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

% ***Judgment pronounced on: 26.11.2025***

\+ **O.M.P. (COMM) 106/2020**

THE NEW INDIA ASSURANCE CO LTD ..... Petitioner
Through: Mr. P.K. Seth, Advocate.

versus

INDO RAMA SYNTHENTICS(I) LTD ..... Respondent
Through: Mr. Gopal Jain, Sr. Advocate along with Mr. Arav Pandit, Advocate.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition assails an Arbitral Award dated 03.03.2011 (hereinafter 'the impugned award'), rendered in context of the quantum payable under two insurance policies being - (i) Fire Policy 'C' No. 1132010003046 covering Material Damage, Riot and Malicious Damage (hereinafter *'Material Damage policy'*), and (ii) Fire (LOP) Insurance Policy No. 1132010003161 covering Plant CP-II & CP-III (hereinafter *'Fire (LOP) Policy'*).

2. The respondent (claimant before the Arbitral Tribunal) is a Company engaged in the manufacture of polyester fiber/yarn, operating three streams of continuous polymerization at its factory premises. The respondent had obtained the aforesaid insurance policies from the petitioner/ the New India Assurance Co. Ltd.

3. The dispute between the parties arose out of the incidents

commencing on 30.07.1999, when a clash broke out between two groups of workers in the CP-II and CP-III Plants at the factory premises of respondent. During the said clash, the rival groups of workers assaulted the respondent's staff, damaged machinery, and attacked the Senior Manager as well as the security guard. All units at the respondent's plant were shut down. On 31.07.1999, further damage was caused to the respondent's property, aggravating the situation. As a consequence, the workers abandoned work, resulting in a complete strike at the establishment, which continued until 06.08.1999.

4. Pursuant to the said events, the respondent lodged claims with the petitioner, seeking a sum of Rs. 1,29,78,720/- under the Material Damage Policy and Rs. 8,12,69,777/- under the Fire (LOP) Policy. The petitioner appointed M/s. C.P. Mehta & Company and M/s. Bhaskar Joshi as joint surveyors to assess the loss. The final joint surveyor report dated 22.03.2002 assessed the loss at Rs. 89,89,070/- under the Material Damage Policy and the final joint surveyor report dated 29.04.2002 assessed the loss at Rs. 6,28,26,287/- under the Fire (LOP) Policy. The losses were bifurcated into three categories, i.e., "Direct", "Overload" and "Polymer".

5. The surveyors recommended payment of Rs. Rs.37,04,952/- towards Direct Damages under the Material Damage Policy and Rs.61,49,884/-towards Direct Damages under the Fire (LOP) Policy. The petitioner offered the said amounts to the respondent, but the respondent did not accept the same.

6. Consequently, the respondent/claimant invoked arbitration under Clause 13 of the insurance policies. Upon constitution of the Arbitral Tribunal, the respondent/claimant filed the Statement of Claim on

14.08.2003.

7. The case of the respondent/claimant before the Tribunal was that, although the joint surveyors had correctly assessed the loss under both the insurance policies, the bifurcation into “Direct”, “Overload” and “Polymer” was made at the behest of the petitioner, and the respondent was illegitimately offered only the amount falling under the head “Direct”. The petitioner, on the other hand, contended that the amount under “Overload” and “Polymer” was inadmissible as they were not covered under the terms of the policies.

8. In the arbitral proceedings, the respondent/claimant sought recovery of the amounts assessed by the joint surveyors towards the total loss suffered, i.e., (i) A sum of Rs.89,89,070/- under the Material Damage Policy; and (ii) A sum of Rs.6,28,26,287/-under the Fire (LOP) Policy.

IMPUGNED AWARD

9. In the above background, the learned Arbitral Tribunal framed the points that arose for consideration as under:-

> *“08. After the pleadings were complete, the following issues were framed on 23.02.2004:*
>
> *(A) D. To what amount the Claimant is entitled to recover from the Insurance Company under the terms of policies. (Renumbered as 'D' vide proceedings dated 11.08.2009)*
>
> *(B) E. Whether Claimant is entitled to interest. If so, at what rate, on which amount and for which period. (Renumbered as 'E' vide proceedings dated 11.08.2009).*
>
> *(C) F. Relief. (Renumbered as 'F' vide proceedings dated 11.08.2009).*
>
> *09. At the request of the Learned Counsel for the Respondent, this Tribunal vide proceedings dated 11.08.2009 framed three additional*

issues which are as follows:

A. Whether the damages claimed by the Claimants are available to be bifurcated as 'Direct', 'Overload' and 'Polymer'.

B. Whether on a fair interpretation f the Insurance Policies, the Claimant is entitled to damages which fall within the meaning of 'Direct' and resulting only from the physical act of the riot / strike by workers on 30 July, 1999.

C. Whether the Claimant is not entitled to any damages for the period falling on 31 July 1999 and thereafter and also to any damages falling within the alleged classification of 'Overload' and 'Polymer'.

The issues framed on 23-02-2004 were renumbered as D, E. & F."

