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

Judgment reserved on: 14.07.2025
Judgment pronounced on: 18.09.2025

\+ **O.M.P. (COMM) 194/2022**

UNITED INDIA INSURANCE CO. LTD. .....Petitioner

Through: Mr. A.K.De, Ms. Ananya De, Ms. Chandni Sharma, Advs.

versus

M/S VALLEY IRON & STEEL CO. LTD .....Respondent

Through: Mr. S.D. Singh, Mr. Kamla Prasad, Mrs. Meenu Singh, Mr. Siddharth Singh, Advs.

\+ **OMP (ENF.) (COMM.) 21/2022 & EX APPL.(OS) 3045/2022, EX APPL.(OS) 6/2023**

M/S VALLEY IRON AND STEEL COMPANY LIMITED

..…Decree Holder

Through: Mr. S.D. Singh, Mr. Kamla Prasad, Mrs. Meenu Singh, Mr. Siddharth Singh, Advs.

versus

UNITED INDIA INSURANCE COMPANY LIMITED

…..Judgement Debtor

Through: Mr. A.K.De, Ms. Ananya De, Ms.Chandni Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) seeking the setting aside of the impugned Arbitral Award dated 28.07.2021 and Order dated 28.08.2021 passed by the Arbitral Tribunal (***"Tribunal"***) in "*M/S. Valley Iron & Steel Company Ltd. And United India Insurance Company Ltd*."

FACTUAL BACKGROUND

2. The petitioner herein was the respondent before the Tribunal, and is a Company incorporated under the Companies Act, 1956. It is a Government of India undertaking, having its Head Office at Chennai. For the purposes of the present dispute, its Regional Office at Delhi and the Policy issuing Office at Noida are relevant. The petitioner is the insurer under the policy in question.

3. The respondent herein was the claimant before the Tribunal, and is a Company incorporated under the Companies Act, 2013. It is engaged in the business of manufacturing stainless steel, billets, flats, HR coils, CR coils, bright bars, pipes, and allied products, having its factory situated at Village Rampur Majari, P.O. Dhaula Kuan, Paonta Sahib, District Sirmour, Himachal Pradesh. The respondent is the insured under the said policy.

4. The respondent obtained a Standard Fire and Special Perils Policy bearing No. 221800/11/10/11/000000310 from the petitioner, covering its factory situated at Village Rampur Majari, District Sirmor, Himachal Pradesh, for the period 15.09.2010 to 14.09.2011, covering risks of its plant, machinery, stocks and building on a reinstatement basis.

5. On 27.08.2011, the respondent intimated to the petitioner that during the intervening night of 26.08.2011 and 27.08.2011, incessant rains led to

heavy floods, resulting in extensive damage to its plant, machinery, equipment, stocks and building.

6. Upon receipt of the intimation, the petitioner appointed M/s Protocol Surveyors Pvt. Ltd. to carry out a survey and assessment of the loss. The respondent remained in constant touch with the surveyor during the assessment process. As the respondent failed to reinstate the damaged plant and machinery within 12 months, in terms of the reinstatement clause of the policy, despite repeated reminders, the surveyor assessed the loss both on market value basis at ₹10,45,03,252/- and reinstatement basis at ₹19,84,08,960/-. The respondent was duly intimated of these assessments.

7. As per the petitioner, the respondent, being satisfied with the surveyor's assessment on market value basis, issued a written consent letter dated 18.01.2014 accepting a sum of ₹10,45,00,000/- towards full and final settlement of its claim. Out of the aforesaid amount, the petitioner paid ₹8,92,73,204/- on 25.04.2014 and ₹1,03,92,758/- on 13.08.2014. The balance was adjusted towards reinstatement premium of ₹7,26,796/- and salvage value of ₹41,07,242/-, which was handed over to the respondent.

8. After a lapse of approximately 42 months from the date of issuance of the consent letter and 34 months from receipt of the final settlement amount, the respondent, for the first time vide letter dated 21.06.2017, alleged that the consent letter had been signed under coercion, financial stress and under threat of repudiation of its claim. In the said letter, the respondent sought a copy of the survey report but did not raise any claim for an additional amount.

9. Thereafter, by letter dated 11.08.2017, the respondent invoked the arbitration clause under the insurance policy and nominated Shri

Nagendra Kumar Singh as its Arbitrator. The petitioner, by email dated 08.09.2017, nominated Shri P.C. James as its Arbitrator. Subsequently, the respondent substituted its nominee and appointed Shri Mansoor Ahmed Mir, Former Chief Justice of the High Court of Himachal Pradesh, in place of Shri Nagendra Kumar Singh by letter dated 26.09.2017.

10. As the two nominated arbitrators failed to appoint a presiding arbitrator, the respondent approached this Court under Section 11 of the Act. By order dated 18.12.2018, this Court appointed Shri Ajit Prakash Shah, Former Chief Justice of this Court, as the presiding Arbitrator. Accordingly, the Tribunal was constituted.

11. By an Award dated 28.07.2021, the Tribunal directed the petitioner to pay to the respondent a sum of ₹33,26,25,300/- along with interest @ 9% p.a. from 01.02.2012 till realization of the said amount.

12. Thereafter, the respondent filed an application under Section 33(a) of the Act, seeking correction of an alleged typographical error in paragraph 212 of the award relating to the estimation of loss. The petitioner filed its reply opposing the said application, pointing out that the estimation statements were never part of the pleadings or evidence.

13. By order dated 28.08.2021, the Tribunal allowed the application of the respondent and corrected para 212 of the Award. The operative portion of the Award, however, remained unaltered.

14. The petitioner, being aggrieved by the Arbitral Award dated 28.07.2021 and the order dated 28.08.2021 passed by the Tribunal, has filed the present petition under Section 34 of the Act, seeking the setting aside of the said Award and order.

SUBMISSIONS OF THE PETITIONER

15. Mr. De, learned counsel for the petitioner, assails the arbitral Award dated 28.07.2021 on the ground that it is contrary to the fundamental policy of Indian law, patently illegal, and perverse. It is urged that the Tribunal decided Issue No. 1 on presumptions and assumptions, disregarding pleadings and evidence. According to the petitioner, upon acceptance of Rs. 10,45,00,000/- under the consent letter dated 18.01.2014, the insurance contract stood concluded, leaving no arbitrable disputes pending between the parties.

16. It is further submitted that the respondent, for the first time after 42 months, by letter dated 21.06.2017, alleged coercion and financial duress in accepting the settlement, but even then, did not raise a claim for any additional amount. The Tribunal's reliance on a forged and fabricated protest letter dated 18.08.2014, which itself was found to be not genuine, was erroneous and led to a contradictory finding that an arbitrable dispute existed despite the settlement and execution of a satisfaction voucher.

17. The petitioner emphasizes that the respondent's long silence and absence of protest is fatal. Reliance is placed on ***New India Assurance Co. Ltd. v. Genus Power Infrastructure Ltd., (2015) 2 SCC 424***, wherein a belated plea of duress was held to be a bald assertion not giving rise to any arbitrable dispute. Similarly, the Tribunal misapplied the principle in ***United India Insurance Co. Ltd. v. Ajmera Singh Cotton and General Mills, (1999) 6 SCC 400***, which permits reopening of claims only where discharge vouchers are obtained by fraud, coercion, or misrepresentation, circumstances not proved in the present case.

18. It is further submitted that the Tribunal erroneously presumed that the survey report assessing the loss of Rs. 10.45 crores was prepared after

the consent letter of 18.01.2014, whereas contemporaneous correspondence, including the surveyor's email of 02.09.2013, shows that the assessment had already been completed, and its release was withheld at the respondent's request. Emails exchanged in October 2013 and January 2014 further confirm that the surveyor was compelled to delay issuance of the report on account of the respondent's own conduct.

19. On Issue No. 2, it is submitted that the Tribunal arbitrarily held the petitioner responsible for the respondent's financial crisis on account of non-release of interim payments, although no such plea was raised in the statement of claim nor proved in evidence. The petitioner argues that the Tribunal misunderstood the scope of interim payment under the insurance contract and erroneously imposed obligations not contemplated under the policy or IRDAI guidelines. The surveyor's interim report of 10.09.2011 was merely preliminary in nature and did not give rise to any obligation to release payments. Despite repeated emails from the surveyor calling upon the respondent to segregate and repair machines, the respondent failed to act, seeking instead to claim a total loss of equipment.

20. Mr. De, learned counsel, also points to contradictions in the award, particularly where the Tribunal noted absence of record explaining contradictory letters, yet in deciding Issue No. 2 concluded that the consent letter of 18.01.2014 had been obtained under duress. It is highlighted that no question or suggestion was ever put to RW-1 (petitioner's witness) during cross-examination that the consent letter was obtained under coercion.

21. Further, reliance on the respondent's averment in paragraph 68 of the Statement of Claim that an email had been received threatening non-

payment unless a full and final settlement was signed is misplaced, since CW-2 (respondent's witness) in cross-examination admitted this was an error and no such email was ever received. The Tribunal's failure to consider this admission and other material evidence, it is urged, renders its findings perverse and patently illegal.

22. It is further submitted that the Tribunal erred in its findings on Issue No. 3. Instead of adjudicating the core issue, the Tribunal wrongly relied upon IRDAI Regulations and the Claim Manual, making observations which were neither relevant nor proved in evidence.

23. It is emphasised that although the Tribunal itself expressed doubts regarding the genuineness of the letter dated 18.08.2014, it nonetheless proceeded to hold that, even assuming the petitioner's allegations to be true, the petitioner could not escape its obligations under the IRDAI guidelines. Such reasoning, it is argued, is self-contradictory and undermines the award.

24. Mr. De, learned counsel, contends that once the letter of 18.08.2014 was found to be forged, the burden lay squarely on the respondent to prove that the settlement embodied in the consent letter dated 18.01.2014 was not binding. The respondent, however, failed to raise any protest for 42 months, and its entire case rests upon a forged document. Reliance on this forged document, despite admissions in cross-examination that no such supporting email existed, renders the findings perverse and illegal.

25. He also points out the inherent inconsistency in the respondent's case. While alleging financial crisis and coercion in executing the consent letter, the respondent in fact waited seven months after the consent letter to receive full payment, and thereafter remained silent for 34 months before sending the letter dated 21.06.2017. This conduct, it is urged, falsifies the plea of duress.

