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

Judgment reserved on: 06.11.2025
Judgment pronounced on: 12.03.2026

\+ **O.M.P. (COMM) 568/2016**

M/S COSCO BLOSSOMS PVT LTD .....Petitioner

Through: Mr. Raman Kapur, Sr. Adv. with Mr Rajinder Wali, Adv.

versus

ORIENTAL INSURANCE COMPANY LTD .....Respondent

Through: Mr. Pradeep Gaur, Mr. Amit Gaur, Ms. Sweta Sinha, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ***("the Act"),*** seeking to challenge the Arbitral Award dated 17.03.2012 ***("Award")*** passed by the learned Sole Arbitrator.

FACTUAL MATRIX AS PER THE PETITIONER

2. The petitioner, namely M/s Cosco Blossoms Pvt. Ltd., is a registered private limited company engaged in the business of floriculture. The company at the relevant time was primarily a 100% export oriented company exporting its flowers in foreign markets in Europe, Japan, etc.

3. For the purpose of operating its floriculture business, the petitioner maintained several greenhouses built on area measuring 15 acres situated at Village Goyla, Sub-Tehsil Tauru, Gurgaon, Haryana.

4. The company catered to the demands of the high-end flowers market abroad, and to ensure high quality standards, the process/technique of production, cultivation and all other necessary equipment were imported from various countries, primarily the UK, Holland and Israel.

5. Greenhouses were the essential component for the cultivation process. The structure of each greenhouse was made of galvanized steel (imported from Israel) containing 17 bays. Each bay measured 7.5 meters wide, 40 meters long, and 3.5 meters in height. The top portion of each bay was made up of UVA Stabilized polyethylene sheets measuring 8.5 meters wide and 46 meters long, which were also imported from Israel.

6. The entire setup of greenhouse structure consisted of 131 high quality polyethylene sheets imported from Azrom Metal Industries Ltd., Israel and other foreign companies. Each such sheet was designed to withstand any high speed winds up to 60km/hr and to allow only a specific measured amount of sunshine exposure to the plants. The nature of plantations in this business required maintenance of appropriate temperature and humidity.

7. The respondent, namely Oriental Insurance Company Ltd., is an Insurance Company from which the petitioner had availed two insurance policies bearing Policy No. 211300/47/98/00002 ("Policy 1") and Policy No. 211300/000/00000/11/13/98/05088 ("Policy 2").

These policies were operative for the period of 12 months, i.e. 07.08.1997 to 06.08.1998.

8. The Policy 1 covered items such as plants, saplings, roses, and inputs, while the Policy 2 covered other physical assets such as equipment in the greenhouses. The present dispute emanates from policy 2, namely the fire and miscellaneous insurance policy.

9. On the evening of 02.06.1998, severe high winds and rainfall struck the greenhouses of the petitioner. The directors of the company were informed, and they reached the site immediately. They discovered that a substantial number of polyethylene sheets had suffered serious damage, were either torn or blown away, thereby also damaging the plants.

10. The directors of the company made several efforts to repair the damaged sheets to reduce the resultant damage to the plants with the help of the villagers, however a second wave of high winds and rain struck the greenhouse of the petitioner again on 04.06.1998. The directors again organised their efforts to repair the damage done on 04.06.1998.

11. The respondent was informed by the petitioner company *vide* letter dated 05.06.1998 about the loss and damage suffered by them and their greenhouses. On 5.06.1998, some more sheets were replaced.

12. Pursuant thereto, the surveyor deputed by the respondent namely Mr. J.K. Sharma visited the site on 06.06.1998 to assess the damage done to the material of the greenhouses. The repair work of the said greenhouses continued on 06.06.1998, whereby 90 sheets were

replaced because of damage and 41 old sheets were found to be in fit condition.

13. Since the surveyor did not visit again, the petitioner repeatedly requested and addressed numerous communications and finally the survey was conducted on 19.09.1998, whereby the surveyor was shown the damaged sheets, damaged plants and also the new sheets, 90 in number which were replaced in order to fix the greenhouses. The stock registers also recorded the said facts, that the petitioner company had 91 sheets in stock and substantial numbers of them were utilised. The surveyor tried on several occasions to get the damaged sheets counted but the same could not be done.

14. The surveyor addressed a letter dated 05.10.1998 to the petitioner stating that it was not possible to measure the heaps of damaged polyethylene sheets because of lack of labour and that the same fact was also informed to one of the directors of the company. The surveyor through this letter allowed a last opportunity to the petitioner to submit their response by 15.10.1998. The petitioner *vide* letter dated 02.11.1998 submitted a statement of measurement and counting, and informed the surveyor that the damaged sheets are lying in pieces and heaps because of extensive damage due to high speed wind and rain.

15. On 09.11.1998, the surveyor submitted his report to the respondent, which as per the petitioner was based on misrepresentation of facts and was without any application of mind.

16. At repeated requests of the petitioner, the respondent company *vide* letter dated 18.02.1999 appointed Mr. Ashwani Chaudhary as a new

surveyor to reassess the loss suffered by the petitioner company. After his visit, in a report dated 23.03.1999, he recommended a net amount of Rs. 3,17, 935/- only for 15 sheets without undertaking the analysis as to the number of sheets actually lost or damaged. The petitioner did not accept this assessment of loss, and the respondent also refused to make the payment of the said assessed amount until it is accepted for full satisfaction.

