IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]
ORIGINAL SIDE

Present:
The Hon'ble Justice Aniruddha Roy

AP-COM/186/2024
Old Case No. AP/322/2020

The Oriental Insurance Company Limited
Vs.
The Reliance Jute Mills (International Limited)

For the petitioner:	**Mr. Chayan Gupta, Adv.** **Mr. Sanjay Paul, Adv.** **Ms. Jaita Ghosh, Adv.**
For the respondent:	**Mr. Sabyasachi Chaudhury, Sr. Adv.** **Mr. Abhijit Guha Ray, Adv.** **Mr. S.E. Huda, Adv.** **Mr. Shounak Mukhopadhyay, Adv.** **Ms. Anwesha Guha, Ray, Adv.**
Reserved on:	**May 01, 2025**
Judgment on:	**May 20, 2025**

ANIRUDDHA ROY, J.:

Facts:

1. This is an assigned arbitration application.

2. This is an application filed under **Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the said 1996 Act)**, *inter alia,* praying for setting aside of an **Arbitral Award** dated **March 2, 2020, at page 430, Volume-IV** of the application, passed by the Arbitral Tribunal.

3. The inescapable and inexorable facts are only stated which are required as a prelude for the adjudication.

4. The applicant herein was the respondent Insurance Company (for short, the **Insurance Company**) in the arbitral reference and the respondent herein was the claimant (for short the **claimant**) in the reference.

5. The claimant was an insured with the Insurance Company. There was a valid and existing insurance policy. On **September 2, 2014** fire broke out at the Jute Mill of the claimant. The policy was lawfully enhanced from **Rs.22 crores to 32 crores**. On **September 3, 2014** the incident of fire was duly notified to the Insurance Company with the substantial loss of finished goods suffered by the claimant. One Dilip Kumar Saha was appointed as preliminary surveyor who inspected the premises on **September 4, 2014** and **September 6, 2014**. The preliminary surveyor also inspected both the manual and computerised records, namely, the stock register of the claimant. On **September 8, 2014**, one Sanjoy Dwivedi was appointed as final surveyor by the respondent. On **September 13, 2014** the preliminary report was submitted by the preliminary surveyor. The time frame of **30 days** under **Sub-Regulation 2 to Regulation 9 of IRDA (Protection of Policy Holders' Interest) Regulation, 2002** had expired **on September 7, 2014**. On **October 17, 2014** the final surveyor caused advertisement to be published in the newspapers to ascertain the salvage value of the salvages. **November 10, 2014** was fixed as the last date for receiving bids pursuant to salvage process. Three bids were received. Two of which on **November 7, 2014,** and one was on **November 10, 2014**. On **November 24, 2014** claimant wrote a letter to the Insurance Company claiming a part payment for a sum of **Rs. 10 Crores** to enable it to carry on business. On **December 3, 2014,** the final surveyor sent an E-mail to the Insurance Company

informing of opening of bids received as part of salvage process and requesting deputation of a responsible officer of the Insurance Company to be present for the same day. However, none was present on behalf of the Insurance Company. On **December 5, 2014**, a meeting was held when the offers for salvage were opened and the highest bid received was for **Rs. 1250/- per metric ton.** The final surveyor persuaded the claimant to accept salvage value at **Rs. 1750/- per metric ton**. On **January 22, 2015** claimant wrote a letter to the Insurance Company requesting for part payment as sought for in its said previous letter. On **March 7, 2015**, the final surveyor sent an E-mail to the claimant urging to accept **Rs. 12 crores 40 lakhs** as full and final settlement and sent consent letter of the claimant and the scanned copy was sent through E-mail. Claimant wrote on the said consent letter subject to terms and condition contained in the Insurance Policy. On the same day i.e. **March 7, 2015**, the six months period since appointment of the surveyor had expired.

6. On **March 21, 2015** the final surveyor submitted its survey report and the report was submitted after expiry of six months period. On **March 23, 2015**, claimant wrote a letter to the Insurance Company intimating that till then the claim was not processed neither any payment was made nor any reply was received by the claimant from the Insurance Company. The claimant further raised its demand for payment with an interest. On **April 19, 2015**, thirty days stipulated period to offer settlement of claim expired. On **June 11, 2015** the claim was filed with the survey report prepared by the final surveyor and was sent to the Head Office of the Insurance Company after almost three months. The Divisional Office was sitting on the file without