26. On Issue No. 4, it is submitted that the Tribunal ignored Section 64-UM of the Insurance Act, 1938 and the law laid down in ***Venkateshwara Syndicate v. Oriental Insurance Co. Ltd. (2009) 8 SCC 507***, which recognizes the surveyor's report as a mandatory basis for settlement. The petitioner approved and settled the claim strictly in accordance with the surveyor's report, which had been prepared after detailed examination of records and without any objection from the respondent. The finding of breach on this count is therefore perverse.

27. On Issue No. 5, it is urged that the respondent failed to establish any breach of policy terms. The policies were on a reinstatement value basis, containing a clause requiring reinstatement within 12 months of the loss, unless expressly extended in writing. The respondent failed to complete reinstatement within the stipulated period and was not granted any extension. Consequently, the surveyor rightly assessed the loss on depreciated value basis. The Tribunal's finding overlooking this breach of the reinstatement clause is therefore unsustainable.

28. Mr. De, learned counsel, without prejudice to aforesaid contention, argues that under the policy terms, particularly Condition 9, the petitioner had discretion to settle the claim either on reinstatement or market value basis, and the respondent could not compel reinstatement. Reliance is placed on ***General Assurance Society Ltd. v. Chandmull Jain, (1966) 36 COMP CAS 468 and United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, 2004 (8) SCC 644***to urge that the parties are bound by the terms of the contract, and the Tribunal erred by rewriting them.

29. With regard to issue no. 6, it is submitted that a licensed surveyor was duly appointed under Section 64-UM of the Insurance Act, 1938 that the respondent participated in the survey process without raising objections,

and the surveyor's assessment of Rs. 10.45 crores on market value basis was expressly accepted by the respondent through the consent letter dated 18.01.2014. Payments were made accordingly, after permissible deductions towards reinstatement premium and salvage. The Tribunal, however, rejected the surveyor's report on assumptions and grounds not pleaded or proved, ignoring both the evidence on record and the settled process of loss assessment.

30. It is further submitted that the Tribunal adopted an illegal procedure by directing the respondent to file fresh calculations after the conclusion of evidence, and then relying on such late-stage material to enhance the assessed amount. Reliance was also placed on documents outside the pleadings, such as a letter of 21.01.2020 and annexures to written submissions, without affording the petitioner an opportunity to rebut them. The Tribunal arbitrarily approved the claims in favour of the respondent at an inflated market value assessment of Rs. 33.26 crores, unsupported by any bills or vouchers.

31. The petitioner further challenges the award of interest from 01.02.2012, only five months after the incident of loss, clearly overlooking and ignoring the fact that the respondent itself failed to reinstate the machinery within the stipulated 12 months and, in fact, accepted settlement on market value basis by issuing a consent letter dated 18.01.2014. Payments were duly made in April and August 2014, with permissible deductions, and thereafter the respondent remained silent for 34 months before raising any grievance in June 2017 and invoking arbitration only in August 2017. In these circumstances, grant of interest from 2012, without any rationale or reasoning, is contended to be contrary to Section 31(3) of the Act, perverse, and patently illegal.

32. It is also urged that the Tribunal erred in awarding costs of Rs. 1,37,03,298/- and counsel's fee of Rs. 60,00,000/- merely on the basis of a "Memo of Cost" submitted after conclusion of arguments, without any supporting proof of actual payment. According to the petitioner, the Tribunal has awarded a sum exceeding Rs. 65 crores without legal or factual foundation, involving public money, and the same is liable to be set aside as being against public policy and shocking to the conscience of the Court.

SUBMISSIONS OF THE RESPONDENT

33. Mr. Singh, learned counsel for the respondent submits that the impugned arbitral Award is fair and reasoned. He contends that the present petition under Section 34 of the Act is, in essence, an appeal seeking re-appreciation of evidence, which is impermissible in law given the narrow scope of interference. The grounds urged by the petitioner are misconceived, as no patent illegality, perversity, or jurisdictional error is demonstrated, and therefore, the petition deserves to be dismissed. Reliance has been placed on ***Consolidated Construction Consortium Limited v. Software Technology Parks of India, 2025 SCC OnLine SC 956.***

34. On Issue No. 1, Mr. Singh, learned counsel, submits that the Tribunal rightly held that disputes between the parties survived notwithstanding payment of Rs. 10.45 crores. The consent letter dated 18.01.2014 was obtained even before the survey report was finalized, and without any formal assessment of liability. It was the petitioner's duty to reject such a premature discharge voucher instead of procuring it. By failing to do so, the insurer breached its obligation of utmost good faith. It is thus contended that the findings of the Tribunal are in accordance with law and call for no interference.

35. On Issue No. 2, it is submitted that the Tribunal rightly found that the consent letter was executed under duress and undue influence. It is urged that the respondent was under acute financial distress, its accounts having been classified as NPAs, and its repeated requests for interim payments were ignored despite the existence of an interim survey report. In such compelling circumstances, the insured was left with no option but to accept Rs. 10 crores under threat of repudiation. The Tribunal, therefore, correctly held that the respondent was not bound by the consent letter. Learned counsel further submits that no interference is warranted as the Award is in consonance with law and the Tribunal is the final authority on appreciation of facts.

36. On Issue No. 3, Mr. Singh, submits that the Tribunal rightly rejected the allegation of forgery in respect of the letters dated 14.08.2012 and 18.08.2014. The Tribunal correctly observed that the petitioner's records were incomplete and unreliable, and that the petitioner had failed to discharge its statutory duty under the IRDAI Regulations to properly communicate with the respondent. In these circumstances, the Tribunal's conclusion that the said letters could not be treated as fraudulent, and at best amounted to collateral lies having no bearing on the respondent's entitlement, is justified and calls for no interference. It is further submitted that even though the Tribunal expressed reservations about the genuineness of the said letters, it was of the view that, irrespective thereof, the petitioner had defaulted in fulfilling its obligations.

37. On Issue No. 4, it is submitted that the Tribunal rightly disbelieved the surveyor's assessment limiting liability to Rs. 10.45 crores. The mishap in question arose from a single peril, namely a cloudburst and subsequent flood, and the surveyor's attempt to selectively attribute

damages only to the direct impact of flooding was erroneous. The Tribunal, after a detailed examination of over 1,000 pages of documents produced by the respondent, found the surveyor's report to be arbitrary, lacking clarity, and contrary to the evidence on record. Accordingly, the finding that the petitioner was not justified in restricting liability to Rs. 10.45 crores is well reasoned and ought to be sustained.

38. On Issue No. 5, it is submitted that the findings of the Tribunal are fully justified. The Tribunal, after examining the obligations of the petitioner and its surveyor under the Insurance Act, the GIPSA Claim Manual, and the IRDAI Regulations, categorically held that the petitioner neither discharged its statutory nor regulatory duties. Instead of acting fairly and in good faith, as required by law, the petitioner adopted an adversarial stance against the respondent. The Tribunal identified as many as seven distinct breaches committed by the petitioner and its surveyor in the discharge of their functions. In view of these findings, Issue No. 5 was rightly answered against the petitioner.

39. On Issue No. 6, it is submitted that the Tribunal has rightly upheld its entitlement to indemnity. Although the claim was initially lodged on reinstatement basis, the Tribunal, after considering the evidence, correctly held that since reinstatement remained incomplete and the stipulated period was not extended, the claim was liable to be assessed on market value.

40. The Tribunal also found that the surveyor's assessment was neither impartial nor reliable, having been influenced by the petitioner and therefore rejected the same. Instead, the Tribunal accepted the respondent's computation as broadly correct, subject to reasonable adjustments. It was duly recorded that the respondent had already incurred over Rs. 40 crores on reinstatement. After applying the

deductible and effecting a lump-sum reduction of Rs. 5 crores towards omissions and policy conditions, the payable indemnity was fairly quantified at Rs. 43,22,91,262/-. After adjusting amounts already released, the net award of Rs. 33,26,25,300/- was rightly granted in respondent's favour.

41. The Tribunal further observed that the petitioner had misused its bargaining power to influence the surveyor's findings in its favour, thereby frustrating the respondent's legitimate rights under the policy. In this backdrop, the quantification of Rs. 33.26 crores is not only based on sound reasoning but also represents a fair and just indemnification of the loss.

42. It is further submitted that there is no prohibition against the grant of interest in the Agreement or contract between the parties. The Tribunal, while considering the provisions of Section 31(7) of the Act, as well as the relevant legal principles, and taking note of the failure on the part of the petitioner to make timely payment, rightly awarded interest by relying upon the IRDAI Regulations. The Tribunal granted interest at the rate of 9% per annum from 01.02.2012, being the date on which the final claim proforma and supporting documents were submitted to the petitioner, until realization.

43. A perusal of the Statement of Defence filed by the insurer reveals that the claim for interest was not even opposed by the petitioner. Consequently, the ground urged by the petitioner that excessive costs have been imposed is wholly unfounded. The Tribunal has given complete justification for the award of interest and costs, which is in accordance with law and warrants no interference.

ANALYSIS

44. I have heard the learned counsel for the parties and perused the material on record.

45. Before proceeding with the objections raised by the petitioner, it is pertinent to mention the scope of interference under section 34 of the Act.

46. In ***Consolidated Construction (supra)***, and ***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375*** the Hon'ble Supreme Court laid down the scope of Section 34 of the Act. A perusal of the two judgments indicates the following:

A) An arbitral Award can be set aside only on limited grounds, and the supervisory role of the Court is confined to a narrow compass;

B) While exercising powers under Section 34 of the Act, the Court does not sit in appeal over the award and cannot re-examine the correctness of the findings of the Tribunal. The Court is not permitted to re-appreciate evidence, reassess factual findings, or substitute its own conclusions for those arrived at by the Tribunal;

C) Where the findings and conclusions of the Arbitral Tribunal are based on a possible and plausible view of the record, the Court under Section 34 of the Act shall not interfere with the award;

D) The construction of a contract by the Arbitral Tribunal is not to be interfered with if a plausible view has been taken. Even an erroneous interpretation of a contract or document remains an error within jurisdiction and is not open to correction under Section 34 of the Act;

E) A finding of the Tribunal may be termed perverse only if it is based on no evidence, or is such that no reasonable person would have arrived at. If relevant and vital evidence has been ignored, or inadmissible evidence has been relied upon, the award may be regarded as perverse.

