Swapnil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 30675 OF 2023

Oriental Insurance Company Ltd.
A Company incorporated & registered
under the provisions of Companies Act
1956 and having its address at MCBO 9,
103/104, First Floor, Faizan Apartments,
Above Syndicate Bank,
Jogeshwari (West), Mumbai – 400102.
having its Regional Office at Mumbai
Regional Office 3, 601605, Town Centre-1,
Andheri Kurla Road, Marol, Near Saki Naka,
Andheri (E), Mumbai – 400059. ...Petitioner
(Org. Resp.)

Vs.

Add On Retail Pvt. Ltd.
A Company registered under the
Companies Act, 1956 and having its
Registered Office (for all
correspondences) at A-1402, Shikhar
Kunj, Upper Goving Nagar, Malad-East,
Mumbai-400097. ...Respondent
(Org. Claimant)

Mr. D. S. Joshi for the Petitioner.
Mr. Harsh L. Behany a/w. Ms. Saloni Manjrekar i/b. H. N. Legal for the respondent.

CORAM : GAURI GODSE, J.
RESERVED ON: 28th NOVEMBER 2025
PRONOUNCED ON: 18th MARCH 2026

JUDGMENT:

1. This arbitration petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act"), praying to set aside the award dated 2nd August 2023 directing the payment towards an insurance claim. The award grants an amount of Rs. 3,04,87,713/- towards the loss of stock of fabrics and 25% of Rs. 1,49,29,335/- towards the loss of stock of accessories. The award grants interest at the rate of 8% p.a. on the awarded amount from 27th December 2018 till the date of passing of the award, and further interest at 12% p.a. till its realisation. The cost of litigation is also granted in favour of the claimant.

2. The following facts would be relevant for considering the rival submissions on behalf of the parties:-

(a) The respondent obtained the insurance policy to cover the stock of textiles, garments, and other accessories stored in the insured premises, as described in the policy. On 23rd February 2017, a fire took place at the insured premises, and the entire stock in the godown was destroyed. On the same

day, the respondent intimated the incident to the petitioner. On 24th February 2017, the respondent intimated to the petitioner that it had suffered a loss of approximately Rs. 15 Crores due to the fire. Accordingly, the petitioner appointed an insurance surveyor to assess the loss. Various correspondence between the parties is brought on record regarding the inspection that took place and the steps taken by the surveyor who assessed the actual loss.

(b) Between 6th May 2017 and 19th May 2017, the respondent informed its bank that it had suffered a loss of approximately Rs. 11.73 Crores due to the fire. The assessor showed the respondent the summary of the final assessment, which was on the lower side. There are various emails on record from the respondent to raise objections to the assessment.

(c) On 20th July 2018, the claimant visited the petitioner's head office because the claim was not settled. On 16th October 2018, the revised assessment of loss was submitted, and the original loss assessed at Rs. 11,74,57,294.26 was reduced to Rs. 6,15,28,050/-. As per the revised assessment, the reduced amount was offered to

the respondent. On 2nd November 2018, the claimant signed the discharge voucher under protest and accepted the amount. Thereafter, the arbitration proceedings were initiated as the respondent was not satisfied with the reduced assessment.

3. The submissions made on behalf of the petitioner are summarised as under :

(a) The acceptance of the amount as per the revised assessment would amount to accord and satisfaction of the claim. The respondent was facing a severe financial crisis; hence, after accepting the amount, the respondent raised objections to the assessment. The respondent's Bank had initiated the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (" the SARFAESI Act"), and the respondent's Bank had taken over symbolic possession of the property of the respondent. Hence, the respondent's director, by email dated 9th July 2018, requested that the insurance company to settle the claim. Accordingly, a survey was carried out, and, as per the surveyor's assessment report, the amount has been released to the respondent. The

emails exchanged between the parties would show that the amounts were settled as requested by the claimant, and thus, in view of the principle of accord and satisfaction, the respondent was precluded from demanding any higher amount than the amount paid as per the surveyor's report.

