

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.03.2018

+ **O.M.P. (COMM) 435/2017 & IA No. 14430-14432/2017**

THE UNITED INDIA INSURANCE CO. LTD Petitioner

Versus

MAJA HEALTH CARE DIVISION Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Pradeep Gaur and Mr Amit Gaur.
For the Respondent : Mr Sudhir Nandrajog, Senior Advocate
with Mr Sidharth Joshi, Ms Monika and
Mr Sunil.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The United India Insurance Company Limited (the petitioner) has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 05.08.2017 (hereafter 'the impugned award') passed by the Arbitral Tribunal consisting of a sole arbitrator.

2. By the impugned award, the Arbitral Tribunal has partly accepted the claims preferred by the respondent. The Arbitral Tribunal has accepted that the total amount payable to the respondent in respect of its insurance claim would be ₹14,39,86,599/-. After adjusting the sum of ₹12,62,94,258/-, which has been paid, the Arbitral Tribunal

has awarded the balance amount of ₹1,76,92,341/- in favour of the respondent. The Arbitral Tribunal has also awarded interest at the rate of 9% per annum on the entire sum of ₹14,39,86,599/- from 28.06.2015 to 18.01.2016 and interest on the awarded amount of ₹1,76,92,341/- from 19.01.2016 to 05.08.2017. The Arbitral Tribunal has also awarded post award interest at the rate of 12% per annum on the awarded amount if the awarded sums are not paid within a period of forty-five days from the date of the award.

3. The petitioner has assailed the impugned award mainly on the ground that the same is contrary to a settlement arrived at between the parties. It is the petitioner's case that the respondent had agreed to receive a sum of ₹12,62,94,258/- in full and final settlement of its claims and the said amount had been paid by the petitioner and, therefore, according to the petitioner, no dispute survived between the parties.

4. Briefly stated, the aforesaid controversy arises in the following context:-

4.1 The respondent is a registered partnership firm and is, *inter alia*, engaged in the business of manufacturing Home Care, Oral Care, Cosmetics products such as shampoo, hair tonic conditioners, hair wave sets/lacquers and rises, Hair bleaches and Hair Colorants, etc. The respondent has manufacturing unit known as Maja Healthcare Division, VI-John Industrial Estate, Village Kishanpura, Tehsil Nalagarh, Distt. Solan (H.P.).

4.2 The respondent purchased a fire insurance policy dated 26.09.2013 (hereafter 'the Policy') insuring the respondent for a sum of ₹20 crores against the specified risks. The said policy was valid from 26.09.2013 to 25.09.2014. Whilst the policy was in force, a fire occurred on 24/25.02.2014 at the respondent's factory at village Kishanpura, Tehsil Nalagarh, Distt. Solan. The said fire was first noticed at about 8.45 p.m. on 24.02.2014. The respondent claims that despite all efforts to control the fire, the same could be controlled only around 20.30 hours on 26.02.2014. The respondent claims that due to the said incident, its factory was gutted and its plant and machinery, stocks, fixture and fittings were extensively damaged.

4.3 The respondent filed a claim for a sum of ₹22,09,86,740/- with the petitioner company in October, 2014 indicating the loss suffered under various heads.

4.4 The petitioner company appointed the surveyors and it is the respondent's case that the said surveyors were provided all information as sought for by them.

4.5 The surveyors appointed by the petitioner submitted a final report on 27.04.2015 assessing the amount payable at ₹13,31,57,184 (net of salvage). The respondent states that although the said amount was much less than its entitlement, the respondent was willing to accept the same as considerable time had elapsed and the respondent was in dire need of funds. Accordingly, the respondent furnished a

consent letter dated 25.04.2015 expressing its willingness to accept the said amount as full and final settlement of its claims.

4.6 Notwithstanding the same, the petitioner company further reduced the said amount on account of four Addendum survey reports: Addendum survey reports dated 16.09.2015, 20.10.2015, 09.12.2015 and 16.12.2015. In terms of the said report dated 16.09.2015, the net amount was reduced to ₹13,27,48,548/-; in terms of the said report dated 20.10.2015, it was further reduced to ₹12,70,34,095/-; in terms of the said report dated 09.12.2015, the assessed claim was further reduced to ₹12,40,04,020/-; and in terms of the Addendum survey report dated 16.12.2015, the amount was further reduced to ₹12,62,94,258/-.

