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

Reserved on: 16th February, 2026
Pronounced on: 10th April, 2026

\+ O.M.P. (COMM) 8/2024

PANCHANAN INTERNATIONAL PRIVATE LIMITED .....Petitioner

Through: Mr. Manish K. Jha, Sr. Adv. with Mr. Rajat Joneja and Mr. Himanshu Mishra, Advs.
M: 7766912655
Email: advhimanshuoffice@gmail.com

versus

THE ORIENTAL INSURANCE COMPANY LIMITED .....Respondent

Through: Mr. Abhishek Gola, Adv.
M: 9958789900

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***Arbitration Act***"), being aggrieved by the Arbitral Award dated 28th August, 2023, passed by the learned Sole Arbitrator in arbitration proceedings titled as, *"Panchanan International Private Limited Versus The Oriental Insurance Company Limited"*.

2. By way of the impugned Arbitral Award, the learned Arbitrator has partly allowed the claim of petitioner and directed the respondent to pay Rs.

20,65,27,032/- along with interest @10% per annum from the date of filing the statement of claim before the Arbitrator, and costs.

3. In the present proceedings before this Court, the petitioner-claimant has challenged the impugned Arbitral Award on the following four findings of the Arbitrator:

(a) Pre-reference Interest: The Arbitrator has not provided the interest on the awarded amount for the pre-reference period, i.e., the period before filing of the claims/statement of claim before the Arbitrator.

(b) Double Deduction: The Arbitrator has approved carrying out deductions twice under the Insurance Policy, first, in the form of *'excess'*, and second, under *'error/ omission/ dead stock, etc.'*, whereby, petitioner's claim has been reduced by Rs. 1,37,71,763/-.

(c) Undervaluation of Stock: Stock of the petitioner has been erroneously undervalued by the Arbitrator by computing the same at 9% of its Maximum Retail Price ("***MRP***"), thus, undervaluing certain old stock worth Rs. 1,76,92,348/-.

(d) Taxation Component: The Arbitrator has failed to adjudicate on the petitioner's *Claim No. 5* for taxes and duties payable on the awarded amount.

4. ***Relevant Facts in Brief:***

4.1 The petitioner company was incorporated in the year 1998 and is engaged in the business of wholesale trade and distribution of readymade garments and undergarments in Delhi and Uttar Pradesh. The respondent – The Oriental Insurance Company Limited ("***OICL***") – is an insurance company providing various types of general insurance covers.

4.2 Petitioner purchased a Standard Fire and Special Perils Floater Insurance Policy ("***Insurance Policy***") from the respondent on 10th May, 2016 for a sum insured of Rs. 30 Crores, upon payment of Rs. 2,50,326/- as premium. The Insurance Policy was valid for a period of one year, till 09th May, 2017.

4.3 On 25th April, 2017, due to some electrical issue, a fire broke out at petitioner's godown, at premises bearing *No. 53/73, Nangli Poona, opposite DIRD College, GT Kamal Road, Delhi-110036*, which was covered under the Insurance Policy. The said fire was brought under control on the morning of 26th April, 2017, whereafter, the petitioner sent an intimation to the respondent, as per the terms of the Insurance Policy.

4.4 The respondent appointed one M/s Aditi Insurance Surveyor and Loss Assessors Pvt. Ltd. ("***Surveyor***") for carrying out the survey to ascertain the nature of fire and quantum of damage/loss. The petitioner submitted its claim of Rs. 37,27,22,010/-, along with documentary evidence, with the respondent and Surveyor on 10th July, 2017.

4.5 After months of back and forth, involving exchange of information, documents and various meetings, the Surveyor assessed the loss at Rs. 20,65,27,032/-, *vide* its Report dated 09th July, 2018.

4.6 Thereafter, post repetitive reminders and requests, on 12th March, 2020, almost 20 months after assessment of the Surveyor, an email was received from the respondent, unilaterally reducing and approving a sum of Rs. 65,86,125/- towards full and final settlement of petitioner's claim under the Insurance Policy.

4.7 Petitioner protested against the computation done by OICL and requested it to provide reasoning for undervaluing the claim. Despite multiple reminders, the respondent maintained its stance on the settlement amount. Aggrieved by the computation and lack of reasoning provided by the respondent, the petitioner invoked arbitration under Clause 13 of the Insurance Policy by way of a notice dated 30th December, 2020.

4.8 The respondent did not reply to the aforesaid arbitration invocation notice. Petitioner approached this Court under Section 11(6) of the Arbitration Act for appointment of an Arbitrator, wherein, *vide* order dated 28th July, 2021 in *ARB.P. 248/2021*, a Sole Arbitrator was appointed.

4.9 Before the learned Sole Arbitrator, the petitioner filed a claim of Rs. 23,09,16,188/- on 16th October, 2021, and raised the following six (06) Claims:

> *"Claim (1) Claim for an amount of INR 23,09,16,188/ - (Indian Rupees Twenty Three Crores Nine Lacs Sixteen Thousand One Hundred and Eighty Eight Only) towards full and final settlement of the Claimants Insurance Claim for loss of Stock due to Fire.*
>
> *Claim (2) Interest at the rate of 18% per annum from the date April 25, 2017 to October 15, 2021 which amounts to INR 18,60,74,148/- (Indian Rupees Eighteen Crores Sixty Lacs Seventy Four Thousand One Hundred and Forty Eight Only).*
>
> *Claim (3) Pendente lite and future interest at the rate of 18% per annum.*
>
> *Claim (4) Claim for Costs of Arbitration; &*
>
> *Claim (5) Claim for taxes on the awarded amounts.*
>
> *Claim (6) Claim for grant of such other and further relief, orders, awards, and directions as the Hon'ble Arbitral Tribunal considers appropriate."*

4.10 Thereafter, post filing of statement of defence by the respondent, the

learned Arbitrator framed the following six (06) issues:

> *"Issue No. 1*
> *Whether the damaged goods were Held-in-Trust by the claimant? If so, whether the respondent was justified in repudiating the claim in view of General Exception Clause No. 5 of Standard Fire and Special Perils Policy as notified by Tariff Advisory Committee in the year 2003 vide circular no. FT/02/2003 dated 17,03.2003?*
>
> *Issue No. 2*
> *Whether stocks of footwear and other accessories worth INR 8,49,11,753/- were covered under the term 'stocks of garments' as mentioned in the cover note of the policy issued to the claimants?*
>
> *Issue No. 3*
> *Whether the respondent was correct in deducting 5% of the claimant's claim on account of dead products / error?*
>
> *Issue No. 4*
> *Whether the respondent was correct in valuating certain old stocks of the claimant at only 9% of the MRP?*
>
> *Issue No. 5*
> *Whether the claim of the claimant is justified, if so, to what extent?*
>
> *Issue No.6*
> *Whether the claimant is entitled to interest if so since when and at what rate?*
>
> *Relief?"*

4.11 By way of the impugned Arbitral Award, the Arbitrator decided Issue No. 1 in favour of the petitioner and awarded a sum of Rs. 20,65,27,032/- along with 10% interest per annum from filing of the statement of claim before the Arbitrator.

4.12 By way of the present petition, the petitioner has partly challenged the Arbitral Award by impugning the finding of the Arbitrator in respect of *Issue Nos. 3* and *4*. Further, the petitioner has also partly challenged the findings of the Arbitrator *qua Issues Nos. 5* and *6*.

