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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 10th March, 2022*

+ **O.M.P. (COMM) 99/2022 & I.A. No.2848/2022**

THE ORIENTAL INSURANCE CO. LTD. Petitioner
Through: Mr P.K. Seth, Advocate.

versus

M/S E-MEDITEK INSURANCE TPA LTD. Respondent
Through: Mr Abhishek Bansal and Mr
Amit Bansal, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner (hereafter '**OICL**') has filed the present petition impugning the Arbitral Award dated 04.11.2021 (hereafter the '**impugned award**') passed by the Arbitral Tribunal comprising of Mr A.K Singhal (Ex-CE, GIPSA & GM, National Insurance) as the Sole Arbitrator (hereafter the '**Arbitral Tribunal**').

2. The impugned award was rendered in the context of disputes that have arisen between the parties in connection with a Service Level Agreement dated 10.07.2014 (hereafter the '**Agreement**').

3. OICL is an Insurance Company and deals in the business of general insurance throughout India

4. The respondent (hereafter 'EMIL') is a company incorporated under the Companies Act, 1956. After acquiring the required license from the Insurance Regulatory and Development Authority of India (hereafter the 'IRDAI') to work as a Health Insurance Third Party Administrator (hereafter 'TPA'), EMIL started offering various services, which included pre-policy health check-ups; cash-less treatment under health insurance policies; claims administration service; hospital bill re-pricing for overseas travel claims; implementation of Rashtriya Swasthya Bima Yojna; and pre-insurance health screening using the network of medical service providers.

5. On 10.07.2014, EMIL entered into the Agreement with OICL to render services as a TPA. In terms of the Agreement, EMIL agreed to render health care and ancillary services to the customers entrusted by OICL to EMIL for a fee to be paid by OICL for the services. The Agreement was valid for a term of one year.

6. Under Clause 14 of the Agreement, the Agreement could be renewed after its expiry by mutual consent of the parties. OICL renewed the Agreement from time to time; it was last renewed on 09.07.2018.

7. In terms of Clause 3 of the Agreement, EMIL was entitled to raise service fee bills in respect of the services provided by it. And,

OICL was liable to make the payment for the services provided by EMIL after duly verifying the invoices.

8. By an order dated 20.03.2018, IRDAI suspended EMIL's license. This was allegedly on the basis of the complaints received in regard to the services provided by EMIL. Aggrieved by the order passed by IRDAI, EMIL filed an appeal before the Securities Appellate Tribunal (SAT). By an order dated 23.03.2018, SAT stayed the order passed by the IRDAI and remanded the matter to IRDAI to decide it afresh.

9. In the meanwhile, OICL discontinued entrustment of further policies to EMIL.

10. EMIL alleges that despite representation and notice demanding the release of the service fees due to it, OICL not only refused to release the fees due but also abruptly and illegally without any prior notice, stopped assigning work in respect of insurance policies to EMIL. EMIL claims that this resulted in EMIL incurring idle costs to maintain the required infrastructure to provide services in terms of the Agreement.

11. In the circumstances, EMIL invoked the Arbitration Clause provided in the Agreement and referred the disputes to arbitration.

12. EMIL filed its Statement of Claims before the Arbitral Tribunal and raised four claims. A tabular statement of the claims as made before the Arbitral Tribunal is set out below:

Claim no.	Particulars
Claim no.1	Recovery of service fee of ₹4,88,32,470/- along with interest @18% per annum on the aforesaid amount which amounts to ₹1,69,33,760/- till 31.12.2018. Claimant is also entitled to <i>pendente lite</i> interest as well as future interest @18% per annum
Claim no.2	Claim of damages to the tune of ₹2,34,56,640/-, or in the alternative, an amount of ₹3,48,26,470/- for the losses suffered by the claimant on account of costs of manpower, infrastructure, and resources incurred by the claimant during April, 2018 to September, 2018 along with <i>pendente lite</i> interest as well as future interest @18% per annum on the aforesaid amount
Claim no.3	Claim for loss of profit to the tune of ₹4,60,06,327/-for the period March,2018 to December,2018 along with <i>pendente lite</i> interest as well as future interest @18% per annum on the aforesaid amount
Claim no.4	Claim for cost of arbitration proceedings

13. OICL contested the aforesaid claims and also raised a counter-claim along with its Statement of Defence. In its counter-claim, OICL claimed an amount of ₹1,17,44,477/- along with interest @18% per annum from 01.06.2018 till payment on account of fraud committed by EMIL.

14. In view of the rival contentions, the Arbitral Tribunal framed the following issues:

- “i. Whether any part or whole of the claim /counterclaim is barred by limitation?