(b) Learned counsel for the petitioner submitted that the Insurance Regulatory Authority ("IRDA") has formulated the Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000, which regulate the licensing and the work of surveyors. He relied upon the decision of the Apex Court in the case of ***Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited and Anr.***[1] to support his submission that the Scheme of Section 64-UM of the Insurance Act, particularly of sub-sections (2), (3) and (4), would show that the insurer cannot appoint a second surveyor just as a matter of course, and that if there are inherent defects in the report, if it is found to be arbitrary, excessive, exaggerated, etc. and that there is no prohibition in the Insurance Act for appointment of second surveyor by the insurance company.

[1] **(2009) 8 SCC 507**

(c) The subsequent claim is based on the events commencing from 16th October 2018 to 2nd November 2018. However, the respondent had given consent on 16th October 2018, and thus, the claimant was not entitled to claim any further amount. The discharge voucher signed by the respondent would constitute full and final satisfaction of the claim. Hence, the learned Arbitrator has erred in granting the amount despite the claimant receiving the full amount based on the revised assessment report submitted by the surveyor. Hence, the impugned award suffers from patent illegality and perversity on the ground of not taking into consideration the principle of accord and satisfaction.

4. Learned counsel for the respondent supported the impugned award on the following submissions:-

(a) All emails exchanged between the parties clearly indicate that the claimant accepted the amount under protest. The claimant had already suffered due to the delay in reassessing the claim at the request of the insurance company. The claimant was in need of financial help due to the loss suffered in the fire. Hence, the claimant had no other option but to accept the reduced amount under protest. The

claimant, by its emails, repeatedly urged the insurance company to settle the long-pending claim, as the respondent was incurring substantial interest liability on payments towards the proceedings initiated by its bank. As the claimant was facing a severe cash crunch, the amount was accepted under protest, as evident from the delivery voucher. The learned arbitral tribunal has therefore correctly interpreted the delivery voucher as an amount accepted under protest.

(b) The record shows that from the outset, the claimant raised objections to the quantification prepared by the assessor. Thus, it was not only at the time of final disbursement that a protest was lodged by the claimant; however, at all the relevant stages, the protest was recorded by the claimant. Thus, at this stage, the issue of accord and satisfaction cannot be considered in detail, as it has already been decided by the learned arbitrator. Reconsideration of the issue on accord and satisfaction would amount to reappreciation of the evidence, which is not permissible under Section 34 of the Arbitration Act.

(c) Learned counsel for the respondent relied upon the circulars dated 24th September 2015 and 7th June 2016

issued by the IRDA. The circulars make it clear that the execution of a voucher would not amount to the foreclosure of the policyholder's right to seek higher compensation before any judicial authority. The circulars state that under no circumstances should a discharge voucher collected under duress, coercion, or compulsion be treated as accord and satisfaction.

(d) To support his submissions, learned counsel for the respondent relied upon the decision of the Apex Court in the case of ***National Insurance Company Limited Vs. Boghra Polyfab Private Limited***[2]***, R. L. Kalathia and Company Vs. State of Gujarat***[3]***, Worldfa Exports Pvt. Ltd. Vs. United India Insurance Co. Ltd.***[4]

(e) It is submitted on behalf of the respondent that the decisions relied upon by the learned counsel for the petitioner would not apply to the facts of this case, as there were two survey reports on record and thus, the insurance company cannot keep on appointing surveyors till the assessment report is submitted as desired by the insurance company. The learned arbitrator has recorded clear findings

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2 **(2009) 1 SCC 267.**
3 **(2011) 2 SCC 400.**
4 **2015 SCC Online Del 13951**

in paragraph 53 of the award, holding that the discharge voucher was signed under protest and that it would not amount to acceptance of the claim towards a full and final settlement.

