



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

**RESERVED ON – 14.11.2024**

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**PRONOUNCED ON –13.02.2025**

+ O.M.P. (COMM) 421/2020, I.A. 3580/2020, I.A. 9091/2021  
THE ORIENTAL INSURANCE COMPANY LIMITED

.....Petitioner

Through: Ms. Ayushi Khazanchi, Ms. Suruchi  
Jaiswal, Ms. Niyati Kohli and Ms.  
Devanshi Rangi, advts.

versus

NAGARJUNA AGRICHEM LIMITED

.....Respondent

Through: Mr. Trinath Tadakamalla, Mr.  
Debarshi Dutta, Mr. Rajat Pradhan,  
Ms. Manvi Adlakha, Ms. Anusha  
Sinha, advts

+ O.M.P. (COMM) 272/2020, I.A. 1563/2020 & I.A. 9082/2021

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**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**J U D G M E N T**

**DINESH KUMAR SHARMA,J :**

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**A. PREFACE**

1. The Court proposes to dispose of both the petitions by a common order as though the petitions have been filed arising out of two arbitral awards, however, some of the issues being dealt with by the learned Arbitral Tribunal are common.
2. By way of present petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the A&C Act'*)



the petitioner seeks setting aside of the Arbitral Award dated 10.09.2019 modified on 12.12.2019 and the Arbitral Award dated 13.09.2019, both passed by the learned Arbitral Tribunal (*hereinafter referred to as 'the learned AT'*) consisting of a sole Arbitrator Mr. Justice (Retd.) Aftab Alam.

3. The Petitioner/Oriental Insurance Company herein is a general insurance company who was the respondent in the proceedings before the learned AT. The Respondent/Nagarjuna Agrichem Ltd. is engaged in the business of manufacture and sale of chemical insecticides, fungicides, herbicides, etc., having manufacturing facilities located in the state of Andhra Pradesh, and was the claimant in the proceedings before the learned AT.

**B. BRIEF FACTS**

4. Briefly stated facts as per the Arbitral Award are that an explosion resulting in a massive fire, occurred at the Srikakulam Plant of the Respondent/Claimant around 9:30 am on 30.06.2012 and caused extensive damage. Pursuant to the accident, an FIR was lodged at Police Station, Ethecota which recorded that the probable cause of explosion to be some “DCM contamination in Myclobutamil reaction system”. The FIR also included the Fire Brigade Report dated 27.10.2012 by the Andhra Pradesh Fire and Emergency Services Department. It is the case of the Respondent/Claimant that the outbreak had caused extensive damage to the building, plant and machinery, furniture, fixture and fitting of Block no.5, Srikakulam Plant. It also caused heavy loss of stocks of finished goods, raw material and stocks in process. Furthermore, the civil structure, plant and machinery,



pipping, electrical installations, instruments, etc. situated close to Block no.5 also faced loss and damage.

5. On the date of fire, the Respondent/Claimant had certain subsisting insurance policies covering all its manufacturing units located at various locations including the Srikakulam Plant i.e. the place of incident. The insurance policies held by the Respondent/Claimant are-
  - i. *Standard Fire and Special peril policy in respect of Building, Plant and Machinery, furniture, fixtures and fittings (BPM Policy) issued on 23 April 2012 under policy schedule no. 462890/11/2013/4 for the insurance period 01 April 2012 to 31 March 2013. The total sum insured under the policy was Rs. 368,18,35,081 for which the claimant had paid the premium of Rs.27,80,003.00*
  - ii. *Standard Fire and Special peril policy in respect of Stock on Floater Declaration Basis (Stock Policy) issued on 01 August 2011 under policy schedule no. 462890/11/2012/8 for the insurance period 01 August 2011 to 31 July 2012. The total sum insured under the policy was Rs. 110,00,000 for which the claimant had paid the premium of Rs. 8,02,178*
  - iii. *Loss Of Profit (LOP) Policy issued on 31 March 2012 under policy schedule no.462890/11/2013/3 for the insurance period 01 April 2012 to 31 March 2013. The total sum insured under the policy was Rs. 180,00,00,000 for which the claimant had paid the premium of Rs. 11,98,593.*
  - iv. *Public Liability Policy issued on 01 April 2012 under policy schedule no.462890/48/2013/2*
6. The said policies were issued by the Petitioner and the present petitions have been filed subsequent to the arbitral proceedings arising out of the dispute with regards to the BPM Policy, Stock Policy which are together called Material Damage Policies and the Loss of Profit (LOP)



policy and the Loss of Profit (LOP) (hereinafter collectively referred as '*the policies*'). It is pertinent to mention that the Respondent/Claimant had been taking out these policies from the Petitioner on a yearly basis, continuously for the past several years.

7. The Respondent/Claimant vide email dated 02.07.2012 notified the Petitioner regarding the mishap and, thereafter, sought a surveyor to be deputed to assess the losses incurred and for registration of claim towards its policies. Furthermore, by a reply email of the event date, the Petitioner conveyed that the claim under the BPM Policy was registered. Mr. A. Ramalingeswara Rao was deputed to conduct preliminary survey and other documentary formalities. Mr. Rao visited the place of incident on 03.07.2012 and submitted the Preliminary Survey Report. Subsequently, on 24.07.2012, a new surveyor namely Mr. Adarsh K. Gupta was appointed by the Petitioner who, vide email dated 26.07.2012 communicated to the Respondent/Claimant that most of the equipment was unaffected that was installed at the Zero level i.e. the Ground Floor. The surveyor in the same email, also communicated that the Respondent/Claimant shall take steps to get the affected premises cleaned and arrange an inspection by way of an independent structural engineer in order to meet the requirement of the local authorities and thereafter submit its report for the perusal of Mr. Adarsh K Gupta. Additionally, the email also stated on receipt of the abovementioned reports the surveyor shall again visit the site and that requirements with regards to business interruption (BI) claim shall be communicated separately.
8. On 23.08.2012, the respondent was granted permission to enter the



- affected Block by the Government. Later on, several communications were exchanged between the parties and pertinently, on 04.12.2012, the Respondent/Claimant submitted its provisional claim bill for a total of Rs. 64.58 Crores, wherein Rs. 58.81 Crores was claimed under the BPM Policy and Rs. 5.77 Crores was claimed under the Stocks Policy.
9. On 28.12.2012, the Surveyor visited the site again and authorized the Respondent/Claimant to dismantle the damaged and affected structures and equipment. Subsequently on 16.03.2013 a Status Report was filed by the Surveyor. Thereafter, during the course of further correspondences between the parties, on 18.09.2013 the Respondent/Claimant informed the Surveyor that it has incurred a cost of Rs.15.04 Crores in re-building Block no.5. Furthermore, an Interim Survey Report (ISR) was submitted on 11.10.2013, indicating an on-account amount of Rs. 17.50 Crores to be paid to the Respondent/Claimant. Several meetings took place between the parties wherein the Respondent/Claimant mentioned the due financial hardship it has been facing due to the loss incurred post the incident.
10. Finally, after repeated requests and meetings, the Petitioner agreed to make an on-account payment of Rs.10 Crores on 26.02.2015 to the Respondent/Claimant subject to execution of a pre-formatted and undated Discharge Voucher (DV) by the Respondent/Claimant. The said condition was accepted, and the DV was duly executed, and on 11.03.2015, Rs. 10 Crore was paid to the Respondent/Claimant. Subsequently, the Surveyor visited the site of incident again and directed the Respondent/Claimant to file a Revised Claim Bill indicating the detailed break-up with regards to the repair,



reinstatement and replacement costs. In compliance with the foregoing direction, the Respondent/Claimant submitted the Second/revised Claim Bill on 05.05.2015 for Rs. 60.46 Crores. As per the bill, Rs.5.75 Crores were sought against repairs of the building, Rs.55.11 Crores were sought towards reinstated and repaired plant and machineries along with replacement of surrounding properties and lastly, Rs. 0.60 Crores were sought towards the debris removal expenses.

11. The revised claim under the Stocks Policy was submitted separately by the Respondent/Claimant on 09.07.2015, and on 20.08.2015, the Final Claim Bill for Rs. 62.84 Crores was submitted by the Respondent/Claimant. In the said bill, Rs. 60.03 Crores were claimed under the BPM Policy, and Rs. 2.81 Crores were claimed under the Stocks Policy. Pertinently, a revised claim bill was filed for Rs. 2.75 Crores under the Stocks Policy. The correspondences continued between the parties in order to obtain complete and adequate information and documentation. In regard to the Loss of Profit (LOP) policy, the respondent/claimant submitted its final bill with all the calculations under the LOP policy amounting to 10.68 Cr. The calculation was based on the following output basis as per the Alternative Base Clause. Subsequently, an additional claim of 72 lakhs was notified vide email dated 31.03.2016.
12. Finally, the Surveyor on 16.04.2016 submitted its Final Survey and Assessment Report (FSR) assessing the loss due to fire explosion calculated at Rs. 43,11,79,305/- under the BPM Policy and the claim under the Stock Policy was rejected in entirety. The Respondent/Claimant aggrieved of the FSR, sent emails to the



Petitioner wherein it raised objections for the partially-approved claims. Thereafter, vide email dated December 6, 2016, the Respondent/Claimant was informed that the approved claim is of Rs. 42,43,98,331/- i.e., subject to a deduction of Rs 67,80,974 from the amount computed in the FSR and was further directed to execute a similar DV as earlier and to have it counter-signed by the Bank. The Respondent/Claimant, against its will and under financial duress, executed the DV and on 15.12.2016, received the approved claim amount of Rs. 42,43,98,331/-, against the BPM policy. The Respondent/Claimant, vide its letters dated 15.12.2016 and 22.12.2016, asked for the annexures to the FSR and also raised issue towards the deduction of Rs. 67,80,974/- complying to which the Petitioner provided the 'A-series' of the annexures of the FSR, on 31.12.2016. In regard to the LOP policy, the surveyor in his FSR *inter alia* held the respondent/claimant to be not entitled to any claim under the said policy.

13. On 12.01.2017, the Respondent/Claimant again raised its concerns regarding the assessment of claim and also about the execution of DV under compelling circumstances towards which the Petitioner replied vide its email dated 02.02.2017. The Respondent/Claimant being aggrieved of this sought to invoke the General Condition 13 of the Policies, i.e. the arbitration clause which was declined by the Petitioner. Pursuant to the Petitioner declining the request of settling the matter by way of arbitral proceedings, the Respondent/Claimant approached this Court under Section 11 of the Act, on 30.05.2017. With the consent of both the parties, this Court vide its order dated





30.05.2017 referred the dispute to arbitration.

**PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL in OMP  
(COMM) 421/2020**

14. The Respondent/Claimant filed its Statement of Claims (SoC) before the learned AT seeking the following reliefs:

- a. *An Award against the Respondent directing the Respondent to pay an amount of Rs. 14,34,47,729.38/- under the BPM Policy and Stocks Policy;*
- b. *An Award against the Respondent directing the Respondent to pay an amount of Rs. 13,34,17,795.73/- as interest;*
- c. *An Award against the Respondent directing the Respondent to pay pendent lite and future interest on Rs. 27,65,65,525.11/- calculated 18% per annum with quarterly rests.*
- d. *An Award against the Respondent declaring that the Discharge voucher dated 06.12.2016 is illegal, invalid, void*
- e. *The Claimant craves leave of the Hon'ble Tribunal to claim any additional sums or relief as a part of Claims (a) to (d) above;*
- f. *An award on actual costs of the present arbitration proceedings along with interest in terms of the Act.*

15. Subsequently, the Statement of Defense (SoD) was filed on behalf of the Petitioner herein, whereby it denied all the claims of the Respondent/Claimant and stated that the learned AT award costs in its favour. Pursuant to the parties filing their statements, the learned AT framed preliminary points of determination, which read as follows:

**Preliminary Point of Determination**

*1. Whether the disputes between the parties are arbitrable? (OPR)*



Points for Determination

2. *Whether the Claimant is entitled to Rs. 143,447,729.73/- under the BPM Policy and Stock Policy (OPC)*
  3. *Whether the Claimant is entitled to Rs. 133, 117,795.73 towards interest on the amount claimed under the BPM and Stocks Policy? (OPM)*
  4. *Whether the Claimant is entitled to pendent lite and future interest on Rs.27,65.525.11/- and if so at what rate and form which period? (OPC)*
  5. *Whether the Discharge Voucher (of 0 December 2016) is illegal, invalid and void? (OPC)*
  6. *Whether the execution of the Discharge Voucher amounts to full and final settlement of the Claimant's claim under the BPM Policy and the Stocks Policy? (OPC)*
  7. *Whether the parties are entitled to costs in the arbitration, and if so, to what extent? (OPC/OPR)*
  8. *To what other relief is the Claimant entitled to?"*
16. Learned AT while dealing with the issues at hand observed that the BPM Policy was of merely two pages and without any wording containing terms and conditions which was issued at a later stage. The learned AT noted that it was a fault on account of the Petitioner which led to the Surveyor facing difficulty in carrying out survey proceedings. The terms and conditions were ambiguous, which resulted in the Surveyor assessing the loss in a different manner, which was to be assessed on a reinstatement basis, and therefore, it was rectified at a later stage. Pertinently, the policy schedule did not specify important issues, including, i.e., what is and what is not debris removal in order to



assess the loss. Therefore, the learned AT held that in computation of the cost of reinstatement under the BPM Policy, the expression “Debris Removal” is to be read as explained in the General Exclusions.

17. The learned AT while dealing with the claims pertaining to the Stock Policy, noted that the policy did not chalk out important terms like “Stock in process” being different from raw material and finished goods also. The learned AT noted that the policy schedules issued for both the policies fails to specify the true intent of the parties and is not conclusive.
18. Furthermore, while dealing with the claims/relief sought by the parties, learned AT observed that the deductions of certain amount and rejections of claims by the Surveyor lacked adequate reasoning and are therefore invalid. Learned AT noted that though the report of the Surveyor is vital while adjudicating an insurance claim, and even though it shall not be put under the same rigour as the judgment of a Court, it is not possible to ignore compelling evidence. Learned AT inter alia held that the Surveyor’s Report should not be based on assumptions, conjectures and preconceived notions, and it must follow objective criteria. Learned AT awarded a total of Rs. 5,22,01,682/- towards the BPM Policy and Rs.2,50,50,371/- towards the Stocks Policy along interest @ 13% p.a. from 15.12.2016 till the final payment of the award.
19. The Petitioner being aggrieved of the award, whereby the claims of the Respondent/Claimant were allowed, by the learned AT, has filed the present petition.

**PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL in OMP**



**(COMM) 272/2020**

20. In the SoC filed by the Respondent/Claimant before the Id. AT, the Respondent/Claimant has claimed for the quantification of indemnified loss under the LOP Policy on, (i) reduction of turnover of all blocks of the Srikakulam Plant comes to Rs. 15.21 Crores; (ii) reduction of output of Block no. 5 comes to 10.09 crores and; (iii) reduction of turnover of Block no. 5 comes to 9.50 crores along with an interest of 18 percent on the amounts claimed as its indemnified loss. The Petitioner in its Statement of Defense (SoD) filed before the learned AT, had completely denied all the claims of the Respondent/Claimant thereby also questioning the maintainability and jurisdiction of the arbitration proceedings. The Petitioner also stated that "Departmental Clause", the "Alternative Basis Clause" and the "Accumulated Stock Clause" did not form part of the LOP Policy.
21. Based on the statement of the parties and their averments, the learned AT framed the following points for initial consideration:
1. *Whether the disputes between the parties are arbitrable? (OPR)*
  2. *Whether the Discharge Voucher (of 6 December 2016) is not binding, illegal, invalid and/or void? (OPC)*
  3. *Whether the discharge voucher was executed by the Claimant under compulsion in order to receive the amount offered by the Respondent in respect of the material damage claim and policy? (OPC)*
  4. *If the answer to the above question is in negative, then even otherwise whether upon execution of the discharge voucher by the Claimant, would it be precluded from claiming any amount above the nil amount stated in the discharge voucher? (OPR)*



5. *Whether the 'Alternative Basis Clause', 'Accumulated Stock Clause and 'Departmental Clause' formed part of the Insurance Policy? (OPC)*
  6. *Whether the Claimant is entitled to the claim for loss of profit in the sum of Rs. 16.65 Crores as 'Turnover Basis (all blocks)' as per Appendix 1 to the*
  7. *In the alternative, whether the Claimant is entitled to claim for loss of Rs. 10.68 Crores on 'Output Basis (Block - V) as per Appendix 2 to the SOC? (OPC)*
  8. *In the further alternative whether the Claimant is entitled to claim for loss of Rs. 10.84 Crores on 'Turnover Basis (Block - V) as per Appendix 3 to the SOC? (OPC)*
  9. *Whether the Claimant is entitled to interest on the claim amount?*
  10. *To what other relief is the Claimant entitled to?*
22. During the course of proceedings, learned AT observed that challenge on maintainability of the claims with regards to the DV is contrary to the IRDAI guidelines and that the execution of the DV was made to be done under compulsion and not out of free will. The learned AT also noted that the insistence upon execution of the DV was quite extraordinary. Learned AT inter alia held that the challenge to the arbitrability fails as the Petitioner's liability is undeniable, as can also be seen on the basis of the DV executed.
23. Learned AT, inter alia held that the Alternative Basis Clause is a part of the LOP Policy. Additionally, it has been observed that the calculation on output basis has been applied by the Surveyor in the FSR dated 29.03.2016 on the entire production of the company, whereas it was found that there was no shortfall in output during the indemnity period.



