

(2021) 03 DEL CK 0352

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM) No. 454 Of 2017, 53 Of 2018

M/S United India Insurance Co. Ltd

APPELLANT

Vs

M/S Worldfa Exports Pvt. Ltd

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11, 33, 34
Insurance Regulatory And Development Authority (Protection Of Policyholders'
Interests) Regulations, 2002 — Regulation 9, 9(2), 9(5), 9(6)

Citation : (2021) 03 DEL CK 0352

Hon'ble Judges : Sanjeev Narula, J

Bench : Single Bench

Advocate : A.K. De, Ananya, Peter, Francis, Sachin Datta, Ritika Jhurani, Jipsa Rawat, Ankit Kakkar

Final Decision : Allowed

Judgement

Sanjeev Narula, J

I.A. 1956/2021 (for early hearing) in O.M.P. (COMM) 53/2018 & I.A. 1957/2021 (for early hearing) in O.M.P. (COMM) 454/2017

1. For the reasons stated therein, the applications are allowed. The petitions are being heard today itself.

O.M.P. (COMM) 53/2018 & O.M.P. (COMM) 454/2017

2. The present petitions under Section 34 of Arbitration and Conciliation Act, 1996, impugn the arbitral award dated 25th July, 2017 passed by the Sole Arbitrator, Hon'ble Justice (Retd.) Mukul Mudgal [hereinafter referred to as "Award"] in respect of disputes arising out of the Standard Fire and Special Perils Insurance Policy dated 28th February, 2012, which was valid up to 27th February, 2013 [hereinafter referred to as the "Policy"].

BRIEF FACTS:

3. Briefly stated, on account of an incidence of fire that occurred on 25th October, 2012, M/S Worldfa Exports Pvt. Ltd [hereinafter referred to as the 'Insured'] suffered loss and made an insurance claim. United India Insurance Co. Ltd [hereinafter referred to as "Insurance Company"] paid an amount of Rs. 5,62,12,429/- to the Insured on 7th July, 2012. However, the Insured contended that on perusal of the Final Survey Report dated 20th November, 2014 [hereinafter referred to as "Survey Report"], it became evident that arbitrary deductions were made by Insurance Company from the original claim of Rs. 12,97,71,460/-, (which was subsequently revised to 12,69,51,063/-). Aggrieved with the said deductions, the Insured initiated arbitration proceedings against the Insurance Company for release of the deficient amount as claimed. The Arbitral Tribunal was appointed pursuant to a petition under Section 11 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as "the Act"] filed by the Insured, and the learned Arbitrator, after considering the facts and the evidence led by the parties, partly allowed the claims of the Insured, out of the twelve claims filed by it vide the Impugned Award. Both the parties have impugned the said award on different grounds. The Insurance Company has challenged the said award in respect of the claims allowed, and the Insured in respect of the claims disallowed. The same are being dealt together claim-wise (as numbered in the Impugned Award) hereinbelow:

a) CLAIM NO. II (C)

4. The findings of the learned Arbitrator on this claim are as follows:

"16. It was urged on behalf of the Claimant. that huge quantity to the extent of 58,000 kgs was unjustifiably described by the Surveyor as non-moving stock, although it was not so and in fact all the goods destroyed were stainless steel utensils and further another large quantity to the tune of 6,000 kgs was wrongly described by the Surveyor as usable accessories and these two descriptions resulted in unwarranted deduction of loss reimbursable to the Claimant. It was argued in this context that the Surveyor has failed to annex any supporting photographs in support of its observation regarding non-moving stock being to the extent of 58,000 kgs and usable accessories being to the extent of 6 metric tons. This argument would work both-ways because if the Surveyor or the Insurance Company have failed to produce any photographs in support of their above discussed step, the Claimant has fared 119 better inasmuch as it has also not produced any authentic documentary evidence supported by electronic record such as CCTV footage etc, to show that 58,000 legs worth of stock referred to above was not "non-moving stock" as wrongly so described by the Surveyor or that 6,000 kgs was not usable accessories" also similarly described by the Surveyor. In this view of the matter, a pragmatic approach has to be taken and keeping in view the extent of operations of the Claimant as reflected in para 10 of this Award above and the attendant circumstances discussed hereinbefore and in view of the admission by the Surveyor of the presence of stock which did not however match with the purchase orders in hand cannot lead