4.7 The petitioner called upon the respondent to accept a sum of ₹12,62,94,258/- in full and final settlement of its claim. The petitioner sent a printed discharge voucher under the cover of its letter dated 08.01.2016 calling upon the respondent to accept the same in order for the petitioner to proceed further.

4.8 The respondent executed the discharge voucher as it is their case that they had no option except to execute the same in order to receive any payment.

4.9 The petitioner credited an amount of ₹12,62,31,213/- to the account of the respondent on 18.01.2016.

4.10 On 19.01.2016, the respondent company sent a protest letter with regard to the assessment of loss and settlement of its claims. Thereafter, on 22.01.2016, the respondent invoked the arbitration clause in the Policy and the petitioner appointed the Sole Arbitrator to adjudicate the disputes that had arisen between the parties.

5. It is the respondent's case that the surveyors had assessed the loss of ₹13,31,57,184/-, as per their final report submitted in April of 2015, without considering the records and documents submitted by the respondent in respect of the loss suffered by it. The respondent claims that the said loss suffered was not assessed and further the surveyors took inordinately long time to submit their final report. It is only in October, 2014 that the surveyors submitted the claim form. The respondent claims that although the loss was under assessed, the respondent was willing to accept the said amount and also furnished a consent letter dated 25.04.2015 indicating its willingness to accept the same. However, despite the same, the petitioner did not release the amount of ₹13,31,57,184/- as assessed by the Surveyors in their final report dated 27.04.2015. By December, 2015, the loss as assessed by the surveyors was further reduced to ₹12,62,94,258/-.

6. The respondent claims that it had availed of the finances from various private finances and had to bear higher rate of interest and, thus, was not in a position to accept any further delay in settlement of its claim. The respondent further claims that the interest burden was mounting on a daily basis and its factory was on the verge of closure. It is alleged that the petitioner took advantage of the precarious

financial condition of the respondent and refused to disburse any amount unless the respondent executed a discharge voucher accepting the payment as full and final settlement of its claims. The respondent states that in the aforesaid circumstances, it had no option but to execute the discharge voucher as demanded by the petitioner. The respondent contends that the said discharge voucher was not executed out of its free will but as a result of the economic coercion and pressure exerted by the petitioner.

7. The Arbitral Tribunal has accepted the aforesaid contention and has held that respondent's acceptance of the loss as assessed was without free consent.

8. Mr. Gaur, the learned counsel appearing for the petitioner contended that the Arbitral Tribunal had grossly erred in accepting that the respondent was under economic pressure to accept the sum of ₹ 12,62,94,258/- as full and final settlement of its claims. He submitted that there was no evidence on record that any recovery proceedings had been commenced by any bank and, therefore, the respondent had been unable to establish that its financial condition was so precarious that it was compelled to execute the discharge voucher. He referred to the decision of the Supreme Court in *New India Assurance Company Limited v. Genus Power Infrastructure Limited: (2015) 2 SCC 424* and *United India Insurance v. Ajmer Singh Cotton & General Mills and Ors.: (1999) 6 SCC 400* in support of his contention.

9. Mr Sudhir Nandrajog, learned Senior Counsel appearing for the respondent countered the submissions made on behalf of the petitioner. He submitted that the Arbitral Tribunal was within its jurisdiction to determine the issue whether the discharge voucher was signed by the respondent willingly or whether the respondent had been pressurized to do so? He submitted that the Arbitral Tribunal considered the evidence placed on record and came to an informed decision, which did not warrant any interference in these proceedings.

10. He also referred to the Circular dated 24.09.2015 issued by the Insurance Regulatory and Development Authority of India (IRDA) wherein it had been clearly stated that the execution of a discharge voucher does not foreclose the right of the policy holder to seek higher compensation. He also referred to the cross-examination of the petitioner's witness and submitted that it was disputed that the petitioner would not have released the amounts due unless the respondent had executed the discharge voucher.