5. The following rival submissions have been made before this Court in favour of and against setting aside of the impugned Arbitral Award:

6. ***Grounds of challenge/objection by Petitioner***:

a. **Pre-reference Interest**

6.1 The Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulations, 2017 ("***IRDAI Regulations***") are binding upon all insurers and insureds, and thus, the respondent-OICL was bound under Regulation 15(8) to settle the claim within 30 days from the receipt of the Final Survey Report, i.e., by 09th August, 2018 in the instant case. However, the respondent, for the first time in March, 2020, offered a paltry sum of Rs. 65 Lacs, and thereafter, delayed in providing adequate reasoning for its unilateral deduction and deviation from the Surveyor's Report. Subsequently, the respondent had also failed to respond to petitioner's notice invoking arbitration, which led to further delay on part of the respondent.

6.2 In the claims submitted to the Arbitrator, the petitioner had specifically sought the interest for three periods – pre-reference, *pendente lite* and post award. Though the Arbitrator acknowledged the delay by respondent in settling the claim, it awarded the interest only from 16th October, 2021, i.e., after filing of the statement of claim.

6.3 Furthermore, the Arbitrator has failed to afford any reason whatsoever for denying said specifically claimed pre-reference interest. The same is violative of Section 31(3) of the Arbitration Act, which provides for a ground for challenge under Section 34 of the Arbitration Act in the absence of reasoning in the Award.

b. **Double Deduction**

6.4 The respondent as well as the Surveyor had carried out deductions

under two headers, i.e., (i) Rs. 1,08,68,865/- under the 5% deduction as per Excess Clause under the Insurance Policy, and (ii) Rs. 1,37,71,763/- for an additional 5% towards *'error / omission / dead stock, etc.'*, which was outside the Insurance Policy. The said double deduction, though specifically challenged before the Arbitrator, has been upheld in the impugned Arbitral Award.

6.5 The petitioner did not lay any challenge to the deduction of 5% under the Excess Clause. The petitioner had challenged the deduction of additional 5% before the learned Arbitrator on the ground that there was no clause in the Insurance Policy permitting deduction for errors and omissions/dead stock/stock differences/non-moving stock, and thus, the second deduction was extra-contractual. However, the Arbitrator failed to adjudicate upon the challenge to the 5% deduction towards *'error / omission / dead stock, etc.'*, as raised by the petitioner.

c. **Undervaluation of Stock**

6.6 The Arbitrator has upheld the challenged finding of the Surveyor reducing the stock value by 91% without any documentary evidence, bulk sale invoices, market data or proof of actual sales at such discount, particularly, when the goods had been purchased at substantially higher prices and were part of the running inventory.

6.7 Surveyor's narration in the Report *qua* the discounted sales of certain goods at 56% or 70% has no nexus with the specific stock destroyed in the fire which was valued by the Surveyor after discount of 91%. Such narration is speculative and substitutes assumption of proof. Furthermore, the Surveyor could not have physically verified the

stock, as incorrectly claimed by the respondent, as all the stock had been destroyed in the fire and there was nothing available for physical inspection.

6.8 The stock of the petitioner was audited on 31st March, 2017 as per AS-2 (Accounting Standard for Inventories), which valued the stock at cost or Net Realizable Value ("***NRV***"), whichever was lower. The incident of fire at the petitioner's premises occurred only 25 days later, i.e., on 25th April, 2018. Therefore, a 91% crash in valuation without any evidence is impermissible.

6.9 The said Audit Report had been specifically pleaded in the statement of claim by the petitioner, which was neither denied by the respondent in its statement of defence, nor did the respondent cross-examine petitioner's witness, who proved this aspect.

6.10 The AS-2 valuation is a statutorily compliant mode of valuation and Arbitrator's failure to consider the same strikes at the very heart of the finding under the impugned Arbitral Award. Thus, the Arbitrator disregarded 'vital evidence', such as audited stock registers, AS-2 valuation and purchase invoices, on record while rendering its finding, which is violative of the mandate of Section 34 of the Arbitration Act as it constitutes patent illegality and is perverse.

d. **Taxation Component**

6.11 The petitioner had claimed statutory taxes and duties payable on the awarded amount under *Claim No. 5*. However, despite petitioner's specific claim and Arbitrator noting the same in his Award, the Arbitrator has failed to deal with or decide the same. *Issue No. 5* framed by the Arbitrator squarely encompassed the tax and duty

claim. The claim was thus, pleaded, noticed and covered by the issues framed.

7. ***Submissions of the Respondent***:

a. **Pre-reference Interest**

7.1 Discretion has been exercised by the Arbitrator under Section 31(7) of the Arbitration Act for non-grant of interest for the period before filing of statement of claim and the same has been duly recorded in the Award. Such exercise of power by the Arbitrator cannot be questioned or reopened in proceedings under Section 34 of the Arbitration Act, as there is no mandatory provision to provide interest under the Arbitration Act.

7.2 The 10% interest that has been granted by the Arbitrator has been considered in accordance with Regulation 15 of the IRDAI Regulations. Furthermore, though the Regulation 15(1) provides for 30 days for settlement of claim, special circumstances are also envisaged under the Regulations, specifically Regulation 15(5)(ii), wherein, if claims involve complex issues, the Surveyor would seek extension from the insurer for submission of the report.

7.3 In the present case, the Arbitrator had duly considered the correspondence filed on record by the petitioner. The said correspondence shows several anomalies and non-compliances on part of the petitioner.

7.4 The Arbitrator has also not considered the petitioner's claim for consideration of footwear, belts and sunglasses in the category of 'garments', which in turn, along with non-following of the Sale-Purchase Agreements with Benetton India Private Limited, led to

delay in assessment. Therefore, the Arbitrator not only rejected the petitioner's claim for inclusion of such accessories as garments, but also considered these aspects, including, disagreement of petitioner with the net adjusted loss of Rs. 65.86 Lacs assessed by OICL, as the reasons for not granting interest for the pre-reference period.

7.5 Therefore, after due consideration of facts and documents on record, the learned Arbitrator had found that the case for grant of pre-reference interest could be made out, and thus, the petitioner cannot contend that grant of pre-reference interest was not considered by the learned Arbitrator.

b. **Double Deduction & Undervaluation of Stock**

7.6 While considering the Surveyor's Report and upholding the view taken therein, the Arbitrator has not only considered the contention towards ownership of stocks, but has also considered the Surveyor's Report in its entirety and then awarded the amount as assessed by the Surveyor. Therefore, it cannot be said that the reasoning given by the Surveyor has not been considered by the Arbitrator while deciding the issues pertaining to valuation of certain old stock @9% of the MRP and deduction of amounts under the heads of dead stock, error and omission.

7.7 In respect of *Issue No. 3*, learned Arbitrator had taken the Report of the Surveyor into consideration, which was the only document filed on record showing assessment of loss, in terms of Section 64UM of the Insurance Act, 1938 ("***Insurance Act***"). The claim of the petitioner has been allowed in accordance with the Surveyor's Report and the basis of assessment has been duly considered, wherein, while

considering the valuation, the Surveyor had given the reasoning after checking certain purchase bills and rates.

7.8 Only certain products were found to be old stock/non-saleable items, and therefore, their value has been considered @9% of MRP only, besides making a deduction of 5% for errors and omissions in quantity and valuation, as the petitioner did not have any purchase orders or invoices towards those particular products and had relied only upon internal records.

7.9 The Surveyor had, in its Report, also discussed the nature of stocks pertaining to the new season and old season merchandise and had noted that the old stock was not sold with aggressive discount and that major stock had been received in December, 2016 at discount of 56%. Further, regarding old season merchandise, the petitioner was getting a discount of 70%.