to the entire claim being thrown out in toto, qua this lot of stock and in view of the said extent of operation as also under the rule of thumb, the said stock is deemed to the extent of 25% thereof viz. 14,500 kgs which in terms of value has been rightly calculated @ Rs 308/- per kg and adding 10.08% export incentive thereto it comes to Rs. 338.80 which when multiplied by 14,500 kgs comes to Rs. 49,12, 600/-and the Claimant is thus held entitled to be reimbursed qua the said value, whereas the remaining part of the claim is liable to be and is hereby declined."

5. Mr. A.K. De, learned counsel for the Insurance Company, argues that the learned Arbitrator has wrongly awarded the amount of Rs. 49,12,600/-against the Claim No. II (C) which is actually a part of Claim No. II(A), II (B) and II (C) by overlooking the facts of the case. He submits that the Surveyor, on physical verification, has taken 58,000 kg as non-moving stocks and 6,000 kg as usable accessories. However, the learned Arbitrator without any basis and contrary to the material on record allowed compensation against 25% of the stock, at the rate of 338.80 per kg, which is contrary to the rate arrived at by the Surveyor for unpacked finished goods. Mr. De submits that the Surveyor is an expert in the field and his observations, findings and assessment cannot be brush aside lightly without giving valid reasons and grounds.

6. Mr. Sachin Datta, learned counsel for the Insured has rightly pointed out that the learned Arbitrator has only awarded 25% of the amount. Further, as becomes evident upon a perusal of the aforesaid findings of the learned Arbitrator, there was no basis for the Surveyor to have categorized the quantity of 58,000 kg to be "non-moving stocks" and 6,000 kg as "usable accessories". The learned Arbitrator has taken a pragmatic approach, keeping in view the extent of the operations of the Claimant which has been discussed in para 10 of the award. The aforesaid findings of the learned Arbitrator are reasonable and therefore the Court does not find any perversity in the same. Accordingly, the objection raised by the Insurance Company regarding this claim is found to be without merit.

b) CLAIM NO. III

7. The finding of the learned Arbitrator with respect to Claim No. III are read as under:

"17. Claim No.III: This claim is on account of stated erroneous disallowance of insurance claim pertaining to electrical installations. In this context the claimant has asserted that electrical installations are separately covered under the insurance policy in question, whereby apart from building (for Rs. 4,07,92.500), plant/machinery and accessories (for Rs 1,04,73,750), the electrical installations are separately and exclusively insured to the tune of Rs 68,25,000/- but the Surveyor has disallowed this amount on frivolous grounds such as non-furnishing of survey records despite being so furnished and that otherwise also the claim under this head pertains to furniture and fittings and not electrical installations. Counsel for the Insurance Company has on the other hand argued that the

claimant did not furnish records to establish capitalisation despite being asked for by the Surveyor and that the bills referred by the claimant are post-loss bills towards replacement and, therefore, claim under this head is misconceived and untenable. In respect of this claim it needs to be pointed out that the insurance policy in hand pertains to electrical installations insuring the same up to an amount of Rs 68,25,000/- but the Surveyor has disallowed the claim under this head in toto.

The counsel for the Insurance Company has submitted that as per page 22 of survey report, Exh. R-4, electrical installations such AC, water chiller etc. were not found to be falling under the head 'Electrical Installations' and therefore, not reimbursable. However no exclusion clause in respect of AC, water chillers etc. is referred to in the insurance policy in hand and nor has any other document been produced on behalf of the Insurance Company to show that AC, water chiller etc. do not fall under the head "Electrical Installation". To my mind, the said amount could not have been refused to be reimbursed and the Claimant is thus held entitled to the amount of loss suffered which has been quantified at Rs 27,15,080/- by the Claimant, the correctness whereof is not under challenge and the Claimant is therefore held entitled to recover the same."

