IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15-12-2025

DATE OF DECISION : 18-12-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(Com.Div.) No.266 of 2024

SBI General Insurance Company Ltd
Represented by Power of Attorney
Mr.Leo John
3rd Floor, Good Shepherd Square,
No.82, Kodambakkam High Road
Nungambakkam, Chennai 600 034

Petitioner

Vs

Saravana Global Energy Ltd
New No.15, New Giri Road,
off G.N.Chetty Road, T.Nagar,
Thyagaraya Nagar Head Post office,
Chennai 600 017

Respondent

PRAYER

To set aside the award dated 02.02.2024 passed by sole arbitrator in A.F.No.125 of 2019 in terms of the present petition.

b). To direct the respondent to pay the costs. SV.Rs.7,90,00,000/- CF.1,00,000/-

For Petitioner : Mr.Nabeel Malik
Mr.Anand Venkataraman
Mr.S.M.Vivekanandh
Mr.Tharun VM

For Respondent : Mr.S.Rajasekar
Mr.Sashidhar Sivakumar
Ms.V.Pavitra

ORDER

This original petition has been filed under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996 (for brevity, hereinafter referred to as 'the Act') challenging the arbitral award dated 02.02.2024 passed by the sole Arbitrator.

2. The respondent herein was the Claimant before the Arbitral Tribunal. The Claimant is a public limited company incorporated under the Companies Act, 1956, engaged in the manufacture of porcelain and composite insulators, with manufacturing units at Cuddalore and Madhuranthakam. The Claimant had obtained an Industrial All Risk (IAR) Insurance Policy from the insurer bearing Policy No.150591-0000-00, which covered buildings, plant & machinery, stock and equipments for a total insured value of Rs.170.50 crores, effective from 31.07.2015 to 30.07.2016.

3. On 09.11.2015, catastrophic floods caused significant damage to the stock and fixed assets located at the Claimant's factory in Cuddalore. In accordance with the Insurance Policy, the Claimant lodged a claim for Rs.12.57 crores from the insurer. The insurer, as per the Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors) Regulations, 2015, appointed M/s.Mehta and Padamsey as the Surveyor to assess the extent of the damages. Based on the surveyor's assessment, the Respondent made two tranches of interim payments viz.,Rs. 3 crores on 17.12.2015 and Rs.2 crores on 29.09.2016.

4. The dispute arose upon the submission of the Surveyor's Final Adjustment Report dated 11.03.2017, which assessed the insurer's net liability at Rs.5,40,95,535/-, calculating the loss entirely on a market value (MV) basis. Relying on this report, the insurer made a final settlement payment of Rs.40,51,284/- on 30.03.2017. The Claimant challenged this, asserting that the policy terms mandated a settlement based on a part reinstatement value (RIV) and part market value (MV) basis. The Claimant further contended that the Surveyor's methodology was flawed by erroneously applying the principle of underinsurance to damaged items not reinstated and by improperly inflating the escalated value by adding Rs.13.59 crores to arbitrarily reach an underinsurance of 19.31%, which exceeded the 15% waiver permitted under the policy.

5. With respect to depreciation, the Claimant relied upon a certification from Anna University regarding the useful life of the kiln furniture and also considering the operational cycles asserted that the depreciation should be fixed at 30%. Whereas the Surveyor had fixed an exorbitant depreciation value of 75% without assigning any reasons. Furthermore, the Claimant contended that the Surveyor misconstrued the phrase "under each of the items" in Section 2.2(3) of the Special Provisions of the IAR Policy, interpreting it as broader categories of items listed in the policy rather than the individual damaged items intended by the Claimant. The Claimant also contended that the Surveyor had relied on the Fixed Assets Register (FAR) to calculate underinsurance, but rejected the same for determining the fixed assets and thereby operating as an estoppel against such rejection.

6. The Claimant, vide letter dated 09.08.2017, invoked arbitration over the disputes arising out of the acceptance of the survey report and settlement of the claim. The insurer resisted arbitration on the ground that a full and final settlement had already been effected. This Court vide order dated 02.04.2019, appointed a sole Arbitrator.

7. The insurer filed the statement of defence and stated that the claimant

delayed in providing the loss estimate despite repeated requests until 20.11.2015. It was further asserted that the interim payments were made merely as a matter of discretion and that the reinstatement work was not carried out within one year from the date of loss as stipulated under the IAR policy. The insurer further averred that the Claimant itself had requested to assess the damages on MV basis vide its letter dated 31.08.2016. The insurer contended that the claimant's request for reduction in depreciation on kiln furniture and computation on a part RIV and part MV basis was duly considered and rejected by the Surveyor after providing sufficient reasons. Subsequently, the Final Adjustment Report was given by the Surveyor assessing the net claim at Rs.5,40,95,535/-. Despite the payment of an additional sum of Rs.40,51,286/-, the Claimant refused to sign the discharge voucher.

8. The Claimant examined CW1 and marked exhibits C1 to C17. The insurer examined RW1 and marked exhibits R1 to R25.

9. The sole Arbitrator, based on the pleadings, framed the following issues:-

1. Whether the Claimant is entitled for the settlement of claims under part RIV part MV basis?
2. Whether the Respondent has erroneously applied underinsurance?
3. Whether the Respondent has erred in calculating depreciation for kiln

furniture?

