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

\# **CNR No. DLHC010153932022**

\+ O.M.P. (COMM) 193/2022

TRANSTONNELSTROY AFCONS JV CHENNAI METRO LIMITED .....Petitioner

Through: Mr. Anil K., Sr. Advocate with Mr. Deepesh, Mr. Himanshu Gulliya, Mr. Vishal Tyagi, Mr. Harsh Gautam and Ms. Bindiya Logawney, Advocates.

versus

ORIENTAL INSURANCE COMPANY LIMITED .....Respondent

Through: Mr. Amandeep Singh and Mr. Pradeep Desodya, Advocates.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGEMENT (ORAL)

% **12.08.2026**

1. Learned Counsel for the Respondent has waived his right to file reply.

2. With the consent of the parties this Court is finally hearing the matter.

3. The present petition is being preferred under Section 34 of the Arbitration and Conciliation Act, 1996[1] filed by the Petitioner assailing Majority Arbitral Award dated 13.01.2022[2] passed by the Arbitral

[1] "Act" hereinafter
[2] "Majority Award" hereinafter

Tribunal comprising three Arbitrators. The Petitioner assails the Majority Award to the limited extent of the findings recorded under issue no. C by which the Petitioner's claim for Rs.1 crore, interest and cost, was rejected. The issue No. C which forms the subject consideration in this matter is as follows:

> *"Whether the Respondent has correctly applied the excess clause i.e., "tunnel risk/collapse (AOG/normal) is 5% of claim amount subject to a minimum of Rs. 1 ,00,00,000/- while settling each of the claim no. 112500/44/2016/0000032 under policy bearing no. 112200/44/2011/153 and in Claim no. 112500/44/2011/154/ (OPR)."*

4. Briefly stating, the factual matrix of the present petition are that in January, 2011, Chennai Metro Rail Corporation Limited awarded the Petitioner a contract for "Design and Construction of Underground Stations and Associated Panels" in Chennai "package UAA-01" for approximately Rs.2597 crores.

5. In order to protect himself from the potential damages, the Petitioner purchased Contractor All Risk Insurance Policy bearing No.112200/44/2011/154 (Policy No.154) from the Respondent/Company on 04.02.2011/25.02.2011 after payment of a premium of Rs.7.8 crores.

6. The tenure of the said policy was 5 years and 6 months. As far as policy deductible terms are concerned under Schedule ENDT-36 of Policy No.154, the same are as follows:

(i) Normal claims – 5% of claim subject to a minimum of Rs.20,00,000/-.

(ii) AOG/Major Perils/Maintenance – 5% of claim subject to a minimum of Rs.50,00,000/-.

(iii) Tunnel Collapse (AOG and Normal)/Design Defect – 5% of claim subject to a minimum of Rs.100,00,000/-.

7. Abruptly, in December, 2015, the severe flooding/heavy rainfall in Chennai caused damage to the project sites of the Petitioner. Consequently, concerned insurance surveyors were appointed by the Respondent and an interim survey was issued by the surveyor by report on 15.06.2016 recommending an interim *ad hoc* payment of Rs.3 crore, which was released by the Respondent on 23.08.2016.

8. On 29.07.2016, upon payment of an additional premium of Rs.4.58 crores by the Petitioner, Policy No.154 was extended by the Respondent from 01.08.2016 to 30.04.2018 with identical deductible terms as endorsement No.36.

9. The concerned surveyors submitted its final survey report on 31.05.2018 assessing the gross liability payable at Rs.7,38,19,499/- (net Rs.4,38,19,499/- after deducting the interim Rs.3 crores). The surveyor applied the Act of God Peril excess clause i.e. 5% of the claim amount subject to a minimum of Rs.50,00,000/-.

10. On 30.01.2019, the Respondent sent a discharge voucher offering only Rs.2,29,64,223/-. The Respondent made two unilateral deductions of Rs.1 crore each applying an excess clause of "tunnel risk/collapse" (minimum Rs.1 crore) instead of AOG perils (minimum Rs.50,00,000/-) and adjusting Rs.1 crore towards alleged excess payment made under a separate CAR Policy No.153 (UAA-05).

11. Rs.2,29,64,223/- was accepted by the Petitioner under protest and invoked arbitration on 18.04.2019.

12. Before the Arbitral Tribunal the pleadings led to the framing of the following issues:

(i) Issue A – entitlement of claim of Rs.2 crores

(ii) Issue B – correctness of Respondent adjusting Rs.1 crore from Policy No.153 into Policy No.154

(iii) Issue C – whether Respondent correctly applied the excess clause "tunnel risk/collapse (AOG/normal)" 5% subject to minimum of Rs.1 crore under Policy No.154".

13. The Arbitral Tribunal concluded the proceedings and delivered the award on 13.01.2022 and rendered anonymous findings on Issue B.

14. The Tribunal held that the Respondent could not adjust Rs.1 crore from Policy No.153 against Policy No.154, holding the two contracts to be distinct.

15. As far as Issue C is concerned, by 2:1 majority, the Tribunal held in favour of the Respondent, holding that the tunnel risk was omitted due to a typographical error in Policy No.154. The majority relied upon pre-contract cover note/discussions to interpret the deductible schedule and upheld the application of Rs.1 crore, tunnel risk/collapse peril.