7.10 Even if the Auditor's Report had taken figures as per financial statement or purchase register, it had not physically verified the same. Whereas, on the other hand, the Surveyor had carried out physical verification and then categorised certain stock as slow-moving, old and non-saleable. This formed the basis of assessment of the relevant slow-moving stock @9% of its MRP.

c. **Taxation Component**

7.11 The Arbitrator had framed the issues based upon the pleadings of the parties. In the issues as framed, the petitioner has only challenged *Issue Nos. 3*, *4* and *6* before this Court. Neither any issue pertaining to adjudication on the tax and duties payable on awarded amount, was framed during the course of arbitration proceedings, nor was any

objection raised by the petitioner for not framing such issue.

7.12 The issue as to failure of adjudication on the tax and statutory duties payable on the awarded amount, being part of *Claim No. 2/Issue No. 6*, is being raised for the first time before this Court.

7.13 Even the *Issue No. 6*, i.e., whether the petitioner was entitled to interest, cannot be said to include the present ground of challenge, i.e., failure to adjudicate the claim in respect of taxes and duties payable.

Findings and Analysis

8. I have heard learned counsels for the parties and perused the relevant Arbitral Record. This Court proceeds to deal with the challenged issue-wise findings in seriatim hereinafter.

a. Pre-reference Interest

9. The petitioner has raised challenge with regard to *Claim No. 2/ Issue No. 6* on the ground that the learned Arbitrator has not awarded interest for the pre-reference period, i.e., the period before filing of the claims/statement of claim before the learned Arbitrator.

10. In this regard, it is to be noted that in the Award, the learned Arbitrator has noted the various claims raised by the petitioner, which includes the claim of interest for the pre-reference period, i.e., *Claim No. 2*. The finding of the learned Arbitrator with regard to the claim of interest, has been given by way of *Issue No. 6*, in the following manner:

> *"xxx xxx xxx*
>
> (vi) **Issue No. 6**: Learned Counsel for the claimant has submitted that as per Regulation 15 of Insurance Regulatory and Development Authority

of India (Protection of the Policy Holder's Interest) Regulation, 2017 the insurance company was required to settle or reject the claim of the insured within 30 days of the receipt of final survey report or the additional survey report as the case may be. The respondent however, took inordinate time of 18 months to process the claimant's claim and arbitrarily offered him a meager sum of Rs. 65 lacs for full and final settlement of the claim. Despite repeated request the respondent failed to communicate the reason for rejecting major part of the claim and departing from the surveyor report. It is submitted that had the claim been settled in time the claimant would have earned income on the said money by investing it. Thus he has pressed for the interest on the award amount.

I find merit in the above contention I, therefore, allow 10% interest on the award amount from the date of filing of the claim petition and till the realization of the same. This issue is accordingly decided in favour of the claimant.

xxx xxx xxx"

11. Perusal of the aforesaid finding of the learned Arbitrator manifests that while the learned Arbitrator found the insurer liable for delay in processing and settling the claim of the petitioner, the Arbitrator has denied interest to the petitioner for the pre-reference period, without adverting to any reason with regard thereto, or even discussing the said aspect.

12. In this regard, it is to be noted that the learned Sole Arbitrator accepted that the insurer was bound under the IRDA Regulations, particularly Regulation 15, to settle or reject the claim within thirty days from receipt of the Survey Report. However, the respondent herein took an inordinate delay of eighteen/twenty months before offering the sum of Rs. 65 Lacs towards full and final settlement of the claim.

13. The petitioner had specifically prayed for interest for all the three periods, i.e., pre-reference, *pendente lite* and post-award. A specific issue, i.e., *Issue No. 6*, was also framed by the learned Arbitrator for the rate and period of grant of interest. Even more so, while deciding the said issue, the learned Arbitrator found merit in the contention of the petitioner that there was an inordinate delay on the part of the respondent in settlement of the claim and that Regulation 15 of the IRDAI Regulations stipulates claim settlement in thirty days from the date of receipt of the Survey Report. Yet, having acknowledged the delay on the part of the respondent, the learned Arbitrator failed to consider grant of interest for the pre-reference period and awarded interest only from 16th October, 2021, i.e., from the date of filing of statement of claim before the Arbitrator.

14. Once the learned Arbitrator found the respondent responsible for prolonged and unjustified delay, denial of interest for pre-reference period required cogent reasons, which are entirely absent in the impugned Arbitral Award. In this regard, reference may be made to Sections 31(3) and 31(7) of the Arbitration Act, which read as under:

> *"xxx xxx xxx*
>
> ***31. Form and contents of arbitral award ……..***
>
> *xxx xxx xxx*
>
> *(3)* ***The arbitral award shall state the reasons upon which it is based****,*

unless— (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under section 30.

xxx xxx xxx

*(7) **(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made***

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]

xxx xxx xxx"

(Emphasis Supplied)

15. Thus, it is clear that an arbitral award has to necessarily contain reasons upon which it is based. Further, in the absence of any agreement to the contrary, the arbitral tribunal has the discretion to award interest. However, in the case at hand, when the learned Arbitrator has recorded clear findings that there was prolonged and unjustified delay in processing the claim of the petitioner and there was persistent refusal to settle the claim, the learned Arbitrator was enjoined upon to give reasons for non-grant of interest for the pre-reference period. Absence of reasons violates Section 31(3) of the Arbitration Act, and constitutes a recognized ground of patent illegality under Section 34(2A) of the Arbitration Act.

16. Law in this respect has been settled long back by the Supreme Court in the case of ***Associate Builders Versus Delhi Development Authority, (2015) 3 SCC 49***, wherein, it has been held that if an arbitrator gives no reasons for a finding in an award, the same falls short of the requirement of

Section 31(3) of the Arbitration Act, and such an award is be liable to be set aside under Section 34 of the said Act. The relevant extract of the aforesaid judgment, is reproduced as under:

> *"xxx xxx xxx*
>
> ***42.*** *In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads:*
>
> ***42.1.*** *(a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:*
>
> > *"**28. Rules applicable to substance of dispute**. — (1) Where the place of arbitration is situated in India—*
> >
> > *(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"*
>
> ***42.2.*** *(b)* ***A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside****.*
>
> ***42.3.*** *(c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:*
>
> > *"**28. Rules applicable to substance of dispute**.—(1)-(2)****
> >
> > *(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."*
>
> *This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

17. On the aspect of non-grant of pre-reference interest without affording any reason for the same, this Court in *O.M.P. (COMM.) 5/2017*, titled as "***Prithvi Associates Versus South Delhi Municipal Corporation***", *vide* order dated 09th January, 2017, has held as follows:

> *"xxx xxx xxx*
>
> *3.* ***The first ground urged is that although a specific claim was made by the Petitioner for interest @ 24% pa on the claim amount "for the period comprising of the pre-reference, pendente lite and post award period", the learned Arbitrator has granted interest @10% pa only for pendente lite and post award period. It is pointed out that no reasons have been given for rejecting the claim in respect of the pre-reference period****.*
>
> *4.* ***Having heard learned counsel for the parties, the Court finds that indeed under Issue No. 6 concerning relief, the learned Arbitrator awards the interest @ 10% pa in the impugned Award under Claim Nos. 1 and 2 for pendente lite and post award period and makes no mention of the claim of interest for the pre-reference period. Under Section 31(3) of the Act, the learned Arbitrator is mandated to give reasons, unless otherwise agreed to by the parties. In that view of the matter, the Court holds that the Arbitrator ought to have given reasons if he was going to decline the relief of interest for the pre-reference period. It will now be open to the Petitioner to seek arbitration on this issue in accordance with law****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