any authority and jurisdiction as the claim exceeded **Rs. 20 lakhs**. On **August 18, 2015**, internal E-mail of the Insurance Company was sent with regard to two different rates of salvage in two claim files i.e. claimant and Hooghly infrastructure, on the basis of which on **October 6, 2015** E-mail was sent to the claimant regarding acceptance of salvage values at **Rs.10,000/- per metric ton**. On **September 19, 2015**, more than after one year of the fire, supplementary report was filed by the final surveyor to the Insurance Company without any intimation to the claimant. On **September 24, 2015** at **page 163** to the application the **IRDA** circular was published regarding discharge voucher in settlement of claim, *inter alia*, directing the Insurance Company shall not withhold claim amounts and execution of discharge vouchers does not foreclose the rights of the policy holders to seek higher compensation before judicial fora or any other fora established by law. On **October 6, 2015** an E-mail was issued by the Insurance Company to the claimant to accept the salvage value at **Rs.10,000/- per metric ton**. The said E-mail further mentioned otherwise the matter may drag and the same shall attract audit scrutiny. On **October 7, 2015,** the claimant replied to the said E-mail stating that increase salvage value of **Rs.10,000/- per metric ton** was not acceptable on the basis for such overvaluation which had no connection to the claimant's case. On **October 10, 2015**, claimant wrote a letter to the Insurance Company requesting a judicious settlement of its claim. On **October 16, 2015** the claimant wrote a letter to **IRDA** informing of the inordinate delay on the part of the Insurance Company in settlement of the claim of the claimant. On **November 13, 2015** claimant wrote a letter to the Insurance Company informing about the inordinate

delay of more than one year on the part of the insurance company to settle the claim of the claimant and the claimant was undergoing through financial hardship. On **March 10, 2016** the claimants agreed for appointing another surveyor by the Insurance Company to further strengthen the cause of fire especially as no action was being taken by the Insurance Company otherwise. On **March 15, 2016** the Insurance Company appointed another surveyor, Mr. K.B. Kuri, the last surveyor for further strengthening the cause of fire. On **March 16, 2016** claimant wrote a letter to the Insurance Company informing that more than a year had passed without settling the claim of the claimant and the claimant requested the Insurance Company to make a part payment of at least **Rs. 8 crores,** since the claimant was suffering from financial stress to carry out its business. In **April 2016**, the draft report was shared by the last surveyor with the claimant only with regard to the cause of fire and without enclosure showing the assessment of loss. On **May 20, 2016**, at **page 191 Volume-II** to the application, the claimant received an E-mail from the said last surveyor containing a pre-formatted letter of consent together with note of acceptance and instructions to print both side on the letterhead of the claimant and to sign and stamp the same. Claimant has been instructed, to get the said letter ready together with the note of acceptance and the same was issued by the claimant. On **August 31, 2016** the claimant had signed the said pre-formatted discharge voucher and sent it to the Insurance Company through E-mail. On **September 7, 2016**, the Insurance Company credited the bank account of the claimant to the extent of **Rs. 11,17,81,171/-.** On **September 9, 2016** claimant by its letter written to the Insurance Company demanded the

remaining amount of **Rs. 4,43,88,000/-.** On **September 19, 2016** the claimant by its letter written to the respondent reiterated its demand to the said extent of **Rs. 4,43,88,000/-** and requested the Insurance Company to furnish the surveyors' reports submitted from time to time.

7. **October 27, 2016**, the claimant invoked the arbitration clause. Since the Insurance Company did not accept the nomination of the claimant, an application was moved under **Section 11 of the 1996 Act** and the Tribunal was constituted. The reliefs claimed in the statement of claim by the claimant is quoted below:-

> "*a) Declaration that all consent documents caused to be made by the claimant including letters dated 07.03.2015, 10.03.2016, 20.05.2016 and discharge voucher dated 31.08.2016 are vitiated by undue influence, coercion, misrepresentation and fraud and are liable to be adjudged void and all such consents/documents are liable to be delivered up and cancelled, if required*
>
> *b) Award for Rs. 7,59,29,406.31 against the respondent;*
>
> *c) Pendente lite interest and interest upon award at the rate of 15 percent per annum;*
>
> *d) Costs;*
>
> *e) Further and other reliefs;"*

8. The statement of claim is available at **page-53** at **Volume-I** of the application. The statement of defence filed by the Insurance Company is available at **page-200, Volume-II** of the application. The rejoinder of the claimant is available at **page 291, Volume-III** of the application.

9. The award was made and published by the Arbitral Tribunal on **March 2, 2020 at page 430, Volume-IV** of the application allowing the claim of the claimants for the balance sum with interest.

Submissions:

10. The principle ground taken by the Insurance Company that, since by signing and executing the discharge voucher, the claimant had accepted the settled amount consciously and after receiving the said settled amount, the claimant could not have claimed the balance sum. Mr. Chayan Gupta, learned counsel appearing for the Insurance Company, the applicant herein, submits that the principle of accord and satisfaction would clearly operate in the instant facts and circumstances.