10. The Arbitral Tribunal examined the rival contentions of the parties in considerable detail. After considering the Final Joint Surveyor Reports, the witness statements and the terms of the insurance policies in question, the impugned award holds as under (as regards the quantum recoverable by the claimant from the insurer):

26. In view of our findings recorded herein-above it is held that the Claimant is entitled to recover from the Respondent insurance company a sum of Rs. 4,92,24,258/- as under:-

i. in respect of Material Damage Policy No.1132010003046	Rs. 89,89,070/-
	Rs. 5,00,80,024/-
Less already received by the Claimant	Rs. 98,44,836/-
	Rs.
Net Amount receivable by the Claimant under two policies	Rs. 4,92,14,258/-

11. As regards the quantum to which the claimant is entitled under the Material Damages policy, the Tribunal observed that the damages assessed by the joint surveyors under the heads of "Direct", "Overload" and "Polymer" were all the direct consequence of one and the same incident involving the rioting of workers on 30.07.1999 and 31.07.1999 at the claimant's factory premises. It was held that the entire material damage was

attributable to the said incident and was squarely covered under the Material Damages Policy. Accordingly, the Tribunal concluded that the claimant was entitled not only to the quantum classified as "Direct" but also to the amounts classified under "Overload" and "Polymer".

12. In this regard, the relevant extracts of the impugned arbitral award are reproduced as under :

> *"04. The question to be examined, therefore, is as to whether the assessed loss could be bifurcated into the above mentioned three categories if the loss falling under each of the categories arose out of the one and the same incident? It is relevant to note here that in para 8.06.4 and 8.06.5 of the report dated 22.03.2002 it is stated that it was at the instance of the Respondent insurance company that the assessed loss was divided into three categories reproduced in para II hereinabove. For ready reference these two paras are reproduced herein-below:*
>
> > *"Considerable time was spent in resolving this anomaly. Consultations with Insurers were also held to resolve the issue. Finally it was suggested to us by the Insurers to assess the lost fully dividing the same into the categories, leaving the matter of indemnity to their discretion.*
> >
> > *Accordingly, we have examined the damages in greater details and have divided them into three categories mentioned above.*
> >
> > *These two paragraphs have also been mentioned under the head 'Nature of Damages' (page D-111, Vol - II) of the report dated 29.04.2002."*
>
> *05. As stated herein-before, the incident which gave rise to the loss in respect of the two policies started on 30.07.1999. In para 7, Page D80, Vol II, of the Final Report dated 22.03.2002, the Joint Surveyors have stated that "The cause of damaging is due to rioting with a malicious intention of the suspended workers to inflict damage on insured's property. The cause would therefore fall within the purview of the policies and hence loss arising therefrom is indemnifiable as described in ensuing paras more particularly para 8.06". It is in para 8.06 that the Joint Surveyors have bifurcated the loss in 3 categories namely: "Direct', 'Overload' and 'Polymer'. In paras 8.01 & 8.02, Page 80, Vol II, of the Final Report dated 22.03.2002, while giving their observation and comments, the Joint Surveyors have stated that "the act of vandalism of the agitating workers has caused extensive damage to insured's property*

in CP II and CP III areas. Various electrical switch boards, sensors have been damaged, polymer melt have solidified and choked up all the lines. The vandals, aware of the sensitive points in the system, had deliberately made attempts to damage these points in order to cause maximum damage to insured's property.

06. The Claimants have, through their witness CW-1, Sh. S.M. Basu, proved their assertion that the entire loss was by external and violent physical damage. The Claimant also examined CW-6, Prof. B.L., Deopura, of Deptt. Of Textile Technology, Indian Institute of Technology who proved his written opinion Exh.C-1/62, page 290Vol 7. In this opinion Prof. Deopura has stated "The process of production at 'the plant' is a continuous process in all aspects at all progressive stages till the output of the final product and it is a non-stop process. Sudden stoppages of the plant results into solidification/jamming of the melt. These will necessarily result into damaging the plant machines and materials in process.... Damages in the present case are direct and it is not possible to call damages (a) Direct (b) Overload (c) Polymer……." In examination-in-chief, this witness stated that these machines cannot be restarted because of damages and would need significant changes for repair and in addition to the machines the material would also be rendered as of no use. He further stated that all the damages in this case were as a result of stoppages of tire machinery and direct result of the act or acts. In his cross examination, in reply to Q.No.89, this witness stated that in a continuous process the material flows from one section to another section and it also changes its forms. This continue till the final product is made.