18. Likewise, in the case of ***Gorkha Security Services Versus Govt. of NCT of Delhi, 2023 SCC OnLine Del 8104***, this Court held that since the arbitral tribunal failed to adjudicate the specifically pleaded claim for pre-award interest and provided no reasons for such non-grant despite the agreement being silent on interest, the award suffered from non-application of mind and was liable to be set aside to that extent. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***9.*** *The only short issue raised in the present petition is the non-grant of pre-award interest by the AT.*

xxx xxx xxx

12. *There is no cavil with the settled position that as per the amended A&C Act, judicial interference under Section 34 is extremely limited, allowing it either to set aside the award or to remand back the matter under the circumstances mentioned in Section 34 of the A&C Act.*

13. *The contractor in its SoC had prayed for the grant of pre-award interest, which has not been granted by the AT.* ***The contractor's contention that this Court has ample power to grant pre-award interest under Section 31 of A&C Act, is erroneous. The law in this regard, is well settled. In Project Director, NHAI v. M. Hakeem, it was observed that under section 34, the Court does not have the power to modify an award****.*

14. ***A perusal of the underlying Agreement would show that the same does not proscribe any party from claiming interest. In fact, the Agreement is silent on the aspect of interest. The impugned award has not specified as to why no pre-award interest was granted, even though same had been specifically prayed for****.*

15. *There lies a discretion with the Arbitrator to award interest which must be exercised reasonably while taking into consideration factors like "the loss of use" of the principal money; the types of sums which the interest must apply; the time period over which interest should be awarded; whether simple or compound rate of interest is to be applied; whether the rate of interest awarded is commercially prudent from an economic standpoint; the rates of inflation; proportionality of the count awarded as interest to the principal sums awarded etc.*

16. ***A plain reading of the impugned award reveals that no reason has been penned as to the non-grant of pre-award interest. It's not the case of the parties that they had consented that no reasons be given as per sub-clause (a) of Section 31(3), A&C Act. The stating of reasons indicates and shows application of mind to the attending facts and circumstances by an arbitrator. An unreasoned award suffers from the vice of patent illegality****. Reference in this regard may also be made to the decision of Supreme Court in Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd., and the relevant extract reads as under:—*

> *"xxx*
>
> *34.* ***The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be****. The aforesaid provision does not*

require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. ***When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are : proper, intelligible and adequate****. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue… On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.*

xxx"

17. ***As noted above, the impugned award, without any discussion/reasoning, has awarded only post-award interest. The award suffers from patent illegality and to this extent, is accordingly, set aside****.*

xxx xxx xxx"

(Emphasis Supplied)

19. Further, the Courts have time and again stressed that interest is not a penalty or punishment. Rather, it is the normal accretion on capital. Delving on the aspect of grant of interest as being compensatory, where a person is deprived of the use of his money to which he is legitimately entitled, Supreme Court in the case of ***Dr. Poornima Advani and Another Versus Government of NCT and Another, (2025) 7 SCC 269***, has held as follows:

"xxx xxx xxx

14. *The concept of awarding interest on delayed payment has been explained by this Court in Karnataka Bank v. RMS Granites (P) Ltd. [Karnataka Bank v. RMS Granites (P) Ltd., 2024 SCC OnLine SC 4695], we quote the following observations: (SCC OnLine SC para 16)*

> *"16.* ***It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B****. [See: Alok Shanker Pandey v. Union of India [Alok Shanker Pandey v. Union of India, (2007) 3 SCC 545 : (2007) 136 Comp Cas 258] .]"*

15. ***Thus, when a person is deprived of the use of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which may be called interest or compensation. Interest is paid for the deprivation of the use of money in general terms which has returned or compensation for the use or retention by a person of a sum of money belonging to other****.*

xxx xxx xxx

18. ***In Irrigation Deptt., State of Orissa v. G.C. Roy [Irrigation Deptt., State of Orissa v. G.C. Roy, (1992) 1 SCC 508], a Constitution Bench of this Court opined that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages****. This is also the principle of Section 34 of the Civil Procedure Code.*

19. The essence of interest as held by Lord Wright in Riches v. Westminster Bank Ltd. [Riches v. Westminster Bank Ltd., 1947 AC 390 (HL)] , at AC p. 400, is that it is a payment, which becomes due because the creditor has not had his money at the due date. It may be recorded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use.

xxx xxx xxx

22. *In Hello Minerals Water (P) Ltd. v. Union of India [Hello Minerals Water (P) Ltd. v. Union of India, 2004 SCC OnLine All 2187:(2004) 174 ELT 422], ELT paras 15 & 16, a Division Bench of the Allahabad High*

Court explained the concept of interest as under: (SCC OnLine All paras 31-33)

> *"31. We may mention that we are passing the direction for interest since interest is the normal accretion on capital.*
>
> *32. Often there is misconception about interest. Interest is not a penalty or punishment at all. For instance, if A had to pay a certain sum of money to B at a particular time, but he pays it after a delay of several years, the result will be that the money remained with A and he would have earned interest thereon by investing it somewhere. Had he paid that amount at the time when it was payable then B would have invested it somewhere, and earned interest thereon. Hence, if a person has illegally retained some amount of money then he should ordinarily be directed to pay not only the principal amount but also the interest earned thereon.*
>
> *33. Money doubles every six years (because of compound interest). Rupees hundred in the year 1990 would become rupees two hundred in the year 1996 and it will become Rs 400 in the year 2002. Hence, if A had to pay B a sum of Rs 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs 300 with himself. This clearly cannot be justified because had he paid that amount to B in the year 1990, B would be having Rs 400 in the year 2002 instead of having only Rs 100.* ***Hence, ordinarily interest should always be awarded whenever any amount is detained or realised by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon which will be pocketed by the person who managed the delay, it is for this reason that we have ordered for payment of interest along with the amount realised as export pass fee."***

xxx xxx xxx"

(Emphasis Supplied)

20. Accordingly, it is held that the Arbitrator ought to have given reasons for not granting the relief of interest for the pre-reference period, and the Award suffers from patent illegality under Section 34(2A) of the Arbitration Act to that extent. The petitioner is at liberty to seek fresh arbitration on this issue, in accordance with law.

b. Double Deduction

21. The next ground raised by the petitioner is with regard to double

deductions by the Surveyor, and approval of the same by the Arbitrator. It is the case of the petitioner that the Surveyor, *vide* the Survey Report dated 09th July, 2018, had already deducted a sum of Rs. 1,08,68,865/- from the claim value in terms of the Excess Clause under the Insurance Policy. Despite the same, the Surveyor made an additional deduction of Rs. 1,37,71,763/- towards *'error / omission / dead stock, etc.'*

22. It is to be noted that the learned Arbitrator specifically framed an issue, i.e., *Issue No. 3*, dealing with the correctness of deducting 5% of the petitioner's claim on account of *'error / omission / dead stock, etc.'* The finding by the learned Arbitrator on the said issue, in the impugned Award, is as under:

> *"xxx xxx xxx*
>
> (iii) **Issue No. 3**: Learned Counsel for the claimant has drawn my attention to the concluding portion of the survey report under the heading "summary of assessment of loss" and submitted that the surveyor has wrongly deducted a sum of Rs.1,08,68,865/- i.e. 5% of total claim amount due to the claimant without any justification.
>
> Learned Counsel for the respondent on the contrary drawn my attention to the relevant excess/deductible clause in the insurance policy purchased by the claimant wherein it is provided as under:-

Excess /Deductible: The following minimum deductibles are applicable based on per location Sum insured of the policy.		
Sum insured band per location (including endorsement if any)		Material Damage
	% Of Claim	Subject to a Minimum deductible in INR
Upto 10 Cr	5	10,000.00
Above 10 Cr and upto 100 Cr	5	25,000.00

Above 10 Cr and upto 1500 Cr	5	500,000.00
Above 1500 Cr and upto 2500 Cr	5	2,50,000.00
Above 2500 Cr	5	5,000,000.00

On the reading of the above it is clear that 5% deduction against the claim amount has been done as per clear stipulation in the insurance policy therefore I do not find merit in contention of the claimant.