17. The policy contained a dispute resolution clause being Clause No. 13, which was invoked by the petitioner *vide* its letter dated 13.08.1999 and filed a Claim petition. The petitioner made several efforts to resolve the dispute even after issuing of arbitration invocation notice but to no avail.

18. The petitioner herein was the claimant before the Arbitrator and the respondent herein was the respondent in the said Arbitral proceedings.

IMPUGNED AWARD

19. Initially, the Arbitral Tribunal consisted of Hon'ble Mr. Justice A.P. Chowdhri (Retd.), Presiding Arbitrator, Shri D.B. Malik, Arbitrator and Shri Girish Aggrawal, Arbitrator. However, the two Arbitrators, namely Shri D.B. Malik and Shri Girish Aggrawal recused themselves from the Arbitral proceedings on 02.02.2009 and then the parties agreed to continue with the presiding Arbitrator Hon'ble Mr. Justice A.P. Chowdhri (Retd.) as the Sole Arbitrator. However, Justice Chowdhri also resigned from the proceedings on 31.07.2009. Thereafter, by mutual consent of the parties Hon'ble Mr. Justice K.S. Gupta (Retd.) was appointed as the Sole Arbitrator to adjudicate the disputes between the parties and the petitioner was consequently

awarded Rs. 3,17,935/- along with interest at the rate of 10% per annum to be calculated from 27.08.1999 *vide* Award dated 17.03.2012.

SUBMISSIONS ON BEHALF OF THE PETITIONER

20. Mr. Kapur, learned senior counsel for the petitioner, at the outset states that the Award suffers from patent error, perversity and has been passed without considering the materials and evidence placed on record.

21. He states that the Arbitrator made an erroneous finding without any application of mind by relying on on-site physical verification as conducted by the initial surveyor Mr. JK Sharma, despite him stating that he never had the opportunity to calculate the number of damaged sheets.

22. The Arbitrator completely disregarded the statements made by Mr. JK Sharma during his cross-examination, wherein he categorically made three admissions, firstly that he has not calculated the total number of damaged sheets, secondly that he was offered full cooperation by the petitioner to assess the damage on-site, and thirdly the survey report is based on his memory.

23. It is further submitted that the Arbitrator has not considered the stock register maintained by the petitioner which clearly proves the replacement of 90 sheets after the damage.

24. The findings of the Arbitrator are inconsistent and contradictory as he accepted the total number of damaged sheets to be 15 but at the same time also recorded an observation as to how this substantial number of damaged sheets can be replaced by the petitioner in a mere duration of

3 days. It is argued 15 sheets could not be called substantial number of sheets.

25. The Arbitrator in holding that the repair work started without informing the respondent in violation of Clause No. 6(i) of the terms and conditions, has failed to appreciate the fact that the nature and environment in which floriculture is practised in very sensitive and vulnerable and any further delay in repair would have caused damage to the entire crop.

26. The Arbitrator has also committed an error in accepting the argument advanced by the respondent that there was a delay in lodging the claim, and the same is in violation Clause No. 6(i) as the clause required any claim to be lodged forthwith. It was only because of another storm which struck the farm of the petitioner on 04.06.1998, the claim was lodged forthwith i.e. on 05.06.1998.

27. He also submits that Clause No. 6(i) of the insurance policy required a notice is to be addressed to the respondent within 15 days of the damage or loss. In the present case, the incident occurred on 02.06.1998 and 04.06.1998, and accordingly a notice was addressed on 05.06.1998 which is duly proved. The petitioner acted in a reasonable and prudent manner even in absence of the full Insurance policy document.

28. In case the notice dated 05.06.1998 was in clear violation of Clause No. 6(i), the claim of the petitioner would not have been entertained by the respondent at all.

29. Additionally, it is submitted that the Arbitrator has failed to ensure compliance with the mandatory statutory requirement as laid down

under Section 12 of the Act. He failed to make disclosure in writing of the *"circumstances likely to give rise to justifiable doubts as to his impartiality and independence".* The Arbitrator was informed by the petitioner company vide letter dated 14.03.2012 that he was related to the Managing director ***("M.D.")*** of the petitioner company and because of internal family conflicts, the Arbitrator was requested to recuse. This conduct of refusal to recuse and non-compliance by the Arbitrator give rise to justifiable doubts regarding his impartiality.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

30. Mr. Gaur, learned counsel for the respondent, states that the Award is a detailed Award passed after taking into consideration all the relevant evidence and material placed on record.

31. The Courts in exercise of Section 34 jurisdiction cannot reappreciate evidence, and the Award cannot be challenged on ground of evidentiary objections like inadmissibility or impropriety of evidence.

32. It is further submitted that the conduct of petitioner was in clear violation of the Clause No. 6(i), which contemplated a notice to be addressed forthwith on the happening of the incident but in the present case the notice was addressed to the respondent company on 05.06.1998 after getting the replacement work done. The petitioner not only conducted the replacement work without informing the respondent but also failed to furnish proof of payment made to the persons employed/hired in the said work of getting the sheets replaced.