Reasons and Conclusion

11. At the outset, it would be relevant to observe that it cannot be disputed that the settlement of the claims preferred by the respondent had been inordinately delayed. The fire had occurred on 24/25.02.2014 and almost two years had elapsed from the incident but the claims preferred by the respondent had not been settled. Admittedly, the respondent had requested for an *ad hoc* disbursement of a part of its claims, yet no steps were taken by the petitioner to

provide any immediate relief to the respondent. It is also not disputed that the petitioner had forwarded the discharge voucher for signatures of the respondent. The said voucher captioned “Claim Disbursement Voucher” is pre-printed form which only requires the details such as the policy number and the amount to be filled in. The said voucher reads as under:-

“CLAIM DISBURSEMENT VOUCHER

Claim No. :

Policy No.: 221600/11/13/11/00000780

Name of bank/branch : Punjab National Bank

Name of Insured: MAJA HEALTH CARE
DIVISION

Bank Account No. of Insured: 1470008700000816

Date: 08.01.2016

In Consideration of approval of my claim referred above, I/We hereby accept from United India Insurance Co. Ltd. the sum of Rs.12,62,31,213.00 (Rs. Twelve Cr. Sixty Two Lac Thirty One Thousand Two Hundred Thirteen only (approved net Claim amount) in full and final settlement of my/our claim arising out of which occurred on 24.2.14 (date of loss) covered under Policy No. 221600/11/13/11/00000780 valid for the period from 26.9.13 to 25.9.2014

I/We hereby voluntarily give discharge receipt to the Company in full and final settlement of all my/our claims present or future arising directly/indirectly in

respect of the said loss/accident. I/We hereby also subrogate all my/our rights and remedies to the Company in respect of the above loss/damages.

One Rupee Rev. Stamp

Signature of insured

Full Name : MAJA HEALTH CARE DIVISION

Address: H.O. Connaught Place, New Delhi

Account No: 1470008700000816”

12. It also cannot be disputed that the petitioner would not have disbursed the assessed claim without securing the respondent signatures on the Claim Disbursement Voucher. This was plainly admitted by Ms Lipika Kalra (who appeared as a witness on behalf of the petitioner). The relevant question put to the said witness and her response thereto is set out below:-

“Q.14 Is it correct that Respondent would not have been paid the amount until and unless the duly signed discharge voucher received by the Respondent?

Ans Yes. As per the terms of the agreed bank clause, the discharge of bank is needed to discharge the insurers of their liability in respect of the claim. Hence duly discharge voucher was requested before the payment of claim.”

13. It was also affirmed on behalf of the respondent that its financial condition was precarious and it had availed of loans from

private financiers and the interest burden was extremely onerous high. The Arbitral Tribunal had also referred to the letter dated 08.01.2016 under the cover of which the Claim Disbursement Voucher had been forwarded to the respondent for signature. The relevant extract of the said letter reads as under:-

“We are pleased to inform you that the competent authority has approved your claim for full and final payment of Rs.12,62,94,258/- subject to:

- (i) Compliance of Agreed Bank Clause. So, please send duly discharged voucher duly signed by you & your bankers named in the policy.
- (ii) Collection of Reinstatement premium of Rs 63045/-. This shall be deducted from the claim amount & claim shall be paid for Rs12,62,31,213/-.
- (iii) NEFT details duly certified by the banker named in the policy.

We request for the above documents so as to proceed further in the matter.”

14. The language of the above letter also makes it amply clear that the petitioner would not have proceeded further to disburse any amount unless the respondent had executed the said voucher.

15. The Arbitral Tribunal had accepted that the respondent was facing financial constrains and its acceptance of the assessed amount was not with its free consent. This Court finds no infirmity with the aforesaid view as there is ample material on record for the Arbitral

Tribunal to have arrived at the said conclusion.

16. It is also relevant to state that at the material time, IRDA had issued a circular dated 24.09.2015. The relevant extract of the said circular reads as under:-

“The Insurance Companies are using 'discharge voucher' or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books. However, of late, the Authority has been receiving complaints from aggrieved policyholders that the said instrument of discharge voucher is being used by the insurers in the judicial fora with the plea that the full and final discharge given by the policyholders extinguish their rights to contest the claim before the Courts.

While the Authority notes that the insurers need to keep their books of accounts in order, it is also necessary to note that insurers shall not use the instrument of discharge voucher as a means of estoppel against the aggrieved policy holders when such policy holder approaches judicial fora.