11. Mr. Chayan Gupta, learned counsel appearing for the Insurance Company while developing his points of argument has submitted that, it was not a case of coercion or undue influence upon the claimant. When the claimant had accepted its claim as full and final settlement by executing the discharge voucher, the claimant could not have taken the plea that the discharge voucher was executed by it under coercion and undue influence practiced by the Insurance Company upon the claimant. He submits that had there been any coercion or undue influence practiced upon the claimant by the Insurance Company, then the claimant subsequently ought not to have gone for new insurance policy which had been executed with the Insurance Company. Even previous to this particular incident the claimant was insured with the same Insurance Company and subsequent thereto also.

12. Referring to the said **IRDA** circular dated **September 24, 2015**, Mr. Gupta submits that the circular provides for that execution of voucher does not foreclose the rights of the policy holder to seek higher compensation before any judicial forum and/or any other fora established by law but in the facts of the instant case, the claimant has voluntarily and wilfully executed the discharge vouchers and accepted the payment without protest with the clear understanding that it did not want to prolong the issue for settlement of its claim. Therefore, in the facts of the instant case the claimant not only executed the voucher but also accepted the payment without any protest. Since the claimant has accepted the payment, the said **IRDA** circular would not apply to support the case of the claimant.

13. Referring to **pages 500 to 508** of **Volume-III** of the application and specifically referring to **Exhibit ADR-8** and **Exhibit ADR-9** at **pages 509** to **512, Volume-III** of the application, learned counsel for the Insurance Company submits that while assessing the value of salvage and the fixation of its rate, all along the claimant was in communication with the surveyor appointed by the Insurance Company and in consultation with the claimant the surveyor has suggested the value for salvage. Therefore, series of communication were there from time to time between the claimant and the surveyor and some vital communication at **pages 510 to 512** of the application were not disclosed in the arbitral proceeding by the claimant and suppressed. Such documents were disclosed by the Insurance Company in the arbitral proceeding as a part of its counter statement of claim and the learned Arbitral Tribunal has failed to assess the purport content and evidential value of those documents. Had those documents been properly

assessed by the learned Arbitral Tribunal in accordance with law, then the complexion of the award would have been changed and would have gone in favour of the Insurance Company, that the claimant knowingly and wilfully executed the discharge voucher after having consultation with the surveyors and on the basis thereof the claim of the claimant was settled and the payment was accepted by the claimant under such settlement of claim. Learned counsel has specifically referred few paragraphs from the impugned award which, *inter alia*, are **paragraphs 13, 15, 19, 35, 39 and 68** and submits that the learned Arbitral Tribunal did not consider the defence of the Insurance Company taken before it, and ultimately no finding was arrived at thereupon. He then refers to the notes submitted by the Insurance Company at **page 68** to the application and submits that the same was not considered. Referring to **Exhibits ADR- 1 to ADR-9** from the application, he submits that the Arbitral Tribunal had not taken note of the content of the same and there was no adjudication on the same.

14. Mr. Chayan Gupta, Learned Counsel for the award-debtor/Insurance Company further submits that, the plea taken by the insured/award holder for releasing money by signing the discharge voucher was that the insured was undergoing a financial stringency at the relevant point of time. Referring to **Exhibit ADR-1**, which are financial statement of the insured, Mr. Chayan Gupta submits that the insured had not undergone through any financial stress, as would be evident from their audited balance-sheet. There was no economic duress. Referring to both pre and post Fire Insurance Policies, **Exhibit ADR-2**, he submits that the insured even after the fire broke-out continued with the Insurance Company and even after the disputes

occurred by and between the parties, the insured executed insurance policy. This, according to him, shows that after executing the discharge voucher and accepting the insurance claim on account of the subject fire unconditionally, the insured proceeded for the further insurance policy with the Insurance Company. Had there been any dispute in the mind of the insured, it would not have proceeded with for further insurance with the Insurance Company. He also refers to **Exhibit ADR-7**, which are the discharge voucher post fire, to show that the insured all along aware of the fact that to receive the insurance claim if any, the discharge voucher are executed as and by way of full and final settlement of the claim and there remained no further scope for raising any further claim. He also refers to the **Exhibit ADR-8** being the communication relating to disposal of salvage along-with the communication between the insured and the third Surveyor being **Exhibit ADR-9**. Referring to these Exhibits, Mr. Gupta submits that the insured was all along with the touch of the third Surveyor and on the basis of the mutual discussion and agreement between the insured and the third Surveyor evaluation of salvage was done. Therefore, the insured had no occasion to go beyond those claims on account of salvage as assessed by the third Surveyor.

15. Mr. Chayan Gupta, Learned Counsel submits that from a close scrutiny of the award, it would be evident that none of the above **Exhibits being ADR-1 to ADR-9** was considered by the arbitral tribunal while adjudicating the disputes between the parties and passing the award. The award is thus perverse. He submits that the tribunal had based it's finding by excluding the vital evidences and relevant materials without taking them into account.