33. Further, the surveyor had assessed damage only to extent of 14.5 sheets and the same was duly assessed and offered to the petitioner in full and final settlement but not accepted by them.

34. The Arbitrator has correctly held that the claim filed by the petitioner is not substantiated by evidence and accordingly he was only entitled to Rs. 3,17,935/- with interest.

35. It is also submitted that the Arbitrator has correctly relied on the survey report as the same is in consonance with law laid down in *United India Insurance Co. Ltd. v. Roshan Lal Oil Mills Ltd.*[1], *D.N. Bhadoni v. Oriental Insurance Co. Ltd.*[2]

ANALYSIS AND FINDINGS

36. I have heard the learned counsels for the parties and perused the material and documents placed on record.

SCOPE OF INTERFERENCE UNDER SECTION 34 OF THE ACT

37. The scope of interference under Section 34 of the Act is now clearly established. The Court is not required to sit in appeal as an Appellate Court over the Award, it cannot venture an inquiry into the Award by reappreciation of evidence or reinterpretation of the terms of the contractual agreement merely because there is another probable view. Judicial intervention with the Award is permissible only on limited and specific grounds, as enumerated under Section 34 of the Act. These instances warranting interference include incapacity of a party, invalidity of the arbitration agreement, procedural irregularities, non-

[1](2000) 10 SCC 19.
[2]1 (2012) C.P.J. 272 (NC).

compliance with the principles of natural justice and the Award being in conflict with the public policy of India. The Court is not required/empowered to reappreciate evidence or substitute its own view for that of the Arbitral Tribunal. As constantly reiterated, Section 34 of the Act, embodies the principle of minimal judicial interference, thereby preserving the foundational precept of the Act, the finality and efficacy of Arbitral Awards. Reliance is placed on ***Associate Builders v. DDA***[3]*and* ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[4].

38. Section 34(2)(b)(ii) of the Act stipulates another ground of challenging the Arbitral award i.e. public policy of India, which was delineated by the Hon'ble Apex Court in the case of ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[5]**,** this phrase "public policy of India" is explained with its contours in both the pre-amendment and the post-amendment position. The phrase must be accorded a restricted meaning post the 2015 amendments, and a mere contravention of law is not sufficient. The fundamental principles which form the very basis of administration of justice and law fallwithin the scope of "Fundamental Policy of Indian Law". The relevant paragraphs read as under:

> *"39. Following the expansive view of the concept "contrary to public policy", in DDA v. R.S. Sharma & Co. [DDA v. R.S. Sharma & Co., (2008) 13 SCC 80] , which related to a matter arising from a proceeding under Section 34, as it stood prior to the 2015 Amendment, a two-Judge*

[3] (2015) 3 SCC 49.
[4](2022) 1 SCC 131.
[5] (2025) 2 SCC 417.

Bench of this Court, on the scope of the power to set aside an arbitral award, summarised the general principles as follows : (SCC pp. 91-92, para 21)

> *"21. ... (a) An award, which is*
>
> *(i) contrary to substantive provisions of law; or*
>
> *(ii) the provisions of the Arbitration and Conciliation Act, 1996; or*
>
> *(iii) against the terms of the respective contract; or*
>
> *(iv) patently illegal; or*
>
> *(v) prejudicial to the rights of the parties;*
>
> *is open to interference by the court under Section 34(2) of the Act.*
>
> *(b) The award could be set aside if it is contrary to:*
>
> *(a) fundamental policy of Indian law; or*
>
> *(b) the interest of India; or*
>
> *(c) justice or morality.*
>
> *(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.*
>
> *(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to public policy of India."*

...

55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section

34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(a) violation of the principles of natural justice;

(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law,

the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).

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. ..."

39. Perversity as a ground for setting aside an Arbitral Award is to be generally examined on the touchstone of the principle of

reasonableness. An Award which is founded on reasons and evidence, however limited or compendious they might be, cannot be categorised as perverse. When the view adopted by the Arbitrator is a plausible view, the same must be upheld.

40. At the outset, Mr. Gaur, learned counsel for the respondent, states that the present petition is not maintainable as an Arbitral Award cannot be challenged on the ground of wrong conclusion by the Arbitrator seeking reappreciation of evidence by the Court. The Award is a detailed Award substantiated by the evidence available on record and the same does not suffer from any vice as enumerated under Section 34 of the Act warranting interference by this Court.