16. The Minority Arbitrator disagreed with the other arbitrators and held that the insurer was wrong to apply the "Tunnel Risk/Collapse"

deductible to this claim. The minority view was that the Respondent should not have deducted the ₹1 crore minimum amount under the tunnel/risk clause while settling the claim under Policy No. 154.

17. Learned Senior Counsel for the Petitioner assails the majority award under Section 34 of the Act on the ground that the majority Tribunal committed a fundamental jurisdictional error by looking into pre-contract negotiations/held cover notes to alter the plain text of Policy No.154.

18. He asserts that once a formal insurance policy is issued, pre-contract cover notice cease to operate and the terms and conditions given in policy governs.

19. He has further submitted that the majority award completely ignored pre-extension letter dated 29.07.2016 which reaffirmed the schedule of deductible without reverse tunnel risk even after 5 years.

20. Learned Counsel for the Petitioner further contends that under Section 26 of the Specific Relief Act, 1963, the rectification of instrument cannot be granted unless it is specifically claimed by pleadings/counter-claims. It is submitted that Respondent has not filed any counter-claim nor issued any rectification endorsement.

21. It is further submitted that the majority Tribunal presumed the decision of the respondent's head office without any internal file or competent authority being produced on record.

22. Learned Senior counsel further submits that the majority award in paragraph 78, has expressly declined to adjudicate whether loss occurred in the station or tunnel area despite the Respondent's own witness (RW-3/server) admitting in cross-examination that loss occurred in the tunnel area.

23. *Per contra*, learned Counsel for the Respondent supports the majority award by submitting that the Arbitral Tribunals are the ultimate master of evidence on contract interpretation and mere error of law does not warrant interference under Section 34 of the Act.

24. He also submits that the a plausible view given by the Arbitral Tribunal within the limited scope of Section 34, and therefore no interference is warranted.

25. Having considered the rival submissions and arbitral record, this Court finds that the majority award suffers from patent illegality and jurisdictional error rendering the majority award unsustainable under Section 34(2)(a) and 34(2)(b) of the Act for the following reasons:

(i) It is a fundamental principal of insurance jurisprudence that upon issuance of a formal insurance policy, all prior noting, discussions, cover notes and pre-contract negotiations merge into the final contract. The Hon'ble Supreme Court in ***K. Nagendra v. New India Insurance Co. Ltd. & Ors.***[3] held that once the insurance policy is issued, the rights and obligations inter se between the insurer and the insured are governed by the terms and conditions of the policy, which delineate the

[3] 2025 INSC 1270

four corners within which the insurance contract operates.

(ii) In the present case, Policy No.154 contained the deductible clause "tunnel/collapse (AOG and normal)/design defect". It is categorically admitted by the Respondent in a statement of defence which was filed after 8 years, that omission of "tunnel risk" was a typographical error. The majority members of the Tribunal acceded their jurisdiction by travelling beyond the executed policy to insert words based on a pre-contract cover notes. An Arbitral Tribunal is a creature of the contract and cannot rewrite explicit contractual provisions.

(iii) The record demonstrate that after 5 years and 6 months, the Respondent extended Policy No.154 *vide* extension letter dated 29.07.2016 upon receiving an additional premium of Rs.4.85 crores. The extension schedule specifically reiterated the deductibles without reverse tunnel risk. The majority award completely overlooked this critical document constituting a fatal perversity and failure to consider vital evidence.

(iv) Under clause 26 of the Specific Relief Act, 1963, a Court or Tribunal cannot grant the relief of instrument rectification unless a party specifically prays or claims it. The Respondent never filed a counter-claim for rectification nor issued a mandatory policy endorsement during the entire 8 year tenure of the policy. The majority Tribunal unilateral correction of the policy terms is legally unsupportable.

(v) The majority Tribunal failed to adjudicate genesis of the dispute to apply a tunnel specific deductible clause, as it was imperative to determine whether damage occurred in the station area or the tunnel area. In this regard, Para 78 of the majority award of the Tribunal is stated below:

> *"We feel that unnecessary controversy is raised on behalf of both parties in the arguments regarding meaning of tunnel and contradiction in the reports of Select Surveyor and Plea of defence in Statement of Defence. . . still we do not want to go into this controversy raised from both sides for two very strong reasons ...".*

(vi) Refusing to decide the fundamental issue and going to the root of the dispute constitute a failure of the adjudicatory process. Moreover, it is an admitted fact by witness produced by Respondent (RW-3/surveyor) who confirmed during cross-examination that zero-loss occurred in the tunnel area. Furthermore, it was presumed by majority Tribunal that a final decision of the Respondent's head office without any documentary evidence on record misinterpreting.

26. Thus, in light of the above findings, in the majority award dated 13.01.2022 in respect of Issue C are perverse patent illegal and opposed to the fundamental policy of the Indian law.

27. Accordingly, the present petition is allowed. The majority award to the extent of the findings of issue C is set aside.

OM PRAKASH SHUKLA, J

AUGUST 12, 2026/pa