This issue is decided against the claimant and in favour of the respondent.

xxx xxx xxx"

23. Reading of the aforesaid finding by the learned Arbitrator on *Issue No. 3* demonstrates that said finding, on the face of it, is not in respect of the 5% deduction of Rs. 1,37,71,763/- towards *'error / omission / dead stock, etc.'*, which had been challenged by the petitioner. Rather, the learned Arbitrator has noted the submission of the respondent that there is an "excess/deductible clause" in the Insurance Policy and held that the 5% deduction against the claim amount done by the Surveyor, has been done as per the clear stipulation in the Insurance Policy.

24. It is to be noted that the issue before the learned Arbitrator was not regarding the deduction of 5% under the Excess Clause, wherein, a sum of Rs. 1,08,68,865/- had been deducted. The petitioner had challenged the deduction of the additional 5% by the Surveyor, i.e., Rs. 1,37,71,763/-, on the ground that the same was extra-contractual, as there was no clause in the Insurance Policy permitting deduction for errors and omissions/ dead stock/ stock differences/ non-moving stock. The case put forth by the petitioner in the arbitral proceedings was that once the 5% excess of Rs. 1,08,68,865/- had been deducted in terms of the Insurance Policy, the second deduction of Rs. 1,37,71,763/- towards *'error / omission / dead stock, etc.'* could not have

been lawfully imposed.

25. However, the finding *qua Issue No. 3* does not deal with the deduction towards *'error / omission / dead stock, etc.'* at all. The learned Arbitrator has wrongly construed the challenge to be regarding the deduction of Rs.1,08,68,865/-, which was admittedly and undisputedly, as per the Excess Clause of the Insurance Policy. Such a finding by the learned Arbitrator is evidently perverse, as the dispute in question before the learned Arbitrator was not towards the deduction under the Excess Clause, but to the deduction towards *'error / omission / dead stock, etc.'*

26. The learned Arbitral Tribunal has essentially failed and omitted to adjudicate upon the specific issue that was framed by it. The learned Arbitrator was required to examine the deduction towards *'error / omission / dead stock, etc.'* However, the learned Arbitrator has failed to firstly, correctly identify the challenged deduction, and secondly, to adjudicate and afford any reasoning for the same.

27. It is settled law that it is for the Arbitrator to construct and interpret the terms of a contract. However, in the present case, the learned Arbitrator has evidently failed to do so. Accordingly, the Award with respect to *Issue No. 3* is set aside. It will be open to the petitioner to re-agitate the dispute with regard thereto, afresh.

c. Undervaluation of Stock

28. The next objection raised by the petitioner is with regard to *Issue No. 4*, wherein, the petitioner has argued that the old stocks of the petitioner have been erroneously undervalued by the Surveyor, and the findings of the Surveyor reducing the stock value by 91% have been upheld by the learned Arbitrator, without any evidence. It is the case of the petitioner that its old

stocks have been erroneously undervalued by computing the same at 9% of MRP.

29. As per the petitioner, its stock was audited on 31st March, 2017, as per AS-2 (Accounting Standard for Inventories), which valued the stock at cost value or NRV, whichever was lower. The incident of fire at the petitioner's premises occurred only twenty five days later, i.e., on 25th April, 2017. Therefore, a 91% crash in valuation, without any evidence, was impermissible. Thus, the petitioner's grievance against finding of *Issue No. 4* is that the learned Arbitral Tribunal has disregarded vital evidence, such as, audited stock registers, AS-2 valuation and purchase invoices on record, while rendering the finding.

30. This Court notes the finding of the learned Arbitrator with respect to *Issue No. 4*, which is as follows:

> *"xxx xxx xxx*
>
> (iv) **Issue No. 4**: The surveyor as also the respondent have calculated the value of certain old stocks worth INR 1,76,92,348.00 destroyed in fire only at 9% of the MRP. Learned Counsel for the claimant has contended that assessment of value of aforesaid stock at 9% of the MRP was unjustified particularly when said stock was purchased at a much higher price. It is submitted that aforesaid arbitrary valuation have been done despite there being no evidence or record to justify.
>
> I do not find merit in the contention perusal of the survey report page No. 29 would show the reason for assessment of certain stock at 9% of MRP have been given as under:

"ABOUT U and AMERICAN SWAN ((D, E and F) Claim of Rs.1.61 Crore)

As per documents produced by the insured it is noticed that the insured has stock of About U & American Swan which is old & slow moving stock and not saleable. The said stock was purchased in 2010 to 2014, 2015 and 2016; we have assessed the same @ 9% of MRP.

UCB Under Garments ((G, H, I and J) Claim of Rs.15.67 Lakhs)

As per documents produced by the insured it is noticed that the insured has procured these stock from their sister concern M/s Goel Retail Products Pvt. Ltd. in 2015 which is old & slow moving stock, we have assessed the same @ 9% of MRP.

Valuation

The insured has claimed on the basis of purchase price as per related purchase tax invoices or market price, whichever is less + element of Value Added Tax paid thereon by FIFO. We have checked certain purchase bill on random basis and the rate claimed found correct, however, certain products of ABOUT U American Swan and UCB Under Garments found old stock/ Non-saleable items. During our verifications, it is noticed that certain old non-moving stocks were sold in bulk @ 91% discount. Hence, we have considered only 9% value in our assessment."

I find no reason to disagree with the justification given by the surveyor for assessing certain stocks

at 9% of MRP. Particularly when the claimant has failed to produce any cogent evidence against aforesaid explanation given in the survey report. Thus I find no reason to disagree with the survey report and hold that surveyor has rightly valued certain stocks at 9% of MRP.

The issue is decided against the claimant and in favour of the respondent.

xxx xxx xxx"

31. To understand the Surveyor's reasoning behind assessment of loss and valuation of various categories of stock, reference may also be made directly to the Report of the Surveyor dated 09th July, 2018, which forms part of the Arbitral Record. The relevant portions of the Survey Report, are extracted as below:

"xxx xxx xxx

STOCKS

The loss is being assessed with following considerations:-

- **Claim of Stock Loss**

The insured has claimed for loss of stock, which is as below:-

S. No.	Brands	Discount on MRP	Qty.	Value after Discount (Incl. VAT)
			No.	Rs.
A	UCB	@70%	290,538	161,160,074
B	UCB	@56%	240,018	190,346,170
C	Calvin Klein	@40.96%	3,157	3,212,267
D	About U	@70%	72,618	9,270,895
E	American Swan	@70%	13,457	5,363,983
F	American Swan	@70%	3,093	1,510,431
G	UCB	@95%	1,487	20,013
H	UCB	@88%	8,961	557,588
I	UCB	@78%	1,809	284,992
J	UCB	@46.5%	2,104	704,459
	Total		**637,242**	**372,430,871**

- **Nature of Stock**

The insured has stated that the affected warehouse had stock of different types & varieties of readymade garments and footwear of reputed brands namely United Colors of Benetton, Calvin Klein, American Swan and About U.

The major claim is of first two categories of UCB, which is

- NSM –New season Merchandise
- OSM- Old Season Merchandise

NSM is generally stored in front part of warehouse and is not sold with aggressive discounts and major stock has been received in Dec 2016 at discount of 56%.

Regarding OSM, it appears that UCB keeps on sending the merchandise whenever it is not being sold at normal stores to be sold in online channel. The insured is getting discount of 70%.