F) An award suffers from patent illegality if it is contrary to substantive provisions of law, the terms of the contract, or is so irrational that it shocks the conscience of the Court. Mere erroneous application of law, however, does not amount to patent illegality;

G) An award may also be interfered with if it is contrary to the public policy of India. Public policy, in this context, does not mean the policy of a particular government but is confined to fundamental notions of justice, fairness, and morality. An award that is manifestly unfair, unreasonable, or injurious to the public good, or which disregards binding legal principles, may be set aside as being opposed to public policy.

47. With these principles, I shall now proceed to consider the rival contentions of the parties, issue-wise.

Issue No. 1 – Arbitrability of Dispute after Execution of Consent Letter

48. The first issue framed by the Tribunal was whether any arbitrable dispute survived after the respondent received Rs. 10.45 crores against a signed consent letter.

49. Before dealing with the contentions of the petitioner in this regard, it is important to state the law on when disputes relating to full and final settlement of claims become arbitrable. In ***National Insurance Co. Ltd.***

v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267, the Hon'ble Supreme Court held as under:

> ***"51.*** *The Chief Justice/his designate exercising jurisdiction under Section 11 of the Act will consider whether there was really accord and satisfaction or discharge of contract by performance. If the answer is in the affirmative, he will refuse to refer the dispute to arbitration. On the other hand, if the Chief Justice/his designate comes to the conclusion that the full and final settlement receipt or discharge voucher was the result of any fraud/coercion/undue influence, he will have to hold that there was no discharge of the contract and consequently, refer the dispute to arbitration. Alternatively, where the Chief Justice/his designate is satisfied prima facie that the discharge voucher was not issued voluntarily and the claimant was under some compulsion or coercion, and that the matter deserved detailed consideration, he may instead of deciding the issue himself, refer the matter to the Arbitral Tribunal with a specific direction that the said question should be decided in the first instance.*
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> ***52…****(iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days*

thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The "accord" is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration."

(emphasis supplied)

50. The principle laid down in ***Boghara Polyfab (supra)*** has been further elaborated in ***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 SCC OnLine SC 1754***, where the Hon'ble Supreme Court observed:

"58. It was further held in Boghara Polyfab (supra) that the mere execution of a full and final settlement receipt or a discharge voucher would not by itself operate as a bar to arbitration when the validity of such a receipt or voucher is challenged by the claimant on the ground of fraud, coercion or undue influence. In other words, where the parties are not ad idem over accepting the execution of the no-claim certificate or the discharge voucher, such disputed discharge voucher may itself give rise to an arbitrable dispute."

51. I am conscious of the fact that the proceedings in the above cited judgments were at a referral stage under Section 11 of the Act, and the present stage pertains to an objection under Section 34 of the Act, after the parties have led evidence. The petitioner contends that following the issuance of the consent letter, no dispute between the parties remained arbitrable. It is therefore necessary to revisit the settled legal position, which clearly establishes that a purported full

and final settlement becomes arbitrable in nature if it is vitiated by undue influence, coercion, duress, or similar factors.

52. Upon a careful consideration of the material on record, the Tribunal concluded that an arbitrable dispute indeed existed. It observed that the consent letter dated 18.01.2014 was obtained at a stage when neither the Survey Report had been finalised (i.e., 29.01.2014), nor had any decision been taken by the petitioner regarding the admissibility of the claim. It was thus inexplicable how the respondent could have, on its own, accepted a figure of Rs. 10.45 crores before the Survey Report was prepared.

53. The Tribunal further noted that the petitioner, being a public sector undertaking and bound by the principles of utmost good faith (*Uberrima fides*), ought to have returned the discharge voucher and required the respondent to await the finalisation of the Survey Report. The relevant findings of the Tribunal read as under:

> *"129. By no stretch of imagination, can it be explained as to how the insured on its own accepted a figure of Rs. 10.45 crores when neither the Survey Report nor any decision by the Respondent could have been formally finalized. This being so it was the bounden duty of the Respondent, being an insurer obliged to abide by norms of good faith and further being a Government of India company to return the voucher to the Claimant and ask it to await the formal issuance of the Survey Report and a decision on the claim by the Respondent, before resubmitting the same so that the Respondent could release the payment. However, the Respondent did not do this, indicating that it was the author of the draft letter which*

the Claimant was obliged to transcript on its letterhead, sign and submit to the Respondent."

54. The Tribunal also noted that the respondent had consistently put forth bona fide estimates of its loss, amounting to Rs. 58.10 crores (reinstatement basis) and Rs. 44.89 crores (market value basis), as recorded in the Survey Report. The sudden reduction to a much lower figure of Rs. 10.45 crores, was treated as a circumstance demonstrating coercion.

55. The Tribunal arrived at the above finding after relying upon various judgments, including ***United India Insurance Co. Ltd. v. Ajmer Singh Cotton & General Mills (1999) 6 SCC 400***, which held that mere execution of a discharge voucher does not bar further claims where such voucher has been obtained by fraud, coercion, undue influence or misrepresentation. The relevant finding of the Tribunal reads as under:

"130. The procedure of issue of a Survey Report and then consideration of claim by the insurer is a necessary factor that is prescribed as the pathway to a proper settlement of claim under various Regulations, such as the Protection of Policyholders' Interests Regulations, the Claim Manual for GIPSA Companies and so on. There is also no record to show as to how the Claimant forwarded the two contradictory letters viz. letter of Authority to the Surveyor and final discharge to the Respondent. The Claimant does not claim to have sent it, and the Respondent does not claim to have received it by post. The Respondent has stated in its SoD that the Claimant has sent most of its non-controverted letters by post or courier and hence had disputed the letters which were delivered by hand. In this

case, there is no record of even sending the discharge voucher and authority letter even by hand. Yet these letters are the cornerstone of the defenses taken by the Respondent, that there is no case for arbitration and that the amount has been accepted in full and final settlement and that as per the many cases cited on behalf of the Respondent no case would lie against it for any further payment. Given the manner of how these documents came to be signed, coupled with the fact that these documents mysteriously coming into the possession of the Respondent, in spite of its affirmations that it had nothing to do with it, but making it the central point of its defence, make their whole case untenable. If the Respondent had no role in it and the discharge document was received before even the Survey Report was made, it was obligatory for the Respondent to reject it and return it to the Claimant.

…

136. It is seen from the manner in which the Claimant was forced to sign the discharge voucher when neither the Surveyor nor the Respondent had formally decided on the amount payable, the sudden arrival at an imaginary figure of Rs. 10.45 Crores was a questionable exercise and making the Claimant sign the same clearly amounts to an exercise of undue influence upon the Claimant who had suffered a huge loss, and whose pleas for interim payment and extension of time were neither replied to nor acceded to."

56. The petitioner contends that the respondent raised the plea of coercion belatedly on 21.06.2017, nearly 42 months after the consent letter and 34 months after the last payment, and that the principle in ***New India Assurance Co. Ltd. v. Genus Power Infrastructure Ltd. (2015) 2 SCC 424*** (***"Genus Power"***) squarely applies. It was further urged that the Tribunal misconstrued ***Ajmer Singh Cotton (supra)***, and that the alleged fabrication of the letter dated 18.08.2014 was used to manufacture a protest.

57. I am unable to agree. The Tribunal expressly considered this argument and held that delay, by itself, could not negate the plea of coercion, particularly in light of the contemporaneous correspondence and anomalous circumstances surrounding the execution of the consent letter. The Tribunal relied upon repeated unanswered requests for interim payment and extension, the respondent's financial distress, and the fact that the consent letter pre-dated the Survey Report. These factual findings are duly supported by material on record.

58. The Tribunal has not misconstrued the ratio laid down in ***Ajmer Singh Cotton (supra)***. In the present case, there was no valid full and final settlement. The Tribunal categorically held that the alleged consent was vitiated by undue influence. Hence, the decision in ***Ajmer Singh Cotton (supra)*** squarely applies to the present facts.

59. The reliance on ***Genus Power (supra)*** is wholly misplaced. This judgment was also addressed by the Tribunal. The Hon'ble Supreme Court in ***Genus Power (supra)*** held:

> *"10. In our considered view, the plea raised by the respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time*

or soon after the letter of subrogation was signed, that the notice dated 31-3-2011 itself was nearly after three weeks and that the financial condition of the respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim. Since our answer to the question, whether there was really accord and satisfaction, is in the affirmative, in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not therefore justified in exercising power under Section 11 of the Act."

60. The above finding was arrived at by the Hon'ble Supreme Court in view of the peculiar factual situation where: **(i)** the plea of coercion was wholly bereft of details and particulars and amounted to a bald assertion; **(ii)** there was no contemporaneous protest, with the first notice having been issued nearly three weeks after execution of the discharge; and **(iii)** the financial position of the insured was not precarious, so as to leave it with no real choice but to accept the terms offered.

61. The present case stands on an entirely different footing. The Tribunal has recorded clear findings, based on evidence, that the respondent's reinstatement efforts were paralysed due to want of

funds, that its accounts had turned into NPAs, and that it was facing acute financial distress. The Tribunal found that in such circumstances, the respondent had no viable alternative but to sign the consent letter in order to secure at least some payment to continue reinstatement. The respondent had also made repeated requests for interim payments and extensions, none of which were addressed by the insurer. In view thereof, the petitioners' reliance on ***Genus Power (supra)*** does not aid its case. The findings of Tribunal read as under:

> *"132….Further, after starting reinstatement and facing severe financial crunch owing to the mishap, the Claimant had sought an interim payment of Rs. 25 crores. In view of the enormous difference between what the insured signed in the consent letter and what was claimed as recorded by the Surveyor appointed by the Respondent, there lies a dispute as to the quantum because prima facie the Report of the Surveyor was prepared after the consent and authority letter were given and the Respondent authorized payment of the claim as agreed in the consent letter.*
>
> *143…During the hearing, the Tribunal had enquired about the insured's financial position and the Claimant had provided evidence to show that its accounts were NPAs with their bankers."*
>
> ***(emphasis supplied)***

62. The contention of the petitioner that the survey report had been finalised prior to the execution of the consent letter and that its release was withheld at the instance of the respondent is erroneous and misconceived. Reliance has been sought to be placed on the surveyor's

email dated 02.09.2013 and 14.01.2014, and the respondent's email dated 27.10.2013.

