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

% **Judgment reserved on: 24.03.2026**
Judgment pronounced on: 02.04.2026

\+ O.M.P. (COMM) 182/2023, I.A. 9296/2023, I.A. 7305/2024 & I.A. 7697/2026
THE ORIENTAL INSURANCE COMPANY LTD. .....Petitioner

Through: Mr. Abhishek K Gola, Advocate.

versus

JINDAL INDIA LIMITED .....Respondent
Through: Mr. Ishaan Chhaya, Advocate.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. The present petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996 (for short 'the Act') for setting aside of the arbitral award dated 10.02.2023.

2. The brief facts are that the respondent/claimant is engaged in the manufacturing of Galvanised Steel Sheets, Corrugated Sheets & Coils and operates an Aluminium Foil division at NH-6 Mouza Jangalpur Hawra, West Bengal comprising of an old mill and a new mill. The respondent took an Industrial All Risk Policy from the petitioner valid from 13.01.2017 to 12.01.2018. The policy covered risk of fire, machinery breakdown and indemnity for business loss for a period of six months on account of business interruption i.e. Fire

loss of Profit (FLOP).

2.1 On the night of 27.09.2017 a fire broke out in the new unit of aluminium foil division. The petitioner appointed a surveyor (hereinafter referred to as 'first surveyor'). The survey report dated 25.12.2018 assessed the loss to the tune of Rs.13,31,13,073/- against the claim of Rs.19,31,69,106/-. The petitioner raised certain queries with regard to the method of calculation of Business Interruption Loss (for short 'BIL'). The first surveyor gave two additional reports dated 12.10.2019 and 18.11.2019 enhancing the business loss to Rs.17,02,77,352/- and Rs.17,38,24,536/- respectively. In both reports, a disclaimer was made that the first surveyor stood by the initial report dated 25.12.2018. On being dissatisfied with the report, the petitioner under Section 64UM of the Insurance Act, 1938 (for short '1938 Act') appointed a second surveyor who assessed the BIL to the tune of Rs. 3,84,80,892/- and this amount was paid. Dissatisfied with the loss assessed, the respondent initiated arbitration proceedings by serving a notice under Section 21 of the Act and claimed an amount of Rs.13,53,43,644/- towards BIL alongwith interest. The arbitrator framed the following issues:

(I) Whether the present claim is barred by limitation? OPR.

(II) If the answer to Issue No. (I) is in negative whether the dispute under the Industrial All Risk Policy bearing No. 31170/11/2017/711 is arbitrable and if so, to what effect?

(III) If the answer to Issue No. (II) is in affirmative whether the payment of Rs.3,84,80,892/- to the Claimant by

the Respondent and the consequent issuance of discharge vouchers stopped the Claimant from raising the present claim, if so, to what effect? OPR.

(IV) If the answer to Issue No. (III) is in negative to what amounts is the Claimant entitled to under the present claim, if so, to what effect? OPC.

(V) Is the Claimant entitled to interest on the claim so awarded and if so, at what rate and for what period? OPC.

(VI) Relief.

3. The claim was held to be within limitation and the dispute to be arbitrable. Issue no. 3 was decided in favour of the respondent holding that the respondent by receiving an amount of Rs.3,84,80,892/- was not estopped from raising the dispute. The arbitrator held that the appointment of the second surveyor without recording reasons or affording an opportunity of hearing to the respondent was not valid. Proceeding on the basis that the petitioner had accepted the report of the first surveyor dated 25.12.2018 for loss of machinery assessed at Rs.27 crores and had found fault only with the assessment of BIL, the arbitrator awarded the assessed amount of Rs.13,31,13,073/- and the amount of Rs.3,84,80,892/- already paid was to be adjusted. Interest @ 7% per annum was granted in case the payment was not made within one month from the date of the award.

4. Learned counsel for the petitioner contended that the first surveyor assessed the BIL by determining the standard turnover in violation of the terms of the policy. It was submitted that the turnover of twelve months immediately preceding the date of loss was to be

considered, adjustments were to be made where the indemnity period exceeded twelve months and for business trends and other circumstances but the first surveyor took the turnover of two months for determining the standard turnover.

4.1 The argument is that the rate of gross profit (for short 'GPR') should have been taken for both the units and not for the new unit alone. Further the GPR was to be calculated on the basis of gross profit earned on turnover during the financial year (for short 'FY') immediately preceding the date of loss.