With respect to the Departmental Clause, Id. AT observed that the Departmental Clause was a part of the Respondent's/Claimant's LOP Policy for the purpose of calculation of gross profit on turnover basis and output basis, preferring output basis over the turnover basis for the calculation. Id. AT while computing the loss of gross profit on an output basis, disallowed Rs. 0.72 crores for procuring one of the products from market as it did not qualify as an increased cost of working under the policy, approving the remaining claim of Rs. 9.96 crores.

24. Therefore, based on the above discussions, the learned AT awarded Rs.9.96 Crores towards loss of profit against the LOP Policy along with interest @13% p.a.

**SUBMISSIONS IN OMP (COMM) 421/2020.**

**SUBMISSIONS ON BEHALF OF PETITIONER**

25. Ms. Aayushi Khazanchi, Learned counsel appearing for the petitioner, submitted that the primary ground of challenge to the Impugned Award pertains to the arbitrability of the claim under the Stocks Policy, wherein liability under the Policy had been expressly denied. It was submitted that the Impugned Award is vitiated by patent illegality as it erroneously held that the Learned AT possessed jurisdiction over disputes concerning the Stocks Policy, despite the arbitration clause specifically precluding disputes related to liability. It was also submitted that the arbitration clause unequivocally provided that only disputes regarding quantum could be referred to arbitration, while liability disputes were to be adjudicated before civil courts.
26. Learned counsel further submitted that the Impugned Award has



improperly delved into factual findings regarding the reasons for the denial of liability under the Policy, thereby exceeding the jurisdiction of the Learned AT. It was further submitted that the denial of liability based on the non-coverage of “Stocks in Process” within the Policy was a dispute beyond the Learned AT’s scope, and the Learned AT’s findings in this regard constitute a jurisdictional overreach.

27. Learned counsel for the Petitioner submitted that Learned AT wrongly assumed jurisdiction over the claim under the Stocks Policy, even though the arbitration clause explicitly restricted arbitration to quantum disputes only. Reliance has been placed upon **United India Insurance Co. Ltd. v. Hyundai Engineering and Construction Co. Ltd.** (2018) SCC OnLine SC 1045 and **Oriental Insurance Co. Ltd. v. Narbheram Power and Steel Pvt. Ltd.** (2018) 6 SCC 534 to emphasize that when liability is denied, arbitration is not permissible.
28. Learned counsel further submitted that the Impugned Award is perverse to the extent that it allows the claim for “Stocks in Process” without an independent surveyor’s assessment. It was further submitted that the absence of an independent surveyor’s verification of the loss undermines the validity of the claim, rendering the Learned AT’s findings unsustainable. It was submitted that the learned AT improperly relied on SAP records, which were even not produced before it, and ignored the requirement for independent verification.
29. Learned counsel also submitted that learned AT erroneously disregarded the finality of the Policy Schedule and relied on prior negotiations to infer coverage for "Stocks in Process," which is legally impermissible. Reliance has been placed upon **Suraj Mal Ram Niwas**



**Oil Mills Pvt. Ltd. v. United India Insurance Co. Ltd.** (2010) 10 SCC 567 which *inter alia* upholds that insurance policy terms cannot be rewritten.

30. Learned counsel for the Petitioner further submitted that learned AT also erred in its findings regarding the DV executed by the Respondent. It was also submitted that the Respondent had voluntarily executed the DV in the presence of its bank under the Agreed Bank Clause of the insurance policy. Learned AT's finding that the DV was executed under financial compulsion is vitiated by patent illegality, as the Respondent did not promptly protest its execution. Instead, it issued emails on 15 December 2016 and 22 December 2016 thanking the Petitioner for processing and paying the claim. Raising objections only on 12 January 2017 indicates an afterthought rather than a genuine grievance.
31. Learned counsel further submitted that the Impugned Award incorrectly allowed certain claims under the head of "Debris Removal" which did not fall within its ordinary meaning. Learned AT wrongly declassified civil works as non-debris removal activities, leading to unjustified claims. Additionally, learned AT reversed a 20% deduction made by the Surveyor on electricity charges despite upholding similar deductions on wages, thereby contradicting its own reasoning.
32. Learned counsel for the Petitioner submitted that the learned AT's award of interest at 13% per annum was excessive and resulted in unjust enrichment of the Respondent. The IRDAI Protection of Policyholders' Interests Regulations, 2002, specify an interest rate of 2% over the RBI bank rate, making the awarded interest rate unreasonable and unconscionable.





33. Learned counsel further submitted that learned AT has erred in its assessment of the Plant and Machinery claim by allowing costs of replacement and repair of machinery at locations which were not affected by the fire. It was submitted that the Surveyor had conducted a detailed examination and found that certain equipment located at 0 mtr, 29 mtr, tank farm area, and outside the block remained undamaged. Learned AT's rejection of the Surveyor's findings was unwarranted and contrary to the documentary evidence, including government reports and Respondent's own communications.
34. Learned counsel for the Petitioner also submitted that learned AT wrongly disallowed the 5% deduction made by the Surveyor on account of improvement in the replaced plant and machinery. It was submitted that the principle of indemnification under insurance law mandates that the insured be restored to the pre-loss condition and not placed in a better position. Allowing full reimbursement without deductions for improved design and functionality of new machinery resulted in unjust enrichment of the Respondent.
35. Learned counsel further submitted that learned AT erroneously set aside the 10% en-bloc deduction applied by the Surveyor on miscellaneous expenses for consumables and spares. It was submitted that the Respondent failed to substantiate the consumption of these materials, and the Surveyor had reasonably applied a deduction based on expert assessment. Learned AT's interference with the Surveyor's expert findings was unjustified.
36. Reliance has been placed upon **14 Reels Entertainment Pvt Ltd v Eros Interntional Media Ltd** 2020 SCC OnLine 18730; **Anand Bros. (P)**



Ltd. v. Union of India, (2014) 9 SCC 212; Associate Builders v DDA (2015) SCC 49; Bharat Coking Coal Ltd v Annapurna Construction (2003 SC); Essar Steel India Ltd. v. New India Assurance Co. Ltd., 2016 SCC OnLine Bom 9472; Food Corpn. of India v. Chandu Construction (2007 SC); Harsha Constructions v. Union of India, (2014) 9 SCC 246; Indo-Rama Synthetics India Ltd. v. IFFCO Tokio General Insurance Co. Ltd., 2019 SCC OnLine Del 7026; Kohinoor Steel Pvt. Ltd. v. Bajaj Allianz Insurance Company, 2011 SCC OnLine Cal 3252; New India Assurance Co. Ltd. v. Ampoules & Vials Manufacturing Co. Ltd., 2018 SCC OnLine Bom 5845; OIC v Narbheram Power, (2018) 6 SCC 534; Patel Engineering Ltd v North Eastern Electric Power Corporation Ltd (2020) 7 SCC 167; PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin, 2021 SCC OnLine SC 508; Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470; Ram Chander v UOI CS(COMM) No 5 of 2015; Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595; Sanghi Industries Ltd. v. United India Insurance Company Limited, 2013 SCC OnLine Guj 5723; Sanjay Roy v Sandeep Soni, [DHC - FAO (OS) (COMM)92/022; Judgment dated 20 May 2022]; SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131; State of Goa v. Praveen Enterprises, (2012) 12 SCC 581; State of Rajasthan v Nav Bharat Construction Co (2006 SC); United India Insurance Co. Limited v Hyundai Engineering and Construction Co Ltd & Ors, 2018 SCC OnLine SC 1045; Vulcan Insurance v Maharaj Singh, (1976) 1 SCC 943



### **SUBMISSIONS OF RESPONDENT**

37. Mr. TrinathTadakamalla, learned counsel for the respondent, submitted that the Respondent had been taking insurance from the Petitioner for more than 15 years. It was submitted that the policies which were the subject matter of the arbitration were Building, Plant & Machinery Policy ("BPM Policy")/Standard Fire and Special Perils Policy ("Fire Policy") and Stocks Policy. Learned counsel submitted that on 30 June 2012, a fire and explosion ("incident") occurred in Block 5 of the Respondent's Srikakulam Plant,
38. Learned counsel for the Respondent submitted that the Petitioner has primarily challenged the Award on the basis that the claim under the stocks policy is not arbitrable. Learned counsel submitted that the learned AT rightly adjudicated the Respondent's claim for "stocks in process". It was submitted that this claim cannot be made out by the Petitioner to be a dispute relating to liability, rather it is squarely an issue of quantum as the Petitioner unjustifiably deducted payment for this particular head of claim while making payment for material damage ( MD )claims.
39. Learned counsel further submitted that the terms and conditions applicable to both BPM and Stocks policies are the same, and as liability under the BPM policy has been admitted, liability for stocks claims cannot be denied as the insured peril remains the same. It was further submitted that no letter was ever issued contemporaneously by the Petitioner "repudiating" liability under the Stocks Policy and even in the Final Survey Report, the Surveyor, which was appointed by the Petitioner, recommended payment of Rs. 43,11,79,305/- under the MD



policies, comprising Rs. 43,11,79,305/- under the BPM Policy and “NIL” under the Stocks Policy. It is the “NIL” assessment of loss of stocks, which was disputed by the Respondent in the arbitration. Learned counsel submitted that this ground is a reiteration of the Petitioner’s submissions before the learned AT.

40. Learned counsel for the Respondent submitted with respect to the petitioner’s challenge of award on the basis that stock policy was rewritten by the learned AT is invalid as learned AT has considered all relevant material, the Petitioner’s pleadings and replies, and arrived at a plausible finding. It was further submitted that the learned AT referred to pleadings where the Petitioner does not deny that “stocks in process” were covered under the policies for past years. Learned counsel submitted that the Petitioner’s challenge is a reiteration of its submissions before the learned. Tribunal. It was submitted that the material considered by learned AT in awarding such claim to the Respondent is recorded in paragraphs 98 to 127 of the Award.
41. Learned counsel for the Respondent submitted that despite the Respondent engaging an insurance broker, it is the Petitioner’s duty as an insurer to furnish all necessary information to the insured concerning coverage under the policy (Regulation 4(1) and 4(4) of the IRDAI (Protection of Policyholders' Interests) Regulations, 2002). Learned counsel for the respondent further submitted that the Petitioner’s allegation that the previous policies did not cover stocks in process is wrong. It was submitted that the value of stocks in process was covered, against which additional premium was paid, and based on this, the Stocks Policy was being renewed from time to time.



42. Learned counsel for the Respondent submitted that the Petitioner's submissions as to the conclusiveness of the Policy schedule are a reiteration of its submissions before the learned AT.
43. It was also submitted that the learned AT's reliance on SAP records to assess "stocks in process", as recorded in paragraphs 227 to 231 of the Award, is a plausible view. Learned counsel submitted that the learned AT correctly considered SAP records to be a "highly reliable record", and the learned AT has also fairly considered the Surveyor's findings in its status report dated 16 March 2013 regarding the extensive damage caused to stocks and stocks in process at various floors of Block 5.
44. Learned counsel for the Respondent submitted that Items 4.3, 4.12 and 5.5 have been categorically referred to by the Respondent as civil works undertaken by the contractor and not debris removal as wrongly categorised by the Surveyor. It was submitted that the Petitioner's reliance on para 71(i) of the SOC for alleging that the Respondent has admitted the above-referred activities as debris removal therein is incorrect. It was also submitted that the claim for Rs. 2,01,852/- is part of the sum total of Rs. 99,15,613.82/- for serial numbers 1.0 to 3.0 of civil works under the claim for Building. Learned counsel submitted that the Respondent's claim of Rs. 2,01,852/- is also stated in its Written Submissions given before this court, therefore, it cannot be said that the Respondent did not challenge the arbitrary deduction of Rs. 2,01,852 by the Surveyor.
45. Learned counsel also submitted that the learned Tribunal has correctly observed at paragraph 181 of the Award that claim 2.2(e) has been



disallowed by the Surveyor without any reason. Reasons now sought to be argued were never argued before the learned. Tribunal. It was further submitted that the learned AT had correctly found the Surveyor's deduction of 15% on the pretext of it being related to debris removal to be unsustainable. Learned counsel submitted that in the absence of an agreed contractual definition, the learned AT relied upon the ordinary meaning of "debris" removal to arrive at a finding that the activities fell outside the scope of debris removal and no fault can be found with it.

46. Learned counsel for the Respondent submitted that the learned AT at para 190 of the Award rightly reversed the deduction of 20% from the electricity cost for erection works. The Respondent had provided the Surveyor with the details of power procured and its distribution among various Blocks, which separately showed the power allocated and consumed by Block No. 5, and was duly certified by the site Electrical Manager. Therefore, it cannot be stated that proper particulars were not furnished by the Respondent.
47. Learned counsel for the Respondent submitted that the Petitioner refers to Table IV, Annexure A-2 of the Final Survey Report to support the deduction of 10%, which according to it has not been considered by the learned AT. However, the said Annexure refers to paragraph 5.2.7 of the Final Survey Report which has been duly cited in paragraph 198 of the Award and the learned AT's reasons for not agreeing with the same are set out in detail in paragraphs 200 to 203. Learned counsel submitted that, therefore, the Award cannot be said to be patently illegal because the learned AT has disagreed with the assessment of the



Surveyor.

48. Learned counsel for the Respondent submitted that the learned AT has correctly reversed the amount deducted by the Surveyor as underinsurance at paragraphs 208 to 218 of the Award after duly considering the submissions of the parties, including on the terms of the policy, Surveyor's views and the cross examination of RW-1. It was submitted that it cannot be said that the terms of the policy have been disregarded.
49. Learned counsel submitted that repeatedly the Award cannot be said to be patently illegal because the learned AT has disagreed with the assessment of the Surveyor. It was also submitted that the learned AT has analysed the relevant facts and events in respect of the financial distress suffered by the Respondent due to the incident, the delay in settlement of the claim and the Petitioner's insistence on the execution of a discharge voucher before the final payment is released to the Respondent.
50. Reliance has been placed upon **Axis Bank Ltd. v. UV Assets Reconstruction Co.** [2024 SCC OnLine Del 1192]; **NTPC Ltd. v. K.N. International Limited** O.M.P. (COMM) 6/2024 DHC (4 January 2024); **MMTC Limited v Vedanta Limited** [(2019) 4 SCC 163]; **Indraprastha Gas Ltd v Pawan Casting** [282 (2021) DLT 39]; **Union of India v Aadhar Stumbh Township Pvt Ltd** [OMP (COMM) 348/2021]; **Fedders Electric and Engineering Limited v Southeast Central Railway Bilaspur** [281 (2021) DLT 1]; **Municipal Corporation of Delhi v Jagan Nath Ashok Kumar &Anr.** (1987) 4 SCC 497 (DB); **State of Jharkhand v HSS Integrated Sdn &Anr.** (2019) 9 SCC 798;



**Braithwaite Burn and Jessop Construction Company Limited v Rail Vikas Nigam Limited** [259 (2019) DLT 781]; **Associate Builders v Delhi Development Authority** [(2015) 3 SCC 49]; **Delhi Airport Metro Express (P) Ltd. v Delhi Metro Rail Corporation** [(2022) 1 SCC 131]; **Ssangyong Engineering and Construction Company Limited v National Highways Authority of India (NHAI)** (2019) 15 SCC 131; **Steel Authority of India Limited v Primetals Technologies India Pvt. Ltd.**[2020 SCC OnLine Del 1392] (DB); **State of Rajasthan v Puri ConstructionCo. Ltd.** (1994) 6 SCC 485; **BV Radha Krishna v Sponge Iron India Ltd.** (1997) 4 SCC 693; Arosan **Enterprises Ltd v Union of India and Another** (1999) 9 SCC 449; **G Ramachandra Reddy and Company v Union of India and Another** (2009) 6 SCC 414; **Union of India v Susaka Private Limited and Others** (2018) 2 SCC 182; **SAIL v Mohan Steels Ltd.** 2021 SCC OnLine Del 2633; **Gail Gas Ltd v Palak Construction Pvt.Ltd.** 2019 SCC OnLine Del 11636.