63. The emails dated 02.09.2013, 27.10.2013, and 14.01.2014 are reproduced below:

Print

ANNEXURE-8

2799

ect: Valley Iron Claim

From: Vikram Johar (vikramjohar@yahoo.com)

To: himanshu@bindal.in; drabesh.jha@bindal.in;

Cc: skmunjal@uiic.co.in; protocol.sunil@psepl.com; pkmahapatra@uiic.co.in; tkvani@uiic.co.in; AHoda@UIIC.co.in; alamelutl@uiic.co.in;

Date: Monday, September 2, 2013 1:17 PM

Dear Mr. Bindal / Mr. Jha

Please refer to the visits of your manager Mr. Drabesh Jha on 26 August, 27 August, 29 August & 30 August - 2013. During these visits, the pending documents were handed-over to us and tallying of the claimed items was conducted, to the extent possible.

Also please refer to your visit on 01 September 2013 and the meeting held with your MD Mr. Bindal.

As informed to you, we are ready to release the Final Survey Report for your Flood-Claim and the overall amounts of the Loss Assessment on Reinstatement-Basis & Market-Value-Basis were informed to you.

As requested by your good-self for holding the release of the Survey Report till the time you inform us of your understanding of the loss; we agree to the same and wish to inform you that in the event of no-response from your side; we shall release the FSR within the next two days.

Thanks & Best Regards
Vikram Johar
PROTOCOL SURVEYORS & ENGINEERS PVT. LTD.

T.C

2801

From: Drabesh [mailto:drabesh.jha@bindal.in]
Sent: Sunday, October 27, 2013 4:06 PM
To: 'ajaygupta'
Cc: milindkharat@uiic.co.in; 'PKMAHAPATRA'; alamelutl@uiic.co.in; tkvani@uiic.co.in; amitsharma@uiic.co.in; 'sunil' vikram@psepl.com; rb@bindal.in; himanshu@bindal.in; 'arvimd bansal'
Subject: Request for early fixation of Meeting at Head Office Chennai (Valley Iron & Steel Co. Limited)

Dear Sir,

I hope you will kindly excuse me for bringing to your kind notice that the aforesaid matter has remained under protracted correspondence/follow-up and due to inordinate delay in settlement of the claim, we are suffering lot of financial constraints. Convening of the meeting has been postponed no. of times for one reason or the other.

We received an email from surveyor informing all concerned that he has now fully recovered from sickness and the doctor concerned has permitted / allowed him to travel and therefore, he has suggested that the meeting may be arranged for any day after 22.10.2013.

Since the Company is incurring heavy losses due to delayed settlement of the claim, it is requested that utmost priority may be attached to the matter and Meeting may kindly be fixed any date between 28th to 31st October ,2013

Thanking you and looking forward to a prompt communication,

Drabesh Jha
Bindal Group
DGM Finance & Account
Valley Iron & Steel Co. Ltd.
Exchange Store Building
Sham Nath Marg, Civil Lines
Delhi-110054
Mob.0091 -9716902381
Tel Nos.(011)23919043-49

T-C

ANNEXURE-9

2850

Protocol 1

From: "Sunil Arora" <sunil@internal>
To: "'Protocol 1'" <jayakumar@internal>
Sent: Tuesday, January 14, 2014 12:23 PM
Subject: FW: Request for early fixation of Meeting at Head Office Chennai (Valley Iron & Steel Co. Limited)

From: Protocol 1 [mailto:protocol1@psepl.com]
Sent: Thursday, December 05, 2013 4:51 PM
To: drabesh.jha@bindal.in
Cc: milindkharat@uiic.co.in; pkmahapatra@uiic.co.in; alamelutl@uiic.co.in; tkvani@uiic.co.in; AMIT SHARMA; sailajasrinivas@uiic.co.in; nandinisridhar@uiic.co.in; Ram Niwas; ajaygupta@uiic.co.in; protocol.vikram@psepl.com; 'Sunil; protocol.survey@psepl.com
Subject: Re: Request for early fixation of Meeting at Head Office Chennai (Valley Iron & Steel Co. Limited)

Dear Sir,

Please refer to the meeting held at M/s United India Insurance Co. Ltd., Head Office, Chennai on 18 November 2013 – during which it was decided to visit the plant to undertake the following works :

a) Re-look at the issue of MOTORs, in view of your statement that all the major motors shall be repaired – which we have been advising you since beginning.

b) Re-check the quantity of damaged REFRACTORIES.

During the said meeting, the date of 26 November 2013 was decided; which was changed to 04 December 2013 – as per our discussions.

However, please refer to your call on 02 December 2013, informing us that due to some worker-problem in the plant, the visit on 04 December 2013 was not feasible.

As a final attempt, we request you to inform us a FINAL DATE when a visit to your plant can be undertaken, so as to close these matters and proceed towards finalization of this claim.

Thanking You,

Faithfully Yours

Signed
PROTOCOL SURVEYORS & ENGINEERS PVT. LTD.

T.C

64. A plain reading of these communications demonstrates that the emails do not, in any manner, establish that the report was final or that its

release was deliberately withheld. The surveyor's email dated 02.09.2013 merely indicated a tentative readiness to release the report, subject to confirmation from the respondent. However, this cannot be construed as proof of finalisation, particularly when subsequent events show otherwise. The respondent's email dated 27.10.2013 only highlights the severe financial hardship being faced due to delay and requests an early meeting after being informed that the surveyor had recovered from illness and was able to travel. It does not suggest that the report had been completed. Likewise, the surveyor's email dated 14.01.2014 records the outcome of a meeting at the petitioner's Head Office on 18.11.2013, where it was decided that further verification regarding motors and refractories was still required. The surveyor specifically requested a final date for plant inspection so that these pending issues could be addressed before progressing towards finalisation.

65. Taken together, these communications establish that the report was not finalised and critical aspects of verification were still pending well beyond September 2013, and even as of January 2014. Accordingly, the petitioner's reliance on these emails is misplaced. Far from showing that the report was ready but withheld, the record corroborates the Tribunal's finding that the report was not finalised as of 18.01.2014, when the so-called consent letter was obtained. The Tribunal's findings read as under:

> *"137. In view of the same, it is clear that there is an arbitrable dispute between the parties even though the Claimant was paid the amount of insurance claim of Rs. 10,45,00,000/- against a signed satisfaction voucher by the Claimant, before the claim amounts were properly*

communicated by the Surveyor to the Respondent by a written Report and before the same was examined, processed and approved by the Respondent."

66. In view of the above discussion, it is evident that the findings recorded by the Tribunal do not suffer from any perversity, patent illegality, or violation of the fundamental public policy of India. The conclusions reached by the Tribunal on Issue No. 1 are based on a careful appreciation of the pleadings, documentary evidence, and the conduct of the parties. Consequently, the Tribunal's determination on Issue No. 1 is fully justified and is accordingly upheld.

Issue No. 2 – Whether the Consent Letter was Signed Under Duress and Undue Pressure?

67. The Tribunal next considered whether the consent letter dated 18.01.2014 was executed by the respondent under duress and undue pressure.

68. The Tribunal, after analysing the material and evidence before it, found that the respondent's reinstatement efforts were stalled due to severe financial constraints, exacerbated by the petitioner's repeated failure to respond to written requests for interim payment and extension of reinstatement. The petitioner had in its possession an Interim Survey Report dated 10.09.2011, yet chose not to make any interim payment. Letters dated 03.07.2012, 14.08.2012, 28.02.2013 and 23.03.2013 reiterated the need for interim relief, but none were answered. The relevant findings read as under:

"142. Keeping in mind the above letters and appeals of the Respondent and the non-response of the Respondent or the Surveyor on behalf of the Respondent, it is clear that the insured's reinstatement efforts were at a standstill owing to

severe financial constraints which only the Respondent could rectify, if it had admitted liability and made an interim payment as sought for in writing by the Claimant. This could have been easily done by the Respondent as it was in possession of the Interim Report dated 10.09.2011, which was received by the Respondent on 16.09.2011."

69. In these circumstances, when an offer of Rs. 10.45 crores was made, conditional upon execution of a full and final discharge voucher, the Tribunal found that the respondent had no real alternative but to sign, since refusal would have meant repudiation of the entire claim. The respondent's evidence showed its accounts had become NPAs, and it was under severe financial distress. The relevant findings of the Tribunal read as under:

"143. In the circumstances, when an opportunity to get at least Rs. 10 crores came up in the offer that was made by the Respondent, but asking the Claimant to sign the voucher containing full and final discharge of all claims, and that too, if the same is not signed, the alternative presented was repudiation of the claim, the Claimant had no alternative but to sign the same so that it could continue the reinstatement. Another important benefit for the Claimant was that, by this action, the Respondent was deemed to have admitted the liability. It is quite obvious from the sequence of the events recorded by the Claimant and informed to the Surveyor and Respondent, that the Claimant was subjected to severe economic duress directly owing to the loss claimed and the indifference and non-settlement of the claim by the Respondent. Thus, it is seen

that the Claimant had no other way to take its activities forward except by complying with the dictates of the Respondent or the Surveyor acting on behalf of the Respondent. During the hearing, the Tribunal had enquired about the insured's financial position and the Claimant had provided evidence to show that its accounts were NPAs with their bankers."

70. On this basis, the Tribunal held that the consent letter dated 18.01.2014 was executed under economic duress and undue pressure, and answered Issue No. 2 in favour of the respondent.

71. The petitioner's argument that there was no contractual obligation to make interim payments, and that the interim survey report was only preliminary, does not undermine the Tribunal's conclusion. The question was not whether the insurer had a legal duty to make interim payments, but whether the respondent was subjected to economic coercion. The Tribunal's finding on this point is one of fact, supported by well-analysed evidence on record, and is not open to scrutiny under Section 34 of the Act.

Issue No. 3 – Whether Alleged Forged Letters vitiate the claim of the respondent?

72. The next contention of the petitioner relates to the Tribunal's findings on the genuineness of the letters dated 14.08.2012 and 18.08.2014. The petitioner argues that these documents were forged and fabricated, and hence, the claims of the respondent cannot survive.

73. The Tribunal dealt with this issue elaborately. With respect to the letter dated 18.08.2014, the Tribunal observed that although the document bore a date of 18.08.2014, the endorsement of the Divisional Office showed it as received on 18.04.2014, raising serious doubts about its

authenticity. The respondent could not establish its genuineness. As regards the letter dated 14.08.2012, while its receipt was disputed, the Tribunal noted that it was referred to in a subsequent letter dated 23.03.2013 addressed to the General Manager, reiterating earlier requests for interim payment and extension. The Tribunal further noted that the internal registers of the petitioner's office were not properly maintained and could not be relied upon to disprove receipt.