4.2 It is submitted that the departmental clause was wrongly invoked on the basis of accounts certified by a chartered accountant (CA) and not on the basis of audited accounts.

4.3 Lastly the emphasis is that the arbitrator erred in recording that there were no reasons for appointing the second surveyor despite relevant evidence in the form of the note dated 16.10.2019 being there on record.

5. *Per contra,* re-examining the report of the first surveyor would amount to re-appreciation of evidence. The contention is that the view taken by the arbitrator is plausible and for every factual or legal error the award cannot be set aside. The report is defended stating that the consideration of turnover for two months is backed by reasons that consequent to the anti-dumping duty imposed in May 2017 there was an increase in turnover and in prices. The first surveyor by two clarificatory reports addressed the objections raised by the petitioner. The non-applicability of the departmental clause was refuted stating that considering the consolidated position of the old and new units

would result in inclusion of figures of the old unit which was not affected by fire. The assessment of the GPR is supported to have been calculated as per the terms of the policy. Submission is that the standard turnover defined in the policy permitted adjustments in GPR based on changing business trends. Lastly the contention is that the calculation of the petitioner and the second surveyor suffered from a fundamental flaw of not calculating the BIL as per the departmental clause.

6. Heard the learned counsel for the parties at length. The relevant record was perused with their able assistance. No other issue than those noted above was pressed.

7. The bone of contention is with regard to the correctness of the methodology adopted for assessment of BIL under the policy.

8. Section II of the policy provides that loss resulting from business interruption caused due to loss destruction or damage during the period of insurance is to be indemnified, subject to the condition that the liability of the insurer shall not exceed the total sum insured.

9. The basic insurance cover is limited to the loss of gross profit due to reduction in turnover and increase in cost of working. The increase in cost of working is not in issue in the present case.

10. The reduction in turnover is defined as a sum arrived at by applying the GPR to the shortfall in turnover during the indemnity period as compared to the standard turnover consequent to loss destruction or damage. The gross profit is defined as the excess of the sum of turnover, closing stock and work-in-progress over the sum of opening stock, work-in-progress and uninsured working expenses.

The definition of GPR is the rate of gross profit earned on the turnover during FY immediately preceding the date of loss destruction or damage. The standard turnover is defined as the turnover of twelve months immediately preceding the date of loss destruction or damage to be adjusted correspondingly where the indemnity period exceeds twelve months and necessary adjustments shall be made to account for business trends and variations or other circumstances affecting the business either before or after the loss which would have affected the business.

11. The arbitrator held the appointment of the second surveyor to be bad for non-recording of reasons and in violation of the principle of *audi alteram partem* by not issuing notice to the respondent for not accepting the report of the first surveyor.

12. The Supreme Court in the case of **Sri Venkateswara Syndicate v. Oriental Insurance Company Ltd. & Ors.** (2009) 8 SCC 507 held that a second report cannot be called for as a matter of course in the absence of a valid reason and for the purpose of obtaining a tailor-made report.

13. The petitioner has the power to appoint a second surveyor under Section 64UM of the 1938 Act. The note of the petitioner company dated 16.10.2019 is on record wherein the reasons for calling for the second report are mentioned. It is stated that the standard turnover was to be taken from the turnover of twelve months whereas the first surveyor without justifiable reasons restricted it to two months. The GPR was not in accordance with section II of the policy.

14. To resolve the objections to the report of the first surveyor a

meeting was convened on 01.10.2019 in the presence of the first surveyor and the respondent, thereafter a decision was taken for appointment of a second surveyor. The finding recorded by the arbitrator that there were no reasons for appointing a second independent surveyor is contrary to the record. The arbitrator ignored the relevant evidence. The meeting convened to resolve the issues provided an opportunity to the respondent to respond to the objections of the petitioner to the report.

15. The arbitrator after having held the appointment of the second surveyor to be bad in law did not consider the second report on merits. The first report dated 25.12.2018 of the first surveyor was accepted. There cannot be a dispute on the proposition that under Section 34 of the Act, there can be no re-appreciation of evidence and this court shall not sit in appeal over the report submitted by a surveyor. What warrants judicial scrutiny is whether the report of the surveyor was in accordance with the terms of the policy.

16. The acceptance of the report of the first surveyor assessing the loss of machinery by the petitioner cannot operate as an estoppel against the petitioner from challenging the report. The report was in two parts dealing with two claims under different heads. Acceptance of one claim does not debar raising objection to the second part of the report.