(f) The surveyor's assessment dated 11th November 2017 clearly indicated the actual loss suffered by the claimant. The learned arbitrator has accordingly independently assessed the surveyor’s report and recorded a finding based on the two survey reports submitted by the surveyors appointed by the insurance company. Hence, any interference in the findings recorded by the learned arbitrator would amount to reappreciating the evidence on record, which is not permissible under Section 34 of the Arbitration Act.

(g) As per the terms and conditions of the insurance policy, the total claim of Rs. 18 Crores was secured. However, the respondent registered a claim only for Rs. 11 Crores commensurate with the actual loss suffered. The findings recorded by the learned arbitrator are based on the surveyor's assessment appointed by the insurance company. The contents of the final assessment report were not shown to the claimant at the relevant time. Thus, the summary of

the final assessment of the revised assessment was not acceptable to the claimant. The assessor sought the claimant's consent to the summary of the final assessment. However, the claimant had refused to give any consent.

(h) The admissions given by the assessor in the cross-examination support the claimant’s contentions that the final assessment report was objected to as it was on the lower side. All this evidence brought on record is appreciated by the learned arbitrator to arrive at the final figures as awarded. None of the figures calculated by the learned arbitrator is beyond the assessment reports prepared by the surveyors appointed by the insurance company. The correspondence on record shows that the insurance company delayed settlement of the claim despite the assessment report submitted on 10th March 2017. Only with the intention of bringing down the surveyor’s assessment was the payment delayed as per the first assessment. Hence, the learned arbitrator has correctly appreciated the evidence on record and recorded the findings on the actual loss suffered by the claimant. The entire claim is based on the actual loss suffered and the quantification made in accordance with the

records maintained by the claimant. Hence, interference with the award would amount to taking a different view by reappreciating the evidence, which is not permissible under Section 34 of the Arbitration Act.

5. Learned counsel for the claimant relied upon the Apex Court's decision in ***Ssangyong Engineering and Construction Company Limited V/s National Highways Authority of India***[5] to support his submissions that interference with the award in an application under Section 34 of the Arbitration Act is narrow and unless patent illegality, perversity or contravention of law is shown the award cannot be interfered with. He submitted that the arbitration petition under section 34 is a summary proceeding and not in the nature of an appeal; hence, the court reviewing the arbitral award does not sit in appeal over the award and if the view taken by the arbitral tribunal is a possible view, no interference under Section 34 of the Arbitration Act is called for. Hence, none of the grounds contemplated under Section 34 of the Arbitration Act is made out by the petitioner to set aside the award. Hence, the Arbitration Petition deserves to be rejected.

[5] **(2019) 15 SCC 131**

Analysis and Conclusions:

6. I have carefully perused the papers. There is no dispute that the revised assessment reduced the original assessment of Rs. 11,74,57,294.26, as done on 11th November 2017, to Rs. 6,15,28,050/- on 16th October 2018. Learned Arbitrator has recorded that the claimant signed the discharge voucher under protest and accepted the amount. I have perused the discharge voucher. A plain reading of the voucher reveals that the claimant had accepted the amount under protest. However, it is sought to be argued on behalf of the petitioner that the claimant, vide letter dated 16th October 2018, consented to the assessment; hence, there was accord and satisfaction, and the payment accepted by the claimant was towards the full and final settlement of the claim. The letter dated 16th October 2018, issued by the claimant, consenting to the assessment, cannot be read in isolation, ignoring the various emails issued by the claimant objecting to the reduction in the assessment. It is a matter of record that on 11th November 2017, the summary of the final assessment was intimated to the claimant. However, the

petitioner made no payment. It is also a matter of record that the petitioner delayed the release of the claim amount.

