* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on: 10.08.2026**
Judgment pronounced on: 19.08.2026

\# **CNR No. DLHC010323242023**

\+ O.M.P. (COMM) 327/2023 &I.A. 15613/2023

HDFC ERGO GENERAL INSURANCE COMPANY LIMITED .....Petitioner

Through: Mr. Gopal Jain, Sr. Adv. with Mr. Rijul Singh Uppal & Ms. Kriti Sharma, Advs.

versus

NATIONAL ALUMINIUM COMPANY LIMITED .....Respondent

Through: Mr. Abhishek Gupta, Mr. Dhruv Tiwari & Mr. A.S. Vamsi Krishna, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 17.05.2023, rectified on 16.06.2023 (for brevity 'the award').

2. The facts shorn of unnecessary details are that the respondent/National Aluminium Company Ltd. (hereinafter referred to as 'NACL') obtained a Standard Fire and Special Perils Insurance Policy (for short 'insurance policy') for Electric Generation Stations-

coal/lignite based at the Captive Power Plant, Angul, Odisha (for short 'CPP') from the petitioner/HDFC Ergo General Insurance Company Ltd. (hereinafter referred to as 'insurer'). The sum insured under the policy was of Rs.23,473,242,000/-. The policy was effective from 01.06.2017 to 31.05.2018 and the premium of Rs.1,51,92,298/- was paid.

2.1 On 11.07.2017, a fire broke out in the Generator Transformer (for short 'GT') for Unit-08 of the CPP (hereinafter referred to as 'GT-8'). A surveyor was appointed by the insurer to assess the loss. In a joint meeting held between the surveyor and the NACL it was decided that the damaged GT-8 be sent to Bharat Heavy Electricals Limited, Jhansi (for short 'BHEL') for assessment of the loss.

2.2 On 04.09.2017, the NACL purchased a new GT and GT-8 was sent to BHEL on 24.03.2018. BHEL by final offer dated 17.08.2018 estimated the cost of repair at Rs.4,02,13,786/- exclusive of GST and transportation charges. The transportation charges were estimated at Rs.26,15,000/-.

2.3 The NACL initially on 15.09.2018 submitted a claim of Rs.6,65,84,669/- towards the repair of GT-8. The claim was subsequently revised to Rs.6,95,35,369/-. The final claim bill was submitted on 05.03.2019 along with the supporting invoices.

2.4 The surveyor submitted a provisional assessment report dated 29.06.2019, assessing the loss at Rs.23,52,397/- and recorded that it is a case of 'under insurance'. The NACL on 28.10.2019 rejected the offer to settle claim at provisional assessment of Rs.23,52,397/-.

2.5 The surveyor submitted the final report dated 31.03.2020 (for short 'final report') wherein it was observed that: (i) transformer cannot function without the bushing; (ii) the bushing was an integral part of the transformer; and (iii) the statements of BHEL employees were not agreed to. The final report recorded 'under insurance' of 56.53%. Relying upon the final report, the insurer on 05.05.2020 rejected the claim relating to the transformer.

2.6 On 30.06.2020, the insurer informed the NACL that a cheque of Rs.23,51,687/-, as assessed by the surveyor was being sent towards settlement of the claim.

2.7 *Vide* notice dated 16.01.2021 the arbitration under clause 13 of the General Conditions of the Insurance Policy (for short 'GC') was invoked at the instance of the NACL. The proceedings culminated in an impugned award wherein the majority members of the tribunal held that deduction for 'under insurance' was not justified, for the reasons that (i) the claim was allowed towards repair and not replacement; and (ii) that the insurance cover was for entire unit and not only for the GT. A sum of Rs.4,25,66,183/- was awarded and in case of failure to pay the amount awarded within four months, simple interest @ 7.5% per annum was to be paid from 18.09.2023 till realization. A sum of Rs.10,00,000/- was awarded towards litigation costs. On the other hand, the minority view relying upon the decisions in ***Sikka Papers Limited v. National Insurance Company Ltd. &Ors.***, (2009) 7 SCC

777 and ***I.C. Sharma v. Oriental Insurance Company Limited,*** (2018) 2 SCC 76 held that in a case of 'under insurance', the proportional deduction towards the 'under insurance' is justified. Hence, the present petition is filed.