8. Mr. De submits that in respect of Claim No. III, the learned Arbitrator has awarded a sum of Rs. 27,15,080/- by overlooking the findings of the Surveyor that the Insured did not provide sufficient records to establish capitalization of the subject assets claimed in the books of the Insured. Further the Insured did not bring any material on record during the arbitration proceedings showing capitalisation of the subject assets claimed.

9. On this claim, Mr. Datta has argued that the Surveyor, while accepting the loss caused, denied the claim only on the basis that the Insured did not provide enough records to establish capitalization of the electrical installations. This finding of the Surveyor has been held to be untenable by the learned Arbitrator as electrical installations are insured under the terms of the insurance policy and the documents in support of the claim were provided to the Surveyor and found to be genuine and accurate. Further, the capitalization of the electrical installations can be seen from the balance sheet and financial statements of the Insured.

10. The findings of the learned Arbitrator in respect of Claim No. III, are based on appreciation of facts and the materials on record and in absence of any perversity, there is no ground for this Court to interfere and accordingly the challenge with respect to this claim is also rejected.

c) CLAIM NO. VII

11. The finding of the learned Arbitrator in this regard are reproduced as under:

"Claim No. VII is on account of erroneous and arbitrary deduction of 5% from Assessed Amount towards Excess in which context the claimant has asserted that

as per the insurance policy an amount of Rs 10,000/- only could have been deducted as the loss was not arising on account of an "Act of God" for which reason the clause (A) envisaging deduction to the tune of 5% of each and every claim was not attracted. The respondent Insurance Company has contended that 5% deduction amounting to Rs 31,38,697/- has been rightly affected. The above contention of the Insurance Company is absolutely unsustainable because the fire incident in question was certainly not an "Act of God" and, therefore, deduction of 5% from the assessed amount could not have been effected and the claim of the claimant to this extent is upheld."

12. With respect to the afore-noted claim, the contention of the Insurance Company is that the learned Arbitrator has awarded Rs. 31,38,697/- by overlooking the policy schedule which specifically states that the "Excess" is 5% or minimum of Rs. 25,000/- both in the case of non AOG perils and AOG perils. Further, the Sole Arbitrator has failed to appreciate that the policy is to be guided by the policy schedule which is drawn on the basis of coverage given under the policy and not by the routine printed general conditions.

13. In this regard, Mr. Datta has drawn the attention of this Court to the terms and conditions of the policy, which stipulates as under:

"Deductibles:

Non-AOG Excess (%) 5	Minimum Excess for Non-AOG Perils (Rs.) 25000
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A OG Excess (%) 5	Minimum Excess for AOG Perils (Rs.) 25000
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14. The learned Arbitrator has relied upon the aforesaid clause and has come to the conclusion that the deduction made by the Insurance Company was contrary to the terms of the policy. Although in the schedule, the concept of the AOG and non AOG Perils has been mentioned, however the view taken by the learned Arbitrator by relying upon the terms and conditions of the policy cannot be said to be perverse. Even otherwise, it is well established in law that under Section 34 of the Arbitration and Conciliation Act, the court cannot go into the reasonability of the reasons given by the Arbitrator on the ground that a view other than the one taken by the Arbitrator is possible, even if it's a plausible one. Accordingly, this objection is also rejected.

d) CLAIM NO. IX

15. The findings of the learned Arbitrator in this regard are as follows:

"Claim No. IX is on account of erroneous disallowance of Debris Removal and Loss Minimization Expense. The claimant has asserted in this context that it had spent considerable amount on the removal of debris of the burnt stock and damaged building material etc. inter-alia to prevent spread of fire and despite the survey report (Exh R-4) taking due note of this fact the respondent has made arbitrary deduction of Rs 94,991/- out of the amount of Rs.8,26,731/- claimed by it.