#### **SUBMISSIONS IN OMP (COMM) 272/2020**

#### **SUBMISSIOIN ON BEHALF OF PETITIONER**

51. Ms Ayushi Khazanchi, Learned counsel for the Petitioner, submitted that the claim of the Respondent/Claimant with respect to loss of profit is arbitrable, is patently illegal and violates Section 34(2A) and Section 32(2)(a)(iv) of the Arbitration and Conciliation Act 2015. Learned counsel submitted that the Alternative Basis Clause is not mentioned under the LOP Policy, but the learned AT allowed the claim of the Respondent/Claimant under the Alternative Basis Clause on the ground that the Respondent/Claimant has sought the clause in their request for quotation, therefore, it would be considered as the part of





the LOP Policy.

52. Learned counsel for the petitioner further submitted that the learned AT with respect to the applicability of the “Alternative Basis Clause” and the “Departmental Clause” assumes the alteration of contract which amounts to re-writing the terms of the contract and contravenes Section 34(2A), Section 34(2)(b)(ii) and Section 34(2)(a)(iv) of the A&C Act.
53. Learned counsel for the petitioner submitted that the learned AT accepted the computation of the loss of gross profit on an output basis over the turnover basis as the turnover basis relied upon the accumulated stock clause, which the learned AT found to be inapplicable.
54. Learned counsel further submitted that in view of the computation of assessment of loss under the Arbitral Award, the learned AT ignored vital pieces of evidence, and therefore, the Arbitral Award is liable to be set aside on the grounds of patent illegality. Reliance is placed upon **“Ssangyong Engg& Construction Co Ltd v. NHAI [(2019) 15 SCC 131]**.
55. Learned counsel for the Petitioner submitted that the Award passed by the learned AT suffers from Patent illegality, as it wandered outside the scope of ‘*reference to arbitration*’ by deciding on matters that have been specifically excluded by the parties. With respect to the scope of *reference to arbitration*, learned counsel submitted that the learned AT cannot decide the issues that are not arbitrable. It is further submitted that in the present petition as per clause 13 of the agreement, the jurisdiction of the learned AT has been restricted only to the disputes as to the quantum to be paid with liability otherwise being admitted,



specifically excluding the jurisdiction of the learned AT where liability has been denied i.e., the moment the Petitioner denies liability, the matter becomes beyond the scope of reference to arbitration as per the terms of the arbitration agreement. Reliance is placed ***State of Goa v. Praveen Enterprise*** (2012)12 SCC 581.

56. The petitioner relied on the following judgements by the Apex Court in support of its submission that it is the settled position of law that an arbitrator cannot decide issues which are not arbitrable. ***Harsha Constructions v. Union of India*** [(2014) 9 SCC 246]. ***New India Assurance Co Ltd v. M/s Ampoules & Vials Manufacturing Co Ltd***[(2018) SCC OnLine Bom 5845]. ***PSA SICAL Terminals (P) Ltd v. VO Chidambaranar Port Trust Tuticorn & Ors***[(2021) SCC OnLine SC 508]. ***United India Insurance Company v. Hyundai Engineering and Construction Co Ltd***[(2018) SCC OnLine SC 1045]. ***Oriental Insurance Company Limited v. Narbheram Power and Steel Pvt Limited*** [(2018) 6 SCC 534]. ***Essar Steel India Ltd. v. New India Assurance Co Ltd***[2016 SCC OnLine Bom 972]. ***Sanghi Industries v. United India Insurance Company Limited***[2013 SCC OnLine Guj 5723]. ***Vulcan Insurance Co. Ltd. v. Maharaj Singh & Ors*** [(1976) 1 SCC 943]. ***Kohinoor Steel Pvt Ltd v. Bajaj Allianz Insurance Company*** [2011 SCC OnLine Cal 252]
57. Learned counsel for the Petitioner submitted that the finding of the learned AT that the issue of Arbitrability was not raised by the Petitioner in the WS filed before the learned AT dated 9.07.2019 is erroneous. It was submitted that the learned AT has entered into the issues beyond its reference despite having been notified, transgressing



its jurisdiction, therefore committed error of jurisdiction which renders the Impugned Award to be set aside as it suffers from patent illegality. Reliance is placed upon ***Ssangyong Engg & Construction Co Ltd v. NHAI*** [(2019) 15 SCC 131].

58. Learned counsel for the petitioner submitted that the decision of the learned AT on the applicability of and computation under the 'Alternative Basis Clause' is perverse, vitiated by patent illegality, is arrived at in a mechanical manner, is based on absolute non-application of mind, and amounts to unilaterally re-writing the terms of the insurance contract.
59. Learned Counsel for the petitioner further submitted that the calculation of loss can be done by various methods, two of which are 'Turnover basis' and 'Output basis'. It was further submitted that as per the Policy Schedule, which is a binding contract signed by both parties, the Respondent opted for application of the 'Turnover basis' as being the basis of indemnity.
60. Learned counsel for the Petitioner also submitted that the finding of the learned AT that the 'Alternative Basis Clause' is a part of LOP Policy for the period April 1, 2012 to March 31, 2013 is unreasoned and without any legal basis, amounting to re-writing of the terms of insurance contract entered into between the parties. Reliance has been placed upon the position of law settled by the Courts in ***Ssangyong Engg& Construction Co Ltd v. NHAI*** [(2019) 15 SCC 131, and ***PSA SICAL Terminal (P) Ltd.v. VO Chidambaranar Port Trust Tuticorin & Ors.*** [2021 SCC OnLine SC 508, Paragraph 86] that re-writing the terms of contract would be in breach of fundamental principles of



justice, entitling a Court to interfere since such cases would be one which shocks the conscience of the Court, and such would be liable to be set aside. Further, the learned counsel for the Petitioner submitted that the Apex Court in “**Rajasthan State Industrial Development & Investment Corpn v. Diamond & Gem Development Corpn Ltd** [2013 5 SCC 470, *inter alia* held that the contract has to be interpreted by strictly construing the terms of the contract without varying/altering the terms and nature of the contract as it may adversely affect the interest of either of the parties.

61. Learned counsel for the petitioner has submitted that as per the Policy Schedule, both parties unequivocally agreed to apply ‘Turnover basis’ as the mode of calculation of loss. Therefore, the findings of the learned AT that the Alternative Basis Clause was optional with no mention in the Policy Schedule and Alternative Basis Clause is part of the LOP Policy is patently illegal and perverse in nature. Learned counsel also submitted with respect to the finding of the learned AT that Alternative Basis Clause is a part of LOP Policy, and has placed reliance upon “**Roop Kumar v. Mohan Thedani** [(2003) 6 SCC 595, Paragraph 17] to submit that the Public Policy of India enshrines the autonomy of parties and inflexibility of contract entered by parties, therefore, is in direct conflict with the public policy of India.
62. Learned counsel for the Petitioner submitted that in the Impugned Arbitral Award, the learned AT had preferred the applicability of ‘Output basis’ over ‘Turnover basis’ because the computation of loss on ‘Turnover Basis’ comes out to be lower than the computation as per ‘Output basis’. It was submitted that this finding expressly violates



Section 31(3) of the Arbitration and Conciliation Act, (A&C), which states that it is the duty of the Arbitrator to back the findings by reasons. Reliance has been placed upon “**Anand Brothers P Ltd.v.Union of India** [(2014) 9 SCC 212, Paragraph 9]. It was furthermore submitted by the learned counsel for the Petitioner that the learned AT cannot exercise its powers *ex debito justitiae* as held in **PSA SICAL Terminal (P) Ltd.v. VO Chidambaranar Port Trust Tuticorin & Ors.** [2021 SCC OnLine SC 508, Paragraph 91]and shall decide *ex aequo et bono* only if the parties have expressly authorised it to do so as per Section 28(2) of the A&C Act.

#### **SUBMISSION ON BEHALF OF RESPONDENT**

63. Learned counsel for the petitioner states that the learned AT’s finding that the “Departmental Clause” was an integral part of the Insurance Policy and it had to be applied for carrying out the assessment of loss suffers from patent illegality.
64. Mr. Trinath Tadakamalla, learned counsel for the Respondent, submitted that the present Petition is liable to be dismissed as it does not satisfy any of the ingredients of Section 34 of the A&C Act, and therefore, the question of setting aside the Award does not arise
65. Learned counsel for the Respondent submitted that the dispute before the Learned AT concerned the Respondent’s claim under the Fire Loss of Profits Policy ("LOP Policy"), issued on 23 April 2012, for the period 1 April 2012 to 31 March 2013, for a sum insured of Rs.180 crores.
66. Learned counsel submitted that the purpose of taking a Loss Of Profit Insurance was that if and when a material damage occurs, the



Respondent should be indemnified for its loss of profits in the business that it would have made, but for the material damage during the indemnity period. It was also submitted that the Respondent had also obtained a BPM/Fire Policy and Stocks Policy (referred to as the "MD Policies") for which the Respondent initiated a separate arbitration proceeding and in respect of which a separate petition is pending before this Court bearing OMP (COMM) No.421/2020.

67. Learned counsel for the respondent submitted that in the present case, there was no dispute as to the fact that a fire and explosion occurred in Block 5 of the Respondent's Srikakulam Plant on 30.07.2012, which caused material damage to the Respondent. It was submitted that there was also no dispute that as a result of the damage caused by the fire, the production from Block 5 was interrupted during the 3-month indemnity period after the fire (i.e. up to September 2012).
68. Learned counsel for the Respondent submitted that the Petitioner has raised similar submissions that were made before the Learned AT in support of its challenge to the findings in the present Petition. It was submitted that all grounds raised in the present Petition comprise a mere repetition of the pleas made before the Learned AT, which the Learned AT has considered and passed a reasoned award dealing with each of them.
69. Learned counsel for the Respondent submitted that the Learned AT has taken a correct, and without prejudice, a plausible view, based on all the material before it and further it was submitted that the Petitioner had failed to demonstrate/prove impugned award to be patently illegal or based on an interpretation of the insurance policy which no



reasonable person would have arrived at or in contravention of the terms of the insurance policy. Learned counsel submitted that none of the findings of the Learned AT have been demonstrated by the Petitioner to be such, which would shock the conscience of the court.

70. Learned counsel for the Respondent submitted that courts have strictly confined powers under Section 34 of the A&C Act limited exclusively to the specific grounds outlined therein. It was submitted that when examining challenges to an Arbitration Award, courts cannot function as an Appellate body reviewing the Arbitrator's findings and determinations. Section 34 enumerates to uphold two fundamental principles, which are First, the conclusive nature of Arbitral Awards and the Right of parties to resolve their disputes through their chosen alternative forum, as permitted by law. Section 34 of the Act based on these principles limits that the interference of Court in Arbitral proceeding.
71. Learned counsel on behalf of the Respondent submitted that the examination of evidence fresh and re-assessment of legal principles by this Court is impermissible and expressly barred under Section 34(2A) of the A&C Act. In this regard, learned counsel submitted that the scope of examination under Section 34 of the A&C Act categorically excludes any review of the merits of the dispute, and this principle has been upheld by the Apex Supreme Court in **MMTC Limited v. Vedanta Limited** (2019) 4 SCC 163. It was also submitted that the jurisdiction under Section 34 of the A&C Act does not permit this Court to undertake a fresh evaluation of evidence as if it were exercising powers of first appeal. Learned counsel submitted that this



position stands affirmed by the coordinate bench of this court in **Indraprastha Gas Ltd v. Pawan Casting** 282 (2021) DLT 39 and reiterated in **Union of India v. Aadhar Stumbh Township Pvt Ltd** (OMP (COMM) 348 of 2021). It was also submitted that the statutory framework, particularly Section 34(2A) of the A&C Act, explicitly prohibits the setting aside of an arbitral award either on the basis of reappreciation of evidence or on grounds of erroneous application of law.

72. Learned counsel for the respondent submitted that the Arbitrator is entitled to take the view which it holds to be correct after considering the material before it. It was also submitted that the Arbitrator is the final adjudicator of the sufficiency and the extent of the evidence, and this decision is not amenable to judicial review under Section 34 of the A&C Act unless any of the grounds therein are established.
73. Learned counsel for the Respondent submitted that judicial interference with an arbitral award is circumscribed to strictly limited grounds. Such interference is permissible only where the arbitral tribunal's findings are based on no evidence whatsoever, or where the tribunal has ignored vital evidence in arriving at its decision. Furthermore, learned counsel for the Respondent submitted that interference may be warranted where the learned AT has failed to adopt a judicial approach or has not complied with the principles of natural justice. Such deficiencies would render the award arbitrary, capricious, and perverse, thereby making it liable to be set aside on the ground of patent illegality.
74. Learned counsel for the Respondent further submitted that it is crucial to note that an error apparent on the face of the records does not invite





or justify closer scrutiny of the merits/documents and materials on record. The test of patent illegality demands that either the illegality must be apparent on the face of the Award, or it should be of such a nature that goes to the root of the matter or shocks the conscience of the court. Learned counsel has placed reliance upon **Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)** ((2019) 15 SCC 131), **Fedders Electric and Engineering Limited v. Southeast Central Railway Bilaspur** (281(2021) DLT 1).

75. Learned counsel for the Respondent submitted that the Learned AT has taken a plausible view based on the material before it, and the findings cannot be said to be perverse or vitiated by patent illegality. It was also submitted that all grounds raised in the present Petition are identical to the pleas made before the Learned AT, which have been duly considered and addressed through a reasoned award. Learned counsel for the Respondent submitted that the Petitioner has failed to establish any exceptional circumstances warranting this Court's interference by demonstrating that the award ignores vital evidence, is perverse, or suffers from patent illegality.
76. Learned counsel for the Respondent submitted that re-examining findings related to contractual interpretation contravenes Section 34 of the A&C Act. Learned counsel for the Respondent also submitted that the primary responsibility of interpreting contractual terms rests with the learned AT. It was also submitted that the law is well-settled that unless the AT's construction of the contract is such that no fair-minded or reasonable person could arrive at it, the award should not be



interfered with under Section 34 of the A&C Act. Learned counsel placed reliance upon **Associate Builders v. Delhi Development Authority** [(2015) 3 SCC 49] and **Ssangyong Engineering & Construction Co. Ltd v. National Highways Authority of India (NHAI)** [(2019) SCC OnLine SC 677].

77. Learned counsel for the Respondent furthermore submitted that it is settled law that where two or more interpretations are possible, courts have consistently refrained from interfering under Section 34 with Arbitral Awards that adopt any of these possible interpretations. Reliance was further placed upon **Arosan Enterprises Ltd v Union of India and Another** [(1999) 9 SCC 449], **G Ramachandra Reddy and Company v Union of India and Another** [(2009) 6 SCC 414], and **Fedders Electric and Engineering Limited v Southeast Central Railway Bilaspur** [281 (2021) DLT 1].
78. Learned counsel also submitted that the Petitioner has challenged the Award on several grounds which were not raised before the Learned AT. It was submitted that it is settled law that the Petitioner cannot be permitted to rely upon such grounds before this Court which it has previously not argued before the Learned AT. Reliance has been placed upon **Union of India v. Susaka Private Limited and Others** [(2018) 2 SCC 182].
79. Learned counsel for the Respondent submitted that the Learned AT, after extensive analysis of pleadings, documents, and evidence, rightly held that the Departmental Clause is an integral part of the LOP Policy and applicable to the present case. Learned counsel for the Respondent submitted that the CL Tariff was mandatory for every LOP Policy, and



any departure would require IRDAI approval. Significantly, the Petitioner neither produced any sample policies showing the Departmental Clause as optional nor ever communicated to the Respondent that the clause would not apply.