07. The Respondent has not produced any expert witness to contradict the opinion of Sh. B.L. Deopura.

08. As stated in para 04 herein-above, the Joint Surveyors in their Joint Survey Report dated 22.03.2002 have admitted that it was suggested to them by the Insurers (Respondent herein) to assess the loss by dividing the same into three categories leaving the matter of indemnity to their discretion. Sh. Bhaskar Joshi in his cross examination dated 16.05.2009 in reply to Q.49, admitted that the terms 'DIRECT', 'OVERLOAD' and 'POLYMER' are not defined in any insurance literature. He, however, explained these terms in reply to Q.50 in his cross examination. The relevant portion from his reply reads as under:

> *"This loss and the damages are of unique nature. The rioting workers had, at some places, inflicted direct damages to some equipment by violent means. Such damages have been classified under Direct At some places the workers simply switched off the*

equipments, due to which sudden stoppage had resulted into overloading. Such damages are classified under the head 'Overloading' Because of such actions by rioting workers and theirs having prevented the plant engineers fro taking a safe shut down the processes were abandoned resulting into solidification of polymer mass. This was due to cessation of work. This is classified under the head 'Polymer'.

09. It will be seen that in the above reply to Q.50, this witness admits that the rioting workers inflicted direct damages to some equipment and these are the same workers who switched off the equipments due to which sudden stoppage had resulted into overloading conditions. He further admits that because of such actions by rioting workers the plant engineers were prevented from taking a safe shut down and the processes were abandoned resulting into solidification of polymer mass and he has classified this under head 'Polymer'. As stated in para 13 herein-above, this witness in para 8 of the Joint Survey Report dated 22.03.2002, Exh.CW-1/65, has stated that various electrical switch boards, sensors have been damaged, polymer melt have solidified and choked up all the lines. From these facts it is clear that all the three damages classified as 'Direct',, "Overloading' & 'Polymer' were the result of the one and the same action of rioting workers. In this connection reference may also be made to the cross examination of this witness held on 16.05.2009. In reply to Q.No.36, this witness admitted that the process in the plant of the Claimant is fully automatic. Further in reply to Q.38, he stated that "The entire outburst and what transpired thereafter is a sequel to the initiation on the 30.07.1999 and, therefore, it can be construed as one single unit". In reply to Q.52, this witness also admitted that "the operating cause is 'Riot and Strike' which is one event as said earlier."

10. From the above facts which have been admitted by the witness of the Respondent itself, who was one of the Joint Surveyors, it is clear that the entire material damage was a result of the incident which occurred on 30.07.1999 to 31.07.1999 at the factory premises of the Claimant and the said damage was done by rioting workers and thus these damages are covered under the Insurance Policy No. 1132080003046 – Material Damage, Riot and Malicious Damage.

XXX XXX XXX

15. ……..

15.1 Vide Question Nos. 48 to 56 challenge has been laid on behalf of the Claimant to the concept of the damages having been divided into three parts; 'Direct', 'Overload' and 'Polymer'. The witness admitted that

such division is not to be found stated in the terms of Insurance Policy. However, the witnesses defended such action by stating that 'the operating clause in the insurance policy is 'riot and strike', which is one event, but bifurcation was warranted on account of the exclusion clause which is referred to as RSMTD. The witness further stated that (b) and (c) of the exclusionary clause deal with 'dispossession' of a building or a plant and loss arising therefrom. The rioting workers had threatened insured's officials to leave the plant whereby the plant was 'dispossessed' and a major portion of the loss falling under the head 'Polymer' had occurred on account of such dispossession.

16. In our opinion the Ld. Surveyor has misconstrued and misunderstood, and therefore, wrongly applied the concept of 'dispossession'.

16.1 "Dispossession or Ouster is wrongfully taking possession of and from its rightful owner. The dispossession applies only to cases where the owner of the land has, by the act of some person, been deprived altogether of his dominion over the land itself ..." (See Advance Law Lexicon, P. Ramnath lyer, 3rd Edition, 2005, at p. 1430). As held in Rangalal Ram v. Makhan Lal, AIR 1951, Orissa 183 - "there must be a termination of possession of the rightful owner followed by actual possession of another." To amount to dispossession, the owner of the plant and machinery should have been driven out of possession and the rioting workers should have taken actual possession thereof. Such has not been the case.

16.2 In the case before us, it is not the case of the Insurance Company that the workers had deprived the Claimant of possession over the plant and machinery. Simply because the officials of the insured were obstructed from taking safe shutting down steps or were threatened to leave the plant that would not mean that the insured was 'dispossessed' of the plant. In law an act of dispossession has to be distinguished from an act of obstruction merely or interfering with exercise of right to possession of the rightful owner.

16.3 We are definitely of the opinion that there was no such dispossession as to attract the applicability of the Exclusion Clause.

17. Vide answer to Q. 56 the witness has very clearly and candidly admitted that if the loss under 'Overload' and 'Polymer' would not have been excluded from consideration then the quantum of loss and damage in this case would have been Rs. 89,89,070/- in relation to Material Damage Policy.

18. We, therefore, reaffirm our opinion expressed at the end of para 19

above that the Claimant is entitled to Rs. 89,89,070/- under the material damage policy."