7. The various emails produced on record by the claimant show that repeated requests were made to the petitioner to release the amount. It is brought on record by the respondent that they were suffering a severe financial crunch due to the fire incident, and that the respondent was required to make payments to its bank, as SARFAESI proceedings had been initiated by the respondent's bank. Hence, the respondent repeatedly intimated to the petitioner that the claim amount should be released. The record shows that, despite all documents submitted by the claimant, the assessment report was not finalised, and it was only after the claimant's constant follow-up that the report dated 11th November 2017 was released. However, the amount was not paid to the claimant. It is only at the petitioner's behest that, despite the final assessment of 11th November 2017, a fresh survey was carried out, and the revised assessment was intimated after 11 months of the original assessment. Hence, the respondent had no option but to consent to the assessment made on 16th October 2018 and request the release of the

payment. The consent letter dated 16th October 2018 was issued along with an email dated 16th October 2018, which recorded that the respondent, with folded hands, requested the release of the payment. Thus, considering all this documentary evidence, together with the admissions made by the petitioners' witnesses during cross-examination, the learned arbitrator has recorded that the consent letter dated 16th October 2018 cannot be accepted as an accord and satisfaction. Hence, the discharge voucher, clearly recording acceptance of payment under protest, is not treated as the acceptance of payment by way of full and final settlement.

8. The fire incident took place on 23rd February 2017. The claimant immediately informed the petitioner about the incident. The claimant informed that it had suffered a loss of approximately Rs.15,00,00,000/- due to the fire. The assessor appointed by the petitioner visited the site on 24th February 2017. As requested by the assessor on 28th February 2017, the claimant submitted all the documents on 10th March 2017, and the claim form for an amount of Rs.11,74,56,576/-. After rigorous follow-up, the petitioner released the final assessment report only on 11th November

2017. The amount was not released, and a second surveyor was appointed who submitted the revised assessment after eleven months on 16th October 2018 at a lower side. However, the petitioner has shown nothing to indicate that the second surveyor was appointed for any valid reason.

9. In the decision of the Hon'ble Apex Court in ***Sri Venkateswara Syndicate*** relied upon by the learned counsel for the petitioner, it is held that the scheme of Section 64-UM of the Insurance Act, particularly of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course and it must specify cogent reasons, without which it is not free to appoint the second surveyor or surveyors till it gets a report which would satisfy its interest. It is further held that the option to accept or decline the report lies with the insurer; however, if the rejection of the report is arbitrary and based on no acceptable reasons, the courts or other forums can definitely step in and correct the error committed by the insurer while repudiating the claim of the insured. The Hon'ble Apex thus held that if the reports are prepared in good faith, with due application of mind and in the absence of

any error or ill motive, the insurance company is not expected to reject the report of the surveyors.

10. In the present case, the learned Arbitrator has examined the surveyor's reports and the evidence led by both parties and held that, in the revised assessment, the surveyor has not considered the value of the goods in respect of the fabrics. After exhaustively examining the entire record, the learned Arbitrator held that the surveyor admitted, during cross-examination, that the value of the stock was Rs. 10,17,82,021, but he granted only Rs. 6,76,33,561/-. Thus, the learned Arbitrator has rightly stepped in and corrected the errors committed by the insurer. Therefore, the learned Arbitrator, after appreciating the evidence, has rightly granted the claim. The figures of the claim amount arrived at by the learned Arbitrator are based on the record and the surveyor's reports.

11. The circulars dated 24th September 2015 and 7th June 2016 issued by the IRDA support the claimant's contentions that the voucher signed by the claimant under protest would not foreclose the right to seek higher compensation before the arbitral tribunal. The Apex Court in the case of ***National***

Insurance Company Limited has explained the applicability of the principle of accord and satisfaction as under:

"**27.** While discharge of contract by performance refers to fulfilment of the contract by performance of all the obligations in terms of the original contract, discharge by "accord and satisfaction" refers to the contract being discharged by reason of performance of certain substituted obligations. The agreement by which the original obligation is discharged is the *accord*, and the discharge of the substituted obligation is the *satisfaction*. A contract can be discharged by the same process which created it, that is, by mutual agreement. A contract may be discharged by the parties to the original contract either by entering into a new contract in substitution of the original contract; or by acceptance of performance of modified obligations in lieu of the obligations stipulated in the contract."