80. Learned counsel for the Respondent submitted that the Petitioner's reliance on foreign commentary is misplaced, as unlike India, insurance in those jurisdictions is unregulated and lacks standard wordings akin to TAC's Tariff Wordings. Learned counsel for the Respondent submitted that both conditions for applying the Departmental Clause were satisfied as (i) Evidence shows products were exclusively manufactured in Block 5 and (ii) The Respondent produced documentation demonstrating ascertainable independent trading results
81. Learned counsel for the Respondent submitted that the Petitioner's challenge essentially seeks re-interpretation of the contract, which is beyond the jurisdiction of this Court. It was submitted that the Petitioner has failed to demonstrate how the learned Tribunal's interpretation was perverse or patently illegal.
82. Learned counsel for the Respondent submitted that the Respondent's case before the learned AT was that the Alternative Basis Clause was attached with the LOP Policy and the Respondent had categorically stated that it wanted to opt for the Alternative Basis Clause with "output" being the alternative basis for calculation of the loss in its RFQ, basis which the Petitioner had quoted the requisite premium and accepted by the Respondent. It was submitted that Surveyor had adopted a fundamentally wrong approach while construing the words "whenever found necessary".



83. Learned counsel for the respondent submitted that, among other grounds of challenge, with respect to ground H and I, it was submitted that the Petitioner's grounds of challenge do not demonstrate how the view taken by the Learned Tribunal is perverse and/or patently illegal and/or could not have been a plausible view. The view taken by the Learned AT is correct, and without prejudice to this, a plausible view. In such circumstances, the court cannot supplant its opinion for that of the learned AT, which is what the Petitioner is asking this Court to do. Learned counsel for the Respondent submitted that in respect of Ground H, the Petitioner's objections are nothing but a reiteration of the merits of the matter and in the teeth of settled law that a challenge under Section 34 of the A&C Act does not entail a review of the merits or reappreciation of evidence or re-assessment of application of law.
84. Learned counsel for the respondent in respect of Ground I, submitted that it was necessary to use "output" because "turnover" would not have been a desirable or useful methodology for calculation of loss. It was submitted that the Learned AT has analysed both the methods and preferred the "turnover basis" over "output basis", even though there was only a slight difference between the two, because the turnover basis also took into account the accumulated stock loss, which was not part of the LOP Policy as per the Learned AT.
85. Learned counsel for the Respondent submitted that the Petitioner has no ground to challenge the reasoned findings of the Learned AT within the narrow compass of Section 34 of the A&C Act. Moreover, the issue of full and final settlement was one of the key objections raised by the Petitioner in the arbitration, and this aspect has been dealt with in great



detail by the Respondent in its written submissions filed after the final hearing before the learned AT. Learned counsel for the Respondent submitted that the Petitioner's grounds of challenge do not demonstrate how the view taken by the Learned AT is perverse and/or patently illegal and/or could not have been a plausible view.

86. Lastly, learned counsel for the Respondent submitted that the Respondent's case before the Learned AT was that the Petitioner had not issued the complete LOP Policy to the Respondent. It was submitted that the Petitioner, having failed to produce the complete LOP Policy before the Learned AT, could not have taken advantage of its own wrong. Learned counsel submitted that on the aspect of arbitrability, it was the Respondent's case that there was no dispute as to liability under the LOP Policy.

### **FINDINGS AND ANALYSIS**

87. This Court in **Rail Land Development Authority v. Parsvnath Developers Limited &Anr.** 2024 DHC 7426 dealt with the scope of Jurisdiction under section 34 of the A&C Act and *inter alia* observed as under:

*“50. The scope of the jurisdiction under section 34 of the Arbitration and conciliation act has repeatedly come up for discussion before the Courts.*

*51. In **MMTC Limited v. Vedanta Limited (2019) 4 SCC 163**, it was inter-alia held that: the reasons for vesting such a limited jurisdiction on the High Court in the exercise of powers under Section 34 of the Arbitration Act has been explained in the following words: —*

*“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral*



award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the —fundamental policy of Indian law would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses v. Wednesbury Corpn.*, [1948] 1 K.B. 223 (CA)] reasonableness. Furthermore, —patent illegality itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

52. In **K. Sugumar v. Hindustan Petroleum Corporation Ltd. (2020) 12 SCC 539**, where it has been observed as follows:

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.”

53. In **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. (2019) 20 SCC1**, the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus:

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as



interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

54. In **Dyna Technologies (P) Ltd.** (supra), it was further inter alia held as under;

“25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

55. In **ParsaKente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited** (2019) 7 SCC 236 , adverting to the previous decisions of this Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* and *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran*, wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus:

“9.1 .....It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it



**could be said to be something that no fair-minded or reasonable person could do.** It is further observed by this Court in the aforesaid decision in paragraph 33 that when a court is applying the —public policy‖ test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. **A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award.** It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.”

**56. Similarly, in South East Asia Marine Engg. & Constructions Ltd. [SEAMAC Limited] v. Oil India Ltd.(2020) 5 SCC 164, it has been inter alia held that it is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. It was further inter alia held that:**

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.”

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna





*Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1 : 2019 SCC OnLine SC 1656] observed as under : (SCC p.12, para 25) 25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act. [emphasis supplied]*

*22. It was also inter alia held in UHL Power Company Ltd.’s case (supra) that if the view taken by the arbitrator regarding the interpretation of the relevant clauses is both possible and plausible then merely because another view could have been taken, can hardly be a ground to interfere with the Arbitral award. Thus, a bare perusal of the settled legal proposition, it is crystal clear that the scope of the jurisdiction under Section 37 of the Act of this Court is very limited. Thus, we have to see whether, within this limited jurisdiction, the case of the appellant is sufficient to exercise that jurisdiction.”*

**57. In Delhi Development Authority v. M/s Erore Resorts and Hotels Ltd.(2022) SCC Online Del 978 : (2022) 290 DLT 397**in FAO (OS)(COMM)75/2022 2022/DHC/001247 (of which undersigned was a part delivered the judgment), it was inter alia held as under;

*“20. The endeavor of the legislation is to make arbitration more responsive to the contemporary requirement as an alternative dispute redressal mechanism. One of the objectives is to minimize the supervisory role of the Courts. It has repeatedly been held by the Constitutional Courts that a court while dealing with objections under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as „the Act) does not sit in appeal over the arbitral award. The courts can exercise their jurisdiction to interfere and can travel on the well-settled limited grounds. An award can be set aside only if it is contrary to substantive provisions of the law or the*



provisions of the Act or against the terms of the contract. Interference can be made only if the award suffers from patent illegality. **M.V.Elisabeth vs. Harwan Investment and Trading Private Limited** (1993) Suppl (2) SCC 433.

21. In **Oil and Natural Gas Corporation Ltd. vs. Saw Pipes Limited** 2003 SCC online SC 545, it was inter alia held that the award would be set aside if it is contrary to (a) fundamental policy of Indian law, or (b) the interest of India: or (c) justice or morality; or (d) in addition, if it is patently illegal. It was further inter alia held that illegality must go to the root of the matter. If the illegality is of trivial nature it cannot be held that award is against the public policy. The Apex Court said that Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court and the award is opposed to public policy and is required to be adjudged void.”

58. Thus, it is no longer res integra and position is well settled that there has to be minimum judicial intervention in this regard, the reference can also be made to Section 5 of the Arbitration and Conciliation Act, 1996 (Act). The Court can set aside the award only on the grounds which are available in Section 34(2) of the Arbitration and Conciliation Act. The Court keeping in mind, the contours of its jurisdiction has examined the award.

59. The Apex Court in **Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani** in Civil Appeal No. 7247/2024 vide its judgment dated 08.07.2024 inter alia held that the legislative intention as reflected in Section 19(1) of the Act, provides that an Arbitral Tribunal is not bound by the provision of the CPC. In **Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani (Supra)** it was further inter alia held that the object of the Arbitration Act is to provide an Arbitral procedure that is fair, efficient and capable of meeting the needs of specific arbitration. It was further inter alia held that the object is to ensure that arbitral proceedings filed for challenging the award are concluded expeditiously. The proceedings have to be cost effective. It was further inter alia held that the supervisory role of the Court is very restricted. The Apex Court noted that arbitration is one of the mode of Alternative



*Disputes Redressal Mechanism provided in Section 89 CPC. In **Bombay Slum Re-development Corporation Private Limited (Supra)**, the Apex Court before parting made certain observations which are advantageous to reproduce here.*

*“21. Before we part with the judgment, we must record some serious concerns based on our judicial experience. Case after case, we find that the arbitral proceedings have become synonymous with very bulky pleadings and evidence and very long, time-consuming submissions, leading to very lengthy awards. Moreover, there is a tendency to rely upon a large number of precedents, relevant or irrelevant. The result of all this is that we have very long hearings before the Courts in Sections 34 and 37 proceedings.*

*22. By way of illustration, we are referring to the factual aspects of the present case. The award runs into 139 pages. The petition under Section 34 of the Arbitration Act runs into 93 pages and incorporates 151 grounds. The judgment of the learned Single Judge dealing with the petition under Section 34 consists of 101 pages. One of the contributing factors is that more than 35 decisions were relied upon by the parties before the learned Single Judge. On the same point, multiple judgments have been cited, taking similar views. As per the practice in the High Court of Judicature at Bombay, a memorandum of appeal under Section 37 of the Arbitration Act does not contain the facts but only the grounds of challenge. In the memorandum of appeal preferred by the respondent consisting of 46 pages, 164 grounds have been incorporated. Considering the narrow scope of interference under Sections 34 and 37 of the Arbitration Act, we cannot comprehend how there could be 151 grounds in a petition under Section 34 and 164 grounds in an appeal under Section 37. It is not surprising that this appeal has a synopsis running into 45 pages, and it contains as many as 54 grounds of challenge.*

*23. In many cases, the proceedings under Sections 34 and 37 are being treated as if the same are appeals under Section 96 of the CPC. When members of the bar take up so many grounds in petitions under Section 34, which are not covered by Section 34, there is a tendency to urge all those grounds which are not available in law*



*and waste the Court's time. The time of our Courts is precious, considering the huge pendency. This is happening in a large number of cases. All this makes the arbitral procedure inefficient and unfair. It is high time that the members of the Bar show restraint by incorporating only legally permissible grounds in petitions under Section 34 and the appeals under Section 37. Everyone associated with the arbitral proceedings must remember that brevity will make the arbitral proceedings and the proceedings under Sections 34 and 37 more effective. All that we say is that all the stakeholders need to introspect. Otherwise, the very object of adopting the UNCITRAL model will be frustrated. We are not called upon to consider whether the arbitral proceedings are cost-effective. In an appropriate case, the issue will have to be considered. Arbitration must become a tool for expeditious, effective, and cost-effective dispute resolution.”*

88. The petitioner has challenged the award predominantly on the ground that the learned AT has gone beyond its jurisdiction and passed an award while going beyond, the scope of the contract. It has been submitted that the award having been passed beyond the terms of the contract is patently illegal and is thus liable to be set aside. It is no longer *res integra* that the jurisdiction of this Court under Section 34 of the A&C Act is extremely limited. The law mandates minimum judicial interference and mandates the finality of the arbitral award and the party autonomy to get the disputes settled by an alternative form as provided under the law. It has been held in the catena of the judgment that the Court while exercising the jurisdiction under Section 34 of the A&C Act cannot enter into the re-appreciation and re-assessment of the evidence and material on the record. The law also makes it clear that a mere erroneous application of the law cannot be grounds to set aside the award. Thus, the Court in the jurisdiction under Section 34 of the A&C Act cannot re-evaluate the evidence nor can act as an Appellate



Court.

89. Thus, the findings can only be set aside, if it is perverse. The finding can be held to be perverse if it is based either on no evidence or the learned Arbitrator has considered the extraneous material or has ignored the vital evidence in reaching to decision. It is also pertinent to mention here that the Court cannot substitute its view only if there is another possible view. If a plausible view has been taken by the learned Arbitrator, the Court cannot re-appreciate or re-evaluate the evidence.
90. The Court is fully conscious of the fact that if the learned AT has travelled beyond the scope of the Contract or has adjudicated the disputes which are not even arbitrable, or the award is patently illegal or it shocks the conscience of the Court, the award is liable to be set aside. But, at the same time, if the bare reading of the award does not reveal any of such ground then the Court has to be objective in returning the finding within the parameters of the law.
91. The primary question in the present case is the construction of the contract i.e. Insurance policy. The Court is therefore required to examine the impugned award so as to find out that whether the award suffers from any illegal infirmity.
92. In view of the settled proposition of the law as has been discussed now it is advantageous to discuss the various findings of the learned AT on issues being raised. The first and foremost challenge raised before the learned Arbitral Tribunal was regarding the “non arbitrable nature of the dispute” the petitioner has claimed that in clause 13 of the Policy, the arbitrator can only arbitrate, if there is any dispute or difference as to the quantum to be paid under the policy. The petitioner has



submitted that since in the loss of profit policy, there was complete denial of liability for payment of the claim and the respondent's denial was reinforced by the surveyor's report, therefore this issue was not arbitrable. It was also stated that once the respondent had executed the discharge voucher, it was no longer open to the claimant to raise any claim under the policy and thus, the award arising out of this claim is not maintainable. The learned AT after considering the entire material on record inter alia held as under:

*"63. With regard to the issue of liability it is pointed out on behalf of the respondent that under General Condition 13, which is invoked by the claimant for seeking arbitration, it is only a dispute or difference "as to the quantum to be paid under this policy (liability being otherwise admitted" that may be referred for arbitration. It is submitted that liability (of the respondent) being admitted is thus the sin qua non for a dispute to qualify for arbitration. It is further, stated that in this case the respondent completely denied any liability for payment of the claim and the respondent's denial was reinforced by the Surveyor's report that found that the claimant was not to be paid anything. In view of the Surveyor's report the respondent had no liability for any payment under the LOP policy and hence, the claim and the arbitration arising from it were not maintainable. Secondly, it is submitted that having executed the discharge voucher it was no longer open to the claimant to raise any claim under the policy and on that ground also both the claim and the arbitration arising from it are not maintainable.*

*64. The first submission on behalf of the respondent is clearly based on a misconception and mix up between no liability and nil or zero liability. At the time of the accident the respondent did not take the position - as it could not take such a position that it had no liability under the LOP policy. As a matter of fact the respondent duly appointed a surveyor to assess the loss, also under the LOP Policy, apart from the other two policies. Before the surveyor the claimant first filed its provisional claim and then filed its final claim. In course of the long drawn survey proceedings the respondent never*



*disowned its liability. There were indeed differences between the parties on whether or not certain terms and conditions formed part of the policy taken out by the claimant but those differences were by no means any repudiation of the liability by the respondent. It is true that the Surveyor assessed the loss at zero but the assessment made by the Surveyor does not in any way alter the nature of dispute between the parties. The Surveyor's computation is based on the view taken by him with regard to certain terms being or not being part of the claimant's policy and further on his understanding of the terms which according to him were part of the policy. In case the Surveyor's computation or the interpretation put by him on the terms of policy is found to be erroneous the amount of the assessed loss may increase from zero and go up to a much higher figure, the payment of which would indeed be the respondent's liability. Hence, the dispute under arbitration is in essence a dispute with regard to quantum of the claim, with the respondent's liability being undeniable. The challenge to the arbitrability, therefore, fails on this ground.”*

93. It is pertinent to mention here that the learned Arbitral Tribunal has rightly pointed out that there is a difference between “no liability” and “nil” or “zero liability”. It is a matter of the record that during the survey, liability on this account was never denied, and even surveyor, on the basis of its computation, took the view that there was no liability. The Court considers that the learned AT has given a reasoned finding regarding this, and there is no reason to interfere into the same. Similarly, in regard to the “non arbitrable dispute” in OMP 421/2020, the learned AT, after discussing in detail, the entire material and evidence on the record inter alia held as under:

*“115. It is a given that the policy schedule did not mention "Stock in Process" but what is under consideration is whether the policy schedule is conclusive on the issue of coverage of the policy and whether it is open to the respondent to reject the claimant's claim*



*because the schedule omitted to mention "Stock in Process". To find the answer it is necessary to also take into consideration the following facts and circumstances. It is not denied by the respondent that "Stock in Process" was covered under the policies for past years. It is also undeniable that in the request for quotation "Stock in Process" was clearly mentioned under the column "Stock Description". There is no contemporaneous document to show that the amount of premium quoted by the respondent or the reduced amount of premium as mentioned in the third quotation was excluding "Stock in Progress". The letter making the third and the lowest amount of quotation (Rs. 8,02,177/-) is reproduced above in full. It does not give any inkling or the faintest indication that the premium amount would not include "Stock in Progress" as had been asked for in the request for quotation. There was, therefore, no means for the claimant to know contemporaneously that the premium paid by it and the policy issued to it did not cover "Stock in Progress".*

94. It is also advantageous to refer to the finding in OMP 421/2020 of the learned Arbitral Tribunal in this regard as referred in para -121 to 127, which are as under:

*121. From the statements made in the SoD and the evidences adduced on its behalf the respondent appears to have disallowed the claimant's claim under the Stock Policy on three grounds: 1) the Stock Policy did not mention "Stock in Process", 2) the claimant initially made a consolidated claim, including the claim for loss of stock in its claim under the BPM Policy and this, according to the respondent, shows that the claimant itself was not sure about the coverage of its Stock Policy and 3) the claimant was unable to satisfy the Surveyor that "Stock in Process" was covered by the policy and finally the Surveyor rejected its claim.*

*122 .As regards the omission to mention "Stock in Process" in the policy schedule the tribunal finds it difficult to accept that the policy schedule is conclusive on the issue of coverage of the policy.*





123 As regards the consolidated claim initially made by the claimant it is explained on its behalf that it considered the two policies BPM and Stock policies as together comprising MD policies and it was for that reason that a consolidated claim was made but as soon as it was pointed out that the two claims should be made separately, it submitted separate claims under the two policies. As regards rejection of the claim by the Surveyor, we now turn to the FSR where the Stock Policy and the respondent's stand about its coverage are noted in paragraph 3.2 which is reproduced below.