13. The Tribunal rejected the submission of the petitioner (respondent before the Tribunal) that the losses under "Overload" and "Polymer" were occasioned by temporary or permanent dispossession of the plant and thus fell within the domain of the exclusion clause of the policy. The findings recorded in the Arbitral Award in this regard are reproduced as under :

"12. We find it difficult to agree with the submission made by the learned Counsel for the Respondent in view of our discussion made herein above. The discussion by us clearly shows that the loss classified under the heads 'Overload' and 'Polymer' is not covered under the Exclusion Clause, as this loss was caused as a result of the rioting of the workers on 30.07.1999. In para 8.06.1 under the head 'Nature of Damages' which has been reproduced in para 03 hereinabove, the Joint Surveyors themselves have admitted that the angry and unruly mob of workers had created a condition of chaos inside the plant. They damaged some equipments directly by hitting them physically and loss on this account has been put under the category 'Direct'. However, the facts mentioned under sub-paras 2 & 3 of paras 8.06.1 also show that the losses which have been put under the category of Overload and Polymer have been caused by the same unruly mob of workers by the same event and at the same time. In sub-para 2 it has been stated that "they also inflicted damages to plant and machinery by preventing plant officials from entering the plant and denying them access to carry out safe shut down of the plants. This had resulted into the fibre tow getting wrapped on the moving machine party thereby jamming and overloading them. This resulted into damage to various parts of the machinery." In sub-para 3 it is further stated that the very act of denial of the access to the plant had resulted into Polymer melt getting solidified in the system thereby damaging various equipments. All these findings recorded by joint surveyors clearly show that all the three damages classified under the three heads were as a result of one continuous act attributable to the rioting workers on 30.07.1999……..Accordingly, we hold that all the damages classified under the three heads namely 'Direct', "Overload" and 'Polymer' were physical damages caused by the workers by external violent means. Accordingly, it is also held that the Claimant is entitled to the entire assessed damages of Rs.89,89,070/- assessed by the Joint Surveyors under Material Damage Policy No. 1132010003046."

14. Further, in support of the said findings, the Tribunal referred to the judgment rendered by the Supreme Court in ***New India Assurance Company vs. Zuaral Industries Ltd*** (2009) 9 SCC 70, as noted in the following paragraphs of the award :

> *"13.2. Their Lordships held that so far as the meaning of 'proximate cause' is concerned the pre-dominant view of the judicial opinion appeared to be that the proximate cause is not the cause which is nearest in time or place but the active and efficient cause that sets in motion a train or chain of events which brings about the ultimate result without the intervention of any other force working from an independent source. The proximate cause may operate through successive instruments as an article at the end of a chain may be moved by a force applied to the other end. The question to be posed is: was there an unbroken connection between the wrongful act and the injury, a continuous operation? In other words, did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or there was some new and independent cause intervening between the wrong and the injury? During the course of the judgment, their Lordships cited with approval an earlier case wherein a fire had originated in the place of business of the insured. The goods were not damaged by the flames but by a gaseous vapour caused by the use of a fire extinguisher in an effort to put out the fire. It was held that the damage was attributable to fire and hence claimable.*
>
> *XXX XXX XXX*
>
> *14. In the present case also the entire loss which has been classified in the Joint Survey Report dated 22-03-2002 as 'Direct', 'Overload' and 'Polymer' was caused by the angry and unruly mob of workers on 30-07-1999. None of the losses would have taken place if only the workers would not have rioted."*

15. With respect to the claims arising under the Fire (LOP) Policy, the Tribunal, has rendered findings on the entitlement of the claimant to recover from the petitioner, the quantum as assessed by the joint surveyors. The relevant portion of the Arbitral Award, containing the findings of the Tribunal in this regard, is reproduced as under :

> *"20. As regards the damages claimed under LOP Policy, it is*

appropriate to give the details of the loss of gross profit assessed by the Joint Surveryors. These details are mentioned in the para 32 of the Joint Survey Report dated 29.04.2002 and the same are reproduced herein-below:

"32.1The loss of Gross Profit has been summarized as under:

		CP2/CP3 Combined
1.	Period of Rioting and physical intimation 30th July '99 to 31st July '99	Rs. 11,97,483/54
2.	Period of Strike 31st July '99 to 6th August '99	Rs.1,73,33,403/11
3.	Period of Interruption CP2 7th August 99 to 1st Sep '99 } CP3 7th Aug '99 to 20th August '99 }	Rs.4,42,95,401/09 Rs .6,28,26,287/74
	i.e. Say	Rs.6,28,26,287/-

Note : This is subject to the comments re: Nature of Material Damage / Liability."

20.1 Against the above assessed amount, the Joint Surveyors in para 21.8 of their Report dated 29.04.2002 (page D 114, Vol II) have stated that "Theoretically the 'Direct' damages would hence be 1 day of riots and two days of repairing the directly damaged equipment i.e. 3 days. The loss during this period would be:

21.8.1	Standard output per day for		
	CP2		233.580 MT
	CP3		244.530 MT
			478.110 MT
	Loss of output for 3 day		1434.330 MT
	Less Output maintained in 1st three Days of Interruption	CP2	108.880 MT
		CP3	139.940 MT
	Net Loss of Output		1185.510 MT

20.2 In para 21.9 of the said report it has been stated that "However, the issue of whether only the 'Direct' damages, as considered by us, or whether all the damages described earlier, constitute claims under the policy, are left to the Insurers discretion". It is relevant to note that the Respondent insurance company has also allowed the above mentioned amount of Rs.61,91,411/- classified under the head 'Direct' and has not

allowed the damages classified under 'Overload' and 'Polymer'.