12. In ***R.L. Kalathia,*** the Hon'ble Apex Court held that even after execution of full and final discharge voucher/receipt by one of the parties, if the said party is able to establish that he is entitled to further amount for which he is having adequate materials, he is not barred from claiming

such amount merely because of acceptance of the final bill by mentioning “without prejudice” or by issuing “no-dues certificate”.

13. In ***Worldfa Exports***, the Delhi High Court held that insurance companies cannot withhold payment of the admitted claim amount to the insured unless the insured provides a complete discharge. It is held that insurance companies are not expected to withhold the admitted claim amount until the insured produces the receipt for full and final settlement. However, in the present case, there is no admitted claim, and the controversy concerns the application of the principle of accord and satisfaction in light of the claimant’s letter dated 16th October 2018 and the discharge voucher signed under protest. I have already recorded reasons that the said letter and the discharge voucher cannot be accepted as a full and final settlement of the claim. Hence, in view of the well-established legal principles as discussed in the above paragraphs, the said letter and the discharge voucher cannot be accepted as accord and satisfaction of the claim.

14. There is substance in the submissions made by the learned counsel for the claimant that any interference in the findings recorded by the learned arbitrator would amount to reappreciating the evidence on record, which is not permissible under Section 34 of the Arbitration Act.

15. The Apex Court in ***Ssangyong Engineering and Construction Company Ltd***, summarised and clarified the law regarding the permissibility of interference on the grounds of judicial approach, patent illegality, breach of principles of natural justice, contravention of law and perversity. This court, in a recent decision in ***ECGC Ltd Vs. Baco Metallic Industries***[6], held that it is now trite law that the Section 34 Court must not lightly interfere with arbitral awards, and that the scope of review is set out in multiple decisions of the Apex Court. To summarise the scope of interference under Section 34, this court reproduced the relevant paragraphs of the Apex Court's decisions in paragraphs 22 and 23 as under;

"**22.** It is now trite law that the Section 34 Court must not lightly interfere with arbitral awards. The scope of review by the Section 34 Court is also well covered in multiple judgments of the Supreme Court including *Dyna*

[6] 2025 SCC Online Bom 3959

Technologies[1], *Associate Builders*[2], *Ssyangyong*[3], *Konkan Railway*[4] and *OPG Power*[5]. Even implied reasons, if discernible, may be inferred to support a just and fair outcome arrived at in arbitral awards. To avoid prolixity, I am not reproducing copiously from these judgments. Suffice it to say (to extract from just one of the foregoing), in *Dyna Technologies*, the Supreme Court held 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.***
>
> *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****."*

[Emphasis Supplied]

23. In *OPG Power*, the Supreme Court explained the scope of interference with interpretation and construction of a contract accorded in an arbitral award in the following words:—

"72. An arbitral tribunal must decide in accordance with the terms of the contract. In a case where an arbitral tribunal passes an award against the terms of the contract, the award would be patently illegal. ***However, an arbitral tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere. But where, on a full reading of the contract, the view of the arbitral tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference****."*

[Emphasis Supplied] *"*

16. In the present case, the arguments raised on behalf of the petitioner would amount to a reappreciation of the evidence. As discussed in the aforesaid paragraphs, the learned Arbitrator has considered the entire evidence and recorded reasons to grant the claim. None of the grounds raised by the petitioner would be covered under the scope of interference under Section 34. Hence, in my view, by applying the standards as set out in the various decisions as discussed above, the arbitral award cannot be interfered with under Section 34 of the Arbitration Act.

17. Hence, for the reasons recorded above, the Arbitration Petition is rejected.

[GAURI GODSE, J.]