3. Learned senior counsel for the insurer relies upon the decisions of the Supreme Court in ***Sikka Papers Limited*** (supra) and ***I.C. Sharma*** (supra) to fortify the contention that in case of 'under insurance', the claim has to be averaged out in proportion of under insurance.

3.1 It is contended that the tribunal accepted the report of the surveyor recording 'under insurance' of 56.53% but failed to average out the claim awarded.

3.2 The submission is that clause 10 of the GC was ignored and the award suffers from patent illegality.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited. The submission is that the award should not be interfered with unless the conclusion arrived at is perverse. Remedy under Section 34 cannot be equated with appellate jurisdiction and the court cannot reappreciate evidence. Every error of law or fact do not justify setting aside an arbitral award. Reliance is placed upon the decisions of the Supreme Court in ***Prakash Atlanta (JV) v. National Highways Authority of India,*** 2026 INSC 76, ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited***, 2025 SCC OnLine SC 2857, ***Consolidated Construction Consortium Limited v. Software***

Technology Parks of India, (2025) 7 SCC 757 and ***ParsaKente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited,*** (2019) 7 SCC 236.

4.1 It is submitted that there cannot be deduction on account of 'under insurance' as value was assessed on the replacement value and not on the repair value. Reliance is placed upon Questions 41 to 45 of the cross-examination of the surveyor in support of the contention that 'under insurance' was determined on the replacement value. The questions relied upon and answers thereto are quoted below:

> "41. Is it correct that the Insured/Claimant got the plant insured on the basis of depreciated value?
> Ans. Yes.
> 42. Is it correct that under insurance determined by you acting as Surveyor is on the basis of reinstatement value?
> Ans. Yes.
> 43. Will you please explain that dichotomy?
> Ans. The computation of under insurance has to be done on the basis of reinstatement value as provided in the policy wordings itself.
> 44. Please explain the term "reinstatement value"?
> Ans. When one is putting up a plant there are many aspect of costs which needs to be incurred. They will be as below:-
> i. Cost as per invoice for replacement
> ii. Taxes & Duties
> iii. Transportation cost
> iv. Loading/Unloading cost
> v. Erection cost'
> vi. Commissioning include cost for operating media such as Oil and or refrigerator etc.

Less credits for the Taxes as allowed by the prevalent Taxation Laws.

The above cost from (i) to (vi) put together less the credit for the taxes as allowed by the prevalent Taxation Laws, makes the "reinstatement value."

45. Is it correct that "under insurance" is calculated on reinstatement value basis when the insurance claim is raised on reinstatement basis / replacement, but not otherwise?"

Ans. Yes, it is correct."

5. Before proceeding further, it would be appropriate to reproduce the relevant portion of the surveyor report dated 31.03.2020, Clause 10 of the GC and Section 64VB of The Insurance Act, 1938 (for short, 'the Insurance Act') –

"**Surveyor Report dated 31.03.2020**

Valuation

Insured - NALCO has confirmed that they have taken the sum insured in the policy based on book value (depreciated) basis. lnsured has a 10 x 120 MW coal fired power station. Based on our experience with similar claims and prevalent prices in market, we have estimated the reinstatement value to be at Rs.4.5 Crores per MW, i.e. Rs.54,000,000,000/-. Comparing the same with sum insured at Rs. 23,473,242,000/-, we observed that there is significant underinsurance i.e. 56.53%. After adjusting for underinsurance at Rs.6,310,503/-, the assessed loss works out to Rs. 4,852,397/-.

B) General Conditions Of The Insurance Policy

10) lf the property hereby insured shall at the breaking out of any fire or at the commencement of any destruction of or damage to the property by any other peril hereby insured against be collectively of greater value than the sum insured thereon, then the insured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to this condition.

Section 64VB Of The Insurance Act, 1938

64VB. No risk to be assumed unless premium is received in advance—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. —Where the premium is tendered by postal money order or cheque sent by post the risk may be assumed on the date on which the money order is booked or the cheque is posted as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so

> collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays. (5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.
>
> (6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

6. Clause 10 of the GC provides that where the value of the insured property is greater than the insured value, the insured shall be treated as the insurer for the difference and has to bear the proportionate part of the loss.