41. With the scope of Section 34 of the Act in mind, I shall now deal with the rival contentions.

REPORT OF THE SURVEYOR

42. The petitioner has contended that the Award is patently erroneous as the Arbitrator has squarely relied on the survey report of Mr. J.K. Sharma, while he himself admitted during cross-examination that the report was based on his memory and he never actually had the opportunity to calculate the number of damaged sheets. The operative portions of the Award read as under:

> *"Claim in this case has been made for 90 sheets whereas J.K. Sharma, surveyor confined the number of damaged sheets to 14.5 which has been increased to 15 by A.K. Choudhary, surveyor. It was pointed out by Shri Vachher, advocate that neither any inventory of the damaged property was prepared nor measurements, were taken by*

J.K. Sharma, and the conclusion reached by this surveyor about damage of 14.5 sheets is erroneous. Report of another surveyor-A.K. Choudhary too is incorrect as he had taken for assessment of loss the number of sheets to be 15 based on the report of J.K. Sharma. Alongwith the affidavit of D.N. Shakkarwal, Deputy Manager, copy of the insurance policy in question was filed. Condition No. 6(i) of the policy provides that "on the happening of any loss or damage the insured shall forthwith give notice thereof to the company and shall within 15 days after the loss or damage or such further time as the company may in writing allow in that behalf, deliver to the company." In cross- examination it was suggested to Shri Sakkarwal that the terms and conditions forming part of the policy in question were not supplied to the insured which suggestion he denied emphatically. As admitted by the Claimant the greenhouses was started sometime in January 1994 and claimant had purchased similar policy in previous years. Claimant must have been supplied the terms and conditions subject to which the policies were issued. In case the terms and conditions including condition No. 6(i) forming part of the policy in question was not supplied, the Claimant ought to have brought that fact to the notice of Insurance Company which it seem to have not done. There appears to be no reason not to believe, Shri Sakkarwal that the terms and conditions of the policy in question were also supplied to the

Claimant. In regard to the loss/damage on 2nd and 4th June 1998, admittedly, the Insurance Company was intimated only on 5.06.1998 in the evening. J.K. Sharma had visited the site immediately on 6.06.1998. In para 5: of the Statement of Claim, it is alleged that the work of replacing the damaged sheets was carried on 3rd June 1998 and it continued on 4th June 1998; few more old sheets were damaged in the high wind and rains in the evening of 4th June 1998 and out of the stock of 91 sheets available with the Claimant, substantial number of sheets were utilized by the afternoon of 5th June 1998.It is in the cross-examination of Suresh Goel Managing Director that no agency was hired for replacement of the polyethylene sheets though the sheets were very costly and skilled persons and supervision needed to fix them; about 25 to 30 persons /villagers had done the job under his direct supervision and Claimant had made payment to them. He admitted that the claimant had not filed any documentary proof/evidence in regard to the payment to the said persons, before the Insurance Company or in arbitration proceedings. Replacement of a substantial number of sheets even before intimating the Insurance Company or visit of the first surveyor to the site is not only in contravention of said condition No. 6(i) but raises serious doubts in regard to the number of sheets damaged. This doubt is further strengthen by non-submission of proof in regard to the payment allegedly made to the persons

involved in the work which required skill. Estimate not prepared in the presence of J.K. Sharma, surveyor forwarded alongwith Claimant's letter dated 2.11.1998 was in response to the letter dated 5.06.1998 and it cannot be safely considered for assessment of damage. Much importance cannot be attached to the inventory having not been prepared by J.K. Sharma and /or the number of sheets lying in stock with the Claimant in view of what has been found on physical verification at the site by him. Surveyors are appointed by the Insurance Company under the provisions of Insurance Act and their reports are to be given, due importance. One should have sufficient ground not to agree with the assessment made by them.(See Shri Vekenteshwara Syndicate Vs. Oriental Insurance Company Limited (2009) 8 SCC 507). For the forgoing discussion, I find absolutely no reason not to accept J.K Sharma's report in regard to the number of polyethylene sheets damaged as modified by A.K Choudhary's report. The number of sheets damaged must be taken to be 15 instead of 90 as claimed by the Claimant. At the cost of repetition it may be stated that in his said report A.K. Choudhary, surveyor has made additions towards freight charges, C& F charges and labour charges, reduced the percentage of depreciation and has maintained the value of salvage as suggested by J.K. Sharma based on weight. A.K. Choudhary assessed the damage at Rs. 4,17,935/- subject to deduction of Excess as

per the policy conditions. Amount of Rs. 3,17935/- seem to have been offered towards full and final settlement through the letter dated 22.4.1999 considering the deduction towards Excess clause of the policy. By the letter dated 13.08.1999 the Claimant requested the Insurance Company to unconditionally make the payment of the said amount which was declined by the letter dated 27.08.1999 by the Insurance Company. As the Claimant was dissatisfied with the said quantum of damage it could not have been legally forced to receive amount towards full and final settlement. Since that amount is still being retained by the Insurance Company, it is liable to make payment thereof alongwith interest w.e.f. 27.8.1999 till the payment is made. In the facts &circumstances of the case, the rate of interest is quantified @ 10% per annum. In addition, the Claimant is entitled to the share of fee paid to the arbitrator and the amount of stamp duty on the award.

Resultantly, award of Rs. 3,17,935/- alongwith interest @ 10% per annum w.e.f. 27.08.1999 thereon is passed in favour of the Claimant and against the respondent Insurance Company. Insurance Company will also pay the share of fee paid by the Claimant to the arbitrator and the amount of stamp duty on the award.

Award made and pronounced at New Delhi on 17.03.2012."

(Emphasis supplied)

43. The Arbitrator in the Award specifically held that the number of sheets damaged must be taken as 15 instead of 90 as claimed by the petitioner. The Arbitrator primarily relied on the survey reports of Mr. JK Sharma and Mr. A.K. Chaudhary while rejecting the petitioner's claim that 90 sheets were damaged.