Policy no :426890/11/2012/8

Type of policy : Standard Fire & Special Perils Policy.

Period of insurance :01.08.2011 to 31.07.2012

Sum Insured :Rs, 110,00,00,000/-

**Description of risk :** On stocks of finished goods, raw materials and packing materials, on Floater Deel. Basis, pertaining to insured's trade at their various locations as per list attached with the policy

**Perils covered:** The aforesaid policy is subject to various clauses/warranties such as Floater Declaration, Earthquake (fire & shock) and Agreed Bank clause etc.

**Note:** in respect of the above policy, the insured contended that the sam insured declared by them includes value of stock in process, which however is not found mentioned on the face of the policy. **In respect of the insured made the representation to underwriters along with correspondences exchanged by them with underwriting office, at the time of last renewal of the captioned policy. The insured also argued that the declared value of all stocks & stock in process, held in their all the plants submitted monthly to the bankers. However, the underwriters have not agreed to the insured's request to consider the coverage of stock in process. Further, we also observed that the said policy is subject to floater declaration clause, which is not granted to cover stocks in process.**



*Thus in view of the above, the loss claimed by insured in respect of stocks in process have not assessed by us.*

*(emphasis added)*

*124. It is difficult to see what else anyone in the claimant's position could do. One could only write to the insurer pointing out that "Stock in Process" was covered under the earlier policies, it was specifically mentioned in the request for quotation and that the premium was agreed upon and paid on that basis. This is exactly what the claimant did. Among the several letters written in this regard is the one dated 18 September 2013 referred to in paragraph 187 of the SoC. But the insurer would not agree. And the Surveyor instead of calling for the past policies and the full records pertaining to the policy in question and taking an independent view on the issue considered him bound by the insurer's refusal to agree to the claimant's claim.*

*125. It is quite ironical that the Surveyor disallowed the claim because the respondent refused to agree "to the insured's request to consider coverage of stock in process" and the respondent tries to support its case by taking the plea that the claim was disallowed by the Surveyor*

*126 The Surveyor also observes that the policy is subject to floater declaration clause which is not granted to cover "Stock in Process", Nothing was brought to the tribunal's notice to sanction the Surveyor's objection. Floater declaration clause is normally understood to cover properties that are easily movable and provides coverage over what normal policies do not.*

*127 In light of the long discussion above the tribunal comes to hold and find that the policy schedule issued to the claimant is not conclusive on the issue of the policy's coverage and it does not truly reflect the intent of the parties; that the respondent had accepted the premium amount from the claimant fully aware that the nature of stock covered by insurance included "Stock in Process" and the policy taken out by the claimant fully extends to "Stock in Progress".*

*95. It is pertinent to mention here that the claim under this head was*



rejected as the policy schedule issued to the claimant did not mention “stock in process” under the column “Nature of stock”. The Surveyor inter alia found that all the stocks destroyed in the accident were neither raw material nor finished good but were “stock in process” which was not covered by the policy taken out by the claimant. Learned Tribunal has rightly adverted to the issue that whether the policy schedule is conclusive on the issue of the coverage of the policy and noted that the respondent had agreed to “rectify the policy” to apply the reinstatement basis for assessment of losses “after verifying the various records” including previous policies and RFQ etc. learned Arbitral Tribunal duly noted that after about 3 years of accident the BPM Policy was brought in accordance with the request for quotation and the earlier policies and rightly inferred that BPM policy schedule as issued on 23.04.2012 did not reflect that true intent of the parties. There cannot be any fault found with the reasoning of the learned Arbitral Tribunal that the policy was issued without any clarity as to the terms and conditions governing the policies. It is pertinent to mention here that the learned Arbitral Tribunal has rightly noted that on 20.07.2011, the claimant had sent a request for quotation. In the request for quotation the details with regard to the standard fire and special funds parallel policy for stocks due to expire on 31st July as also the changes sought in the fresh policy were set out in the table at the head of the following containing other relevant other periods and in the stock description, the “stock in process” was clearly mentioned.

96. Learned Arbitrator after taking into account the quotations dated 25.07.2011 categorically held that denial of ostensible claim on the



pretext that, the policy did not cover stock in process is quite arbitrary.

97. In ***Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited*** (2019) 7 Supreme Court Cases 236 wherein it was inter alia as under;

*11.1.....Having considered the reasoning given by the learned arbitrator, we are of the opinion that the interpretation by the learned arbitrator was both possible as well as plausible. Therefore, merely because some other view could have been taken, the High Court is not justified in interfering with the interpretation made by the arbitrator which as observed was possible and plausible. Therefore, in the facts and circumstances of the case, we are of the opinion that the High Court has clearly exceeded in its jurisdiction in interfering with the award passed by the learned arbitrator with respect to claim no.1 – price adjustment/escalation. At this stage, it is required to be noted that though the High Court has observed that the award passed by the learned arbitrator with respect to claim no.1 was against the public policy, with respect, we do not see any element of public policy. It was pure and simple case of interpretation of the relevant clauses of the agreement which does not involve any public policy. Therefore, we are of the opinion that the impugned judgment and order passed by the High Court for quashing and setting aside the award passed by the learned arbitrator with respect to claim no.1 – price adjustment/escalation cannot be sustained and the same deserves to be quashed and set aside.”*

98. It is pertinent to mention here that in the present case, the insurance company has made part payment from the material damage process of the respondent. It is also pertinent to mention here that if the liability under the BPM Policy has been admitted, it is unjustified to deny the liability under the stock policy. The Court considers that no fault can be found with the finding of the learned AT.
99. Before proceeding further, it is also necessary to refer to the



jurisdiction of the arbitrator regarding its jurisdiction relating to the interpretation of the Contract. It is no longer *res integra* that the learned Arbitrator has jurisdiction to interpret a contract having regard to the terms and conditions of the contract, the conduct of the parties including correspondence exchanged, circumstances of the case and pleadings of the parties. It is also a settled proposition that if the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere into it. The Court can only interfere if the view of the learned Arbitral Tribunal on the terms of a contract is not a possible view. The reliance can be placed upon ***O.P.G. Power Generation Private limited v. Enexio Power Cooling Solutions India Private Limited & Anr.*** 2024 INSC 711.

100. Similarly, in the ***South East Asia Marine Engineering and Constructions Limited (SEAMEC Limited) v. Oil India Limited*** (2020) 5 Supreme Court Cases 164, it was inter alia held that usually the Court is not required to examine the merits of the interpretation provided in the award by the Arbitrator, if it come to a conclusion that such an interpretation was reasonably possible.
101. In ***Steel Authority Of India Limited v. Gupta Brother Steel Tubes Limited*** (2009) 10 Supreme Court Cases 63 after discussing the law on the scope of the jurisdiction of the learned Arbitral Tribunal regarding the interpretation of the terms of the Contract, it was inter alia held as under:

*“18. It is not necessary to multiply the references. Suffice it to say that the legal position that emerges from the decisions of this Court can be summarised thus:*



*“(i) In a case where an arbitrator travels beyond the contract, the award would be without jurisdiction and would amount to legal misconduct and because of which the award would become amenable for being set aside by a Court.*

*(ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award.*

*(iii) If a specific question of law is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law does not make the award bad on its face.*

*(iv) An award contrary to substantive provision of law or against the terms of contract would be patently illegal.*

*(v) Where the parties have deliberately specified the amount of compensation in express terms, the party who has suffered by such breach can only claim the sum specified in the contract and not in excess thereof. In other words, no award of compensation in case of breach of contract, if named or specified in the contract, could be awarded in excess thereof.*

*(vi) If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award.*

*(vii) It is not permissible to a court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings.”*

102. In regard to the Discharge Voucher, the learned Arbitral Tribunal in both the awards i.e. BPM and the LOP has returned the identical finding regarding the discharge voucher which is as under:

*66. The challenge to arbitration is based on the discharge voucher (DV) executed by the claimant on 6 December 2016 after which payment was released to it by the respondent. It is submitted that*



*having executed the voucher in full discharge of its claims, it was no longer open to the claimant to raise any further claims under the two policies and on that ground alone the claims and the arbitration arising from the two policies are not maintainable.*

*67 It is the case of the claimant that it was made to sign the discharge voucher under financial duress. There was no accord or satisfaction. The DV is not a valid or binding document. It is submitted that as a result of the losses from the explosion-fire accident coupled with inordinate delay in the settlement of its insurance claims, the claimant was faced with great financial distress. In those circumstances when the respondent made the execution of the DV a precondition for release of the claim amount and absolutely refused to listen to the claimant's entreaties, it was left with no option but to sign on the dotted line to get at least the amount approved by the respondent, even though it was much less than the amount lawfully due to it. The condition put by the respondent for releasing even the amount unilaterally "approved by it was clearly an abuse of its superior bargaining position. The claimant did not sign the DV dated 6 December 2015, or for that matter the earlier one to get the on-account payment, willingly or freely. The forced execution of the DV cannot be taken as "full and final settlement" of the claims and there is no question of its relinquishing or giving up its legitimate dues against the respondent.*

*68 The DV in order to be binding on the executant must appear to have been executed freely and not under coercion of any kind. The question is whether the DV in consideration satisfies the test. To find the answer one needs to recall some of the facts during the period from the occurrence of the accident till the execution of the DV and the release of payment by the respondent, which are noted in greater detail in the earlier part of the award.*

- The accident took place on 30 June 2012 and the claimant notified the respondent about the accident on 2 July 2012.*
- Mr. Adarsh Gupta, the Surveyor appointed by the respondent, visited the site for the first time on 24 July 2012. In course of his*



*visit the claimant made a request for an early on-account payment in view of the huge losses suffered by it.*

- This was followed by exchange of a series of correspondences between the Surveyor and the claimant before the Surveyor made his second visit to the site on 28 December 2012.*
- On 16 March 2013 the Surveyor submitted a Status Report to the respondent.*
- There were further exchange of correspondences between the Surveyor and the claimant and a series of meetings between the claimant's representatives and Surveyor, in which the claimant requested for some on-account payment without any delay.*
- On 11 October 2013 the Surveyor submitted the Interim Survey Report recommending an on-account payment of Rs. 17.50 Crores to the claimant. After submission of the ISR the claimant's representative made the respondent's officials around 15 times pleading for some on-account payment without any delay.*
- On 26 February 2015 the respondent agreed to make on-account payment of Rs. 10 Crores, subject to the claimant executing the discharge voucher.*
- Thus, it took two years and 8 months from the date of the accident and, more importantly, a year two months from the submission of the ISR for the respondent to agree to pay even a small fraction of the losses suffered by the claimant ..... and that too, on the odd condition of execution of the DV by the claimant.*
- It is the case of the claimant. That its financial position was such that it had no option but to accept the unjust condition put by the respondent and it accordingly executed the DV.*
- More than a year later the Surveyor submitted its Final Survey Report on 16 April 2016.*





- *It is the case of the claimant that though it sought to raise objection to the assessment of loss made by the Surveyor, it was bluntly told that there was no provision for filing any objection against the assessment made by the Surveyor and any objection filed on its behalf would only lead to further delay in the settlement of its claim.*
- *On 06 December 2016 it was informed by the branch office that approval had come from the regional office for payment of Rs. 42,43,98,331, subject, once again, to execution of another DV.*
- *On 15 December 2016 the claimant received the amount of Rs 42,43,98,331/-.*
- *The claimant then by its letters dated 15 and 22 December 2016 raised the issue of deduction of Rs. 67,80,974/- from the amount assessed by the Surveyor.*
- *On 12 January 2017 the claimant wrote to the respondent raising its grievances with regard to the assessment of its claim and complaining about compelling it to sign the DV for payment of the amount approved by the respondent.*
- *On 2 February 2017 the respondent gave its response regarding the deduction of Rs. 67,70,974/- from the amount assessed by the Surveyor.*
- *On 9 February 2107 the claimant invoked arbitration under General Condition 13 of the Policies and asked the respondent to refer the dispute for arbitration.*

*69. It is thus to be seen that after receiving the amount approved by the respondent, the claimant first tried to recover the amount of Rs. 67,80,974/- deducted from the amount of loss assessed by the Surveyor but as it became clear the respondent would not pay the deducted amount, the claimant invoked the arbitration clause without any loss of time and requested the respondent to refer the dispute for arbitration. There was clearly no after-thought and this*



*lends credence to the claimant's case that it was made to execute the DV under financial compulsion*

*70. As regards financial distress, it is the case of the claimant that its financial position was such that it had no option but to accept the condition. It accordingly executed the DV which was a consolidated one for all the three policies namely, BPM Policy. Stock policy and LOP Policy. The facts concerning the financial downside suffered by the claimant as a result of the accident and the delay in resumption of production at the affected plant are pleaded in some detail. In brief, it is stated as under:*

*i. As a result of the fire, the Claimant suffered major losses, which were further aggravated due to the closure of its plant. The loss resulting from the fire and the plant closure further led to extreme financial stress.*

*ii. After the fire, the claimant suffered losses to the extent of Rs. 19.93 Crores and Rs. 23.38 Crores respectively, in the two succeeding years, i.e., financial years 2012-2013 and 2013-2014.*

*iii. The claimant's financial position was so severely affected that it had to resort to short term and long-term borrowings from different sources. The claimant's Annual Report for the year 2012-2013 shows no borrowings but the Annual Report for the year 2013-2014 shows total borrowings of Rs. 38.97 Crores. In the financial year 2014-2015, the Annual Report shows additional borrowings of Rs. 32.40 Crores. The claimant has total borrowings, both short term and long term, of Rs. 71.37 Crores.*

*iv. The claimant had also to sell its 3 Wind Mills, at a loss of Rs. 3.31 Crores (as noted in the Annual Report of 2013-2014) to raise funds for reinstatement of the affected Block 5.*

*V. The claimant's Annual Report for the year 2014-15 shows that the trade payables went up to Rs. 164 Crores from Rs. 122 Crores in the year 2013-14, registering an increase of Rs. 42 Crores. This shows that despite borrowings of Rs. 71.37 Crores, the current liabilities (trade payables) increased to Rs. 42 Crores on account of the huge financial crunch faced during the relevant period.*



*These statements remain uncontroverted and lend further credence to the claimant's case.*

*71. The tribunal also finds the respondent's insistence on execution of the DV by the claimant even for making the on-account payment of Rs. 10 Crores quite extraordinary. One fails to see how the respondent viewed the discharge voucher and what purpose it had in mind in getting the DV executed for making some payment which was admittedly ad-hoc and on-account.*

*72 Learned Counsel for the claimant brought to the tribunal's notice the IRDAI Circular of 24 September 2015 on the issue of discharge vouchers. It provides as under:*

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

*Accordingly, insurers are hereby advised as under:*

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

*73 It is quite clear that the reliance placed by the respondent on the discharge voucher to challenge the maintainability of the claims is quite contrary to the IRDAI guidelines.*

*74. In any event, in the facts of this case the tribunal has no hesitation in holding that execution of the discharge voucher by the claimant was under financial compulsion. The discharge voucher was not executed out of free will and it cannot be relied upon as evidence to show full and final settlement. The discharge voucher does not come in the claimant's way to pursue its claim for compensation and to seek its remedies in arbitration.”*