74. Despite expressing reservations about the authenticity of the letter dated 14.08.2012, the Tribunal concluded that the letter did not go to the root of the matter. It reasoned that the respondent had, in any case, raised repeated requests for interim payment and extension, none of which were answered, along with various breaches committed on the part of the petitioner.

75. Relying on ***Versloot Dredging BV v. HOI Gerling Industrie Versicherung AG [2016] UKSC 45,*** the Tribunal observed that a collateral lie does not vitiate an otherwise genuine claim. Reference was also made to ***Lakhmi Chand v. Reliance General Insurance (2016) 3 SCC 100***, where the Hon'ble Supreme Court held that insurers can avoid liability only in case of a fundamental breach contributing to the loss. Applying these principles, the Tribunal held that even if the disputed letters were doubtful, they did not prejudice the respondent's entitlement. The relevant findings of the Tribunal are reproduced below:

> *"154. In this connection, assuming that the allegations made by the Respondent are true, it is quite amply pleaded by the Claimant on all aspects of the failure of duty on the part of the Respondent in key areas of its conduct as expected from an insurer of repute and as per the Regulations of the IRDAI. It is clearly proved that the Interim Report was not provided to the Claimant, its pleas*

for interim payment and extension of time were not responded to, but at the same time were not explained nor denied in writing. The Respondent and the Surveyor also had in its possession evidence that the insured had begun to reinstate its damaged factory, but the Claimant ran out of money at which time it sought for both interim payment and extension of time. Hence, taking a plea that a particular letter or two were false and fabricated, in the face of non-reply of the various letters of the insured, does not absolve the Respondent of its duties as enumerated in the IRDAI Regulations and its own claim manual.

155. It may be further seen that the two letters cited as fraudulent, do not appear to go to vitiate the genuineness of the claim of the Claimant and change in any way the truth of the claim made by the insured. Of the letters dated 14.08.2012 and 18.01.2014 filed as Annexures C-36 and C-40 and alleged as forged and fabricated, it is seen that the letter dated 14.08.2012 relates to the request for extension of the period of reinstatement (which according to the Tribunal was duly received by the Respondent) and the letter dated 18.08.2014 relates to the fact of the Claimant being paid Rs. 10.45 crores when it was under financial stress and the said amount was accepted on the threat of repudiation. The letter ends with a request to re-assess the claim and pay the balance amount as claimed. Both letters highlight the technical aspects of the claim and do not provide any evidence of fraud in relation to the claim or its quantum.

156. In Versloot Dredging BV and another v HOI Gerling lndustrie Versicherung AG and others [2016], UKSC 45, decided by the UK Supreme Court, the court explained the contractual position that prevails in an insurance claim. The right to an indemnity arises as soon as a covered loss is suffered. A collateral lie is irrelevant to the existence or amount of that contractual entitlement. If the insured claims nothing more than the core claim, the claim does not get vitiated. In the case examined by the UKSC, the managers hired by the Owners of the Vessel (the "Managers"), sent a letter to the Underwriters' solicitors stating (falsely) that the bilge alarm had gone off at about noon on 28 January 2010; that the alarm had been ignored because it was attributed to the rolling of the vessel in heavy weather and that he had been told both these things by the Master or crew. This was repeated in substance in a letter dated 27 July 2010 to the first Defendant as lead underwriter. The Judge in the lower court found that the manager's lie was a reckless untruth, not a carefully planned deceit. Even then he decided on rejection of the claim with regret, because in the circumstances he thought this "a disproportionately harsh sanction". The UK Supreme Court termed this a collateral lie, i.e. "a lie which turns out when the facts are found to have no relevance to the insured's right to recover". In the case of a collateral lie, the fraud is irrelevant to the insured's entitlement to recover. In Lord Sumption's words, "the lie is dishonest, but the claim is not." Thus, if the lie is found out, the claim is still genuine. But, as the majority pointed out, "the

insured gains nothing from the lie which he was not entitled to have anyway [and] the underwriter loses nothing if he meets a liability which he had anyway". In the case under Arbitration, it may be seen that the letters cited as fraud deals with issues that wish to keep the claim alive and to seek extension of time and in the letter of the 18.08.2014 to record that the claim was settled under duress and seeking re-assessment. In neither of these letters, there is anything that prejudices the claim under consideration. If this was so the Respondent would have no liability to pay any further claim and in addition, would have been entitled for recovery of the claim that was already paid. No such plea has been made. Nor any plea of fraud was cited in response to the Arbitration notice."

(emphasis supplied)

76. I am of the view that while the petitioner's contention regarding collateral lie may have some substance, the Tribunal's reasoning is neither perverse nor irrational and forms a plausible view. The Tribunal appreciated the difference between a "fraudulent claim" and a "genuine claim supported by collateral lies." As explained in ***Versloot Dredging BV (supra)***, fraudulent claims fall into three categories: **(i)** wholly fabricated claims, **(ii)** genuine claims dishonestly exaggerated, and **(iii)** genuine claims supported by collateral lies.

77. The UK Supreme Court in ***Versloot Dredging BV (supra)*** clarified that while exaggerated claims disentitle recovery, collateral lies do not, since the claim would have been payable in any event. In the present case, the Tribunal applied this distinction, holding that even if the disputed letters were collateral lies, they did not affect the genuineness of the

respondent's claim, which stood supported by other evidence, including pre dated consent letter, respondent's precarious financial position, lack of due compliance of rules and regulation is processing the claims of the respondent by petitioner.

78. This approach accords with settled principles governing judicial interference with arbitral awards. In ***Associate Builders v. DDA (2015) 3 SCC 49***, the Hon'ble Supreme Court held that interference would be warranted only where the Tribunal's findings are perverse, i.e. based on no evidence, or by ignoring vital evidence, or by relying on irrelevant material. In the present case, it cannot be said that the Tribunal's findings were unsupported by evidence or that relevant evidence was ignored.

79. On the contrary, the Tribunal considered the disputed letters within the broader factual matrix, assessed their evidentiary value, and concluded that they were immaterial to the core claim. This finding represents a plausible view on the evidence and cannot be said to suffer from perversity. The Tribunal further observed that, even assuming the letter dated 18.08.2014 to be non-existent; the position would not materially alter, since the respondent had already been compelled to execute the consent letter prior to the issuance of the surveyor's report. The Tribunal analysed the evidence on record and concluded that, despite the existence of an interim report, the petitioner had not released the payment. This inaction caused such acute financial hardship to the respondent that its accounts were classified as NPAs.

80. The Tribunal also found, on the basis of evidence, that the respondent was under severe financial duress; its assets had been classified as non-performing, it required approximately Rs. 25 crores for reinstatement of its machinery, and it had repeatedly addressed letters to the petitioner seeking release of interim payments. Against this backdrop, the Tribunal

held that although the letter dated 18.08.2014 may not be genuine, its authenticity was of little consequence to the adjudication of the dispute, since the existence of undue influence and coercion had already been established on independent grounds.

81. It must be emphasised that Section 34 of the Act does not permit re-appreciation of evidence on merits. I am of the considered opinion that even if another view is possible, the view of the Tribunal is reasonable, plausible and meets the threshold of a prudent mind, and it should not be interfered with. I find no patent illegality or perversity in this finding. The plea that reliance on the letters dated 14.08.2012 and 18.08.2014 vitiated the arbitral proceedings is without merit and stands rejected.

Issue No. 4 - Whether the petitioner was justified in declining the full claims of the respondent and granting only Rs. 10.45 crores as full and final settlement of the insurance claims?

82. The petitioner has contended that the Tribunal erred in ignoring the mandate of Section 64-UM of the Insurance Act, 1938, which requires that an insurer must obtain a report of assessment of loss from a licensed surveyor before deciding a claim. Reliance is placed on ***Sri Venkateshwara Syndicate v. Oriental Insurance Co. Ltd. (2009) 8 SCC 507***, where the Hon'ble Supreme Court underscored that surveyors form the critical link between the insurer and the insured, and that their assessments carry statutory recognition. It is submitted that once the surveyor, after thorough investigation, assessed the loss and the petitioner settled the claim at Rs. 10.45 crores, the Tribunal could not have disregarded such assessment.

83. This contention is misplaced. The Tribunal did not disregard Section 64-UM or the law laid down in ***Venkateshwara Syndicate (supra).*** On the contrary, it examined the Surveyor's Report in detail and found it to be riddled with inconsistencies, arbitrary deductions, and remarks wholly

at odds with the overwhelming evidence of damage caused by the cloudburst. The Tribunal observed that despite the Surveyor's own photographs and admissions showing extensive destruction of plant and machinery, the quantification of loss was illogical and the recommended indemnity of Rs. 10.45 crores grossly inadequate when compared to the respondent's detailed claim of Rs. 58 crores (reinstatement basis) and Rs. 44 crores (market value basis).

84. During the course of examination of evidence, the Tribunal specifically noted that the Surveyor's own visits and joint inspection reports with the insured's technical team, vendors, and repairers clearly established the severity of damage. As early as the first visit on 31.08.2011 and 01.09.2011, it was admitted that a majority of the plant and machinery was semi-buried under silt, mud, and sand, with several machines, equipment, and installations uprooted and displaced. Subsequent visits recorded silt removal, repair works. These records, supported by the reports of manufacturers and repairers, directly contradicted the Surveyor's later remarks that the insured failed to segregate or minimize loss and that even after 28 months the affected machinery remained untouched.

85. The Tribunal also found contradictions in the Surveyor's observations regarding the Gas Plant, while one part of the report admitted that flood water rose to 4 - 6 feet and submerged the machinery under silt and mud, elsewhere it was stated that water barely entered the plant and reached only 2 - 3 feet.

86. On further scrutiny of the Surveyor's assessment of vendor-wise claims amounting to Rs. 58.10 crores, the Tribunal found that many of the remarks were adversarial in nature, shifting the burden of proving the cause of damage upon the insured despite overwhelming evidence that

the losses arose directly from the cloudburst and resultant flooding. The Surveyor discredited inspection reports for want of technical inputs, yet subsequently called vendors in March - April 2012 and conducted joint inspections with only four vendors, while relying on incomplete reports from others. The Tribunal noted that the duty to conduct thorough inspections, seek technical opinions, and, if necessary, bring in independent experts lay squarely on the Surveyor, not the insured.