6.1 Section 64VB(1) of the Insurance Act provides that the risk shall be covered on receipt of the premium payable or guaranteed to be paid in the prescribed manner and within the prescribed time or until such amount is deposited in advance.

7. The undisputed facts are that the value of the coal/lignite based electric generation unit in the CPP was Rs.54,000,000,000/- whereas the sum insured was Rs.23,473,242,000/-. The surveyor assessed 'under insurance' at 56.53% and the tribunal accepted the report of the surveyor. The dispute only pertains to deduction to be made for 'under insurance'. The loss assessed is not disputed by either of the parties.

7.1 The relevant portion of the majority award is reproduced below:

> "153.........As pointed out earlier, the insured value comes to Rs.2078.00 crore. Underinsurance occurs when the amount of insurance is less than the full value of the property insured and means that the insured pays a lessor

premium than what should have been required to be paid and the full value being disclosed as the rate fixed is on the basis of full value being insured. As per the case of the Claimant and the evidence of CW-1, the Claimant has followed the procedure that is being followed in NALCO for the purposes of valuation. It may be that NALCO has its own procedure for assessing the valuation for the purposes of insurance, the Claimant, however, should have followed the standard insurance guidelines concerning valuation and underinsurance. Accordingly, the claim for underinsurance as assessed by the surveyor is accepted."

8. The tribunal considered the initial repair offer of Rs.4,02,13,786/- made by BHEL *vide* letter dated 17.08.2018 and took note that on account of 'under insurance' the deduction to be made is of Rs.63,10,503/-. The deduction was not made on the ground that the final bill submitted by BHEL was higher and that the insurance cover was for the entire unit and not only for the GT. The acceptance of initial bill for repair by BHEL is an assessment of loss to be decided on evidence adduced and is not a relevant fact for not averaging out the 'under insurance'. The tribunal travelled beyond Section 64VB of the Insurance Act and ignored Clause 10 of the GC. There was no premium received for the difference between Rs.54,000,000,000/- and Rs.23,473,242,000/-, the risk in respect of the difference amount was not insured as stipulated in Clause 10 of the GC. The NACL was its own insurer for the difference amount and had to bear the relatable proportion of the loss.

9. The Supreme Court while dealing with a challenge to the deduction made from the repair bill on account of 'under insurance'

considered the following two issues in ***Sikka Papers Limited*** (supra):-

> "10. We heard the learned counsel for the parties. In the light of the contentions advanced before us, the following two questions arise for our consideration:
>
> (one) Whether the insurer was justified in accepting report dated 15-5-2000 submitted by the surveyor who had assessed the loss of Rs.14,45,000/- after deducting about Rs.10,55,000/- from Rs.25,00,000/- i.e. actual amount paid by the complainant for repairing the diesel generating set ?
>
> (two) Whether the insurer was justified in deducting an amount of Rs.3,71,509.50 (25.71%) as under insurance from the loss assessed at Rs.14,45,000/- by the surveyor in its report dated 15-5-2000 ?"

9.1 While deciding the second issue, the Supreme Court held that where the sum insured is less than the required insurance, the insurer is liable to pay only the proportionate amount. The pro-rata formula applied by the surveyor for deducting the 'under insurance' was upheld. The relevant portion is quoted below:

> "23. In Dictionary of Insurance (2nd Edn.) by C. Bennett, "underinsurance" is explained thus:
>
> "underinsurance occurs when the amount of insurance is less than the full value of property insured and means that the insured pays a smaller premium than that required as the rate is fixed on the basis of full values being insured. It leads to partial loss claims being scaled down by average (qv.)."
>
> The expression "average" is explained thus:
>
> "In non-marine property insurance if a sum insured is 'subject to average', and the sum insured is less than the

value at risk at the time of loss, the claim will be reduced in the same proportion. The measure combats underinsurance."

24. As per the invoice, the diesel generating set and the alternator was purchased by the complainant in the year 1997 for Rs 45,25,000. The complainant, however, got the insurance cover valuing diesel generating set (Rs 26,00,000) and alternator (Rs 9,00,000), in all for Rs 35,00,000. Apparently, therefore, there is an element of underinsurance. There is merit in the contention of learned counsel for the insurer that the value of the item is always declared by the insured at the time of issuance of the insurance policy while the element of underinsurance is calculated by the insurer at the time of assessment of loss.