44. The Arbitrator categorically observed in the Award that *"...Surveyors are appointed by the Insurance Company under the provisions of Insurance Act and their reports are to be given due importance..."* and relied upon ***Shri Venkenteshwara Syndicate v. Oriental Insurance Company Limited***[6] to support the proposition that one should rely on the report of the insurance surveyor and should be reluctant to disagree with the findings made therein.

45. However, a perusal of the Award reveals that the Arbitrator himself recorded serious deficiencies in the survey report. The petitioner's counsel pointed out that neither was any inventory of the damaged property was prepared nor measurements were taken by Mr. JK Sharma, and the conclusion reached by this surveyor regarding damage to 14.5 sheets is erroneous. The Arbitrator did not categorically deal with these contentions but nonetheless accepted the survey report by stating that *"Much importance cannot be attached to the inventory having not been prepared by J.K. Sharma and/or the number of sheets lying in stock with the Claimant in view of what has been found on physical verification at the site by him. Surveyors are appointed by the Insurance Company under the provisions of Insurance Act and their reports are to be given, due importance. ..."*

[6]2009 (8) SCC 507.

46. A perusal of the cross-examination of the surveyor Mr. JK Sharma reveals the following crucial admissions on his part:

i. He admitted that he did not actually calculate the total number of damaged sheets.

ii. He stated that the report was based on his memory.

iii. He mentioned that he was offered full cooperation by the petitioner to assess the damage on-site.

iv. He acknowledged that he could not complete a thorough count of the damaged sheets.

v. No inventory of damaged property was prepared.

vi. No measurements were taken during the site visit.

47. The relevant portions of the cross-examination of the surveyor Mr. JK Sharma, read as under:

> *"Q. Is there any term or condition in the policy issued to the Claimant which provided that the Claimant was required to provide staff or labourers at the site to you for measuring the damaged sheets?*
>
> *Ans. The policy does not contain any such term/condition.*
>
> *Photographs are generally taken by us. On the spot I had not prepared any rough estimate/report. Inventory of the damaged insured goods was also not prepared. It is correct to suggest that the survey report was prepared on the basis of memory. The report was prepared after physical verification. In this case I had taken the photographs of the site and those have been filed along with my affidavit. As per Ext. RW2/1 photographs are not filed with the survey*

report. There is no mention of the photographs in the Survey Report which I have seen. It is incorrect to suggest that no photographs were taken at the site. I admit that a meeting was held on 17.9.1998 at the office of the Claimant along with Ashok Sharma who is an employee of the Insurance Company and in that meeting it was decided that another visit would be made to the site. I visited the site thereafter on 19.9.1998. On that date I was alone when I visited the site. I admit that the Claimant had provided labourers and offered to measure the loss. They had co-operated in measuring the loss. Number of the sheets damaged is shown as 13 in the Survey Report. The Claimant had claimed that the number of sheets damaged were 94. I have seen the copy of the Claim Form which would show that the Claimant had claimed damage for 90 sheets. A letter was sent on 5.10.1998 to the Claimant. I admit that thereafter I had not visited the site. Claimant had sent reply to the letter dated 2.11.1998. Copy of the letter dated 2.11.1998 was shown to me which does not contain acknowledgement of receipt with my signature. I had received this letter. Claimant must have sent the letter dated 2.11.1998 to the respondent-Insurance Company also. On page 19 of the report, it is stated that the Claimant had claimed that the number of the sheets which were damaged were 104. It is incorrect to suggest that the report was prepared on the basis of surmises and conjectures and not on the basis of the number of the sheets

which were damaged. The Claim was allowed for 14.5 sheets in the Survey Report.

Q. Can you furnish any explanation as to why when in your report you had mentioned that the number of sheets damaged were 13, you had recommended for payment of claim for 14.5 sheets?

Ans. Total number of damaged sheets was calculated by me. They have a standard on each roll and then after division the result is calculated about the number of damaged rolls.

On the first visit I had spent 4 or 5 hours. Subsequent visits also were of the same duration. I admit that the area of the Farm House was approximately 15 acres. It is incorrect to suggest that some of the pieces of the torn/damaged sheets were blown in the air and the damaged sheets were 90 in number. It is correct that there is always a difference in colour between a new sheet and an old sheet."

(Emphasis supplied)

48. Though a report of the surveyor is important and holds substantial value in the eyes of law but the same is neither sacrosanct not binding, it is only a piece of evidence. The Hon'ble Division Bench of this Court in its judgment titled ***United India Insurance Co. Ltd v. M/S Valley Iron & Steel Co. Ltd.***[7]**,** while discussing issue-wise assessment traced down a catena of Supreme Court judgments. The relevant paragraphs of the judgment read as under:

[7] FAO(OS) (COMM) 165/2025, pronounced on 24.12.2025.