20.3 In this connection reference may be made to para 8.01 and 8.02 under the head "Our Observation and Comments of the final survey report dated 22.03.2002 wherein the Joint Surveyors have stated that 'The act of vandalism of agitating workers has caused extensive damage to insured's property in CP2 and CP3 areas. Various electrical switch boards sensors have been damaged, polymer melt have solidified and choked up all the lines. The vandals, aware of the sensitive points in the system, had deliberately made attempt to damage these points in order to cause maximum damage to insured's property. These facts clearly show that the damage caused to the machinery was extensive and repair work of the machinery could not have been completed within 2 days. As stated hereinabove, polymer melt had solidified and choked up all the lines. Even the clearing of the machines would have taken 2/3 days.

20.4 ……..

21. From the facts mentioned above, it is clear that the amount assessed by the Joint Surveyors under LOP Policy pertain to CP2 and CP3 areas of the factory premises of the Claimant. From this it is further evident that the damage to the machinery was caused by the incident of 30.07.1999 and the damage to the machinery and plant of CP2 and CP3 were seen by and were visible to Sh. Bhaskar Joshi as admitted by him in reply to QNo.62 of his cross examination conducted on 22.05.2009.

22. Though we have referred to in the earlier part of this Award, yet, we would like to make a specific reference to the testimony of Mr. Bhaskar Joshi, RW-2, for the purpose of finding out as to what would be the reasonable time to be spent in restoring the machinery to earlier its position so as to make the plant functional. Vide Q. 24 the witness has stated that looking at the extent of the damages to the plant and the manufacturing process, It would have taken some time but a precise estimate of time frame was not feasible. The witness did not respond to the specific suggestion if it would have taken more than three weeks time to carry out the repairs and put the plant in working module.

xxx *xxx* *xxx*

24. In para 32.1 of the Final Report dated 29.04.2002 (which has been reproduced in para 22 herein-above), the total loss assessed by the Joint Surveyors is Rs.6,28,26,287/-. The said amount has been bifurcated under three different periods. Against the item no.01 a sum of Rs. 11,97,483/- has been assessed for the period of rioting and physical Intimidation i.e. 30.07.1999 to 31.07.1999 and this period has been

allowed by the Respondent insurance company. So there is no dispute about this period.

24.1 Against item no.02 a sum of Rs.1,73,33,403/- has been assessed for the period of strike 31.07.1999 to 06.08.1999 and this amount has not been allowed by the Respondent on the ground that this period was covered by the Exclusion Clause in view of the Claimant having been dispossessed by the rioting workers. We cannot countenance this approach of the Respondent in as much as, as we have held vide para 16 herein above that there was no dispossession of the Claimant; in spite of the rioting workers having obstructed the officials of the Claimant from having access to the plant and the machinery, the Claimant had continued in possession of the plant and machinery. The quantum of claim for this period as assessed by the surveyors has to be allowed and cannot be denied to the Claimant.

24.2 Against item no.03 an amount of Rs.4,42,95,401/- has been assessed which is towards the period of interruption of 07.08.1999 to 01.09.1999 with regard to the repairs of the machinery of CP2 and for the period 07.08.1999 to 20.08.1999 with regard to the repairs of the machinery CP3. The bifurcation of this amount has further been shown in para 28 of the Final Survey Report dated 29.04.2002. As per this bifurcation the amount of loss of profit for the period 07.08.1999 to 20.08.1999 in respect of CP3 has been shown as Rs. 1,57,74,569/- and the loss of profit for the period 07.08.1999 to 01.09.1999 in respect of CP2 has been shown as Rs.2,85,20,831. In para 21.7.5 of the Final Survey Report dated 29.04.2002 it has been stated that "It was not, therefore, possible for them to carry out concurrent repairs to both plants and hence CP2 remained unattended till CP3 was repaired and put into line, Although actual time taken for repairs to CP2 was more or less same as that of CP3, the prolonged interruption of the same was due to is remained unattended for some time". For this reason, the time for repairs of CP2 cannot be taken as more than for repairs in respect of CP3. We are, therefore, of the opinion that loss of profit in respect of CP2 also should be for the period 07.08.1999 to 20.08.1999 (i.e. a period of two weeks 14 days which we have considered to be a reasonable period required for effecting repairs of the damaged plant and machinery) and not 07.08.1999 to 01.09.1999 and the amount of loss of profit in respect of CP2 will also come to Rs.1,57,74,569/-. Thus, against item no.03 the loss of gross profit shall come to Rs.3,15,49,138 instead of Rs.4,42,95,401/-.