On behalf of the Insurance Company it is contended that survey report (Exh.R-4) has clearly specified the reasons for such deduction and the claimant has not given any explanation as to how such deduction is wrong or erroneous."

16. The contention of the Insurance Company is that the award of Rs. 94,991/- under the afore-noted claim has been passed by the learned Arbitrator by overlooking the observations made by the Surveyor wherein he had clearly stated the reasons for deductions made and the Insured is not able to disclose any reason to contradict the same. In the opinion of the Court, the learned Arbitrator has held that the deductions under this claim are made without justifiable reasons. The Surveyor has recorded in the Survey Report that the invoices for expenditure were provided, however 75% of such expenses have been deducted without any basis. Since the learned Arbitrator did not find any supporting reasoning for arriving at this conclusion, the claim has been upheld in favour of the Insured. This aspects is also purely factual, based on the record before the Arbitrator, and thus calls for no interference.

e) CLAIM NO. XII

17. The finding of the learned Arbitrator on this claim reads as under:

"Claim No. XII is on account of alleged arbitrary deduction made by the respondent. In this context the respondent Insurance Company has asserted that the final Survey Report had assessed the indemnifiable loss to be Rs. 5,96,02,356/-, although the respondent Insurance Company had obtained the concurrence of the claim for an amount of Rs.6,04,36,887/-, which too was obtained under duress and coercion as the claimant was facing acute financial crisis due to the fire incident in question and, therefore, the reduction in the said amount from Rs 6,04,36,887/- to Rs 5,96,02,356/- and reducing it further to Rs 56212429/- by carrying out further deduction of Rs. 42,24,458/-, without any basis and unilaterally was unwarranted. It is claimed that the claimant learnt of this fact only through the statement of defence that the said deduction was towards disallowance of loss towards packing material which is self-contradictory because the Surveyor had specifically allowed the said claim as being covered under the insurance policy and, therefore, the act of the Insurance Company in unilaterally imposing this cut of Rs. 42,24,458/- is unjustified. The Insurance Company on its part has asserted that the insurance policy covers only "stock of finished/semi-finished, raw material, stock in process and goods pertaining to insured trade" and does not cover "packing material" for which reason the aforesaid amount was rightly deducted from the total amount payable and the claimant was offered a total sum of Rs 5,62,32,959/ -, which the claimant had accepted as full and final settlement while issuing the discharge voucher and, therefore, the said amount is not recoverable under this head. Though the insurance policy in hand does not specifically cover packing material, yet the fact cannot be lost sight of that any finished goods for being sent abroad would need quality packing material as they are sent through containers and therefore damage to such packing material could not have been declined by the Insurance

Company, specially when the surveyor had specifically allowed the said claim and consequently the claimant is held entitled to recover the said amount of Rs 42,24,458/-."

18. Mr. De submits that the aforesaid amount has been wrongly awarded by overlooking the fact that the amount of Rs. 42,24,498/- was deducted from the assessed amount towards damage to packaging material, which was not covered under the insurance policy.

19. On this issue, as rightly contended by Mr. Datta, the learned Arbitrator has, after consideration of the facts of the case, concluded that the packaging material, which was used for finishing goods for the purpose of export, would also be covered under the insurance cover. It is noticed that the insurance policy covers "stock of finished/ semi-finished/ raw material/ stock in process and goods pertaining to insured trade".

20. Though the Insurance Company contends that the packaging material is not covered, however, the expression "goods pertaining to insured trade" would take in its ambit the packaging material. This resonated with the learned Arbitrator to hold that the claim of packaging material cannot be declined by the Insurance Company. Accordingly, this finding of fact, too, calls for no inference by this Court. Thus, this claim is also rejected.