"20.4.3 Appellant's contention that surveyor's report ought to have been accepted at face value, does not hold water, particularly in the light of the law by the Supreme Court. The Supreme Court, in a catena of judgments, has consistently held that a surveyor's report, though statutorily recognised, is only a piece of evidence, is neither sacrosanct nor binding, and may be departed from where it suffers from infirmities or is outweighed by more reliable material on record. For the purpose of reference, said decisions are extracted as under:

…

ii. National Insurance Co. Ltd. v. Hareshwar Enterprises (P) Ltd. (2021) 17 SCC 682:

"13. In that view of the matter the only question on merits which needs consideration herein is with regard to the loss assessed towards destruction of the stock-intrade in the fire incident. On this aspect, the learned counsel for the appellant while contending that Ncdrc has committed an error in relying on the surveyor report as sacrosanct without giving credence to the investigation report has referred to the decision in New India Assurance Co. Ltd. v. Pradeep Kumar [New India Assurance Co. Ltd. v. Pradeep Kumar, (2009) 7 SCC 787 : (2009) 3 SCC (Civ) 314] and

referred to paras 21 and 22 which read as hereunder : (SCC pp. 791-92)

...

14. In the said decision, it is no doubt held that though the assessment of loss by an approved surveyor is a prerequisite for payment or settlement of the claim, the surveyor report is not the last and final word. It is not that sacrosanct that it cannot be departed from and it is not conclusive. The approved surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured. On the said proposition, we are certain that there can be no quarrel. The surveyor's report certainly can be taken note as a piece of evidence until more reliable evidence is brought on record to rebut the contents of the surveyor's report.

17. Having noted the said decisions, we are of the opinion that the same cannot alter the position in the instant case. On the proposition of law that the surveyor's report cannot be considered as a sacrosanct document and that if there is any contrary evidence including investigation report, opportunity should be available to produce it as rebuttal material, we concur. However, the issue to be noted is as to whether the surveyor's report in the instant case adverts to

the consideration of stock position in an appropriate manner and in that circumstance whether an investigation report which is based on investigation that was started belatedly should take the centre stage. The fact remains that the surveyor's report is the basic document which has statutory recognition and can be made the basis if it inspires the confidence of the adjudicating forum and if such forum does not find the need to place reliance on any other material, in the facts and circumstances arising in the case. ...”

(Emphasis supplied)

49. In this view of the matter, the recommendation/report of the surveyor is only evidentiary in nature and not a binding or sacrosanct document. When the report is perfunctory, casual or suffers from infirmity, the same has to be rejected by the Arbitrator.

50. In the present case, the cross-examination of Mr. J.K. Sharma itself reveals casualness and a perfunctory manner in which the report was prepared. A survey is an integral and most important cog in the wheelof insurance claim settlements. The survey report is a foundational document on which the first assessment of loss is made. The survey report dated 09.11.1998 of Mr. JK Sharma which forms the fountainhead of the Award is without actual measurement of loss and based on the surveyor’s memory. This survey report at best is the guesswork of the surveyor. The petitioner in his cross-examination has

clearly been able to demolish the surveyor's method to assess loss, and its evidentiary value for quantification of loss.

51. The evidence led by the witnesses of the petitioner namely Suresh Goel, M.D. (CW-1), Gautam Goel, Director (CW-2), Zuruddiun (CW-3) and Sanjeev Tyagi (CW-4), as well as stock registers attached as exhibit-CW-1/10 in the Claim petition, had not even been discussed in the Award. Even though the Arbitrator has stated that these witnesses of the petitioner duly tendered their evidence and that the same was also subjected to the rigour of cross examination, but the Arbitrator failed to analyse, even in one single paragraph, the evidence led on behalf of the petitioner and has squarely relied on the respondent's version on the basis of the report of the surveyor.

52. The Arbitrator while performing its adjudicatory function even in presence of a survey report was required to examine, consider and weigh the evidence of the claimant also, which in the present case had not been adverted to at all, and in fact, the Award is only based on the observations of the surveyor made in the survey report.

53. The paragraph No. 18 (i) of the affidavit furnished in evidence by Mr. Suresh Goel (CW-1) mentions that the surveyor in his report has categorically stated that the requisite measurement was undertaken for each damaged sheet in front of the directors of the petitioner company. However, this statement is inconsistent with the surveyor's letter dated 05.10.1998 wherein he specifically mentioned that the measurement of the damaged polyethylene sheets could not be carried out as the petitioner failed to provide him with proper labour for the said

purpose. The relevant portions of the report dated 09.11.1998 reads as under:

> *"Methodology for assessment of loss.*
>
> *Damage to the polyethylene sheets, was assessed after measuring each damaged sheet. The damages were critically examined with respect to the cause of accident mentioned in the claim form.*
>
> *Damage to sheets were counted in front of insured's representative. Then we measured length and width of each sheet. All the sheets were of standard size of 46 X8.50 meters. …"*
>
> ***(Emphasis supplied)***

54. The said observation in the report of the surveyor, which forms the basis of the report and the Award, is totally contrary to the evidence of the surveyor in his cross-examination. Mr. JK Sharma categorically admitted in his cross-examination that no inventory or rough estimate was prepared at the site. He further stated that, the report was prepared on the basis of his memory and that he last visited the site on 19.09.1998. Even though, in his cross-examination, the surveyor stated that he had taken photographs of the damaged sheets at that relevant time, however they were neither filed with the survey report, nor mentioned in the report. The relevant portions of the cross-examination read as under:

> *"...I visited the site thereafter on 19.9.1998. On that date I was alone when I visited the site. I admit that the Claimant had provided labourers and offered to measure the loss.*

They had co-operated in measuring the loss. Number of the sheets damaged is shown as 13 in the Survey Report. The Claimant had claimed that the number of sheets damaged were 94. I have seen the copy of the Claim Form which would show that the Claimant had claimed damage for 90 sheets. A letter was sent on 5.10.1998 to the Claimant. I admit that thereafter I had not visited the site. ...