- ii. Whether the Claimant is entitled to recovery of Service Fee from the Respondent as prayed for in the Statement of Claim?
- iii. Whether the Arbitral Tribunal is competent to determine and decide the claims in question and/or counter claims, given the specific allegation of fraud as specifically pleaded/alleged in the Statement of Defence/Rejoinder in the present proceedings?
- iv. Whether the claims set out in the Statement of Claim under the heads of “Claim No. 2” and “Claim No. 3” are not arbitrable in terms of the Arbitration Clause of Service Level Agreement?
- v. Whether the Claimant is entitled to damages as prayed for in the Statement of Claim?
- vi. Whether the Claimant is entitled for loss of profit as prayed for in the Statement of Claim.
- vii. Whether the Claimant is entitled to interest as prayed for in the Statement of Claim?
- viii. Whether the counter claim of Rs. 1,17,44,477/- is maintainable and has been raised in accordance with the provisions of the Arbitration Act, 1996.
- ix. Whether the Respondent is entitled to recover by way of an award Rs.1,17,44,477/- with interest at the rate of 18% p.a. from 1.6.2018 till payment from the Claimant as claimed?
- x. Relief”

15. The Arbitral Tribunal, by the impugned award, partly allowed the claims of EMIL and awarded a sum of ₹1,57,35,413/- towards recovery of service fee bills, in respect of Claim No.1. The Arbitral Tribunal also awarded a sum of ₹66,51,399/- towards damages and a

sum of ₹10,00,438/- as loss of profits in satisfaction of Claim Nos.2 and 3.

16. Additionally, on the amount of ₹1,20,81,294/- awarded by the Arbitral Tribunal under Claim No.1, no interest was awarded till the expiry of three months from the date of the award and thereafter, interest @6% per annum from the first day after the expiry of the three months if the said amount was not paid during that time by OICL, till it was paid. Further, on the balance amount of ₹36,54,119/- under Claim No.1, the amount of ₹66,51,399/- under Claim No.2 and amount of ₹10,00,438/- under Claim No.3, no interest payable till the expiry of one month from the date of the impugned award. However, thereafter, interest @ 6% per annum was awarded till the time they were paid were awarded.

17. The counter-claim raised by OICL was rejected by the Arbitral Tribunal.

18. The Arbitral Tribunal rejected the contention that any part of the claim was barred by limitation. The invoices raised by EMIL in respect of the service fees (as claimed by EMIL under Claim No.1) was within the period of limitation. The Arbitral Tribunal also found that the counter claim was also not barred by limitation.

19. In respect of Claim No.1, the Arbitral Tribunal partly allowed the same and awarded a sum of ₹58,53,041/- after excluding invoices of a value of ₹1,46,98,535/- and held that it was beyond its jurisdiction. In addition, the Arbitral Tribunal awarded a sum of

₹54,98,137/- in respect of invoices, which OICL claims that it had not received. Thus, in aggregate, the Arbitral Tribunal awarded a sum of ₹1,13,51,178/- against an amount of ₹2,69,73,850/- as claimed by EMIL.

20. Further, the Arbitral Tribunal also found that a sum of ₹1,20,81,294/- was payable in respect of the service rendered which were “yet to be billed”. The Arbitral Tribunal found that an aggregate amount of ₹2,34,32,472/- (₹1,13,51,178/- + ₹1,20,81,294/-) was payable subject to certain deductions. The Arbitral Tribunal also held that a sum of ₹76,97,059/- was required to be deducted from the aforesaid amount on account of deficiency in the services for the policies that remained unserved during the period October, 2018 to March, 2019. Thus, against Claim No.1, the Arbitral Tribunal awarded an aggregate a sum of ₹1,57,35,413/- (₹2,34,32,472/- – ₹76,97,059/-)

21. In respect of Claim Nos. 2 and 3, the Arbitral Tribunal rejected OICL’s contention that the said claims were not arbitrable.

22. The Arbitral Tribunal proceeded to examine the said claims and allowed Claim No.2 to the extent of ₹66,51,399/- and ₹10,00,438/- in respect of Claim No.3. EMIL had claimed a sum of ₹4,60,06,327/- as loss of profits in respect of the quantum of work not assigned to it. Against the aforesaid claim, the Arbitral Tribunal awarded a sum of ₹10,00,438/-.

23. Mr P.K. Seth, learned counsel appearing for OICL confined OICL's challenge to the impugned award to the award in respect of Claim Nos.2 and 3. He did not assail the impugned award in respect of the amount awarded for payment of service fees or the award of interest.

24. He submitted that the Arbitral Tribunal had grossly erred in awarding claims for loss on account of idle manpower, infrastructure and resources incurred during the period April, 2018 to September, 2018 and loss of profits. He contended that the order dated 20.03.2018 passed by IRDAI whereby EMIL's license was suspended, had been stayed by SAT by an order dated 23.08.2018. But there was legitimate ground for OICL to refrain from providing any further work and assigning the policies to EMIL. He submitted that the allegations against EMIL were serious. And, these allegations were sufficient for OICL to lose confidence in EMIL.