87. With regard to building claims of Rs. 3.33 crores, the Surveyor admitted direct damage but reduced the amount to Rs. 90.24 lakhs, disallowing claims such as roads (Rs. 89.55 lakhs) and foundations (Rs. 21 lakhs) without cogent reasoning, despite judicial recognition that foundations form part of a building and are not excluded under the policy. Similarly, for plant and machinery, the Surveyor inconsistently allowed only partial losses, adopting arbitrary depreciation and salvage values, without explaining what constituted "direct damage" and what did not. Depreciation of 50% was applied in some cases, such as small motors and pumps, without justification, while for acid tanks and DG sets, although total loss was admitted, arbitrary reductions and disallowances were made without written proof of agreement by vendors or repairers.

88. The Tribunal thus rightly found that the Surveyor's assessment was marked by contradictions, illogical deductions, and failure to apply industry practice. In light of the clear and consistent evidence of catastrophic damage, the award of Rs. 10.45 crores was grossly inadequate and unsupported, justifying the Tribunal's decision to disbelieve the Surveyor's quantification and uphold the respondent's claims to a much higher extent.

89. The relevant findings read as under:

"164. Despite so many documents submitted to prove the loss, it is seen that in the assessment part of the report, the Surveyor loses the sense of clarity that is expected of a professional Surveyor to reach a logical assessment. The Claimant submitted very elaborate documentation of claims and the Surveyor categorically finds that as to the real cause of the loss which was a cloud burst, and which resulted in the Surveyor's own words "Our First Visit on 31.08.2011 & 01.09.2011 Majority ofthe plant & Machinery was semi-buried under silt/mud/sand. Many Machines I Equipment/ Panel-Cabins I other installations were uprooted and moved hundreds of feet & damaged." The photographs printed in the two reports in colour clearly brings out the extent of damage. Despite such evidence and also the fact that the insured also made a detailed claim for Rs. 58 crores on reinstatement value and further sought an interim payment of Rs. 25 crores, it is clear that an amount of Rs. 10.45 (with adjustments) seems to be totally inadequate as an indemnity for the clearly documented large loss sustained by the insured. Hence the Tribunal rules that the Respondent is not all justified in granting only Rs. 10.45 crores to the Claimant.

…

167. The Supreme Court judgment as cited above and relied upon by the Respondent in fact requires that in this case the entire Survey Report ought to have been rejected by the Respondent for the many wrong findings, conclusions and assessments. That the Respondent has

chosen to fully endorse it, is further evidence that the advance voucher for Rs. 10.45 crores was made with the full knowledge and consent of the Respondent and the Surveyor was thereafter asked to finalize the report on that basis.

…

169. In the case on hand before the Tribunal, the situation appears worse than the case cited above regarding which the Supreme Court found fault with the practice of no claim certificates. The Claimant has offered evidence that the claim arose from a natural calamity which overwhelmed its factory with flood water, mud and trees and in the process, it sustained a recorded loss estimated at Rs. 58 crores after obtaining estimates from all manufacturers and suppliers of the damaged machinery and other assets. As the Claimant ran out of finance, it sought from the Respondent an interim payment of Rs. 25 crores, considered reasonable in the light of the claim of Rs. 58 crores, and also sought for extension of time to reinstate the factory. The fact that the Claimant had started clearing the site almost immediately after the loss and began to reinstate the factory was duly recorded by the Surveyor. However, it is seen that after the early stage the Surveyor, as seen in the report, changed course and began to cast negative remarks about the manner in which the Claimant was proceeding to prove the claim, even though voluminous documents, running into almost 950 pages of various documents were submitted which have been

attached to the Survey Report itself. By finding fault with the Claimant and ensuring that it ran out of finance and by not disclosing the Interim Survey report which had provided ground for admitting liability and for paying an on-account payment, the Respondent and the Surveyor waited for the 12-months period to be over. During this period and later, the Respondent never replied to the letters and pleas of the Claimant. Then the Claimant was faced with the prospect of a repudiation of the claim, if the voucher was not signed. All these appeared possible given the bad faith progressively displayed both by the Surveyor and Respondent as the claim was dragged into delay and non-response from the Respondent.

170. However, what strikes as strange, unjust and illegal is the fact that the full and final discharge voucher is procured from the Claimant before the Survey Report was finalized and the Respondent had a chance to read, verify the report and approve the claim for settlement.

…

175. When the policy was issued, the Respondent defined the extent of its obligation by the terms of the policy and it is a violation of good faith to attempt to misuse the opportunity to pay less than it owes by demanding and enforcing a release, when a mishap has happened. In view of the above it is clear that the Respondent was not justified in declining the claims of the Claimant and granting only Rs.10.45 crores to the Claimant as full and final settlement of its claims. It may be further noted that

the requirement of full and final discharge is also not specified in the IRDAI Regulations.

…

206. In view of this the Tribunal is constrained to reject the assessment of the Surveyor and look for other means to evaluate a proper indemnity for the Claimant."

90. The law on surveyors' reports is well-settled. Under the IRDAI (Insurance Surveyor and Loss Assessor) Regulations, 2015, surveyors are licensed professionals whose reports are to be filed promptly and provide the basis for claim settlement. However, as repeatedly affirmed by the Hon'ble Supreme Court, their reports are neither sacrosanct nor binding. In ***New India Assurance Co. Ltd. v. Pradeep Kumar (2009) 7 SCC 787***, which was referred to in ***Khatema Fibres Ltd. v. New India Assurance Co. Ltd., (2023) 15 SCC 327***, the Court held as under:

*"**35.** This is why the law is settled that the surveyor's report is not the last and final word. It has been held by this Court in several decisions, that the surveyor's report is not so sacrosanct as to be incapable of being departed from."*

91. This rationale was recently applied in ***S.S. Cold Storage (India) (P) Ltd. v. National Insurance Co. Ltd. (2024) 2 SCC 467***, where a surveyor's report was discarded for failing to consider material facts.

92. The Tribunal's reasoning also accords with ***National Insurance Co. Ltd. v. Hareshwar Enterprises (P) Ltd. (2021) 17 SCC 682***, where the Court held that a surveyor's report, though having statutory recognition, is not beyond scrutiny and may be displaced where it fails to inspire confidence. Likewise, in ***New India Assurance Co. Ltd. v. Mudit***

Roadways (2024) 3 SCC 193, the Hon'ble Supreme Court reiterated that while surveyors' reports ordinarily carry weight, they cannot override more reliable evidence disclosing the true cause and extent of loss.

93. Applying these principles, the Tribunal was justified in holding that the Surveyor's Report in the present case could not be accepted at face value. Far from acting contrary to law, the Tribunal correctly applied the settled position that surveyors' reports are persuasive but not binding, and must be assessed in light of the entire record.

94. The petitioner has failed to point to any perversity or patent illegality in this approach. Its argument essentially seeks a reappreciation of evidence, which is impermissible under Section 34 of the Act. The Tribunal's finding that the indemnity of Rs. 10.45 crores was unjustified, and that the petitioner was not entitled to rely solely on the Surveyor's Report, is a plausible view based on evidence and calls for no interference.

95. Accordingly, the Tribunal's findings on Issue No. 4 are upheld.

Issue No. 5 – Whether the petitioner and Surveyors appointed by the petitioner have acted in accordance with the terms and conditions of the policy, rules, and regulations while deciding the insurance claims of the respondent arising out of the Insurance policy?

96. The petitioner has assailed the finding of the Tribunal on Issue No. 5 by contending, first, that the respondent has failed to prove on record any breach of policy or rules and regulations. Second, the respondent failed to comply with the reinstatement clause of the policy, inasmuch as reinstatement was not completed within twelve months (contrary to

Clause 3 of the policy), and no extension was granted in writing. It was further urged that under the terms of the policy, particularly Clause 9 of the General Conditions, the option of reinstatement or settlement rested with the petitioner. Reliance was also placed on decisions of the Hon'ble Supreme Court, such as ***General Assurance Society (supra)*** and ***Harchand Rai Chandan Lal (supra)*** to argue that insurance contracts must be interpreted strictly as per their terms.

97. In the course of analysing the claims, the Tribunal observed that Clause 9 could not be invoked in the present case, since the petitioner had not exercised the option of reinstatement. Consequently, the Tribunal placed reliance on Clause 3 (Reinstatement Value Policies), which was cited by the petitioner as well as the Surveyor. The said clause reads as under:

> *"REINSTATEMENT VALUE POLICIES*
>
> *Reinstatement value insurance may be granted on Buildings, Machinery Furniture, Fixture and Fittings only subject to the incorporation of the following memorandum in the policy:*
>
> *"It is hereby declared and agreed that in the event of the property insured under (Item Nos ..... of .....) within the policy being destroyed or damaged, the basis upon which the amount payable under (each of the said items of) the policy is to be calculated shall be cost of replacing or reinstating on the same site or any other site with property of the same kind or type but not superior to or more extensive than the insured property when new as on date of the loss, subject to the following Special Provisions and subject also to the terms and conditions of the policy except in so far as the same may be varied hereby."*

Special Provisions

1. The work of replacement or reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the insured subject to the liability of the Company not being thereby increased) must be commenced and carried out with reasonable dispatch and in any case must be completed within 12 months after the destruction or damage or within such further time as the Company may in writing allow, otherwise no payment beyond the amount which would have been payable under the policy if this memorandum had not been incorporated therein shall be made.

Until expenditure has been incurred by the Insured in replacing or reinstating the property destroyed or damaged the Company shall not be liable for any payment in excess of the amount which would have been payable under the policy if this memorandum had not been incorporated therein.

2. If at the time of replacement or reinstatement the sum representing the cost which would have been incurred in replacement or reinstatement if the whole of the property covered had been destroyed, exceeds the Sum Insured thereon or at the commencement of any destruction or damage to such property by any of the perils insured against by the policy, then the insured shall be considered as being his own insurer for the excess and shall bear a rateable proportion of the loss accordingly. Each item of the policy (if more than one) to which this memorandum applies shall be separately subject to the foregoing provision.

3. This Memorandum shall be without force or effect if

a) the Insured fails to intimate to the Company within 6 months from the date of destruction or damage or such further time as the Company may in writing allow his intention to replace or reinstate the property destroyed or damaged.