In support, he has relied upon a Division Bench judgment of this Hon'ble Court ***In the matter of: Collector of Customs, Calcutta and Ors. Vs. Biswanath Mukherjee reported at 1974(1) CLJ 251.***

16. Mr. Chayan Gupta further submits that, a perverse finding is one which is on no evidence or one that no reasonable person would have arrived at. If it is found that the relevant evidence was not considered, despite being there before the tribunal, finding is of tribunal is perverse. In support, he has relied upon a decision of the Hon'ble Supreme Court, ***In the matter of: Sumitomo Heavy Industries Limited Vs. Oil and Natural Gas Corporation Limited reported at (2010) 11 Supreme Court Cases 296.***

17. Learned Counsel for the Insurance Company then submits that the subject discharge voucher had not been accepted by the arbitral tribunal as full and final settlement of the claim. The tribunal had proceeded in a manner which is beyond the prescribed procedure under the law and thereby the award is opposed to public policy and should be set-aside. In support, Learned Counsel has relied upon a Supreme Court decision ***In the matter of: Supermint Exports Pvt. Ltd. Vs. New India Assurance Co. Ltd. and Others, reported at 2021 SCC OnLine Delhi 5237***.

18. Mr. Chayan Gupta, Learned Counsel for the Insurance Company further submits that, when the patent illegality is *ex facie* on the face of the arbitral award, the award is liable to be set aside. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of Associate Builders Vs. Delhi Development Authority reported at (2015) 3 Supreme Court Cases 49.***

19. Mr. Chayan Gupta then submits that the finding of the Learned Arbitral Tribunal, as in the instant case, since without considering the vital evidence is perverse and liable to be set aside. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Ssangyong Engineering And Construction Vs. National Highways Authority of India (NHAI) reported at (2019)15 Supreme Court Cases 131.***

20. In the light of the above, Mr. Chayan Gupta, Learned Counsel of the Insurance Company submits that the instant award being perverse and also being opposed public policy, is liable to be set aside.

21. Mr. Sabyasachi Chaudhury, Learned Senior Counsel appearing for the insured award holder submits that, the principle challenge allegedly made, as would be evident from the grounds taken by the Insurance Company in the setting aside application are on counts:

    (a) The award was opposed to public policy;

    (b) The award is on the face of it perverse and

    (c) Once the discharge voucher has been issued and accepted by the award holder, there was accord and satisfaction, hence, the award is bad in law and not sustainable beyond the said satisfied claim.

22. Mr. Chaudhury, Learned Senior Counsel submits that the claim arose out of an Insurance Contract. There is no dispute between the parties that the Insurance Contract was executed. In such case, if a claim is raised arising out of such contract, such a claim has to be proved by the claimant and the respondent would have to disprove and dislodge the claim. It is not the case of the Insurance Company, in the facts of this

case that, the claimant has not proved its claim. The solitary plea of the Insurance Company is that the claim allowed by the Learned Arbitral Tribunal was beyond the alleged discharge voucher, under which the claimant has accepted its claim as full and final settlement. The specific case of the claimant was that the discharge voucher was signed by the claimant under coercion and undue influence. The award shows that such case of coercion and undue influence made out in the claim have been specifically proved and only thereafter, the claim of the claimant was allowed.

23. The Learned Senior Counsel for the claimant refers to ***the Arbitration Clause from page 132 Volume-1*** of the setting aside application. He submits that the Arbitration Clause itself is clear and accepted by the parties which, *inter alia*, provides that if any dispute or difference shall arise as to the quantum to be paid under the policy liability being otherwise admitted, such differences shall independently of all other instances to be referred for decision of a sole arbitrator. Accepting the said Arbitration Clause the parties herein participated and proceeded with the arbitration reference. The parties are, now, debarred from raising any dispute to the contrary.

24. Referring to the ***IRDA Circular dated September 24, 2015 at page 163, Volume- 2*** of the setting aside application, Learned Senior Counsel submits that the said Circular provides that the Insurance Company shall not use the execution as of discharge voucher as a means of **Estoppel** against the aggrieved policy holder when such policy holder approaches any judicial forum. Execution of such discharge voucher does not

foreclose the rights of policy holder to seek **Higher Compensation** before any judicial fora or any other fora established by law. All the Insurance Companies were directed to comply with the said instruction. It is not the case of the Insurance Company that the said Circular is not binding on them. So long, the said Circular remains binding on the Insurance Company, the alleged discharge voucher would not have been the plea of the Insurance Company in support of their case for accord and satisfaction.