25. EMIL's claim for damages and loss of profits (Claim Nos.2 and 3) was premised on the basis that OICL had breached the Agreement by not providing work and assigning policies to EMIL after 20.03.2018 even though, the Agreement was in force till 09.07.2018. EMIL had invested in setting up an infrastructure to provide services to OICL and was thus, entitled to reimbursement of expenses for providing the agreed services to OICL as well as anticipated profits.

26. There was no dispute that OICL had stopped assigning further work to EMIL after 20.03.2018. It is also contended on OICL's behalf that it was entitled not to do so as it had lost confidence in EMIL.

27. The Arbitral Tribunal found that OICL had not communicated its decision to terminate the Agreement. It had also not taken recourse to the terms of the Agreement to terminate it. OICL had not taken any steps to call upon EMIL to show cause why the Agreement should not be terminated. On the other hand, there was ample evidence on record to establish that EMIL had been pursuing OICL for assigning policies and work in order that it could continue to render services. It was also established that OICL was aware of the order of SAT staying the order dated 20.03.2018 passed by IRDAI whereby, EMIL's license was suspended.

28. In view of the above, the Arbitral Tribunal concluded that OICL had breached the Agreement by not assigning any work after 20.03.2018. The said conclusion is a plausible one and warrants no interference in these proceedings. The learned counsel appearing for OICL in effect seeks re-adjudication of the said issue. It is OICL's case that it was entitled to withhold work as it had lost confidence in EMIL. However, as noticed above, the Arbitral Tribunal had concluded that the act of OICL in not taking recourse to the terms of the Agreement to terminate the same and abruptly stopping work, constituted a breach of its obligation under the Agreement. It is trite law that this Court is not required to re-appreciate the issues and re-adjudicate the same. Unless the Court finds that the decision of the

Arbitral Tribunal is in conflict with the Public Policy of India or is vitiated by patent illegality, no interference with the Arbitral Award is warranted.

29. Indisputably, if OICL had breached the Agreement, it would be liable to compensate EMIL not only for the appropriate portion of the expenses incurred for rendering services under the Agreement, but also loss of anticipated profits.

30. In this regard, OICL had claimed that EMIL was rendering services to other insurance companies as well. Therefore, no part of the expenditure incurred by EMIL after 20.03.2018 could be recovered from OICL.

31. The Arbitral Tribunal had observed that the relationship between OICL and EMIL was a long standing one as the same had commenced in 2004. It accepted EMIL's contention that it had set up the infrastructure and deployed resources for rendering uninterrupted services to the policy holders of OICL. Even though EMIL was rendering services to other Insurance Companies, it is obvious that it would have allocated resources for rendering services to OICL as well. The Arbitral Tribunal had thus, accepted EMIL's claim that it was entitled to recover part of the expenses incurred during the relevant period from OICL. However, the Arbitral Tribunal did not accept EMIL's claim regarding quantification of the expenses. A plain reading of the impugned order indicates that the Arbitral Tribunal had closely examined the basis of the said expenditure and against EMIL's

claim of ₹2,34,56,640/- (or in the alternative ₹3,48,26,470/-), awarded a sum of ₹66,51,399/-. The aforesaid figure amount was arrived at after taking into account the total amount of expenditure incurred by EMIL for the months of April through July, 2018 and comparing the same with the expenses incurred in the month of October, 2018, that is, after EMIL would have trimmed down its resources. The reduction was further apportioned in the ratio of total revenues generated by EMIL during the past three years (2015-16, 2016-17 and 2017-18) and those generated from OICL during the said period. The Arbitral Tribunal had found that 19.21% of the total revenues were generated from OICL and accordingly, apportioned the expenditure in that ratio. The Arbitral Tribunal also reduced an appropriate amount as the Agreement did not run for the entire month of July, 2018. This Court finds no infirmity with the approach of Arbitral Tribunal in computing the reasonable amount of expenses incurred by EMIL for rendering services to OICL during the period April to July, 2018.

32. Similarly, the Arbitral Tribunal also closely examined the assumptions on which EMIL had quantified its claim for loss of profits. The Tribunal found the estimated profit margin to be 2.39% of the revenue and accordingly, awarded a sum of ₹10,00,438/- as loss of profits for the period March, 2018 to July, 2018.

33. The learned counsels appearing did not seriously challenge quantification of the amount awarded against Claim No.2 and Claim No.3 and it is not necessary for this Court to examine the sum in further detail.

34. In any event, this Court finds no infirmity with the approach of the Arbitral Tribunal.

35. The petition is unmerited and, accordingly, dismissed. The pending application is also disposed of.

MARCH 10, 2022
RK/pkv/v

VIBHU BAKHRU, J