- **BASIS OF CLAIM**

As stated by insured that they have claimed stock loss on the basis of quantity as per books and the basis of rates/value is the purchase price as per related purchase tax invoices or market price, whichever is less + element of Value Added Tax paid thereon by FIFO (First in First out) accounting method, The purchase invoices being voluminous have been verified on test check basis and no adverse noticed. Statement giving the detailed item-wise quantity and value of stock aggregating to Rs.372430870.52 damaged/burnt in the fire is enclosed.

- **BASIS OF ASSESSMENT**

Quantity

The quantity as claimed by the insured has been verified from the initial data taken during our first visit and also verified from the records maintained. The insured has maintained stock register for inward & outward and the same is verified with the purchase and sales invoice.

Items other than garments like Footwear & Accessories of Rs.8.49 Crore (as per details below) is not covered in the policy, hence we are not assessing the loss of footwear etc., we have also not included the same for arriving at adequacy of sum insured.

Brands	Discount on MRP	Footwear etc. in Rs.
UCB	@70%	17,551,667
UCB	@56%	67,200,634
American Swan	@70%	159,452
Total		**84,911,753**

UCB (NSM & OSM Stock) ((A&B), Claim of Rs.35.15 Crore)

We are considering garments stock in our assessment, the conclusion & remarks on Insurable Interest is already reported above in our report. Further, footwear & accessories stock not covered as per Policy, hence not considered in our assessment.

CALVIN KLEINE ((C), Claim of Rs.32.12 Lakhs)

As per documents produced by the insured it is noticed that the insured has purchased garments from Calvin Kleine vide Invoice No.90021900 dt-23.03.2017 of Rs.8,04,990/- and Invoice No.90022043 dt-25.03.2017 of Rs.32,47,997/-. The insured has transferred stock of Invoice No.90022043 at the affected location on 30.03.2017 and no sales have been made till the date of loss & the said stock also got burnt. The insured has submitted transfer challan dt-30.03.2017, these are not old stock, we have considered the affected quantity in our assessment.

ABOUT U and AMERICAN SWAN ((D, E and F) Claim of Rs.1.61 Crore)

As per documents produced by the insured it is noticed that the insured has stock of About U & American Swan which is old & slow moving stock and not saleable. The said stock was purchased in 2010 to 2014, 2015 and 2016; we have assessed the same @ 9% of MRP.

UCB Under Garments ((G, H, I and J) Claim of Rs.15.67 Lakhs)

As per documents produced by the insured it is noticed that the insured has procured these stock from their sister concern M/s Goel Retail Products Pvt. Ltd. in 2015 which is old & slow moving stock, we have assessed the same @ 9% of MRP.

Valuation

The insured has claimed on the basis of purchase price as per related purchase tax invoices or market price, whichever is less + element of Value Added Tax paid thereon by FIFO. We have checked certain purchase bill on random basis

and the rate claimed found correct, however, certain products of ABOUT U, American Swan and UCB Under Garments found old stock/ Non-saleable items. During our verifications, it is noticed that certain old non-moving stocks were sold in bulk @ 91% discount. Hence, we have considered only 9% value in our assessment.

With the above considerations, the loss of garments stock is assessed as under:-

Sl. No	Brands	Discount on MRP	Qty.	Value after Discount (Incl. VAT)	Footwear etc.	Considered	Remarks
			No.	Rs.	Rs.	Rs.	
A	UCB	@70%	290,538	161,160,074	17,551,667	143,608,407	Items other than garments is not considered.
B	UCB	@56%	240,018	190,346,170	67,200,634	123,145,536	
C	Calvin Klein	@40.96%	3,157	3,212,267		3,212,267	
D	About U	@70%	72,618	9,270,895		2,781,268	Being Old Stock 9% value is considered.
E	American Swan	@70%	13,457	5,363,983	159,452	1,561,359	
F	American Swan	@70%	3,093	1,510,431		453,129	
G	UCB	@95%	1,487	20,013	-	20,013	
H	UCB	@88%	8,961	557,588	-	418,191	Being Old Stock 9% value is considered.
I	UCB	@78%	1,809	284,992	-	116,588	
J	UCB	@46.5%	2,104	704,459	-	118,507	
	Total		**637,242**	**372,430,871**	**84,911,753**	**275,435,265**	

XXX XXX XXX"

32. From a bare reading of the Surveyor's Report, it is apparent that the Surveyor had inspected and physically verified the premises, as well as the petitioner's internal records, including, stock registers, purchase tax invoices, books, etc. Post such exercise, the Surveyor had divided and segregated the stock on the basis of company, date of purchase and manner/trend of sale. On the basis of such categorization, the Surveyor found that there were stocks from the following three companies, which were old, slow-moving and not saleable:

- *"ABOUT U"* and *"AMERICAN SWAN"* – Total claim with respect to these was Rs. 1.61 Crores. Stock of these two companies was purchased during the periods 2010-2014, 2015 and 2016.
- *"UCB UNDERGARMENTS"* – Total claim with respect to this category of stock was to the tune of Rs. 15.67 Lacs, and this particular stock was purchased from petitioner's sister concern, M/s Goel Retail Products Pvt. Ltd., in the year 2015.

33. The Survey Report also records that during verifications, it was noticed that certain non-moving stocks were sold in bulk discount @91% by the petitioner. Thus, based on such assessment and finding, the value of aforenoted categories of old stocks was considered @9% of their MRP by the Surveyor, for calculation of loss.

34. Furthermore, the learned Arbitrator, while taking note of the aforesaid reasoned calculation of the Surveyor, has recorded that the petitioner had failed to produce any cogent evidence to counter the explanation of the Surveyor. Whereas, the petitioner seeks to challenge the explanation of the Surveyor and finding of the Arbitrator by relying upon the valuation of stock in the Audit Report dated 31st March, 2017. Thus, a part of the grievance

raised by the petitioner before this Court against finding of *Issue No. 4* is that the Arbitrator had not considered the valuation of petitioner's stock as per the Auditor's Report dated 31st March, 2017, placed on record by the petitioner.

35. In this regard, this Court notes the following extract from the Survey Report, which makes it evident that the Auditor's Report was duly considered and noted by the Surveyor, before valuation of stock and assessment of loss:

"xxx xxx xxx

9.5 PROVISIONAL TRADING ACCOUNT

The insured has submitted provisional trading account duly certified by auditor, the detail of the same is as under:-

Sales	55,125,479
Closing Stock	435,589,472
Total	**490,714,951**
Opening Stock	468,990,030
Purchase	7,481,826
Cartage	3,575
Gross Profit	14,239,520
Total	**490,714,951**
G.P. Ratio	25.83%

9.6 STOCK LEVEL & FINANCIAL POSITION

We have reviewed the stock level of last three years from the audited balance sheet, which is as under:-

Particulars	**31.03.2017**	**31.03.2016**	**31.03.2015**
Sales	509,518,913	579,459,207	244,849,641
Closing Stock	468,990,030	216,075,550	79,691,880
Total	**978,508,943**	**795,534,757**	**324,541,521**
Opening Stock	216,075,550	79,691,880	71,444,700
Purchase	686,035,644	662,900,915	222,691,624
Cartage	350,961	150,524	97,950
Gross Profit	76,046,788	52,791,438	30,307,247
Total	**978,508,943**	**795,534,757**	**324,541,521**
G.P. Ratio	14.93%	9.11%	12.38%

From the above it is noticed that

- Sales/Turnover declined in 2016-17 from the previous year sales.
- Purchases increased in the year 2016-17.

xxx xxx xxx"

36. In a petition under Section 34 of the Arbitration Act, the petitioner

cannot seek to agitate a challenge to a reasoned calculation by the Surveyor, which is based upon assessment of petitioner's internal documents, such as sales and purchase bill, tax invoices, stock registers, etc., which has subsequently been affirmed by the Arbitrator.