25. Learned Senior Counsel then places the relevant averments made by the Insurance Company from the statement of defence filed by it in the arbitral reference. Referring to the pleadings, *inter alia*, at **sub-paragraphs (a) to (f) to paragraph 14** of the statement of defence, he submits that the consistent stand of the Insurance Company in the arbitration was that the insured was a loss making Company. In the notes of arguments filed by the Insurance Company, the same stand continued. Section 34 application does not contain any pleading to that effect. Subsequently, in course of the argument, at this stage, it has been urged from the bar referring to the balance-sheet and financial statement of the Company being **Exhibit ADR-1, 2, 3, 4, 5 and 6** that the financial health of the Insured was very strong. The Insured has not suffered any financial duress, therefore, there was no reason for the Insured accept the said discharge voucher under coercion and undue influence. The said evidences were never vital evidence at all. He submits that if it is found that a particular claim raised by the Insured under the Insurance Contract is proved and found to be payable by the Insurance Company, it

is the obligation of the Insurance Company in law to pay such compensation irrespective of the nature and character of the financial health of the Insured.

26. Mr. Chaudhury, Learned Senior Counsel then refers to various questions and answers from the record of the arbitral proceeding and those which are quoted in the impugned award and submits that after considering the entire witness action, Arbitral Tribunal has passed the award. The award is detailed and well versed.

27. Learned Senior Counsel then submits that the scope of adjudication under **Section 34** of the Arbitration Act is very limited and narrow. On a detail reading of the instant award it appears that the same is extremely well versed and well-reasoned. The evidences referred to on behalf of the Insurance Company being **ADR-1, 2, 3, 4, 5, 6 and 7** are not at all vital evidences. In the light of the scope of adjudication of the arbitral reference, the evidences relating to financial health of the insured or the pre and post fire Insurance Policies are not at all vital evidence. Once the quantum of compensation is in dispute and the quantum claimed by the claimant is proved in accordance with law and is found to be payable to the claimant by the Insurance Company under the Insurance Contract, it is sufficient to pass an award accordingly, for which all these evidences are not at all material to be looked into as vital evidence. The discharge voucher **ADR-7** being pre and post fire issued by the Insurance Company are also not vital evidence, as they are not relevant to be considered under the specific Insurance Contract of which the arbitral reference arose. Moreover, in view of the **IRDA Circular dated September 24, 2015**, the

discharge voucher had no relevance when the claim was for adjudication before the Arbitral Tribunal. The communication being **ADR-8 and ADR-9** are not at all vital evidence, as the Claimant/Insured has proved its case for coercion and undue influence before the Arbitral Tribunal.

28. Mr. Sabyasachi Chaudhury, Learned Senior Counsel appearing for the insured further submits that, a setting aside Court is not a court of appeal and consequently errors of facts cannot be corrected by it. A possible view by the arbitrator on the 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. 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. Once it is found that the approach of the arbitrator is not arbitrary or capricious, then, he is the last word on facts. In support, he has relied upon the decision of the Hon'ble Supreme Court ***In the matter of: Associate Builders (supra).***

29. Mr. Chaudhury further submits that the re-appreciation of evidence, is permitted by the Appellate Court and cannot be permitted under the ground of patent illegality appearing on the face of award as the setting aside Court is not an Appellate Court. A mere contravent of a substantive law, by itself is no longer a ground available to stay an arbitral award. If a vital evidence being produced before the Arbitral Tribunal and the Tribunal passing its award fails to look at it and to appreciate the same, then the award becomes bad in law and against the fundamental policy of Indian Law and award suffers from patent illegality. In the instant case,

all the vital evidences have been considered by the Arbitral Tribunal and the evidences referred to on behalf of the Insurance Company which were not at all vital, the same would have no bearing on the adjudication of the issue before the Tribunal. Hence, he submits that, the award cannot be said that it suffers from patent illegality. In support, he has relied upon the decision of the Hon'ble Supreme Court, ***In the matter of: Ssangyong Engineering And Construction (supra).***

30. In the light of the above, Mr. Sabyasachi Chaudhury, Learned Senior Counsel submits that the award does not suffer from any infirmity and should not be interfered with. He prays for dismissal of Section 34 application.

31. In reply, Mr. Sanjay Paul, Learned Counsel appearing for the applicant Insurance Company reiterates the earlier submissions and submits that since Arbitral Tribunal has ignored the vital evidences, patent illegality is apparent on the face of the impugned award and the award is perverse and should be set aside. In support, at the reply stage, Mr. Sanjay Paul has relied upon a decision of the Hon'ble Supreme Court, ***In the matter of: Delhi Metro Rail Corporation Ltd. Vs. Delhi Airport Metro Express Pvt. Ltd.*** **reported at** ***2024 SCC OnLine SC 522.***

32. He submits that the decision of the Hon'ble Supreme Court ***In the matter of: Delhi Metro Rail Corporation (supra)*** was rendered after considering the judgment cited by Mr. Chaudhury ***In the matter of***: ***Associate Builders (supra)*** and ***Ssangyong Engineering And Construction (supra).*** He submits that since vital evidences were not considered by the Learned Tribunal, the award is liable to be set aside.