(b) the Insured is unable or unwilling to replace or reinstate the property destroyed or damaged on the same or another site."

98. The Tribunal, while interpreting the reinstatement clause, also took guidance from comparative jurisprudence. In ***Renasa Insurance Company Ltd. v. Watson (32/2014) [2016] ZASCA 13 (11 March 2016),*** it was held that an insurer cannot take advantage of its own breach by withholding payment and thereafter insisting that the insured failed to reinstate within the stipulated period. The Court emphasised that insurers are expected, at the very least, to release the indemnity value to enable reinstatement, and failure to do so frustrates the very mechanism envisaged by reinstatement clauses. Similarly, in ***Great Lakes Reinsurance (UK) SE v. Western Trading Ltd.*** **[2016] EWCA Civ 1003**, the Court recognised that an insured cannot be said to have failed to act with "reasonable despatch" in reinstating property where liability is either denied or unreasonably delayed by the insurer.

99. The Tribunal further placed reliance on ***HDFC Ergo*** **(supra)**, wherein it was held that where a policy is issued on a reinstatement value basis, there is no clause granting unilateral discretion to the insurer to convert the basis of settlement into a market value basis. Even assuming such a conversion could be permissible with the consent of the insured, any modification to the written contract must necessarily be reduced to writing.

100. Having set out the legal framework governing the interpretation of reinstatement clauses, the Tribunal proceeded to evaluate the conduct of the parties. It noted that while the respondent/insured was cooperative, it was the petitioner and its appointed surveyor who failed to provide the necessary assistance and information required to process the claim. The Tribunal recorded that the Survey Report was inordinately delayed, no interim or on-account payments were made despite industry practice permitting the same, repeated requests of the insured for extension of time were left unanswered, and crucial documents, including interim reports, were not shared with the insured.

101. In this regard, the Tribunal referred to the General Insurance Public Sector Association (GIPSA) Manual, which mandates that where the loss is a major one, the surveyor shall be asked to submit one or more interim reports. The manual further provides that, at the request of the insured, it may be necessary to consider making on-account payments, and the surveyor shall be required to provide recommendations in writing for such payments with due regard to policy terms, warranties, and probable quantum of loss.

102. Additionally, the Tribunal examined the IRDAI (Protection of Policyholders' Interests) Regulations, 2002, which impose a clear duty on surveyors to adhere to the prescribed code of conduct. Regulation 9 obliges the surveyor to submit his report to the insurer within 30 days of appointment, with a copy furnished to the insured if requested. In exceptional cases involving complex circumstances, the surveyor may seek an extension, but such extension must be intimated to the insured, and in no event may the survey process exceed six months from the date of appointment.

103. In the present case, however, no interim report was ever furnished, and the survey process was marked by delay and lack of transparency.

While the petitioner, in its Statement of Defence, contended that the surveyors ultimately submitted their report dated 29.01.2014, which was accepted and processed, the Tribunal found this explanation strange, as the consent letter was obtained prior on 18.01.2014.

104. In this background, the Tribunal was justified in holding that the petitioner and its surveyor failed to act in accordance with both the policy terms and the regulatory framework. The record reveals that repeated letters and requests for on-account payment or extension of reinstatement period went unanswered; the survey process was delayed for over two years without justification; and reports were neither furnished nor shared with the respondent, in breach of IRDAI Regulations.

105. The Tribunal also noted that instead of adopting industry practice of recommending interim payments in cases of delay, the surveyor dragged the matter on technical grounds, thereby frustrating the reinstatement clause and enforcing a market value settlement. The discharge voucher was obtained even before the survey report was finalized.

106. Furthermore, the surveyor disregarded technical reports and expert opinions submitted by the respondent, made unilateral interpretations of policy terms to disallow legitimate heads of claim, and failed to prepare proper assessments on market value and reinstatement value as required. This approach of undervaluing the claim resulted in an award of only Rs. 19.84 crores on RIV basis and Rs. 10.45 crores on market value basis, against the respondent's well-documented claim of Rs. 58.10 crores, thereby demonstrating arbitrariness and lack of bona fides in the assessment.

107. The relevant findings of the Tribunal read as under:

"195… A similar situation is seen in the claim before the Tribunal and it is clear that by this action the Respondent has violated many of the duties prescribed for insurers in the Regulations of the IRDAI and the Claims Manual of the GIPSA companies as prescribed therein. It is also clear that the Surveyor has been guilty by his association with such an action as he has worked to discredit the claim of the insured and thus violated the Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000.

…

197. The Supreme Court of India in the case Canara Bank vs MIS United India Insurance Co. Ltd., (2020) 3 SCC 455 stated as follows: "21. The principles relating to interpretation of insurance policies are well settled and not in dispute. At the same time, the provisions of the policy must be read and interpreted in such a manner so as to give effect to the reasonable expectations of all the parties including the insured and the beneficiaries. It is also well settled that coverage provisions should be interpreted broadly and if there is any ambiguity, the same should be resolved in favour of the insured. On the other hand, the exclusion clauses must be read narrowly. The policy and its components must be read as a whole and given a meaning which furthers the expectations of the parties and also the business realities. According to us, the entire policy should be understood and examined in such a

manner and when that is done, the interpretation becomes a commercially sensible interpretation."

198. This means that the provisions of the Reinstatement Clause should have been interpreted liberally by the Respondent and as per the terms of the underlying the market value policy ought to have made one or more on account payments to help the Claimant to reinstate properly guided by the Surveyor and necessary extension of time should have been allowed.

199…It is clear that the loss in question has arisen only from one cause which is a natural catastrophe arising from the consequences of a cloud burst, and the effort of the Surveyor to hair split the cause of loss, and the Respondent's acquiescence of the same can be termed as deplorable."

108. On this basis, the Tribunal concluded that the conduct of the petitioner and surveyor was inconsistent with the policy terms and statutory obligations, and answered the issue against the petitioner.

109. The contention of the petitioner that insurance terms must be interpreted strictly, relying on ***General Assurance Society (supra)*** and ***Harchand Rai Chandan Lal (supra)***, was also addressed by the Tribunal. The Tribunal correctly placed reliance on ***Canara Bank (supra)***, where the Hon'ble Supreme Court reconciled these earlier authorities and held that while the terms of an insurance contract must govern the parties, coverage provisions are to be interpreted broadly to give effect to the reasonable expectations of the insured, and ambiguities must be resolved in their favour, while exclusion clauses are to be construed narrowly. The Hon'ble Supreme Court further emphasised that

insurance contracts must be understood in a commercially sensible manner, giving effect to the business realities and the legitimate expectations of both sides.

110. In view of the above the Tribunal's conclusion that the petitioner and the surveyor did not act as per the insurance policy is correct and is based on a holistic evaluation of the evidence. Accordingly, no ground is made out to interfere with the Tribunal's finding on Issue No. 5.

Issue No. 6 - Whether the respondent is entitled to claims?

111. Issue No. 6 concerns whether the respondent is entitled to the claims set out in paragraphs 87 and 88 of the Statement of Claim.

112. The petitioner has contended that the Tribunal, by relying on its own assumptions and presumptions as reflected in paragraph 205 of the Award, discarded the surveyor's report on grounds neither pleaded nor proved by the respondent. This contention cannot be accepted in view of the Tribunal's careful and detailed consideration of the surveyor's report.

113. The Tribunal found multiple infirmities which rendered the surveyor's report unreliable. It observed that the surveyor had misconducted himself by refusing to examine or giving due weight to material evidence produced by the respondent, including causation reports, documents of the respondent's own technical experts, and letters from suppliers and repairers. The surveyor also failed to disclose the issuance of an interim report, did not recommend any on-account payment despite clear evidence of reinstatement. These lapses indicated a lack of fairness and transparency in the assessment process.

114. On the substantive aspect of valuation, the Tribunal noted glaring inconsistencies and unexplained contradictions. While the respondent's estimate in its claim form was Rs. 58.10 crores on reinstatement value, the surveyor abruptly shifted the market value calculation to Rs. 44.89

crores, purportedly based on a letter dated 07.03.2013. However, the Tribunal found that no such letter existed on record and that Annexure-25 was in fact a letter dated 28.02.2013, wherein the respondent had reiterated that its claim remained unchanged. Further, the Tribunal noted that the depreciation rates applied by the surveyor were arbitrary. By way of illustration, in respect of the Gas Plant, depreciation at the rate of 50% was applied, though contemporaneous reports and inspection records showed that the plant was only 1.41 years old and should have attracted depreciation of merely 7.4%. Similar discrepancies, spread throughout the report, convinced the Tribunal that the surveyor had introduced wrong figures and unsupported assertions, thereby rendering the report non-dependable.

115. The Tribunal also found that several claims had been arbitrarily disallowed. Claims towards plinth, foundation, and roads were rejected by the surveyor, despite the absence of any exclusion under the policy. Reliance was placed on the decision of the Madras High Court in ***HDFC Ergo (supra),*** which clarified that plinth and foundation, in the absence of express exclusions, are covered under the insurance policy. Similarly, the Tribunal observed that the policy contained a "Designation of Property" clause extending coverage to roads, making the rejection of such claims contrary to the contractual terms.

116. Further examples of arbitrary exclusions were noted in respect of motors and induction furnaces. In the case of motors, though the respondent had produced inspection reports and expert opinions showing irreparable damage due to prolonged submersion, the surveyor rejected nearly 86% of the claim, insisting on unnecessary further testing. In relation to induction furnaces, only 15% of the claim was allowed, on speculative grounds such as "water starvation," which the Tribunal held to be manufactured and unsupported.

117. The Tribunal additionally noted that, despite repeated requests and after the respondent had furnished detailed expenditure statements amounting to Rs. 40.07 crores under cover of its letter dated 21.01.2020, the petitioner offered no comments. This omission prevented a reliable assessment of reinstatement value, since such an exercise required physical inspection, verification of bills, and scrutiny of admissibility under the terms of the policy, including deductions for betterment. In these circumstances, the Tribunal was constrained to restrict its assessment to a market value basis, though it noted that most of the assets were less than two years old. Accepting the general approach to depreciation but applying it in a rational manner, the Tribunal held that depreciation of 2% per year for building and 5% per year for machinery was appropriate.

118. In light of the above, the Tribunal concluded that the surveyor's report was marred by contradictions, arbitrariness, and lack of objectivity. It could not, therefore, form the basis for the settlement of the claim. The Tribunal accordingly proceeded to independently assess the claims on market value basis, drawing upon the respondent's recalculations and supporting documents, and applied logical and consistent standards to arrive at its findings.