103. The perusal of the finding of the learned Arbitrator makes it clear that the respondent was made to sign the discharge voucher under financial duress. It has rightly been held that the discharge voucher cannot be held as a valid or binding document. It is pertinent to mention here that execution of discharge voucher was made a precondition for release of claim amount, the refusal of the same was certainly to put the respondent into the financial distress, thus, it has rightly been held that the execution of the discharge voucher was under “financial distress” and therefore it cannot be taken up as “full and final settlement”. The facts as has been noted by the learned Arbitral Tribunal and reproduced above makes it clear that the respondent was under such position that it had no option but to accept the pre condition of the petitioner for execution of discharge voucher. The Court considers that no fault can be found with the finding of the learned Arbitral Tribunal, and no record has been brought before the Court so as to reach on the conclusion that there is any illegality or perversity in the order of the learned Arbitral Tribunal.
104. The petitioner has challenged the award on the ground that the learned Arbitral Arbitrator allowed certain activities to be classified (removal of debris activities) by the civil contractor, whereas as per the respondent's own admitted case, those activities fell under removal of damages. It has been submitted that the impugned award even allowed the claim of analysed/alleged wrongful deduction of Rs.20,18,521/-on account of said deduction being carried out without any basis. It has been submitted that the perverse interpretation contrary to the plan term has been recorded/accorded to the scope of the term “debris removal”



by the learned Tribunal. In this regard, finding of the learned Arbitral Tribunal are in para-94 to 97 which are as under:

*“94 Counsel for the claimant submitted that the clause relating to debris removal from General Exclusions would indeed apply for assessment of the claimant's losses but the special definition under serial H of the menu of add-on clause will not apply to the claimant's claim for the simple reason that that clause was never opted for by the claimant. From the side of the respondent no material was brought to the tribunal's notice to justify the application of the special and expansive definition of "Debris Removal" for assessing the claimant's claim on reinstatement basis.*

*95 The Surveyor, when asked in cross examination, what guidelines he followed for application of the debris removal clause in making the assessment, gave the short answer that he followed the general practice from his experience. The exchange took place as under:-*

*Q.162 Is there any guideline that you would follow to ascertain what is to be treated as debris?*

*Ans. Yes. Debris is recognized as such by **general practice and experience**.*

*96. A vague reference to general practice and experience cannot override the clear terms of a Standard Fire and Special Perils Policy, as discussed above.*

*07 Hence, the tribunal comes to find and hold that in computation of the cost of reinstatement under the claimant's BPM Policy the expression "Debris Removal" must receive the ordinary meaning as provided under General Exclusions and not the special and expansive meaning as given to the term in the menu of add on clauses.”*

105. The contention of the respondent that items 4.3, 4.12 and 5.5 have categorically been referred as civil works undertaken by the Contractor and not debris removal as wrongly been categorized by the surveyor.



The reliance in this regard has been placed upon the testimony of CW-3. The perusal of the award makes it clear that the learned Arbitral Tribunal has interpreted the policy taking into the account the facts and circumstances and reached at a reasoned finding that the claims were in fact not in the nature of the Debris Removal and were therefore not subject to the limitation of 1% under General Exclusion VIII. No fault can be found out with the view taken by the learned Arbitrator that in computation of the cost of reinstatement under the Claimant's BPM Policy. The expression "Debris Removal" must receive the ordinary meaning as provided under General Exclusion VIII and not the special and expensive meaning as given to the terms in the menu of add on clauses.

106. In dealing with the claim under the material damage, the learned Arbitral Tribunal summarized the claims as follows:

*133. From the above chart, the claimant's claims before the tribunal may further be summarized as follows.*

*1. Building; Rs. 1.13.06,115.04;*

*2. Plant and Machinery: Rs. 7,92.48.911/-;*

*2.1 Replacement cost of completely damaged equipment: Rs. 2,14,40,424-50*

*2.2 Repair Cost of Partially Damaged Plant & machinery: 71,73,897.98*

*2.3 Erection and Commissioning, and dismantling charges: 78,02,029.73*

*2.4 Electrical Installations and fittings: Rs.42,85.427.16*

*2.5 Instrumentation works: Rs. 1.35-39-575-33*



2.6 Piping: Rs. 2,50,07,556.30

3. Stock: Rs. 2,50,50,371/-and

Other deductions pertaining to BPM Policy: Rs. 2,09,27,131.57

4. Salvage: Rs. 9,04,618.00

5. Underinsurance: Rs. 1,27,33,076.71

6. Debris removal: Rs. 11.03.783.74

7.1 Services rendered by permanent employees: Rs. 56,21,005-12

7.2 Consultancy charges paid to Sivel Engineering Consultancy P. Ltd: Rs 5,64,648.00

Grand Total: Rs. 13.65.32,528.61 ”

107. The learned AT returned categorical finding in respect of each of the points the learned Arbitrator in the impugned award in OMP COMM 421/2020 inter alia held as under:

**“Building –**

134. The FSR examines the claim in respect of Building and in paragraph 5.1.1 tabulates the details of expenses submitted by the claimant as under:

5.1.1 After completion of repairs/renewal of damaged building of block no- 5 and other buildings mainly warehouses/ admin block etc. the insured submitted details of expenses incurred amounting to Rs. 6,66,32,656.83, as per following details:-

| Sl. No. | Particulars/ Name of contractors                                         | Amount (Rs) |
|---------|--------------------------------------------------------------------------|-------------|
| 1.0     | M/s. Reptech Structural Services, Hyderabad i.e., main contractor        | 37666740.00 |
| 2.0     | M/s Shree Lakshmi Construction, Hyderabad (Contractor)                   | 6902790.00  |
| 3.0     | Expenses incurred for repair of damaged other civil works, incl. cost of | 12587913.85 |



|     |                                                       |             |
|-----|-------------------------------------------------------|-------------|
|     | <i>materials i.e. cement and steel etc. purchased</i> |             |
| 4.0 | <i>Cost of various materials issued from stores</i>   | 8462064.98  |
| 5.0 | <i>Cosultancy charges</i>                             | 1013148.00  |
|     | <i>Total Amount Claimed</i>                           | 66632656.83 |

*The FSR then makes certain general remarks, setting forth the principles followed in considering the claims with regard to the repairs/reinstatement of the building and in paragraph 5.1.5 observes as under:*

*5.1.5 The Insured's claim also included cost for removal of debris /dismantling of various civil works. Ascertained by us at Rs. 37,53,066.19 However, as against of which, we have considered 1% of cost of total repairs/renewal of damaged civil works, being lower and as per policy provisions.*

*(emphasis added)*

*136. At serials 1.0 & 2.0 in the FSR table above are payments made to Reptech and Sri Lakshmi. From payments to Reptech (Rs. 37-76,66,740.00) the Surveyor has allowed amount of Rs. 3,45,55,180.00 and disallowed the balance amount of Rs. 31,11,559.66. The claimant, however, in its revised claim in the arbitration has confined its claim with regard to the Reptech payments to Rs. 24,89,519.00*

*137. Similarly, from payments to Sri Lakshmi (Rs. 69,02,790.00) the Surveyor has allowed the amount of Rs. 59,15,922.00 and disallowed the balance amount of Rs. 9,86,868. The claimant claims the full amount disallowed from the payments made to Sri Lakshmi.*

*138. Out of the amounts disallowed by the FSR, the sums of Rs. 24,89,518.81 (from Reptech) and Rs. 7,85,016.62 (from Sri Lakshmi) have not been taken into account because those were deemed expenses for debris removal. The works for which those payments were made are detailed in Annexure AI and Annexure A1(1) to the FSR and those are also stated at one place in Paragraphs 21 and 22 of the witness statement of CW-3. Some of the works which are deemed by the Surveyor as debris removal are as under:-*





| S.No. | Item description                                                                                                                                                                                                                                                                  | Contractor | Amount for<br>ROD/Dismantling<br>exp/ |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|---------------------------------------|
| 1.1   | Chipping of grad slab )in-<br>exposing pedestal/plinth<br>hewn of column using<br>electrically operated<br>drilling cum hammering<br>chippers of appropriate<br>capacity us per the<br>standard practice<br>including lead and lift<br>men, machinery and<br>materials, etc.<br>. | REPTECH    | 24774.53                              |
| 1.3   | Chipping of damaged<br>cover concrete till the hard<br>and sound concrete is<br>exposed using electrically<br>operated drilling cum<br>hammer chippers of<br>appropriate capacity as<br>per standard practice<br>including lead & lift,<br>machinery & materials.                 | REPTECH    | 188835.98                             |
| 1.4   | Exposed bars to be<br>thoroughly cleaned with<br>electrically operated<br>buffing machine to remove<br>seals, rust dust etc, and<br>provided with two coats ad<br>anti corrosive chemical<br>including lead & lift, men,<br>machinery & materials,                                |            |                                       |



|      |                                                                                                                                                                                                                                    |                    |                  |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------|
|      | <i>etc.</i>                                                                                                                                                                                                                        |                    |                  |
| 3.1  | <i>Chipping of damaged plaster and cover concrete till the hard and sound concrete is exposed using electrically operated drilling cum hammering chippers of appropriate capacity as per the standard practice including lead.</i> | <i>REPTECH</i>     | <i>149010.88</i> |
| 3.2  | <i>Carrying out hydro blasting to remove loose particles as per standard practice including lead &amp; lift, men, machinery &amp; materials etc.</i>                                                                               | <i>REPTECH</i>     | <i>196829.93</i> |
| 12.0 | <i>A-1 b. Dismantling of Brick Wallas 5-10 mtrs level</i>                                                                                                                                                                          | <i>Sri Lakshmi</i> | <i>26715.00</i>  |
| 13.0 | <i>A-1 c. Dismantling of Brick Wallas 10- 15 mtrs level</i>                                                                                                                                                                        | <i>Sri Lakshmi</i> | <i>23002.00</i>  |
| 17.0 | <i>A-3 Dismantling of RCC</i>                                                                                                                                                                                                      | <i>Sri Lakshmi</i> | <i>71604.00</i>  |
| 28.0 | <i>A-3 Dismantling of RCC</i>                                                                                                                                                                                                      | <i>Sri Lakshmi</i> | <i>103536.00</i> |

139. In light of the detailed discussions made earlier on the issue, the tribunal is clearly of the view that the works in question cannot be deemed debris removal and the expenses incurred on those works cannot be discounted for that reason. These expenses (Rs. 32,74,535/-) were clearly incurred in repairs of the building and must, therefore, validly form part of the claimant's claims.

140. Further, an additional amount of Rs. 2,01,852/- from payments to Sri Lakshmi is disallowed for no discernible reason. This amount too should, therefore, be added to claims fit to be allowed.

141. At serials 3.0 in the FSR table above are "Expenses incurred for repairs of damaged other civil works, incl. cost of materials i.e.



*cement & steel etc. purchased". From the amount claimed under this head (Rs. 1,25,87,913.85), the Surveyor has allowed the amount of Rs. 67,70,723.69 and disallowed the balance amount of Rs. 58,17,190. The claimant, however, in its revised claim has confined its claim under this head to Rs. 25,58,943.04. The amount claimed by the claimant is divided under two sub-heads; grievance is made that the payment of Rs. 4,61,383.00 made to M/s Sarna Building Services (another contractor engaged by the claimant for repairs of the building) has been rejected, and another sum of Rs. 20,97,570.04 has been disallowed for no stated reason. On a careful consideration of the materials on record the tribunal does not find any merit in the claimant's claims under this head. From Annexure A1 to FSR it appears that two other payments to Sarna (of Rs. 8,82,770.00 and Rs. 6,10,040.00) were allowed but the payment of Rs. 4,61,383.00 was disallowed on the ground that it was supported only by a pro-forma invoice.*

*142. CW-3 in paragraphs 25(ii) of his Witness Statement has stated that the payment made to Sarna was supported by the claimant's bank statement and its books of accounts showing payment of the amount to Sarna by cheque. On the other hand, in the Written Submissions filed on behalf of the respondent it is pointed out that the payment was shown not only against a pro-forma invoice, but the invoice had various cuttings and modifications by hand. Further, though the invoice was dated 22.01.2013, it referred to a service order dated 11.12.2013 in purported response to which it was raised. Also the payment shown to have been made on 04.04.2015 did not match with the invoice amount and did not clarify as to the invoice against which the payment was made.*

*143. It is thus clear that the claim is highly disputed and cannot be said to have been disallowed for any untenable reasons. The claim of Rs. 4,61,383/- as payment to Sarna is accordingly disallowed.*

*144 The other claim of the claimant under serial no. 3.0 is of Rs. 20,97,570.04 as payments made to different other suppliers and contractors and which accordingly to the claimant have been disallowed by the Surveyor without assigning any reasons. The payments in question are identified and catalogued by CW-3 in*



paragraph 25 of his Witness Statement. The tribunal proposes to consider this claim along with the claim at serial no-4.0.

145. At serial no. 4.0 in the FSR table above is the cost of various materials issued from the claimant's store. From the amount claimed under this head (Rs. 84,62,064.98) the Surveyor has allowed only the small amount of Rs. 3,24,829.54 and disallowed the balance amount of Rs. 81,37,235. The claimant, however, in its revised claim in the arbitration has confined its claim under this head to Rs. 51,70,785.00

146. The reasons for disallowing a very large segment from this claim, as also the payments to different suppliers and contractors (aggregating to Rs. 20,97,570.04, being part of claim under serial 3.0) are discussed in paragraphs 5.1.2 to 5.1.4 of the FSR which are as under:

“5.1.2 We examined the quantities of various works under taken for repairs/renewal of damages buildings and materials issued from stores or purchased from market as claimed by insured and verified the same from respective bills of contractors/store issued records maintained by insured and considered the expenses, for assessment of loss, wherever found reasonable.

In respect of quantities of various misc. works dismantling, white washing etc, under taken by various local vendors /petty contractors, we have considered the same as per our observations /physical verifications conducted at site.

5.1.3 In respect of cost of various materials, issued from stores mainly comprising steel, cement paint and other hardware/consumables etc., we verified the qty and cost of such items from insured's SAP records and reconciled the same with the repairs/renewal of damaged works undertaken at site. On scrutiny of the bills of main contractors M/s Reptech Structural services & M/s Shree Lakshmi Construction Hyderabad, we observed that the unit rates for various works, within their scope of activities, were inclusive of supply of materials including cement & Steel. Therefore, we have not considered the qty. of cement, steel & paints, as issued



from stores to contractors, being in addition to the bills of above Contractors.

Besides above, in respect of quantities of various materials like structural steel, electrical & mechanical items, claimed by insured as issued from stores, for repairs/renewal of plant structure/foundation etc., were either not found related to civil works or could not be correlated with the actual repairs/renewal works undertaken at site & hence the same were not considered, for assessment of loss.

5.1.4 The unit cost for various civil works/items, have been considered by us, as per actual expenses incurred by insured as verified from bills/invoices of various contractors/vendors. However, the cost of various misc. materials including paints, thinner & consumables etc., have been considered as per insured's store issue/purchase records, being reasonable.

We have considered unit rate for various civil works, inclusive of duties & taxes/service tax, as no credit can be availed for the same, as per Cenvat/Vat proviso.”

147. In regard to the claim under serial no. 4.0 it is further stated in paragraph 23 of the Written Submissions on behalf of the respondent as under:

23. It is inexplicable as to how an alleged claim can keep shifting so many times over the period of assessment. The continuous shifts in the claim is also visible from the alleged sheets placed in the statement of claim, making the claim put forth by the claimant to be completely wrong and untenable.

148. The tribunal is of the view that in the facts and circumstances of the matter the claims, including the claim of Rs. 20,97,570.04 under serial no. 3.0 were duly disallowed and there is no reason for the tribunal to interfere in the matter.

149. At serial no. 5.0 in the FSR table above are the consultancy charges for the amount Rs. 10,13,148.00. The Surveyor has allowed practically the entire claim but for the small amount of Rs. 1,00,000.00



for inspection and issue of stability certificate. The reason for disallowing this amount is stated in paragraph 5.1.6 as under:

*Keeping in view of severity of nature & extent of damage sustained by building of involved block No.5, the above expenses have been found reasonably incurred, except in case of Rs.1,00,000- paid to M/s Gyazuddin Ahmad Irfan of Hyderabad, which was primarily for the obtaining stability certificate required to complete the formality of the "Factory Act of Andhra Pradesh", copy of which is enclosed as Annexure-'D'.*

*(emphasis added)*

150. The Tribunal fails to understand the logic behind rejection of this claim. The certificate being statutory in nature was inherently a part of the reinstatement process and in the absence of the certificate the reinstatement of the plant would not be complete in the eyes of law. The payment made to the person nominated for inspection by the Factories Department must be held as a valid claim by the Claimant.