24.3. Accordingly, in our opinion, the Claimant is entitled towards loss of profit under LOP Policy No. 1132010003161 for a sum of Rs.5,00,80,024/- as under:

i. For the period 30-07-1999 to 31-07-1999	Rs. 11,97,483/-
ii. For the period 01-08-1999 to 06-08-1999	Rs. 1,73,33,403/-
iii.For the period 07-08-1999 to 20-08-1999 (C.P. 2)	Rs. 1,57,74,569/-
iv. For the period 07-08-1999 to 20-08-1999 (C.P. 3)	Rs. 1,57,74,569/-
TOTAL	**Rs. 5,00,80,024/-**

16. In addition to the amounts awarded under the two insurance policies, the Tribunal further granted costs in the amount of Rs.15,00,673/- to the respondent/claimant, to be recoverable from the petitioner.

SUBMISSIONS ON BEHALF OF THE PARTIES

17. The primary contention raised by the learned counsel for the petitioner is that the surveyors had rightly bifurcated the damages into three heads - “Direct”, “Overload” and “Polymer”. It is submitted that only the loss falling under the head “Direct” was payable under the policy, and that there was no nexus between the incidents of 30.07.1999 and 31.07.1999 and the damages claimed by the respondent.

18. It is further submitted that impugned award proceeds on a misinterpretation and misunderstanding of the relevant terms and conditions of the policies, particularly the exclusion clause. The Tribunal, according to the petitioner, wrongly assumed that there was ambiguity in the terms of the policies, whereas the exclusion clause was clear, specific and within the knowledge of the respondent. Reference is made to sub-clause (d) of sub-section III of the policy, which, it is contended, clearly barred the claims of the nature as raised by the respondent. The award is therefore assailed as being in violation of terms and conditions of the policy.

19. Learned counsel for the petitioner further submits that the Tribunal misconstrued the concept of ‘dispossession’ by relying upon the definitions

in Advanced Law Lexicon, P. Ramnath Iyer III Edition 2005 at p.1430 and in ***Ranga Lalram vs. Makhan Lal***, AIR 1951 Orissa 183, while ignoring the clear and unambiguous definition contained in the exclusion clause of the policy. Relying on the decision rendered by the Supreme Court in ***United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal***, (2004) 8 SCC 644, the petitioner contends that in absence of any ambiguity, the Tribunal ought to have applied the definition of 'dispossession' as contained in the exclusion clause of the policy.

20. On these grounds, the petitioner submits that the impugned award, having wrongly awarded the amounts to the respondent, is liable to be set aside.

21. Per contra, learned counsel for the respondent submits that there is no basis for interference with the impugned award, and that the present petition transgresses the limited scope of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the Act'*).

22. It is submitted that the damages suffered by the respondent were wholly attributable to the incident(s) of 30.07.1999 and 31.07.1999, and that there was no independent intervening agency which could be considered as a separate cause of damage. Reliance in this regard is placed on the principle of 'proximate cause', as laid down by the Supreme Court ***New India Assurance Co. v. Zuarai Industries Ltd.*** (supra). Attention is also drawn to the statement of Mr. Bhaskar Joshi (RW-2), who, during cross-examination admitted that the entire damage was occasioned by one continuous sequence of events.

23. The respondent identifies three specific causes for loss: (i) sudden stoppage of machines by the rioting workers; (ii) inability to effect a safe

stoppage; (iii) breakage of control panels. It is submitted that all these causes are directly attributable to the rioting workers and form part of the same chain of events.

24. It is further submitted that at no point was the respondent dispossessed of the property so as to attract the exclusion clause. The exclusion clause, therefore, according to the respondent, cannot be invoked in the present circumstances, and the damages awarded under the impugned award are appropriate and justified.

REASONING AND CONCLUSION

25. A perusal of the impugned award reveals that the Arbitral Tribunal, upon a thorough examination of the relevant facts and circumstances in minute detail, rendered a categorical finding that the damages suffered by the respondent were occasioned by the incident of clash between rival groups of workers on 30.07.1999 and 31.07.1999, and that such damages were a direct consequence thereof. The relevant findings in this regard have been rendered by the Arbitral Tribunal in the impugned award in the following terms :

> *"12. We find it difficult to agree with the submission made by the learned Counsel for the Respondent in view of our discussion made herein above. The discussion by us clearly shows that the loss classified under the heads 'Overload' and 'Polymer' is not covered under the Exclusion Clause, as this loss was caused as a result of the rioting of the workers on 30.07.1999. In para 8.06.1 under the head 'Nature of Damages' which has been reproduced in para 03 hereinabove, the Joint Surveyors themselves have admitted that the angry and unruly mob of workers had created a condition of chaos inside the plant. They damaged some equipments directly by hitting them physically and loss on this account has been put under the category 'Direct'. However, the facts mentioned under sub-paras 2 & 3 of paras 8.06.1 also show that the losses which*

have been put under the category of Overload and Polymer have been caused by the same unruly mob of workers by the same event and at the same time. In sub-para 2 it has been stated that "they also inflicted damages to plant and machinery by preventing plant officials from entering the plant and denying them access to carry out safe shut down of the plants. This had resulted into the fibre tow getting wrapped on the moving machine party thereby jamming and overloading them. This resulted into damage to various parts of the machinery." In sub-para 3 it is further stated that the very act of denial of the access to the plant had resulted into Polymer melt getting solidified in the system thereby damaging various equipments. All these findings recorded by joint surveyors clearly show that all the three damages classified under the three heads were as a result of one continuous act attributable to the rioting workers on 30.07.1999……..Accordingly, we hold that all the damages classified under the three heads namely 'Direct', "Overload" and 'Polymer' were physical damages caused by the workers by external violent means. Accordingly, it is also held that the Claimant is entitled to the entire assessed damages of Rs.89,89,070/- assessed by the Joint Surveyors under Material Damage Policy No. 1132010003046.