37. As far as the Audit Report is concerned, upon which the petitioner has based its challenge to the finding of *Issue No. 4*, it is to be noted that the purpose of said Report was not specific to or relevant for loss assessment in case of insurance claims. The categorization of stock for the purpose of valuation by the auditor was not as per the date of purchase of particular garment/stock; rather, said categorization was based upon "stock at commencement" and "stock at closing". Hence, for assessing claim/loss arising out of an insurance policy, the Auditor's Report cannot be considered to be a cogent evidence *vis-à-vis* the Surveyor's Report.

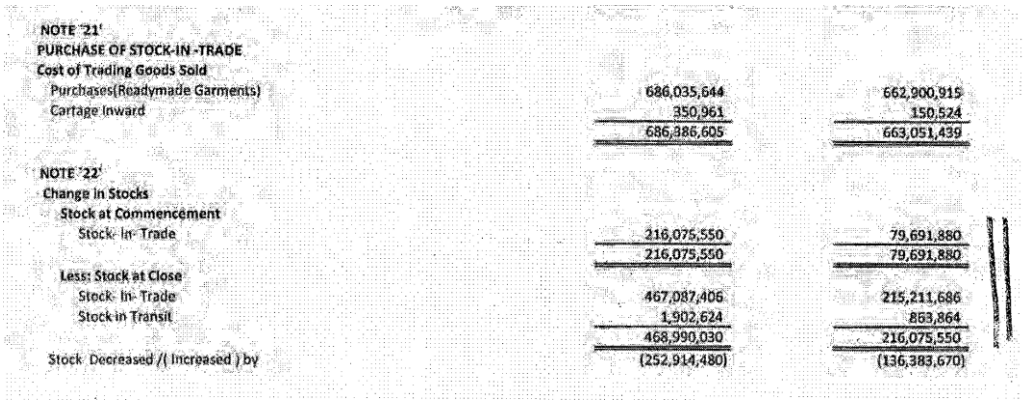
38. The relevant portions of the Auditor's Report dealing with valuation of stock, are reproduced as under:

"xxx xxx xxx

Panchanan International Private Limited
NOTES FORMING PART OF ACCOUNTS

Particulars		On 31/03/17 ₹	On 31/03/16 ₹
NOTE '13'			
CURRENT INVESTMENTS			
International Recreation Parks Pvt. Ltd.		372,600	372,600
The Vaish Co-Op Bank-Share		10,000	10,000
	TOTAL	382,600	382,600
NOTE '14'			
INVENTORIES			
Stock-in-Trade		467,087,406	215,211,686
Stock in Transit		1,902,624	863,864
	TOTAL	468,990,030	216,075,550
NOTE '15'			
TRADE RECEIVABLES			
Over Six Months from the due date of payment			
Unsecured, Considered Good		31,277,390	16,317,731
Below Six Months from the due date of payment			
Unsecured, Considered Good		209,517,866	176,270,525
	TOTAL	240,795,256	192,588,256

xxx xxx xxx



NOTE '21'		
PURCHASE OF STOCK-IN -TRADE		
Cost of Trading Goods Sold		
Purchases(Readymade Garments)	686,035,644	662,900,915
Cartage Inward	350,961	150,524
	686,386,605	663,051,439
NOTE '22'		
Change in Stocks		
Stock at Commencement		
Stock- In- Trade	216,075,550	79,691,880
	216,075,550	79,691,880
Less: Stock at Close		
Stock- In- Trade	467,087,406	215,211,686
Stock in Transit	1,902,624	863,864
	468,990,030	216,075,550
Stock Decreased /(Increased) by	(252,914,480)	(136,383,670)

xxx xxx xxx"

39. Thus, the challenge by the petitioner to a reasoned calculation carried out by an industry expert, i.e., the Surveyor, which is based upon the petitioner's internal documents, and further, without bringing cogent evidence on record that can counter the reasoned calculation, is erroneous.

40. In this regard, reference may be made to the judgment in the case of ***National Insurance Company Limited Versus Hareshwar Enterprises Private Limited and Others, (2021) 17 SCC 682***, wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***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.*** *If in that light, the surveyor's report, on which reliance has been placed by NCDRC is taken note of insofar as the assessment relating to*

the loss due to destruction of stock, the consideration of the same has been adverted to in clause 8.1.1 and the stock position as declared to the bank has been referred to in clause 8.1.3. The learned counsel for the appellant as also the learned counsel for the respondents have made detailed reference and taken us through details contained in the report.

18. <u>The consideration made by the surveyors to ascertain the correctness of the details relating to the stock indicates that reference is made to the value of the stock declared to the bank; value of the stock as per audited manufacturing account and balance sheet for the year ended 31-3-1999; the explanation offered for the purchase made during the months of August 1999 to October 1999. In that regard, the surveyors have also visited the source from which the LDPE was procured during September 1999 to 4-11-1999. It is on making such verification and inquiries, the surveyors arrived at the conclusion</u> *as follows:*

> *"8.1.8. Though the purchases and sales were found to be in order as per records, we could not accept the total quantity of 73,585 kg claimed by the insured. Opening stock considered for arriving at this balance is higher as compared to quantity declared to bank. For assessing the quantity we have taken stock quantity as on 30-4-1999 as per bank declaration and then made addition/deduction for purchase & sale quantity during the period 1-5-1999 to 6-11-1999. Accordingly the quantity of stock as on date of loss worked out as follows:*

	kg
Stock quantity as on 30-4-1999	5367.75
Add : Purchases from 1-5-1999 to 6-11-1999	1,14,155.60
	1,19,523.35
Less : Sales from 1-5-1999 to 6-11-1999	
Balance quantity on 6-11-1999	75,444.73
	44,078.62

> *8.1.9. We have valued the stock as per the latest purchase rate viz. at market value. The last purchases made by insured prior to loss was on 4-11-1999. The rate including octroi is Rs 68.238 per kilogram. The rate matches with the selling price fixed by IPCL. Further the entire quantity was considered to be raw material avoiding any addition of insured's own manufacturing cost.*
>
> *8.1.10. Salvage : There was small quantity of remnants of the burnt stock, in lump/melted form. Considering the limited quantity which could be extracted and its scrap value we have deducted 1% as salvage value.*
>
> *8.1.11. The loss assessed for stock is as follows:*

Cost of 44,078.620 kg of LDPE @ Rs 68.238 per kilogram	Rs 30,07,885
Less : Salvage value 1%	Rs 30,079
Loss assessed	Rs 29,77,806"

> ***19. <u>Thus, a perusal of the surveyor's report would indicate that the same is not perfunctory but has referred to all aspects, discarded what was not reliable and the assessment has been made thereafter</u>****. In that background, as noted, the fire incident had occurred on 6-11-1999 and the surveyors had visited the site on 9-11-1999 itself and the interim as also the final report were submitted on 23-3-2000 and 13-3-2001 to the insurer after due deliberations. The insurer did not take any steps immediately but after much delay appointed the investigator on 22-6-2001 and had not concluded the said process though Respondent 1 had made repeated request. The insured had approached NCDRC and it is in the said proceedings, for the first time the insurer seeks to rely on the investigator's report. <u>**Therefore, in the facts and circumstances herein the surveyor's report was submitted as the natural process, the conclusion reached therein is more plausible and reliable rather than the investigation report keeping in view the manner in which the insurer had proceeded in the matter. Hence, the reliance placed on the surveyor's report by NCDRC without giving credence to the investigation report in the facts and circumstances of the instant case cannot be faulted. In that view, the conclusion reached on this aspect by NCDRC does not call for interference**</u>.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