25. Although on behalf of the complainant, it was contended that underinsurance, if any, must be calculated at the time of issuance of policy and could not be deducted at the time of assessment of the loss but we find it difficult to accept the same. The policy provides that if the sum insured is less than the amount required to be insured, the insurer will pay only in such proportion as the sum insured bears to the amount insured. In accordance with the said provision in the policy if the surveyor applied the pro rata formula and deducted 25.71% from the loss so assessed i.e. Rs 3,71,509.50 from the sum payable as underinsurance, such deduction cannot be faulted."

10. The Supreme Court in ***I.C. Sharma*** (supra) while dealing with the issue of 'under insurance' and the effect thereof held that the principle of averaging out has to be applied in case of 'under insurance'. Where all the goods are not destroyed the loss assessed is to be averaged out with the 'under insurance'. In case of total loss, the amount insured is to be paid irrespective of the actual value. The

relevant paragraphs are as under:

> "8. The only legal issue which arises for consideration is "what is underinsurance — and the effect thereof?" Underinsurance basically means that the insured has taken out an insurance policy in which he has valued the insured items for a sum which is less than the actual value of the insured item. In a country like India this is normally done to pay a lesser premium. This is, in fact, harmful to the policyholder and not to the Insurance Company because even if the entire insured property is lost, the policyholder will only get the maximum sum for which the property has been insured and not a paisa more than the sum insured. To give an example, in case a person takes out the householder policy covering fire insurance and gives the value of the structure of his house and goods stored therein at Rs 50,00,000 even though the value of the same is Rs 1,00,00,000 then even if the entire house and goods are completely lost in a fire, he cannot get an amount above Rs 50,00,000 even though the value may be more.
>
> 9**.** If all the insured goods are lost then there is no problem. The insured is entitled to the amount for which the goods were insured even if that be less than the actual value of the goods. In case a person gets a painting insured for Rs 1,00,000 though the value of the same is Rs 10,00,000, if the painting is lost the insured is entitled to Rs 1,00,000 only. If all the insured goods falling under one head are stolen or lost then the insurance company cannot apply the principle of averaging out because, though the loss may be Rs 10,00,000, the claimant will get only one Rs 1,00,000 as per the value assessed and the insurance premium paid by him.
>
> 10**.** The Insurance Company can however apply the principle of averaging out when all the goods are not

> destroyed. Supposing the entire house was insured for Rs 50,00,000, but on valuation it is found that the value of the structure and the goods was Rs 1,00,00,000 and if the policyholder claims that he has suffered loss of Rs 40,00,000 then he will be entitled to only Rs 20,00,000, by applying the principle of averaging out. What this means is that if the value of the goods is more than the sum for which they are insured then it is presumed that the policyholder has not taken out insurance policy for the uninsured value of the goods. The claim is allowed by applying the principle of averaging out i.e. the insured is paid an amount proportionate to the extent of insurance as compared to the actual value of the goods insured."

11. The contention of learned counsel for the NACL that the 'under insurance' was assessed on replacement value and not for the purpose of repair, is ill-founded. The value of the asset is to be determined at the time of obtaining insurance cover and the loss is to be assessed on occurrence of the event of destruction or damage. At the time of insurance admittedly the value of the insured unit was Rs.54,000,000,000/- whereas the sum insured was Rs.23,473,242,000/-. Consequently the premium on 56.53% of the value of the unit was not paid and the loss assessed has to be averaged out accordingly.

12. There is no quarrel with the proposition pressed by learned counsel for the NACL that the scope of interference under Section 34 of the Act is limited and the case laws relied upon in support of this proposition. In the present case the award is contrary to the statutory provisions of the Insurance Act and has travelled beyond the terms of

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the insurance policy, particularly clause 10. The award suffers from patent illegality and is set aside.

13. The petition is allowed. Pending application is also disposed of.

AVNEESH JHINGAN, J

AUGUST 19, 2026
Ch

Reportable:- **Yes**