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"13.2. Their Lordships held that so far as the meaning of 'proximate cause' is concerned the pre-dominant view of the judicial opinion appeared to be that the proximate cause is not the cause which is nearest in time or place but the active and efficient cause that sets in motion a train or chain of events which brings about the ultimate result without the intervention of any other force working from an independent source. The proximate cause may operate through successive instruments as an article at the end of a chain may be moved by a force applied to the other end. The question to be posed is: was there an unbroken connection between the wrongful act and the injury, a continuous operation? In other words, did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or there was some new and independent cause intervening between the wrong and the injury? During the course of the judgment, their Lordships cited with approval an earlier case wherein a fire had originated in the place of business of the insured. The goods were not damaged by the flames but by a gaseous vapour caused by the use of a fire extinguisher in an effort to put out the fire. It was held that the damage was attributable to fire and hence claimable.

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14. In the present case also the entire loss which has been classified in

the Joint Survey Report dated 22-03-2002 as 'Direct', 'Overloud' and 'Polymer' was caused by the angry and unruly mob of workers on 30-07-1999. None of the losses would have taken place if only the workers would not have rioted."

26. As such, the impugned award finds that the bifurcation of the assessed loss into "Direct", "Overload" and "Polymer" was not appropriate in the peculiar factual conspectus.

27. On an overall appreciation of the facts and circumstances, the Tribunal rejected the petitioner's contention that the exclusion clause was applicable and held that the respondent was never dispossessed of its property, and therefore the exclusion clause could not be invoked.

28. The Tribunal, while relying upon the final joint surveyors reports (dated 22.03.2002 and 29.04.2002), held that the respondent/claimant was entitled to the quantum assessed therein, without bifurcation, since the damages in their entirety were found to be the direct consequence of the events commencing on 30.07.1999. As a consequence, the respondent was held entitled to a cumulative sum of Rs. 4,92,14,258/- under the Material Damage Policy and the Fire (LOP) Policy.

29. Having examined the award, this Court finds that no ground is made out for interfering with the same in exercise of its jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996.

30. There is no patent illegality in the impugned award so as to justify interference therewith. The petitioner has essentially sought to re-agitate the same issue/s which have been elaborately dealt with in the impugned award. The scope of interference under Section 34 is extremely circumscribed and cannot be equated with appellate scrutiny. Interference with an arbitral award is warranted only where the conclusions reached therein are so

perverse or untenable that they cannot be characterized even as a 'possible view'.

31. The legal position in this regard has been stated and reiterated in a catena[1] of decisions. Recently in ***Consolidated Constructions Consortium Ltd vs. Software Technology Parks of India*** (2025) 7 SCC 757, wherein it has been observed as under: -

> *"45. Sub-section (1) of Section 34 provides that an application may be made to the competent court for setting aside an arbitral award. This is the only remedy available for setting aside an arbitral award. The conditions for setting aside an arbitral award are mentioned in sub-sections (2) and (2-A). Sub-section (2) provides for situations such as the agreed party was under some incapacity or the arbitration agreement is not valid under the law or the aggrieved party did not receive proper notice regarding appointment of arbitrator or of the arbitral proceedings which prevented it from presenting its case or the arbitral award deals with a dispute not contemplated by or not falling within the terms of arbitration or the composition of the Arbitral Tribunal or the procedure adopted in arbitration were not in accordance with the agreement of the parties or the subject-matter of dispute is not capable of settlement by arbitration or the arbitral award is in conflict within the public policy of India. In terms of sub-section (2-A), an arbitral award may also be set aside on the ground of patent illegality appearing on the face of the award. Sub-section (3) provides for the time-limit for filing of an application for setting aside arbitral award. Therefore, the grounds on which an arbitral award can be set aside are clearly mentioned in Sections 34(2) and 34(2-A) of the 1996 Act. An arbitral award cannot be set aside on a ground which is beyond the grounds mentioned in sub-sections (2) and (2-A) of Section 34.*
>
> *46. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only*

[1] ***Dyna Technologies Private Limited v. Crompton Greaves Limited*** *(2019) 20 SCC 1;* ***South East Asia Marine Engg. & Constructions Ltd. v. Oil India Ltd.*** *(2020) 5 SCC 164;* ***Steel Authority of India ltd. v. Gupta Brothers Steel Tubes Ltd.*** *(2009) 10 SCC 63.*

on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

47. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."