41. Likewise, this Court also takes note of the judgment in the case of ***Himanshu Trading Co. Versus New India Assurance Co. Ltd. and Another, 2022 SCC OnLine NCDRC 88***, wherein, it was held that report of the surveyor has to be given due importance as surveyor is an expert in the field, and that there should be sufficient ground to disagree with the same. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***8.*** *I have considered the arguments of the counsel for the parties and examined the record.* ***<u>It is mandatory for the Insurer to appoint a surveyor for assessment of loss, exceeding Rs.25000/- under Section 68 UM of Insurance Act, 1938.</u>*** *Supreme Court in Sri Venkateswara Syndicate v. Oriental Insurance Company Ltd., (2009) 8 SCC 507 and New India Assurance Company Ltd. v. Sri Buchiyyamma Rice*

Mill (2020) 12 SCC 105, held that Section 68 UM of Insurance Act, 1938 does not impose any restriction for appointment of second surveyor. ***In Sri Venkateswara Syndicate v. Oriental Insurance Company Ltd., (2009) 8 SCC 507 and Khatema Fibres Ltd. v. New India Insurance Company Ltd., 2021 SCC OnLine SC 818 held that the report of surveyor has to be given due importance. There should be sufficient ground to disagree with the report of the surveyor. Once it is found that there was no inadequacy in quality, nature and manner of performance of the duties and responsibilities and once it is found that the report is not based on adhocism or arbitrariness then the consumer forum will have no jurisdiction to ignore it.***

9. The surveyor is an expert and its report stands on the footing of expert evidence *and has to be corroborated from other evidence on record, in order to examine bonafide/malafide of the Surveyor and correctness of the report. In the present case, the Insurer appointed Kejriwal & Company, Ghaziabad, on 03.10.2005, for preliminary survey and KAYPSENS, Surveyor & Loss Assessor, Delhi, on 04.10.2005, for final survey and assessment of the loss. As such, it cannot be said that there was appointment of second surveyor. Job of preliminary surveyor was only to ascertain the incident, on visual examination at the earliest. Preliminary Survey Report cannot be taken to contradict the Final Report of the surveyor.*

xxx xxx xxx"

(Emphasis Supplied)

42. In view of the detailed discussion hereinabove, petitioner's challenge to the finding on *Issue No. 4* has to fail. Accordingly, this Court finds no infirmity in the finding of the learned Arbitrator on *Issue No. 4*, which is premised on the Surveyor's Report.

d. Taxation Component

43. The next objection raised by the petitioner is with regard to *Claim No. 5*. It is the case of the petitioner that the learned Arbitrator has failed to adjudicate on the petitioner's *Claim No. 5* for taxes and duties payable on the awarded amount.

44. Though no specific issue has been framed by the learned Arbitrator on this aspect, *Issue No. 5* framed by the learned Arbitrator reads as follows:

"Whether the claim of the claimant is justified, if so, to what extent?"

45. Thus, the *Claim No. 5* raised by the petitioner would necessarily have been included in *Issue No. 5* framed by the learned Arbitrator.

46. It is to be noted that the petitioner had claimed statutory taxes and duties payable on the awarded amount under *Claim No. 5*. However, despite petitioner's specific claim and the learned Arbitrator noting the same in the impugned Arbitral Award, the learned Arbitrator has failed to deal with the said issue or decide the same.

47. An arbitrator is required to consider each of the specific claims raised by a claimant, and decide the same by assigning reasons on the findings with respect to the specific claims. Failure of the learned Arbitrator in the present case to decide the *Claim No. 5* constitutes a valid ground for setting aside the impugned Award. In this regard, reference may be made to the judgment in the case of ***State of Uttar Pradesh and Others versus Combined Chemicals Company Private Limited, (2011) 2 SCC 151***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***31. In our view, the arbitrator was duty-bound to examine the tenability of the claim made by the respondent under different heads and decide the same by assigning some reasons, howsoever briefly. His failure to do so constituted a valid ground for setting aside the award and the trial court committed a serious error by making the award rule of the court****. Unfortunately, the High Court also overlooked this lacuna in the award and approved the judgment of the trial court.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

48. Similarly, in the case of ***Som Datt Builders Limited Versus State of Kerala, (2009) 10 SCC 259***, the Supreme Court held that it was obligatory for an arbitral tribunal to state reasons in support of its award. By legislative

mandate, it is now essential for the arbitral tribunal to give reasons in support of the award. As already noted hereinabove, as per Section 31(3) of the Arbitration Act, an arbitral award must contain reasons that reflect the basis of the conclusions reached. Howsoever brief they may be, reasons must be indicated in the award, as that would reflect the thought process leading to a particular conclusion. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***20.*** ***Section 31(3) mandates that the arbitral award shall state the reasons upon which it is based****, unless—(a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award under Section 30. That the present case is not covered by clauses (a) and (b) is not in dispute.* ***In the circumstances, it was obligatory for the Arbitral Tribunal to state reasons in support of its award*** *in respect of Claims 1 and 4-B.* ***By legislative mandate, it is now essential for the Arbitral Tribunal to give reasons in support of the award. It is pertinent to notice here that the 1996 Act is based on UNCITRAL Model Law which has a provision of stating the reasons upon which the award is based****.*
>
> ***21.*** ***In Union of India v. Mohan Lal Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5] this Court said: (SCC p. 854, para 28)***
>
> > ***"28. … Reasons are the links between the materials on which certain conclusions are based and the actual conclusions****."*
>
> ***22.*** *In Woolcombers of India Ltd. v. Workers' Union [(1974) 3 SCC 318 : 1973 SCC (L&S) 551 : AIR 1973 SC 2758] this Court stated: (SCC pp. 320-21, para 5)*
>
> > *"5. …* ***The giving of reasons in support of their conclusions by judicial and quasi judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations****."*
>
> ***23.*** ***In S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] the Constitution Bench held that recording of reasons***

"(i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making." (SCC p. 612, para 35)

24. *Learned Senior Counsel for the contractor referred to a decision of the Delhi High Court in Delhi Electric Supply Undertaking v. Victor Cable Industries Ltd. [(2006) 1 Arb LR 297 (Del)] and submitted that where the arbitrator has referred to facts of the case and has noticed some reasoning which in view of the arbitrator was sufficient to arrive at a conclusion for granting relief, award cannot be stated to be unreasoned. He also referred to yet another decision of the Delhi High Court in Kumar Construction Co. v. DDA [(1996) 64 DLT 553] wherein it has been observed that the arbitrator is not expected to write an elaborate judgment and where the arbitrator has noticed contentions of the counsel, it cannot be said that the arbitrator failed in stating reasons for the award.*

25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect the thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the Arbitral Tribunal upon which the award is based; want of reasons would make such award legally flawed.

xxx xxx xxx"

(Emphasis Supplied)

49. Thus, it is apparent from the text of the Arbitral Award that the claim of the petitioner in respect of the tax payable on the awarded amount has not been discussed by the Arbitrator at all, which is violative of Section 31(3) of the Arbitration Act, and consequently, patently illegal under Section 34(2A) of the said Act. Though specifically claimed in *Claim No. 5*, and covered under *Issue No. 5* as framed by the learned Arbitrator, there is complete silence and lack of adjudication on the issue of liability of the parties to pay taxes and statutory dues in respect of the awarded amount.

50. The aforesaid being the case, it will be open to the petitioner to seek arbitration on the present issue, in accordance with law.

Conclusion

51. The present petition is disposed of in the aforesaid terms.

MINI PUSHKARNA
(JUDGE)

APRIL 10, 2026/KR