151. Thus the claim under the Building head are allowed to the extent of Rs. 35,76,387.43

**In regard to Plant and Machineries:**

157. Unfortunately, with regard to a number of claims, including those relating to plant and machinery the survey report betrays such a bias.

158. First taking the deduction of 5% on the assumed ground of improvement of the system, the Surveyor does not find that there was in fact an up-gradation or improvement of the system. The cut is admittedly on the likelihood of up-gradation of the equipment. Again, the figure 5% is taken just off the cuff. Any up-gradation of the equipment, fifteen or twenty years after initial installation would in all probability cost far more, may be in the region of 20-25%. There is absolutely nothing to show that there was in fact any improvement/up-gradation of the system. It appears that the Surveyor was intent on cutting down the amount of claim and a 5% reduction simply appeared a handy figure. The tribunal is, therefore, clearly of the view that the



amount of Rs. 1,00,04,311.50 wrongly disallowed by the Surveyor must be added to the admissible claims of the claimant.

159. The blanket cut of Rs. 58,06,460.00 with respect of all items installed in the ground floor and on the roof top is equally mechanical, without any basis and contrary to overwhelming evidences on record.

160. For applying this cut, the Surveyor has solely relied upon his visits to the site.

161. It has been noted earlier that the fire took place on 30 June 2012. First, Mr. A. Ramalingeswara Rao, Surveyor visited the site on 03 July 2012 and submitted a Preliminary Survey Report (no copy of which was given to the claimant). Later, on 24 July 2012 Mr. AK Gupta who prepared the FSR visited the site. On 26 July 2012 the Surveyor wrote an email to the claimant in which it was noted that "most of the equipments, storage tank, etc. installed at Zero level (ground floor), were unaffected". [There was no mention of roof top level in this mail]. In reply to the mail, the claimant's countered his observation suggesting that there was no damage at the ground level of the Block whereupon the Surveyor told the claimant that that was only a prima facie observation and the claimant should wait until it submitted a list of all the damaged equipment. There is no material to show that later the Surveyor got his prima facie observation confirmed with regard to the ground floor (leave alone the roof top!). The Surveyor visited the site for the second time on 28 December 2012 when he gave permission for dismantling the burnt structures for necessary repairs. Repairs were started in January 2013. The Surveyor visited the site for the third and the last time on 27 March 2015 when the repairs and re-installments were long over and no damages caused by the explosion-fire were there to be seen any longer.

162. The first Surveyor Mr. A. Ramalingeswara Rao had submitted a report on 03 July 2012. Findings from the report are extracted in the Written Submission filed on behalf of the claimant which are as under:

4.42. Mr A. Ramalingeshwara Rao, who was the first Surveyor appointed by the Respondent (only to be replaced later), was the one who had visited the site immediately after the incident. His report,



which was produced by the Respondent during cross examination of RW-2 (MrBipin Kumar), shows extensive effect of the incident:

(i) "One of the nut and bolt of the flange on Reactor SSR-5211 was given off under the pressure and solvent vapours which rushed out had come in contact with a hot plate or such other heat source culminating into explosion and foe disaster."

(ii) "Due to Vapour Cloud explosion, many assets in the premises were damaged. He has explained that vapour cloud Explosion It is the most dangerous and destructive explosions in the chemical process industries which occurs when a vessel containing a super-heated and pressurised container ruptures. Due to the vapour cloud explosion which many insured assets in the premises were damages in addition to certain assets in Block 5."

(iii)"There was a blast/shock wave which exerts forces many times greater than the strongest hurricane."

(iv) "Given the amount of combustible matter present in the building it could have acted as fuel to feed a hostile fire and thus the presence of flammable and volatile material at levels 10 mtr, 15 mtr and 22 mtr had aggravated the peril into an uncontrollable disaster for a few hours."

(v)"Many insured assets in Block No. 5 inclusive of 'Building' were destroyed by operated peril."

(vi)"The widespread damages to the insured's assets reportedly caused by explosion were conspicuous in the premises."

(vii) "The water jet/foam compound from ordinary 'Fire Tender' was not reaching the upper floors and the fire in the presence of combustible materials devastating the insured assets for hours together without being controlled."

163.The Surveyor, after his second visit to the site on 28 December 2012, had submitted a Status Report on 16 March 2013 (a copy of which came to the claimant only in course of this arbitrationom) in which he recorded as under:





*The equipments installed immediately outside/ in near vicinity of block no. 5, in open i.e. wet scrubber, etc., including tank and pipelines etc were burnt/ damaged in varying degrees.*

*However, the equipments installed at Zero mtr level and at roof top, were apparently in sound condition, however the same required checking/ testing, as the case may be. I view of extensive damage sustained by various equipments, the same required detailed inspection/ testing to decide about repairs/ replacement of the same, as the case may be.*

*164. In cross-examination the Surveyor was asked about his visit to the site on 28 December 2012. The question (no.125) and his answer to the question are as under:*

*Q125. In your visit on 28.12.2012 did you operate and check the equipments that were claimed to be damaged, but you have concluded them to be not damaged?*

*Ans. During our visit on 28.12.2012, the plant was in shutdown mode and the equipments could not be operated and checked. In any case we do not ourselves operate any equipment for checking. During the said visit, visual inspections were made looking at the site conditions and examining every equipment floor-wise, to ascertain whether the same was damaged or affected by fire or heat etc.*

*165. The Surveyor never checked or tested the damages on those two levels since, as noted above, he next visited the site only on 27 March 2015 when the plant was reinstated and the damaged equipment were no longer there to be checked or tested.*

*166. As against this, there is overwhelming evidence of the significant damages caused by explosion-fire at the ground level and at the roof top of Block no. and in the surrounding areas of the building of block no. 5.*

*167. CW-3 who is a qualified Civil Engineer, in paragraphs 5 to 8 of his Witness Statement has given a detailed and vivid description of the devastation caused by the explosion-fire, including damages caused at the*



ground level and at the roof top of block no. 5 and further beyond the block 5 building to its adjoin structures.

168. The evidence of CW-3 not only remains un-rebutted but it is actually supported by the reports and sketch maps prepared by the Fire Station Officers.

169. There are also photographs of the burnt site and its adjoined areas

170. Even some of the observations made by the Surveyor in the status report dated 16 March 2013 and his answers to questions put to him in cross examination belie the assumption that no plant installations would be damaged at the ground level and the roof top of the building.

171. In the face of such compelling evidence it is not possible to accept the sweeping and prima facie observation of the Surveyor that the equipment installed at the ground level and at the roof top of the building were apparently in sound condition and it is impossible to justify the blanket cut of the claims in respect of those equipment. The tribunal is clearly of the view that the amount of Rs. 58,06,460.00 disallowed by the Surveyor must be added back to the admissible claims of the claimant.

### **Under Insurance**

214. On a consideration of the rival submissions and on perusal of paragraph 6.1 of the FSR, the tribunal is unable to accept as valid the deduction on the ground of under insurance. There is no sanction to hold that the sum insured must represent the capitalized value of the buildings, arrived at by multiplying the actual year-wise expenditure by an escalation factor taken from the CII index.

215. It would be appropriate here to note that RW-1 when asked if there were any guidelines for determining the capitalized value of an old building using the CII index gave his answer in the negative. The question no 188 and its answer by the witness are as under:

Q188. For calculating under insurance, you have considered the CII Index. Is there any guideline or manual, which provides that the capitalized value of an old building has to be assessed using the CII Index only to ascertain under insurance?



*Ans. No, there are no specific guidelines.*

*216. It is important to note that there is no allegation of suppression of any material facts by the claimant. All expenditures were duly made known to the Surveyor. And it is the Surveyor who undertook the exercise to determine under insurance post facto and to the prejudice of the claimant. The tribunal feels that the issue of under insurance is simply contrived as a device to cut a substantial amount from the amount allowed by the Surveyor after a rigorous examination of the accounts relating to repairs of the building.*

*217. For the same reasons the deduction of Rs. 51773-57 from the assessed loss in respect of furniture and fixtures is held to be unjustified, unsustainable and reversible.*

*218. The tribunal accordingly holds that the amount of Rs. 1,27,33,076.71 must be added back to the admissible claims.*

### **Stocks -**

*220. It is seen earlier in the award (under marginal heading: Stock Policy) that the Surveyor declined to assess any claim in respect of 'Stocks in Process' because the respondent's refusal to give its consent that "Stock in Process" was covered by the Stock Policy, Having thus excluded "Stock in Process" from the coverage of the policy, the Surveyor proceeded to examine the claimant's claim under that policy. Though, the claim was, apart from "Stock in Process", also in respect of raw materials and finished products, the Surveyor branded the entire claim as relating to "Stock in Process" and thereby rejected the entire claim.*

*221. The relevant discussion is to be found in Paragraph 5.4 of the FSR, which is as under:*

*5.4 In respect of stocks & stocks in process, covered under policy No.426890/11/2012/8:*

*Insured initially submitted details of their loss in respect of*



*damaged stocks & stocks in process, available in various Reactors/Kettles/& holding tanks etc. available in block No.5 as well as yield loss from other unaffected at R\$ 5,77,43,034/- i.e. cost of WIP at Rs.3,32,48,616/-, cost of raw material & finished goods at Rs.1,14,31,684/- and yield loss from unaffected plant at Rs.1,30,62,734/-. However, now insured submitted their final claim at Rs.2,80,67,024/-, as per following breakup:-*

*For cost of damaged raw materials & finished goods Rs.70,46,318/-*

*For cost stocks in process, available in Block No.5 as well as in other unaffected bocks and Rs.1,80,04,053/-*

*For Excise duty/cenvat credit, reversed. Rs.30,16,653/-*

*On our examining the said details, we observed that certain stocks in process which were initially reported as sound, but after testing, some of the stocks were declared as damaged. Further, the bifurcation of damaged stocks in process, as raw materials & finished goods, were neither in order nor in line of the verification conducted by us at site and from insured's records.*

*From the details of closing stocks as on date of loss i.e. 30.06.2012, as provided by insured from their SAP records, we ascertained that the quantities & value of various raw materials and finished goods, claimed by insured, were appearing under the category of "stocks in process". This, the captioned policy covers only the stocks of raw materials & finished goods on declaration basis, as mentioned above.*

*Therefore, in view of above, we have not assessed loss for stocks in process, which were held/stored in reactors/Kettles/& holding tanks etc. in involved Block No.5-*

*222. The tribunal has already held that "Stock in Process" fully fell within the coverage of the Stock Policy taken out by the claimant. It is, therefore, clear that rejection of the claim on that ground is invalid and unsustainable.*



223. At this point, it may be noted that with regard to the claim under the Stock Policy, it is strongly contended on behalf of the respondent, that the claim is not arbitrable and beyond the jurisdiction of the tribunal. The issue of arbitrability of the claim and the challenge to the tribunal's jurisdiction is based on the premise that the respondent has no liability of payment against the claim since the policy on the face of it did not cover "Stock in Process". The very premise on which the challenge is based is rendered untenable in view of the finding earlier recorded by the tribunal. The challenge to the tribunal's jurisdiction thus fails.

224. It is next submitted on behalf of the respondent that the claim under the stock policy is based on specious Pleas and dubious explanations. it is pointed out that in a letter dated 11 October 2012 to the Surveyor, it was stated by the claimant as under:

*The stock in process is material/stock lying in different tanks, pipelines, reactors & shop floor etc. Hence, the same was considered as part of Plant and Machinery*

225. The tribunal does not find anything specious or dubious about the statement. The letter was in reply to the Surveyor's email of 26 September 2012. Those were early days after a disastrous accident had taken place out of the blue and the claimant had not been able to even tentatively assess its losses and make even a provisional claim which was first made on 4 December 2012. It is also clear from the materials on record that after the disaster took place it took all sides, that is, the claimant, the respondent and the Surveyor some time to grasp the correct processes to be followed for the settlement of the policies.

226. The claimant initially believed that the BPM policy and the Stock Policy together comprised Material Damage policies and it was on that basis that the first provisional claim bill was submitted for a consolidated claim of Rs. 64.58 Crores, out of which Rs. 58.81 Crores was under the BPM Policy and Rs. 5.77 Crores was under the Stocks Policy. But when it was asked to submit separate claims under the two policies it filed two separate claims.

227. It is also pointed out on behalf of the respondent that the claimant claimed different amounts at different times under the Stock Policy.



*The different claims made by the claimant at different times are as under:*

| <i>S.No.</i> | <i>Claim Bill Dated</i>                     | <i>Amount</i>          |
|--------------|---------------------------------------------|------------------------|
| <i>1.</i>    | <i>12 October 2012</i>                      | <i>R.s.9.26 Crores</i> |
| <i>2.</i>    | <i>4 December 2012</i>                      | <i>Rs.5.77 Crores</i>  |
| <i>3.</i>    | <i>9 Jily 2015</i>                          | <i>Rs.2.83 Crores</i>  |
| <i>4.</i>    | <i>20 August 2015</i>                       | <i>Rs.2.81 Crores</i>  |
| <i>5.</i>    | <i>18 September 2015</i>                    | <i>Rs.2.75 Crores</i>  |
| <i>6.</i>    | <i>Claim before Arbitral Tribunal in SO</i> | <i>Rs.2.50 Crores</i>  |

*228. The tribunal fails to see what benefit could accrue to the respondent from the fact. The amounts in claim have been consistently reduced and hence, there is no prejudiced to the respondent.*

*229. In this regard it is important to note that it is no one's case that there was no loss of stock. The SAP records, relied upon by the Surveyor to classify all destroyed stock as "Stock in Process" is in itself a highly reliable record. Apart from the SAP record the Surveyor himself noted in the Status Report dated 16 March 2013 as under:*

#### *5.4 Stocks &stocks in process:*

*The entire qty of stocks and stocks in process, stored in the floors including present in the various columns/ storage tanks, installed at various floors of involved block no. 5, as well as stored in drums, near various reactors/ kettles, were extensively burnt/ charred/ solidified/ damaged.*

*230. Anyway, the tribunal is of the view that a claim, due and valid under a binding contract, cannot be defeated by the pleas such as the*



*ones raised on behalf of the respondent.*

*231. The tribunal is therefore clearly of the view that the claimant's claim under the stock policy, as per its revised claim of Rs. 2,50,50,371/- must be counted among its admissible claims."*

108. The petitioner has challenged the finding on the ground that the learned Arbitral Tribunal has re-written the contract in regard to the stock policy and thus being without jurisdiction is liable to be stuck down as being perverse. Similarly, the petitioner has stated that the claimant did not produce any evidence of its purported loss of Rs.25,05,371/- and despite that the full amount was awarded in regard to the Plant and Machinery. The petitioner has taken an objection that arbitral award is contrary to the written terms of the contract and findings are contrary to the established law. It has also been argued that the element of under insurance has not been examined at the time to insurance of policy, and it has wrongly been *inter alia* held that the element of under insurance was not examined at the time of issuance of funds. The petitioner has stated that the full claim of the claimant was awarded.

109. The petitioner has also challenged the award on the ground that the learned Arbitral Tribunal has held that the 5% of the deduction carried out by the surveyors on account of improvement/replacement of Plant and Machinery to be unjustified. It has been submitted that the impugned award failed to consider that the very basis of any insurance policy, is to indemnify the insured to its position as it was before the accident. It was submitted that the insured was to reinstate, replace the damaged machinery with machinery of the same kind, but not superior



toward/to more or more expensive than the insured machinery. It has been submitted that the insured failed to lead any evidence to establish that its plant was of the same specification/functionality as to the previous plant which was destroyed in the fire. It has also been stated that the learned Arbitral Tribunal has committed an illegality vide reversing the burden of proof.

110. However, I consider that none of the objections being taken by the petitioner holds any grounds. The bare perusal of the findings as reproduced herein above makes it clear that the learned Arbitral Tribunal has minutely examined each and every aspect. Even otherwise, the findings on such claims are totally factual in nature. It has repeatedly been held that the learned Arbitral Tribunal is the final arbiter of the facts and the Court cannot clothe itself with the power of the appellate Court to set aside the findings on facts. Even, inadequacy or erroneous appreciation is not a ground to set aside. It is also pertinent to mention here that the petitioner being a reputed insurance company is required to furnish the necessary information to insure concerning coverage under the policy. No fault can be found with the exercise being undertaken by the learned Arbitral Tribunal, wherein the request for the quotation was duly analysed. It has rightly been noted that the policy did not contain an entire agreement clause. In regard to the evidence relating to the purported loss of Rs.25,05,371/- the learned Tribunal has correctly relied upon SAP record to assess “stock in process” and which seems to be a plausible view, subjecting such exercise to surveyor would have led to further avoidable delay. The claimant’s witnesses have made the categorical statement and have





proved the material on the record.