33. *Per contra*, Mr. Sabyasachi Chaudhury, Learned Senior Counsel submits that the evidences referred to by the Insurance Company are not at all vital as already narrated above and therefore, even if those evidences could be considered, would not have altered the award. He submits that the setting aside application should be dismissed.

Decision :

34. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, the **Arbitration Clause** between the parties and the provisions from the ***IRDA Circular dated September 24, 2015*** are quoted below:

Arbitration Clause:

"If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a conditio0n precedent to any right of action or suit upon this policy that the award by such

arbitrator/arbitrators of the amount of the loss or damage shall be first obtained."

IRDA Circular:

*"**Reg: Discharge Voucher in settlement of claim***

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

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

Accordingly insurers are hereby advised as under:

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

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

35. On a meaningful reading of the **Arbitration Clause** this Court is of the considered and firm view that if any dispute or difference shall arise as to the **quantum** to be paid under the policy, liability being otherwise admitted, such differences shall independently of all other questions be referred to the decision of a sole arbitrator. The Insurance Company

participated in the arbitration reference without any objection as to its maintainability. The jurisdiction of the Arbitral Tribunal was never challenged. Therefore, the scope of reference between the participating parties was limited only to the extent of determination of **quantum** of compensation.

36. Next comes, the ***IRDA Circular dated September 24, 2015.*** The Circular indisputably is binding upon the Insurance Company. There was no challenge to the contrary by the Insurance Company. The Circular unequivocally shows that Insurers/Insurance Company **shall not** use the instrument of **Discharge Voucher** as a **Means of Estoppel** against the **Aggrieved Policy Holders,** who approaches judicial forum. The Circular further provides where the liability on quantum of claim under a policy is established, the **Insurers/Insurance Company** shall not withhold the claim. 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. The Circular was directed to be complied with by all **Insurers/ Insurance Companies**. On a plain reading of the said Circular, this Court is of the firm and considered view that, the execution of discharge voucher would not amount to estoppel on the part of the Insured, if such an Insured is aggrieved with the quantum of compensation fixed by the **Insurers/Insurance Company** and approaches a judicial forum and execution of such discharge voucher also does not foreclose the rights of the **Policy Holder/Insured to seek Higher Compensation** in accordance with law.

37. This Court is also of the firm view that, where the liability or quantum of the claim under a policy is established, the Insurance Company shall not withhold the claim amount and all Insurance Companies are directed to comply with the provisions of the said Circular. The natural consequence of the said **IRDA Circular** is that, if an Insured is aggrieved with the quantum of claim allowed by the Insurance Company, it may approach the judicial fora or any other fora established by law seeking **Higher Compensation** and execution of the discharge voucher should not operate as an **Estoppel** on the part of such Insured neither does it foreclose the rights of the Insured to seek **Higher Compensation**.

38. The said Circular is binding upon the Insurance Company.

39. In the light of the above, the impugned award is required to be adjudicated upon within the limited scope of **Section 34 of the Arbitration Act.**

40. In this backdrop, when the instant award has been read by this Court meaningfully, it appears that the Learned Arbitral Tribunal has gone in detail with regard to the plea of the Insured that the discharge voucher was executed by it under coercion and undue influence. Apart from that the Insured had proved its claim independent of execution of the discharge voucher. In view of the provisions laid down in the said ***IRDA Circular dated September 24, 2015,*** the plea taken by the Insurance Company for **Accord and Satisfaction** on the basis of the execution of the discharge voucher, in any event, would not stand in the eye of law.

41. The award further shows that upon detail witness action and upon considering all the materials, the Ld. Arbitrator had arrived at its finding that the insured being the claimant had proved its claim. When an

Insurance Contract is executed, it is the duty and legal obligation of the Insurance Company to compensate the Insured by paying its claim, if the Insured has proved its claim in accordance with law. When such a claim is proved in the eye of law, the Insurance Company has no other alternative but to pay the said claim to the insured. Unless otherwise agreed by and between the parties to the relevant Insurance Contract, it is irrelevant and of no consequence to consider the financial health of the insured or whether any other Insurance Contract pre and post occurrence of fire was there, in the facts of the instant case. The claim which is under adjudication allegedly settled by and between the parties on the basis of any discharge voucher, as pleaded by the insurance company is wholly irrelevant and immaterial consideration, when the insured has claimed higher compensation.