Q. I put it to you that between 2.6.1998 and 5.6.1998, the Claimant had replaced around 90 sheets and the difference of the colour in the sheets was clearly visible?

There was no colour difference and one could easily make out that the sheets had never been replaced.

It is incorrect to suggest that the salvage of the damaged sheets was lying at the site. It is incorrect that despite the salvage of the damaged 90 sheets at the site, I had not measured the same. I admit that I had not measured the damaged/salvaged sheets up to 5.10.1998. I have a vague idea that A.K. Chaudhary was appointed as a Surveyor later on by the respondent-Insurance Company. I have no idea that A.K. Chaudhary was appointed since my report was erroneous. It is incorrect to suggest that I had not stayed for more than 2 hours on any of my visits at the site. It is incorrect to suggest that I am deposing falsely. ..."

(Emphasis Supplied)

55. A bare perusal of the letter dated 05.10.1998 also reveals that the measurement of the polyethylene sheets could not be undertaken on

the date of earlier visit due to the petitioners lack of cooperation with the surveyor in getting the waste sheets counted. The relevant letter is reproduced as under:

ANNEXURE-9

GOVT. OF INDIA LICENCE NO.: 23795
DATE OF EXPIRY : 15-05-1999

OFF. 523905
RES. 5403543
FAX. 540 3543

41

J.K. SHARMA.

SURVEYOR& LOSS ASSESSOR
13, B.D. CHAMBER, 10/54, D.B. GUPTA ROAD,
KAROL BAGH, NEW DELHI-110005.

Our Ref ; JKS/ 152 / 98
Dated ; 05-10-98

The Manager,
Cosco Blossom (P) Ltd.
301, AVG Bhawan
M-3, Connaught Circus.
New Delhi-1

Sub : Damage to your Green House Structure at Village Goyla.
Dear Sir,

This has reference to the meeting held on 17th September, 1998. At your office at above said address. Meeting was in presence of Mr. Ashok Sharma, Manager of Insurance Co. at Jhandewalan Extension. It was collectively decided that we will again visit at the site of loss. As per the decision we approached at Green House on 19th September, 98. There we met your Mr. Aditya Goyal. He showed the waste material. He also said that the polyethylene sheets couldn't be measured as lack of labourer.

After having discussions at length at your office, we once again visited the site of loss. You have not cooperated in measuring the waste sheets as was decided in the meeting.

In case we are unable to receive proper response from your side unto 15-10-98. We will submit our independent report.

Very Truly Yours.

(J.K.Sharma.)

Copy : The Oriental Insurance Co. Ltd.
D.O. III, Jhandewalan Extension.
New Delhi-55

56. This letter is also clearly contradicted by the evidence of Mr. JK Sharma, who in his cross-examination has categorically stated that the petitioner had provided adequate labour. The relevant portion of the cross-examination reads as under:

> *"...I admit that the Claimant had provided labourers and offered to measure the loss. They had co-operated in measuring the loss. ..."*

57. In view of the above, there is material inconsistency in the statements made by the surveyor. While the report of the surveyor dated 09.11.1998 records that each damaged sheet was measured in the presence of the insured's representatives, his earlier letter dated 05.10.1998, as well as his categorical admission during cross-examination, reveal that no such measurement exercise was actually conducted owing to non-availability of proper labour and lack of cooperation from the petitioner. This contradiction is apparent on the face of the record and shakes the reliability and authenticity of the report of the surveyor. This ground of inconsistency was raised before the Arbitrator by the petitioner but the same was not considered by him.

58. A survey report based merely on memory, without proper calculation, verification, inventory preparation or measurements, cannot form the sole basis for determining the quantum of insurance claim, especially when the petitioner has placed on record documentary evidence in the form of stock registers showing replacement of 90 sheets. These stock registers maintained in ordinary course of business have not even been discussed in the Award.

59. In the present case, the Arbitrator erred by placing reliance on the survey report despite its deficiencies, which were duly admitted by the surveyor himself in his cross-examination, while simultaneously not considering the petitioner's evidence at all.

60. In this view of the matter, it is crucial to point out that the Arbitrator has failed to consider the contentions raised by the petitioner, material placed on record and has also erred in accepting the survey report on its face value without giving reasoned analysis and findings. Thus, the Award which clearly ignores the evidence available on record and is based on findings which are in contradiction to the clear admissions on record, cannot be sustained.