119. It was further urged by the petitioner that the conclusions recorded in paragraphs 207 and 208 of the Award were baseless, irrelevant, and contrary to the statutory mandate under Section 64-UM of the Insurance Act. According to the petitioner, the Tribunal, in order to favour the respondent, directed it to submit calculations of loss on both reinstatement and market value basis after conclusion of evidence and at the stage of final arguments. These statements of estimation, it was argued, were unsupported by documentary evidence, never proved on record, and yet relied upon by the Tribunal without affording the

petitioner any opportunity to verify or rebut them. Such a course of action, it was submitted, was patently illegal.

120. This contention, however, is factually untenable. The record demonstrates that the Tribunal considered quantification of claims strictly on the basis of the pleadings, documents, and evidence adduced by the parties. The chart filed by the respondent after conclusion of its arguments was merely in the nature of a convenience note, prepared as a key to correlate the documentary and oral evidence already on record. The Tribunal, by order dated 22.02.2021, specifically afforded the petitioner an opportunity to address arguments on the correctness of the said chart, thereby ensuring procedural fairness.

121. It is evident from the Award that the Tribunal relied only on material forming part of the evidentiary record. The petitioner itself, on pages 3790 and 3791 of its pleadings, placed on record details of the claims calculated on both the reinstatement and market value basis.

122. On this foundation, the Tribunal computed the reinstatement value at Rs. 58,10,50,085/-, and the market value at Rs. 48,22,91,262/-, applying the principle of depreciation. However, noting that indemnity was payable on market value basis, the Tribunal awarded compensation on that footing. The Tribunal further reduced the amount by applying the policy deductible. While 5% of the claim amount (i.e., Rs. 2,41,14,563/-) was contractually deductible, the Tribunal, in its discretion, directed a deduction of Rs. 5 crores, thereby arriving at a payable sum of Rs. 43,22,91,262/- to the respondent, from which Rs. 10.45 crores, already paid by the petitioner, was deducted.

123. Accordingly, the argument that evidence was improperly introduced or relied upon after the conclusion of hearings is without substance and contrary to the record.

124. The petitioner also submitted that the Tribunal erred in holding that deduction of premium under Condition No. 15 of the policy was not justified. It was urged that, in view of the clear and unambiguous terms of Condition No. 15, deduction of premium at the stage of settlement was mandatory, particularly since the policy had expired prior to settlement of the claim. The finding of the Tribunal to the contrary was alleged to be arbitrary, illegal, and perverse.

125. Clause 15 of the insurance policy reads as under:

> *"At all times during the period of insurance of this policy the insurance cover will be maintained to the full extent of the respective sum insured in consideration of which, upon the settlement of any loss under this policy, pro-rata premium for the unexpired period from the date of such loss to the expiry of period of insurance for the amount of such loss shall be payable by the insured to the company.*
>
> *The additional premium referred above shall be deducted from the net claim amount payable under the policy. This continuous cover to the full extent will be available notwithstanding any previous loss for which the company may have paid hereunder and irrespective of the fact whether the additional premium as mentioned above has been actually paid or not following such loss. The intention of this condition is to ensure continuity of the cover to the insured subject only to the right of the company for deduction from the claim amount, when settled, of pro-rata premium to be calculated from the date of loss till expiry of the policy.*
>
> *Notwithstanding what is stated above, the sum insured shall stand reduced by the amount of loss in case the*

insured immediately on occurrence of the loss exercises his option not to reinstate the sum insured as above."

126. The Tribunal has dealt with the contention of the petitioner in detail. It held as under:

"220. Under Issue No. 6, the Tribunal is satisfied that the Claimant is entitled, in principle, to the claims made in paragraphs 87 and 88 of the Statement of Claim. However, when actually assessed, whether by the Surveyor or, as in this case, by the Tribunal, there will be adjustments and deductions keeping in mind that the Claimant is entitled only to strict indemnity. The Tribunal has therefore assessed the claim on market value at Rs. 43,22,91,262, from which the amount already received by the Claimant must be deducted. The adjustments made by the Respondent are to be ignored, as it was noted that no one came forward to take the salvage for which the Surveyor had sought quotations, and hence an artificial amount was thrust on the Claimant. With regard to deduction of premium, it is to be noted that the claim was settled after nearly three years, by which time the policy under which the claim was paid had expired. Condition No. 15, under which the amount was sought to be deducted, does not appear to be valid in such circumstances. The relevant terms indicate that the intention of this condition is to ensure continuity of the cover to the insured, subject only to the right of the company to deduct, from the claim amount when settled, the pro-rata premium calculated from the date of loss till the expiry of the policy."

127. Clause 15 clearly supports this finding. In view of the above, I find no perversity in the Tribunal's conclusion, as Clause 15 unambiguously stipulates the relevant position. Accordingly, the interpretation adopted by the Tribunal cannot be faulted.

Issue No. 7: Interest and Costs

128. Before dealing with the petitioner's contention with regard to grant of interest from cause of action, it is important to set out the law.

129. In ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465***, the Hon'ble Supreme Court held as under:

> ***"3.*** *"Interest" is defined as "the return or compensation for the use or retention by one person for a sum of money belonging to or owned by any reason to another. In essence, an award of interest compensates a party for its forgone return on investment, or for money withheld without a justifiable cause."*

130. On pre-reference interest, the Hon'ble Supreme Court in ***Pam Developments (P) Ltd. v. State of W.B., (2024) 10 SCC 715*** held as under**:**

> ***"23.3.*** *Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, unless otherwise agreed by the parties. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment.*

23.5. *The power of the arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded or does not contain a specific term that prohibits the same."*

(*emphasis supplied*)

131. From the above, it is clear that the Tribunal has discretion to grant interest for pre reference as well as post post-award period.

132. The petitioner's contention that interest could not be granted from 01.02.2012 as the respondent had not reinstated within 12 months, and had accepted settlement on market value basis, cannot be sustained.

133. The Tribunal, after a detailed consideration of the materials on record and law, awarded simple interest at 9% per annum from 01.02.2012 till realization on the awarded sum. The reasoning of the Tribunal is twofold. First, it referred to Section 31(7)(a) and (b) of the Act, which empowers the tribunal to award pre-award interest at a rate it deems reasonable and mandates post-award interest at 2% above the prevailing rate, unless otherwise directed. Second, the Tribunal placed reliance on the IRDAI (Protection of Policyholders' Interests) Regulations, 2002, which obligate insurers to settle claims within 30 days of receipt of the survey report and, once accepted, within 7 days of acceptance by the insured. Any delay renders the insurer liable for interest.

134. On facts, the Tribunal found that the surveyor submitted his report belatedly on 29.01.2014, well beyond the prescribed time limits, and even after the respondent had signed the consent voucher on 18.01.2014. Payments were made only in April and August 2014. The Tribunal also noted that despite repeated requests, neither the petitioner nor the surveyor recommended any on-account payment, thereby forcing the respondent to remain without indemnity for a prolonged

period. In these circumstances, the Tribunal held that interest from 01.02.2012, the date on which the respondent submitted the final claim proforma and supporting documents, was justified as the delay was squarely attributable to the petitioner.

135. The Tribunal has given cogent reasons that the petitioner's failure to process the claim expeditiously, including failure to release interim payments, directly impeded reinstatement. The reliance on the respondent's consent letter is also misplaced, since the Tribunal has concurrently held that the letter was signed under duress and undue pressure. In any event, once the Tribunal found unreasonable delay in settlement of the insurance claim, it was well within its discretion under Section 31(7)(a) of the Act to award interest for the pre-award period.

136. The further plea that the respondent invoked arbitration belatedly, after remaining silent for years, is equally untenable. The Tribunal has dealt with this aspect under Issue No. 1, holding that a live dispute survived as to the quantum of claim, and this finding has been upheld as a plausible view. Once the existence of a dispute was established, the entitlement to interest for delayed settlement naturally followed.

137. The rate of interest so awarded by the Tribunal cannot be said to be unreasonable or perverse so as to justify any interference by this Court in exercise of its powers under Section 34 of the Act.

138. As to the quantum of costs, the Tribunal recorded the Memo of Costs submitted by the respondent and made its award. Section 31A of the Act vests discretion in the Tribunal to determine costs, subject to reasons. Merely because the petitioner disputes the figures or terms the award of counsel's fees excessive does not establish perversity. The Tribunal considered the record before it and exercised discretion. In ***Naresh Kumar Bajaj & Ors. v. Bunge India Pvt. Ltd***., ***2024 SCC OnLine Del 7316,*** it was held as under:

> *"67. Furthermore, whether the costs are to be granted or not for the arbitration proceedings, was a subject matter before the learned Arbitrator. The learned Arbitrator has not chosen to award the costs to the petitioners in his discretion and the same cannot be questioned before this Court in a Petition under Section 34 of the Act."*

139. Even the last contention of the petitioner, that the Tribunal has awarded a sum exceeding Rs. 65,00,00,000/- without any legal or factual basis, thereby involving public money and rendering the award liable to be set aside as being against public policy and shocking to the conscience of this Court, is without merit. The submission essentially amounts to an argument that since public money is involved in insurance administered by national insurance agencies, no award ought ever to be passed against them. Such a proposition cannot be accepted. The mere involvement of public funds does not immunize an insurer from liability under a validly drawn contract of insurance, nor can it be a ground, by itself, to vitiate an arbitral award.

CONCLUSION

140. In view of the above findings, the present petition seeking the setting aside of the impugned Arbitral Award dated 28.07.2021 and Order dated 28.08.2021 passed by the Tribunal stands dismissed.

141. Pending applications, if any, also stand disposed of.

OMP (ENF) (COMM) NO. 21 OF 2022

142. In view of the judgment passed in O.M.P. (COMM) 194/2022, where the petition filed under section 34 of the Act has been dismissed, the enforcement petition is allowed, and the Award shall be enforced as a decree.

143. As per the office report, the awarded amount along with interest has already been deposited by the judgment debtor with the Registrar General, Delhi High Court. Let the same be released to the decree holder along with up-to-date interest after 4 weeks from today.

144. With these directions, the enforcement petition is disposed of along with pending applications, if any.

JASMEET SINGH, J

SEPTEMBER 18th, 2025/DE