42. The evidences as already referred to above, with regard to the financial health of the Insured at any material point of time, would have no relevance at all for adjudicating the claim of the insured in the facts and circumstances of the instant case, therefore, any evidence with regard to the financial health of the Insured would have no relevance or material bearing on the adjudication and are not at all vital evidence. In absence of any agreement by and between the parties that the insurance claim under the Insurance Contract would depend upon the financial health of the Insured.

43. Similarly, arising out of a particular Insurance Contract, the Insured has raised its claim in the arbitral reference. The adjudication of such claim should be restricted only in respect of that particular Insurer/Insurance Contract and not beyond, therefore, whether the parties have entered into any previous Insurance Contract or future Insurance Contract and in claims

were raised and the fate of it are wholly irrelevant consideration while adjudicating the claim raised by the Insured arising out of a particular Insurance Company. Therefore, the evidence, as referred to above, with regard to pre and post subject Insurance Contract, arising whereof the arbitral reference arose, would have no relevance and material bearing in the adjudication of the reference. Hence, all such evidences are not at all vital and relevant for adjudication.

44. The objection raised by the Insurance Company that allegedly negotiation took place by and between the Insured and the Surveyor appointed by the Insurance Comp[any and the claimant allegedly was paid on the basis thereof would amount to Accord and Satisfaction of the claim of the Insured or waiver or estoppel on the part of the Insured, are not tenable in law as provision under the said ***IRDA Circular dated September 24, 2015*** provides that execution of discharge voucher will not operate as an estoppel and the Insured can still claim Higher Compensation. Moreover, the Surveyor did not file their report and settled the claim within the contractual period and/or the statutory period fixed under the relevant guidelines and the Insured has proved its claim beyond all reasonable doubt. Therefore, the evidence, as referred to above according to the Insurance Company that on the basis of a negotiation between the Insured and the Surveyor, the claim was settled is not a tenable objection in the eye of law. Hence, the evidences, as referred to above in this regard not at all vital or relevant for adjudication of the claim of the Insured, in the facts of this case.

45. ***In the matter of: Associate Builders (supra)*** the Hon'ble Supreme Court had observed as under:

> *"31.The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
>
> *i) a finding is based on no evidence, or*
> *ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
> *iii) ignores vital evidence in arriving at its decision,*
>
> *such decision would necessarily be perverse.*
>
> *32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, it was held:(SCC p. 317, para 7)*
>
> *"7....It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*
>
> *In Kuldeep Singh v. Commr. of Police, it was held: (SCC p.14, para 10)*
>
> *"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."*

33. It must clearly be understood 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. 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. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd., this Court held : (SCC pp. 601-02, para 21)

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

> *34. It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood."*

46. ***In the matter of: Ssangyong Engineering And Construction (supra)*** the Hon'ble Supreme Court had observed as under:

> *"34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in para 18 and 27 of Associate Builders, i.e., the fundamental policy of Indian law would be relegated to the "Renusagar" understanding of this expression. This would necessarily mean that the Western Geco expansion has been done away with. In short, Western Geco, as explained in para 28 and 29 of Associate Builders, would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders.*
>
> *37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.*

> *38. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award."*

47. ***In the matter of Delhi Metro Rail Corporation (supra)***, the Hon'ble Supreme Court observed as under:

> *"40. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view.24 A 'finding' based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of 'patent illegality'. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice."*

48. Upon reading the provisions of ***Section 34 of the Arbitration Act*** and the law laid down through various precedences, this Court, now, proceeds to discuss power and authority of the Court under ***Section 34 of Arbitration and Conciliation Act*** as follows:

> (a) *An award by an arbitrator can only be set aside on limited grounds and the supervisory role of the Court is limited to a narrow extent;*
>
> (b) *The Court in exercise of its power under Section 34 of the Arbitration Act shall not exercise its appellate jurisdiction over the award while examining the correctness of the finding of the award. A Court while considering the objections under Section 34 of the Act shall not re-appreciate the fact finding enquiry, the evidence looked upon by the Arbitral Tribunal, the entire finding of the Tribunal and to reassess the evidence before the Arbitral Tribunal;*

(c) *When finding of the Arbitral Tribunal and its conclusion is based on a possible view on the basis of the records, Section 34 Court shall not interfere with the award. Section 34 Court shall not substitute its view when a possible and plausible view has already been taken by the Arbitral Tribunal on the basis of the existing materials before it.*

(d) *The finding of the Arbitral Tribunal with regard to construction of a contract is not to be interfered with, if there is a plausible view taken by the Arbitral Tribunal and even an error relating to interpretation of a contract or a document by an Arbitral Tribunal is regarded as an error within its jurisdiction and such an error is not amenable for correction by a Section 34 Court.*

(e) *While adjudicating the issue before the Arbitral Tribunal, if the Tribunal does not look into the evidence or consider the same, which is otherwise of no relevance or has no material barring in adjudication of the issue before the Arbitral Tribunal, such an evidence can and should not be construed to be a vital evidence before the Arbitral Tribunal. As such, non-consideration of such evidence would not render the award perverse.*