Accordingly insurers are hereby advised as under:

Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However, it should be clearly understood that execution of such vouchers does not foreclose the rights of policy holder to seek higher compensation before any judicial fora or any other fora established by law.

All insurers are directed to comply with the above instructions.”

17. It is apparent from the above that although the Insurance Companies were insisting on securing a discharge voucher before disbursing the claims, the said discharge voucher was only to be used to keep the books in order and would not preclude the insured from pursuing its claim. Mr Gaur contended that the aforesaid circular had been amended by another Circular dated 07.06.2016. The relevant extract of the said circular reads as under:-

“The Authority has reviewed the matter taking in to consideration the provisions of the Contract Act, PPI Regulations and Apex Court Judgements. Taking equal cognisance of the legal rights of the policy holders and insurers, the Authority hereby further directs that-

- (i) Wherever there are no disputes by the insured/s or claimant/s to the amount offered by the insurer towards settlement of a claim, the present system of obtaining the discharge voucher may be continued. However, the insurers must ensure that the vouchers collected must be dated and complete in all respects while obtaining the signature/s of the insured/s or claimant/s.
- (ii) If the amount offered is disputed by the insured/s or claimant/s, insurers would take steps to pay the amount assessed without waiting for the voucher discharged by the insured/s or the claimant/s.
- (iii) Under no circumstances the Discharge voucher should be collected under duress, by coercion, by force or compulsion.

Since there is no uniformity in the format/wordings of the Discharge vouchers in use, Authority would suggest that the insurers may consider adopting a standardised format/wording/s of the Discharge voucher.

Insurers are directed to comply with the above with immediate effect.”

18. Mr Gaur submitted that in view of the aforesaid Circular, the respondent could not dispute the full and final settlement as recorded in the Disbursement Voucher. The reliance placed by Mr Gaur on the Circular dated 07.06.2016 is misplaced, as it was clearly admitted by the petitioner’s witness that the petitioner would not have disbursed the amount if the respondent had not signed the Disbursement Voucher. It was also not disputed that the respondent had applied for *ad hoc* disbursement; however, the petitioner had failed to make any such *ad hoc* disbursement. It is also relevant to state that at the material time when the respondent had signed the Disbursement Voucher, the Circular dated 24.09.2015 was operative. This was also considered by the Arbitral Tribunal. Thus, in view of the Circular dated 24.09.2015, the respondent could not be precluded from pursuing its claims.

19. The reliance placed by the petitioner on the decision of the Supreme Court in the case of *New India Assurance Company Ltd.* (*supra*) may not be apposite. In that case, the Supreme Court had considered the question whether in the given facts acceptance of the compensation and signing of the subrogation letter by the respondent therein was voluntary or whether the respondent (claimant) was

subjected to compulsion or coercion.

20. On the facts of that case, the Court had concluded that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up such a plea, must *prima facie* establish the same by placing the relevant material before the Chief Justice/his designate. This was in context of an application under Section 11 of the Act. On the facts of that case, the Court concluded that the respondent's plea was a bald plea and not supported by sufficient material. The learned counsel appearing for the petitioner therein had also pointed out that the respondent's turnover was more than ₹500 crores and, therefore, it was improbable that such a company would feel financially constrained and stand coerced in giving a discharge receipt of ₹5.98 crores. The facts in the present case are materially different. In the present case, the surveyors had submitted a financial report assessing the claim of ₹13,31,57,184/- which the respondent was willing to accept; however, the petitioner did not accept the same. As stated above, four further reports were called for from the assessors and finally the amount offered almost eight months later was reduced to ₹12,62,31,213/-. It cannot be disputed that (i) the disbursement of the respondent's claim was inordinately delayed; (ii) the loss suffered by the respondent was substantial; (iii) the petitioner would not disburse the admitted amount without the respondent signing the Voucher; and (iv) the respondent's witness had affirmed that the factory was on the verge of closure. It is also noteworthy that the respondent had immediately on receipt of the said amount lodged a protest on

19.01.2016.

21. In view of the above, this Court finds no reason to interfere with the impugned award. The petition is, accordingly, dismissed. All the pending applications also stand disposed.

MARCH 12, 2018

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VIBHU BAKHRU, J



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