17. The challenge that the standard turnover was not calculated as per the policy wherein the turnover of twelve month immediately preceding the date of loss was to be considered but in the instant case the turnover of two months was taken by the surveyor, need not be

gone into in detail. Suffice to say that the terms of the policy provide leeway for making necessary adjustments to the standard turnover, taking into account the business trends and circumstances affecting the business either before or after the loss. The first surveyor recorded reasons for making adjustments and the law is well-settled that a plausible view shall not be interfered in exercise of powers under Section 34 of the Act.

18. The contention of the learned counsel for the petitioner that the gross profit should have been taken of both the units is fallacious. The standard turnover assessed on the basis of the turnover of the new unit is not challenged and the only objection raised is that the turnover of two months was considered instead of twelve months. On one hand the turnover of the new unit for determining the standard turnover is not objected to while on the other hand a contradictory stand is taken that the gross profit of both the units combined should be considered.

19. The figures relied upon for calculating the mill-wise turnover for invoking the departmental clause were from financial statements certified by a CA relying upon the figures provided by the management. The argument that the departmental clause could not have been invoked on the basis of verified account statements in the absence of audited accounts lacks merit. Learned counsel for the petitioner despite repeated queries failed to point out any term in the policy providing that for invoking the departmental clause audited accounts are to be relied upon.

20. Another angle is that the fire incident took place in September 2017 and the impugned award was passed in February 2023 but the

petitioner failed to adduce evidence that the verified account statements produced were not at par with the audited accounts prepared for the FY in question.

21. The challenge to the determination of the GPR deserves acceptance. The method adopted by the first surveyor to calculate the GPR is contrary to the terms of the policy. The definition of GPR is reproduced below:

> "Rate of gross profit earned on the turnover during the financial year immediately before the date of loss destruction or damage."

22. The first surveyor noted that the gross profit of both the old and new units in the FY immediately preceding the date of loss was 10.75% and when compared to the last six months prior to the loss the GPR was 19.35%. By considering the turnover of six months of the FY 2017-18 of the new unit and making adjustments for business trends the GPR calculated at 31.64% is under challenge being contrary to the terms of the policy. The calculation in the surveyor's communication dated 18.11.2019 is reproduced below:

Particulars	**Amount (Rs.)**	
Rate of Gross Profit	40,608	Per Ton
Add increase in GP due to trends of business	43,403	Per Ton
Less decrease in GP due to Increased other costs	2,158	Per Ton
Trend Adjusted GP	81,853	Per Ton
Selling Prices	2,54,802	Per Ton

Trend Adjusted Rate of GP	32.124	%

23. From the departmental clause and the method of calculation provided therein it is evident that for determining the loss, the GPR is to be applied to the shortfall in turnover during the indemnity period as compared to the standard turnover. There are two components i.e. the standard turnover and the GPR. The definition of the standard turnover gives flexibility to the surveyor to make adjustments for business trends, variations or other circumstances affecting the business either before or after the loss destruction or damage to enable the surveyor to arrive at a practicable result. The turnover during the indemnity period is to be reduced from the standard turnover and on the difference amount the GPR is to be applied.

24. The definition of GPR is unambiguous that the GPR is to be taken on the turnover of the FY immediately preceding the date of loss destruction or damage. The fire incident took place in September 2017 and FY 2016-17 preceded the date of incident. There is no provision in the policy for trend adjustment to the GPR. The first surveyor went beyond the terms of the policy by calculating GPR of 31.64% on the basis of turnover of the six months of the FY 2017-18 instead of taking the GPR earned on turnover of the FY 2016-17 and also by making trend adjustments to GPR. The different language used for determination of standard turnover and GPR is important. Turnover of twelve months preceding the date of loss or destruction is to be considered for determining the standard turnover whereas GPR earned on the FY immediately preceding the date of loss or destruction is to

be taken to determine the loss.

25. The arbitrator cannot go beyond the terms of the contract and before accepting the report of the first surveyor it was to be scrutinized whether both the components for assessing the loss of gross profit due to reduction in turnover were calculated in accordance with section II of the policy.

26. There cannot be a departure from the trite law that awarding a claim beyond the terms of the contract renders the award perverse and it is not a case of a factual or legal error.

27. The report of the first surveyor was not in accordance with section II of the policy and the arbitrator by accepting the report went beyond the terms of the policy, consequently the award is set aside. The petition is allowed.

AVNEESH JHINGAN, J

APRIL 02, 2026
'JK'

Reportable:- Yes