(f) *The important consideration by Section 34 Court would be whether an evidence, had it been considered by the Arbitral Tribunal would have altered the finding of the Arbitral Tribunal on the existing materials before it and in the event such is the case, then that particular evidence having a material bearing and relevance on the issue should be construed as a vital evidence and non-consideration of the same would render the award perverse.*

(g) *A perverse finding is one which is based on no evidence or one that no reasonable person would have arrived at. In the event, it is found that some relevant and vital evidence had not been considered or that certain inadmissible evidence has been taken into consideration, the award may be perverse.*

49. A close perusal of the impugned award would reveal that the Arbitral Tribunal has dealt with the rival claims of the parties in detail. The

Tribunal has meticulously and meaningfully considered the evidence before it. The Tribunal has analysed the evidence of the parties on proper appreciation of their respective witness action. The Arbitral Tribunal has dealt with the defence of the Insurance Company, in all respect. After all these exercise the tribunal has come to its finding that the claimant has proved its claim.

50. ***In the matter of: Collector of Customs, Calcutta and Ors. (supra)*** the Hon'ble Division Bench of this Court had delivered the judgment in a writ proceeding while examining the judgment of a Tribunal whether was perverse or not. Firstly, the law applicable for judicial review in a writ jurisdiction is not the same with regard to the application of law in the arbitration proceeding. It was held that the decision of the Tribunal was to be perverse if the Tribunal has given its finding on material not admissible or has excluded the relevant materials. In the facts of this case, it is not the case of the Insurance Company that the finding of the arbitrator was based on such materials which were not admissible in evidence. The plea taken by the Insurance Company that the **Exhibits ADR-1 to ADR-9** being material evidence were excluded to be looked into by the Arbitral Tribunal. It has already been discussed above in detail that had these Exhibits been considered by the Arbitral Tribunal, there would have been no material alteration in the ultimate finding of the Arbitral Tribunal in its award. The said Exhibits were not at all relevant or vital evidence in the facts of this case. Hence, the ratio of the judgment has no application and relevance in the facts and situation of the instant case.

51. The ratio laid down ***In the matter of: Sumitomo Heavy Industries Limited (supra)*** has also no application in the facts and situation of the instant case. Since the Exhibits, as referred to above, were not at all vital evidence, the consideration of the same was also irrelevant before the Arbitral Tribunal. The award cannot said to be perverse in absence of consideration of those evidences.

52. The ratio laid down ***In the matter of: Associate Builders (supra)*** describes the scope and ambit of the authority of Section 34 Court and the relevant portion have already been quoted above. Since the execution of the discharge voucher was irrelevant and of no consequence while considering enhancement of claim of the claimant before the Arbitral Tribunal and the execution of other Insurance Contracts by and between the parties had no relevance in the facts of this case and since the evidence **Exhibits being ADR-1 to ADR-9** not being vital evidence in the facts of this case, it cannot be said that the award suffers from any patent illegality.

53. ***In the matter of: Supermint Exports Pvt. Ltd. (supra),*** the Hon'ble Supreme Court has held that the finding of the Tribunal which is altogether against the evidence, it becomes perverse. This is not the case here. The award shows that the same is a speaking award and was made by the Tribunal on appreciation of the existing materials before it. The evidence being **Exhibits ADR-1 to ADR-9** were not at all relevant for consideration. Hence, the award does not suffer from perversity in the instant case. Thus, the ratio of the judgment has no application in the facts of the instant case. The arbitrator throughout had a judicial

approach as would be evident on the face of the award and the arbitrator has acted within the forecorner of law and no perversity is there on the face of the award. Hence, the ratio laid down ***In the matter of: Delhi Metro Rail Corporation Ltd. (supra)*** has no application in the facts of this case. There is no patent illegality on the face of the award. There is no violation of any substantive Indian Law which would be evident on the face of the award. The award is not opposed to public policy of India at all.

54. In view of the foregoing discussions and reasons, this Court is of the considered and firm view that the **Award does not warrant any interference by this Court.**

55. **The Award dated March 2, 2020 stands**.

56. Accordingly, the application being **AP-COM/186/2024, Old Case No. AP/322/2020** stands **Dismissed**, without any order as to costs.

57. The Learned Registrar, Original Side with whom the awarded amount is lying secured in an interest bearing Fixed Deposit Account shall take steps forthwith to encash the Fixed Deposit and pay the entire amount with accrued interest thereupon, upon compliance of all formalities, in favour of the respondent insured positively within a period of **Four Weeks** from the date of communication of this judgment.

58. The concerned Bank shall also take all necessary steps accordingly.

(Aniruddha Roy, J.)