32. Further, in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and Another*** 2024 SCC OnLine SC 2600, the Supreme Court observed as under:

"60. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while this Court was dealing with the concept "public policy of India", in the context of a Section 34 challenge prior to the 2015 Amendment, it was held that an award can be said to be against justice only when it shocks the conscience of the court [See Associate Builders case, (2015) 3 SCC 49, para 36 : (2015) 2 SCC (Civ) 204] . The Court illustrated by stating that where an arbitral award, without recording reasons, awards an amount much more than what the claim is restricted to, it would certainly shock the conscience of the court and render the award vulnerable and liable to be set aside on the ground that it is contrary to justice.

61. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with post the 2015 Amendment scenario, it was observed that an argument to set aside an award on the ground of being in conflict with "most basic notions of justice", can be raised only in very exceptional circumstances, that is, when the conscience of the court is shocked by infraction of some

fundamental principle of justice. Notably, in that case the majority award created a new contract for the parties by applying a unilateral circular, and by substituting a workable formula under the agreement by another, dehors the agreement. This, in the view of the Court, breached the fundamental principles of justice, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered with the other party [See Ssangyong Engg. case, (2019) 15 SCC 131, para 76 : (2020) 2 SCC (Civ) 213] . However, a note of caution was expressed in the judgment by observing that this ground is available only in very exceptional circumstances and under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the court because that would be an entry into the merits of the dispute.

62. In the light of the discussion above, in our view, when we talk about justice being done, it is about rendering, in accord with law, what is right and equitable to one who has suffered a wrong. Justice is the virtue by which the society/court/Tribunal gives a man his due, opposed to injury or wrong. Dispensation of justice in its quality may vary, dependent on person who dispenses it. A trained judicial mind may dispense justice in a manner different from what a person of ordinary prudence would do. This is so, because a trained judicial mind is likely to figure out even minor infractions of law/norms which may escape the attention of a person with ordinary prudence. Therefore, the placement of words "most basic notions" before "of justice" in Explanation 1 has its significance. Notably, at the time when the 2015 Amendment was brought, the existing law with regard to grounds for setting aside an arbitral award, as interpreted by this Court, was that an arbitral award would be in conflict with public policy of India, if it is contrary to:

(a) the fundamental policy of Indian law;
(b) the interest of India;
(c) justice or morality; and/or is
(d) patently illegal.

63. As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2)(b)(ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term "justice" with "most basic notions" of it. In such circumstances, giving a broad dimension to this category [In conflict with most basic notions of morality or justice.] would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be

prudent to cull out "the most basic notions of justice". Suffice it to observe, they [Most basic notions of justice.] ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/fundamental principles of justice that it shocks the conscience of the Court.

64. The other ground is of morality. On the question of morality, in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court, after referring to the provisions of Section 23 of the Contract Act, 1872; earlier decision of this Court in Gherulal [Gherulal Parakh v. Mahadeodas Maiya, 1959 SCC OnLine SC 4 : AIR 1959 SC 781] ; and Indian Contract Act by Pollock and Mulla, held that judicial precedents have confined morality to sexual morality. And if "morality" were to go beyond sexual morality, it would cover such agreements as are not illegal but would not be enforced given the prevailing mores of the day. The Court also clarified that interference on this ground would be only if something shocks the Court's conscience [See Associate Builders case, (2015) 3 SCC 49, para 39 : (2015) 2 SCC (Civ) 204] .

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

66. In Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

67. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court held that an award would be patently illegal, if it is contrary to:

(a) substantive provisions of law of India;
(b) provisions of the 1996 Act; and
(c) terms of the contract [See also three-Judge Bench decision of this Court in State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275 : (2022) 2 SCC (Civ) 776]
*The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) ["28. Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated in India—(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;***(2)***(3) While deciding and making an award, the Arbitral Tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction."(As substituted by Act 3 of 2016 w.e.f. 23-10-2015)Prior to substitution by Act 3 of 2016, sub-section (3) of Section 28 read as under:"28. (3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."] of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.*

68. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that 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 [See Ssangyong Engg. case, (2019) 15 SCC 131, para 37 : (2020) 2 SCC (Civ) 213] . Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See Ssangyong Engg. case, (2019) 15 SCC 131, para 38 : (2020) 2 SCC (Civ) 213] .

69. Perversity as a ground for setting aside an arbitral award was recognised in Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] . Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India."

33. In the circumstances, no interference with the impugned award is warranted on the touchstone of patent illegality and/or other parameters set out in Section 34 of the Arbitration and Conciliation Act, 1996.

34. With regard to the interest awarded *vide* paragraph 37 of the award, this Court is satisfied that the same is reasonable and within the discretion of the Tribunal. No infirmity is disclosed so as to warrant interference under Section 34 of the Act. The award of costs is also within the discretion of the Tribunal.

35. In the circumstances, this Court finds no merit in the present petition; the same is, accordingly, dismissed.

SACHIN DATTA, J

NOVEMBER 26, 2025
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