61. Even though the Arbitrator is the master of quality and quantity of evidence in Arbitral proceedings, an Award which ignores material evidence and gives findings contrary to the evidence on record is perverse and deserves to be set aside. The relevant paragraph of ***Associate Builders v. DDA (Supra)*** reads as under:

> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
>
> *(i) a finding is based on no evidence, or*
>
> *(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
>
> *(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse."*
>
> ***(Emphasis Supplied)***

62. In view of the above, on this ground alone the impugned Award dated 17.03.2012, is hereby set aside.

SECTION 12: NON-DISCLOSURE BY THE ARBITRATOR

63. Learned counsel for the petitioner has also raised a contention that the Arbitrator in the present case has failed/ignored to make disclosure which is mandated by the Section 12 of the Act. The petitioner in support of its contention relies on a letter dated 14.03.2012 addressed by the M.D. of the petitioner Company to the Arbitrator, wherein the Arbitrator was requested to recuse himself from the proceedings on the ground of being related with the M.D. of the petitioner company, thereby raising doubts about the impartiality of the Arbitrator in rendering the Award. The relevant letter dated 14.03.2012 reads as under:

167.

/By hand/

March 14, 2012

In the Matter of Arbitration between

Cosco Blossoms Pvt. Ltd. ... Claimants

And

Oriental Insurance Company Ltd. ... Respondents

Hon'ble Mr. Justice K.S. Gupta (Retd.),
Sole Arbitrator
B-176, Ground Floor
Shivalik
New Delhi

Sub: Arbitration matter being adjudicated by your goodself

Respected Sir,

The undersigned, Managing Director of Cosco Blossoms Pvt. Ltd. has come to know on date that he is related to you.

In the circumstances to avoid any kind of misunderstanding or any subsequent objections raised by any party it is our duty to bring this fact to your kind attention.

In the circumstances you may like to recuse yourself from the said arbitration proceedings.

Warm regards,

For Cosco Blossoms Pvt. Ltd.

Suresh Goel
Managing Director

64. The petitioner has only fleetingly invoked the embargo of Section 12 of the Act. In any event, the petitioner had participated in the Arbitral proceedings, knowingly, and being fully aware of the identity of the Arbitrator and his relationship with the M.D. of the petitioner company. Additionally, it was only three days prior to the passing of the Award that the petitioner company requested the Arbitrator to recuse himself from the proceedings. No reasons have been given by the petitioner for the delay in addressing the letter dated 14.03.2012, after a period of about 2 years from the date of appointment of Arbitrator on 30.11.2009 by mutual consent of the parties and even the allegations of partiality are vague and ambiguous. For the said reasons, I am not inclined to entertain this ground of non-disclosure raised by the petitioner.

CLAUSE NO. 6(i) NOTICE AFTER LOSS/DAMAGE

65. Clause No. 6(i) of the policy which is reproduced in the Award, reads as under:

> *"On the happening of any loss or damage the insured shall forthwith give notice thereof to the company and shall within 15 days after the loss or damage or such further time as the company may in writing allow in that behalf, deliver to the company"*

66. The Arbitrator with respect to the aforesaid clause has held that *"replacement of a substantial number of sheets even before intimating the Insurance Company or visit of the first surveyor to the site is not only in contravention of said condition No. 6(i) but raises serious doubts in regard to the number of sheets damaged."*

67. To my mind there is substantial compliance of Clause No. 6(i), which prescribes the outer limit of 15 days to furnish the requisite information and does not unequivocally/mandatorily state that the same be furnished immediately. The clause mentions the word "forthwith" and the words as used are to be given their intended meaning. From a perusal of the aforesaid clause it is clear that the insured is required to inform the insurer "forthwith" about the loss sustained by it and in the context of this Clause "forthwith" means "as soon as possible" and maximum within 15 days unless time extended by the insurance company. The first storm hit the greenhouses of the petitioner on 02.06.1998 and the second storm on 04.06.1998, thereafter the petitioner furnished notice to the insurance company on 05.06.1998. In view of the matter, the petitioner company has informed the respondent "forthwith" about the loss suffered.

68. The Arbitrator has erred in holding that the replacement of sheets prior to any intimation to the insurer violated Clause No. 6(i) of the policy. The nature of damage required immediate restoration and the representatives of the petitioner acted in a manner as every prudent person ought to have. I am of the view that the actions were reasonable and in any case, the insured is required to take reasonable steps in order to prevent extensive damage to its plants.

69. An Award which does not analyse the evidence led by the parties and ignores vital evidences placed on record deserves to be set aside under Section 34 of the Act.

70. The reasoning of Arbitrator is cryptic, without application of mind, ignoring the clear evidence available on record and is consequently

perverse. Thus, the same needs to be set aside by this Court in the interest of justice.

CONCLUSION

71. The Award is squarely based on a survey report which, though an important piece of evidence, is not a sacrosanct document and cannot be accepted at face value when it is clearly defective. The Arbitrator could not have relied solely on the survey report to deliver its findings while disregarding other vital evidence placed on record. Such non-consideration of vital evidence and contentions of the petitioner at all by the Arbitrator amounts to perversity.

72. Accordingly, the impugned Award dated 17.03.2012 is hereby set aside.

73. The petition is allowed and disposed of in the aforesaid terms along with pending applications, if any.

JASMEET SINGH, J

MARCH 12th, 2026/(SS)