21. Resultantly, the challenge by the Insurance Company is rejected.

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22. The Insured has impugned the arbitral award on the limited ground of award of interest on the insurance claim paid to it on 7th July, 2012. It is contended that the learned Arbitrator has accepted the contentions of the Claimant/Insured and allowed Claim No. VIII concerning additional interest of 2% per annum above bank rate, but, in the operative portion of the award, interest has not been awarded on the amount of Rs. 5.62 crores which was concededly given belatedly by the Insurance Company. The relevant portion of the Arbitral Award in this regard is as under-

"Claim No. VIII is on account of additional interest of 2% p.a. above bank rate in view of Regulation 9 of IRDA (Protection of Policyholders' Interest) Regulations, 2002. In this context the relevant provisions of IRDA (Policyholders Interests) Regulations, 2002 with specific reference to Regulation 9(2) may be adverted to which provides that in no case shall a Surveyor take more than six months from the date of his appointment to furnish his report. Furthermore, Regulation 9(5) directs that the insurer is required to take a final call within 30 days to be computed from the date of the survey report, meaning thereby that the respondent insurance company was required under the relevant IRDA (Policyholders Interests) Regulations, 2002 to conclude the proceedings within outer limit of seven months in all which it apparently did not do and thereby inviting liability under Regulation 9(6) to pay interest @ 2% above the bank rate

prevailing at the beginning of the financial year in which the claim is reviewed by it. It may be recalled here that the fire incident in question occurred on 25.10.2012 and the Surveyor was appointed on 27.10.2012 and commenced survey on the said date itself but did not submit the requisite report within the stipulated period of six months to be computed from 27.10.2012. No specific argument or reply has been put forth on behalf of the insurance company towards this claim. In any case, the insurance company has absolutely no defence available to it regarding its liability to pay interest at the rate of 2% above the bank rate prevailing at the beginning of the financial year in question because it did not adhere to the time line contemplated in Regulation 9 of RDA adverted to above and, therefore, the plea of the claimant company to this extent is also upheld."

23. Mr. De contends that the award of interest has been deliberately declined by the learned Arbitrator. The contentions sought to be raised before this Court were also made by way of an application under Section 33 before the Arbitral Tribunal, however, the learned Arbitrator did not find merit and rejected the same. It is further argued that the regulations are not mandatory. Since the learned Arbitrator did not find the case worthy of grant of interest, the same was declined without payment. It is argued that if the Court would come to the conclusion that there was an error in the award, then the same, to that extent be set aside and the matter be remitted to the learned Arbitrator for fresh consideration.

24. In the operative portion of the award, the learned Arbitrator, while allowing interest observed as under:

"Claim No. VIII - Allowed, awarding interest at the rate of 2%, bank rate w.e.f. 27.5.2013 on onwards on the amount held recoverable under this award."

25. On account of the above, the Insured has been held entitled to interest only on the awarded amount and not on the entire amount belatedly paid to the Insured. The court has examined the arbitral award on the aforesaid aspect. Upon a perusal of the finding extracted above, it becomes clear that the learned Arbitrator returned the finding in favour of the Insured and awarded interest. Further, the learned Arbitrator also found merit in the contention of the Insured that in terms of Clause 9(2), 9(5) and 9(6), the Surveyor ought to have submitted the Survey Report within a period of six months from the date of appointment of Surveyor, and once the Insurance Company receives the Survey Report, it has to offer a settlement of the claim to the Insured within a period of thirty days thereof. On this basis, the learned Arbitrator has awarded interest. The final claim amount was disbursed by the Insurance Company of Rs. 5,62,12,429/- only on a 7th July, 2015. Therefore, on the basis of reasoning given by the learned Arbitrator, the Insured is also entitled to interest at the awarded rate on the aforesaid amount.

26. The Court is not disturbing the findings of the Arbitral Tribunal. The Court is

also not in any way re-appreciating or examining the facts of the case. Since interest has to be awarded on the claim amount, which has been ex-facie ignored in the arbitral award, this Court holds that the Insured shall also be entitled to the interest at the awarded rate of 2% above bank rate on the amount of Rs. 56,21,249/-w.e.f. 27th May, 2013 till the date of disbursal of the said amount i.e. 7th July, 2015. The petition is allowed to this limited extent.

27. In all other respects, the award of the Arbitral Tribunal stands confirmed.