111. The perusal of the record indicates that the learned Arbitral Tribunal has allowed claims for plants and machinery located 0mtr, 29 mtrs outside 10 farm area and outside block at 0 mtr based upon correspondence between the parties. Learned Arbitral Tribunal has also taken into account side visits by surveyors of 24.07.2012, 28.12.2012 and 27.03.2013.
112. In regard to the Reversing the burden of proof, the finding of the learned Arbitral Tribunal that the deduction was made by the surveyor entirely on the likelihood of improvement and not on any actual findings in fact of improvement of upgradation is plausible. The contention of the respondent that even now the petitioner has not provided any justification for 5% deduction cannot be rejected. The Court considers that all such objections are basically factual in nature, and the present proceedings being not in Appellate in nature, such objections cannot be entertained. In regard to under insurance, the learned Arbitral Tribunal has correctly found out that there was no manual rules and guidelines requiring the sum insured to the capitalize value of the building arrived at by multiplying the actual year wise expenditure by an escalation factor taken before the CEIA Index, thus, no fault can be found.
113. The petitioner submitted that the policy schedule did not mention alternative basis clauses under the LOP Policy. It has been submitted that the learned Arbitral Tribunal, merely on the ground, that since the respondent had sought the clause in the request for the quotation, it would be considered as the part of the LOP Policy. It has been



submitted that this finding amounts to re-writing the terms of the contract.

114. Even at the cost of brevity, it may be stated that the findings on fact and interpretation of the contract falls within the domain of the Arbitral Tribunal. The Learned Arbitral Tribunal noted that the “Policy wording” was not attached to the schedule issued, “policy wording” applicable to the claimants policy was not produced by the petitioner even before the learned Tribunal. It was noted that from the request for quotation and the policy schedule, it was clear that the claimant opted for “turn over” as the basis of indemnity with “output” being the alternative basis in the terms of the “alternative basis”. It was noted that the Schedule mentioned “turn over” as the basis of indemnity but did not mention “output” as the alternative to turn over. The learned Tribunal noted that the policy schedule was issued without “policy wording” and therefore in absence of any clarity, the parties were in serious dispute on whether or not the following three clauses were part of the claimant’s LOP Policy (i) Accumulated Stop clauses (ii) Alternative basis clause (iii) Departmental clause.
115. In regard to the departmental clause, the learned Tribunal has given its finding in para 113 to 123 which reads as under:

*“113. In the FSR the Surveyor dealt with the departmental clause in Paragraph 7.3.2, where he starts by saying that the said clause is neither attached with the captioned policy nor was it requested by the insured in the request for quotation. The observation is simply rhetorical and actually betrays a bias against the insured. No attachments to the policy have seen the light of day because the schedule issued by the respondent did not have any attachments. It is*



also held earlier that 'Departmental Clause' did not require to be opted for separately or additionally.

114. Coming now to the substantive ground on which the Surveyor refused to apply the departmental clause, in paragraph 7.3.2 of the FSR it is stated as under:

7.3.2. Though the details of the plant/block wise production and sales **could be ascertained** from the records maintained by the insured, because of allocation of code nos. under SAP programme, but insured did not maintain separate financial records for 6 blocks at Srikakulam plant & for 2 unaffected plants to separately calculate gross profit, plant wise.

Further, no break-up sum insured, plant wise is available under the captioned policy.

Besides, insured also did not provide separate rate of gross profit for affected plant/blocks.

Further, the departmental clause is not attached with policy.

(emphasis added)

115. On the aforesaid reasoning the Surveyor proceeded to hold that what was material for determining the claimant's claim was the short fall in the overall turnover or output during the indemnity period of the claimant company as a whole, taking into account all its three manufacturing facilities and the shortfall in turnover or output of the affected block or of the Srikakulam plant could not form the basis for determining the claimant's claim. Taking into account the figures of turnover and output of all the three manufacturing facilities of the claimant company, the Surveyor showed that there had been, in fact, an increase both in turnover and output during the indemnity period and hence, there was no loss within the meaning of the LOP Policy and the claimant was not entitled to receive any compensation.

116. If the reason assigned by the Surveyor to exclude the departmental clause is correct and computation of loss must be made on the basis of the difference in turnover or output of the company as a whole, taking into account all its three



manufacturing facilities then the conclusion arrived at by the Surveyor is faultless and the claimant's claim would fail in view of the definition of the 'Standard Turnover' given in Specification A, even though no production took place in the Srikakulam plant for several months and in the affected block 5 for Two and half years as noted in paragraph 1-3 of the PSR. However, the question is whether the Surveyor was right in excluding the departmental clause.

117. The two conditions, subject to which 'Departmental Clause' may get attracted, are stipulated in the opening words of the clause and there as under:

1. "If the business be conducted in departments" and
2. "The independent trading results of which are **ascertainable**"

118. There is not much difficulty with regard to the first condition and the position is all but admitted. The claimant is a company engaged in production of chemical formulations. The products are manufactured not only plant wise but block wise. There is ample evidence on record that certain specified formulations are manufactured exclusively in a particular block of the plant and nowhere else. With regard to Block no. 5 it is noted in paragraph 3.7 of the FSR as under:

**3.7. The Involved block/plant no.5:**

The block no.5 was constructed on about 3000 sq mtrs floor area & commissioned for commercial production in 2006-07. The said building of 29 mtrs in height had 5 stories, was engaged for manufacturing of various products, having different capacities, as under:

| Sl.No. | Particulars of products | Capacity      |
|--------|-------------------------|---------------|
| 1.     | Profenofos O&T          | 4.00 TPD each |
| 2.     | Propiconazole           | 3.32 TPD      |



|    |               |          |
|----|---------------|----------|
| 3. | Myclobutanil  | 0.40 TPD |
| 4. | Fenbuconazole | 0.60 TPD |

*All the above products were manufactured with the help of separate dedicated production lines, except Myclobutanil & Fenbuconazole, which being inter changeable were manufactured one at a time on t line. Besides above, insured also undertake manufacturing of 2 products i.e. Isarobin and Buerest for DourdArysta, on job work basis.*

*119. In cross examination the Surveyor confirmed what he recorded in the passage quoted above:*

*Q23. Para 3.7 you have stated that the products manufactured at Block-s had separate dedicated production lines. Please explain what you meant by this and were the production of those products was being entirely and exclusively done in Block-s from start to finish?*

*Ans. The specific production line, dedicated to produce particular producers, has been referred as separate dedicated production lines. Yes, certain products were being entirely and exclusively produced in Block-5.*

*(emphasis added)*

*120. The first condition for the application of the clause thus stands satisfied.*

*121. With regard to the second condition what is required is that independent **trading** results of the business being carried out in departments be **ascertainable**. The condition does not require, as insisted by the respondent in paragraph 9.1 of its SoD as under:*

*“..... this would mean the consumption and sale of each department and the total profit and loss of each department and the total profit and loss of each*



*department is maintained separately for every financial year”*

122. The Surveyor also does not seem to have any clarity about ascertainability of independent trading results of a business conducted in departments. In paragraph 7.3.2 of the FSR he stated as under:

*"Though the details of plant/block wise production and sales could be ascertained from records maintained by the insured, because of allocation of code nos under SAP programme but insured did not maintain separate financial records, for 6 blocks of Srikakulam plant & 2 unaffected plants, to separately calculate gross profit, plant wise."*

123. Thus even though accepting that details of plant/block wise production was ascertainable he declined to apply the departmental clause because the insured did not maintain separate financial records, for 6 blocks of Srikakulam plant & 2 unaffected plants, to separately calculate gross profit, plant wise.

116. Similarly, in regard to the computation the finding of the learned Tribunal are from para 131 to 135 which reads as under:



| Bloc<br>k   | Ma<br>teri<br>al<br>Co<br>de | Name<br>of the<br>Product              | Jul<br>-11     | Aug<br>11  | Sep<br>t 11 | Total      | Sale<br>Price<br>Per<br>KG<br>(RS) | Vari<br>able<br>Cost<br>Per<br>Kg<br>(RS) | Value<br>Per<br>Kg<br>(RS) | Gro<br>ss<br>Prof<br>it<br>Per<br>Kg<br>(RS) | Gross<br>Profit it<br>Loss<br>Per Kg<br>(RS) | Gross<br>Per<br>Kg<br>(RS) |
|-------------|------------------------------|----------------------------------------|----------------|------------|-------------|------------|------------------------------------|-------------------------------------------|----------------------------|----------------------------------------------|----------------------------------------------|----------------------------|
| Bloc<br>k 5 | 400<br>1                     | Profeno<br>pos<br>Technic<br>al        | 64             | 89         | 110         | 257        | 425                                | 382                                       | 10.96                      | 44                                           | 1.14                                         | 10.40<br>%                 |
|             | 400<br>4                     | Profeno<br>posQTe<br>chnical<br>Export | 63             | 57         | 69          | 190        | 689                                | 409                                       | 11.17                      | 180                                          | 3.42                                         | 30.60<br>%                 |
|             | 406<br>1                     | Propico<br>nazole<br>Technic<br>al     | 88             | 94         | 94          | 275        | 1.14<br>8                          | 921                                       | 31.5                       | 227                                          | 6.23                                         | 19.74<br>%                 |
| S           |                              |                                        |                |            |             |            |                                    |                                           | 53.67                      | Tota<br>l                                    | 10.79                                        | 20.09<br>%                 |
|             |                              |                                        |                |            |             |            | Time Excess 7 Days<br>Gross        |                                           |                            |                                              | 0.82                                         |                            |
|             |                              |                                        | 21<br>4.6<br>2 | 234.<br>23 | 272<br>.51  | 721.<br>36 | Net Claim (A)                      |                                           |                            |                                              | 9.96                                         |                            |

“131. There is nothing in this exchange to even remotely cast any doubt on the correctness of the figures produced by the claimant before the tribunal which are the same as submitted to MCA as statutorily required. It follows that there is no reason not to accept the computation of loss made by CW-1 on the basis of those data.

132. CW-1 has actually made two computations of losses, one on output basis and the other on turnover basis. The amount of loss on



turnover basis is slightly lower than the amount computed on turnover basis. Moreover, the computation on turnover basis also takes into account the claimant's accumulated stock of the products in question. It is held earlier that the accumulated stock clause was no part of the claimant's policy. Hence, the tribunal finds it reasonable to accept the computation on output basis in preference to the one on turnover basis. The computation of loss on output basis does not suffer from any infirmity and it is as under:

## APPENDIX 2

### Computation of loss on output basis (Block 5)

#### A) LOP Claim calculations on Output (Production) Basis

\* Sales Price & Variable Cost are based on the Cost Audit Sheets for the year 2012-13.

In the above computation the determination of gross profit is made on the basis of the following formula:

| (A)                                                                                                | (B)                                                                   | (C)                            | (S)                                                          |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------|
| Standard Turnover (during the period in the preceding 12 months corresponding to indemnity period) | Turnover (During the indemnity period immediately following the fire) | Reduction of Turnover (A-B)    | Loss of Gross Profit                                         |
| Q2 (2011-2012)                                                                                     | Q(2012-2013)                                                          | Q(2011-2012) less Q(2012-2013) | Rate of GP X Reduction in Turnover(c) = Loss of Gross Profit |





133. The Surveyor in cross-examination accepted the formula as correct for determination of gross profit and in answer to question 84 stated as under:

"Q84. What do you have to say on the formula: (Selling Price - Variable Cost) divided by Selling Price x 100, for calculating the rate of gross profit?

Ans. If the formula gives the gross profit, then it is the same and it is fine"

134. CW-1, however, has added Rs. 0.72 Crores to the amount of loss suffered on account of shortfall in output (Rs. 9.96 Crores). This amount (0.72 Crores) is represented as additional cost incurred in procurement of Profenotos technical, one of the products of Block No. from market during the indemnity period. This, however, does not qualify as increase in "cost of working" as stipulated in Specification A and, therefore, cannot be claimed as part of loss of profit under the policy. The claimant is accordingly held entitled to receive from the respondent the sum of Rs. 9.96 Crores towards loss of profit from the affected Block no.5.

135. On the aforesaid amount the claimant will also be entitled to interest @ 13 % p.a. In case the dispute arising from the LOP Policy had come up for consideration completely separately and had there been no reference to other two policies, the tribunal might have considered awarding interest from an earlier date, e. g-, the date of submission of FSR in the LOP Policy. However, as the two matters are loosely combined, the accrual of interest is directed, for the sake of consistency, as in the other award from 15 December 2016. The amount of interest from 15 Dec 2016 to 13 September 2019 come to Rs. 3.55,80,394.52. The claimant is thus held entitled to receive from the respondent the amount of Rs. 13.51,80,394.52 under the LOP policy."

119. Precisely to say that all the challenges being made by the petitioner in regard to the findings are regarding the interpretation, construction of the terms of the contract and the findings on the



factual matrix of the case which are beyond the domain of Section 34 of the Court. Similarly in respect of the interest being rewarded by the learned Trial Court, this Court finds no fault.

120. Learned counsel for the petitioner has heavily relied upon **United India Insurance Co. Ltd. v. Hyundai Engineering and Construction Co. Ltd.** (2018) SCC OnLine SC 1045 and **Oriental Insurance Co. Ltd. v. Narbheram Power and Steel Pvt. Ltd.** (2018) 6 SCC 534. However, the case at hand is distinct from ***United India Insurance Co. Ltd.*** (Supra) and ***Narbheram Power and Steel Pvt. Ltd.*** (Supra) on several fundamental legal and factual grounds. Though, the cases concern insurance disputes, yet they differ significantly in terms of arbitrability, the enforceability of discharge vouchers, policy interpretation, and the weight given to surveyor reports.
121. A key distinguishing factor is the question of arbitrability, which played a decisive role in ***United India Insurance Co. Ltd.*** (Supra) and ***Narbheram Power and Steel Pvt. Ltd.*** (Supra). In the aforesaid cases, the Apex Court unequivocally ruled that when an insurance company entirely denies liability, arbitration is not permissible under the terms of the insurance contract. It was, *inter alia*, held that if the insurer repudiates the claim altogether and there exists no dispute over quantum. The Court, *inter alia*, held that such matters must be adjudicated in a civil court. However, in the present case, the petitioner did not completely repudiate liability but instead partially admitted liability and even made partial payments under the material damage policy. In the present case, the learned Arbitral



Tribunal, *inter alia*, found that the insurer, by making partial payments and engaging in negotiations, had waived its right to object to arbitrability.

122. The judgments cited can also be distinguished on the ground of interpretation of Discharge Voucher. In ***United India Insurance Co. Ltd.*** (Supra) and ***Narbheram Power and Steel Pvt. Ltd.*** (Supra), the Supreme Court, *inter alia*, held that a discharge voucher signed voluntarily by the insured is binding and enforceable, effectively closing the door on any further claims. The Court emphasized that unless the insured can prove that the voucher was signed under coercion, fraud, or misrepresentation, it serves as conclusive evidence of settlement. However, in the present case, the learned Arbitral Tribunal, *inter alia*, found that the discharge voucher was not signed voluntarily but was instead executed under financial duress. The respondent had suffered extensive losses due to fire, and the insurer delayed settlement for years, creating immense financial hardship. The learned Arbitral Tribunal, *inter alia*, held that execution in such circumstances vitiates the discharge voucher and it does not constitute a valid waiver of rights.

123. In the present case, the learned Arbitral Tribunal found that the insurer's own policy documents were unclear and failed to provide explicit definitions for certain key terms. The ambiguity in policy wording led to differing interpretations. The Court considers that any ambiguity in an insurance contract must be construed against the insurer, as they are the ones who draft the policy terms.

124. It is also pertinent to mention that, in the present case, the learned



Arbitral Tribunal found multiple flaws in the surveyor's report. It observed that:

- A. The surveyor's deductions lacked adequate reasoning
- B. The assessment ignored documentary evidence provided by the insured
- C. The methodology used for quantifying damages was inconsistent

125. The learned Arbitral Tribunal, *inter alia*, held that a surveyor's report, while important, cannot be blindly accepted if it is based on assumptions rather than objective assessment. It ruled that certain deductions were arbitrary and unsupported by evidence, making it necessary to modify the assessment.

126. In view of the discussions made hereinabove, this Court finds that there is no perversity, illegality in the order of the learned Arbitral Tribunal. Hence, both the petitions along with pending applications, if any, stand dismissed.

**DINESH KUMAR SHARMA, J**

**FEBRUARY 13, 2025**

*Pallavi/HT*