4. Whether the Claimant is entitled for the claim on yard materials?
5. Whether the Claimant is entitled to seek for damages / losses incurred due to loss of business which arose as a direct consequence of the arbitrary settlement of claims by the Respondent?
6. Whether the Claimant is entitled to seek interest at the rate of 24% p.a. from the date of initial cause of action i.e. 09.11.2015?
7. Whether the Claimant is entitled for further interest as per the provisions of the Act?
8. Whether the parties are entitled to recover the cost of the proceedings?

10. The sole Arbitrator, upon considering the facts and circumstances and on appreciation of evidence, passed the following award:-

i. The claimant is entitled to claim compensation for the damages caused to the machineries on Part Reinstatement Value and Part Market Value.
ii. The claimant is entitled to get a sum of Rs.60,10,040/- (Rupees Sixty Lakhs Ten Thousand and Forty) which was deducted by the respondent on the ground of undervaluation of assets and underinsurance.
iii. The respondent shall calculate depreciation for kiln furniture at 50%, not at the rate of 75%.
iv. The claimant is not entitled to the claim of compensation for the damage caused to yard materials, and the claim is rejected.
v. The claimant is entitled to get interest at the rate of 18% from the date of cause of action, namely, 09.11.2015 till the date of passing of the award and future interest at the rate of 12% from the date of award till the settlement of claim.

vi. The parties are directed to bear their own costs.

11. Aggrieved by the same, the insurer has filed the present petition challenging the award contending that it is perverse, contrary to public policy and is patently illegal.

12. The learned counsel for the petitioner (insurer) made the following submissions:-

- The sole Arbitrator failed to quantify the amount payable pursuant to its findings on the RIV/MV basis of assessment, the 50% depreciation on kiln furniture and the interest that has been awarded in favour of the Claimant.
- The Sole Arbitrator went wrong in granting interest to the Claimant at 18% from 09.11.2015 till the date of Award and 12% thereafter till settlement, in disregard of Regulations 9(5) and 9(6) of the IRDAI (Protection of Policyholders' Interests) Regulations, 2002, thereby violating Section 28(3) of the Act.
- The Arbitrator determined the depreciation of the kiln furniture at 50% solely 'to strike a balance' between the claimant's estimate of 29% and the Surveyor's assessment of 75%, without any adjudication or reasoning. Such an approach, founded merely on compromise rather than on evidence, is impermissible in matters arising out of commercial contracts.
- The Arbitrator wrongly interpreted the term "item" under the Reinstatement Value Clause as an individual machine or part thereof, instead of treating it as an asset class, leading to an absurdity.

- The finding that the Policy permits assessment partly on RIV and partly on MV is untenable, as the Policy mandates assessment on an MV basis if reinstatement is not completed within 12 months.
- The Arbitrator wrongly awarded Rs.3.25 crores towards reinstatement expenses without any primary evidence such as invoices, purchase orders, or bank statements, thereby rendering the sward patently illegal.
- The Arbitrator merely held that the Surveyor could not explain his position in cross-examination and without independent examination of the calculation, wrongly allowed the Claimant's underinsurance claim.

13. Per contra, the learned counsel appearing on behalf of the respondent (claimant) made the following submissions:-

- The allowance of the claim on a Part RIV and Part MV basis was rightly allowed by the sole Arbitrator, as it is a possible interpretation of the Special Provisions of the Policy. The IAR Policy contains no clause prohibiting such assessment.
- The Sole Arbitrator rightly applied the principle of *contra proferentem*, holding that any ambiguity in an insurance contract must be construed against the insurer.
- The Arbitrator rightly held that the Surveyors had wrongly applied underinsurance by using the wrong RBI indexation and by double counting in respect of "old items."
- The depreciation rate of 50% was based on documentary evidence, specifically the Surveyor's Second Interim Report dated 28.09.2016 (Ex.C.6). The phrase "to strike a balance" reflected evidentiary appreciation and not equitable considerations.

- The Sole Arbitrator acted within the discretion vested under Section 31(7)(a) of the Act. The challenge based on IRDAI Regulations being raised for the first time in the Section 34 proceedings is impermissible.
- The sole Arbitrator awarded Rs.3.25 Crores based on Surveyor's report and documentary evidence, including Ex C-16A.
- The insurer's plea that the award is inexecutable or incomputable is untenable and only an attempt to delay payment. The insurer's own valuation for court fees and its failure to raise objections to detailed post award calculations or seek clarification under Section 33 make it clear that the award is certain and capable of execution.

14. This Court has carefully considered the submissions made on either side and perused the materials available on record and the award passed by the sole Arbitrator.

15. Broadly, four issues arise for consideration in this petition and they are:-

(a) Whether the sole Arbitrator went wrong in allowing loss assessment to be conducted on a part reinstatement value and part market value basis and the same has been done in total disregard to the terms of the agreement and consequently is in violation/contravention of Section 28(3) of the Act?

(b) Whether the finding of the sole Arbitrator on the issue of underinsurance lacks any independent reasoning and consequently suffers from perversity and patent illegality?

(c) Whether the award granted by the sole Arbitrator on the issue of depreciation for kiln furniture is based purely on equity and in order to 'strike a balance' and the same is in violation/contravention of Section 28(2) of the Act and that non-furnishing of independent reasoning on this issue contravenes Section 31(3) of the Act?

(d) Whether the sole Arbitrator went wrong in awarding interest at the rate of 18 percent per annum from 09.11.2015 till the date of award and it is in violation of IRDAI 2002 Regulations, which specifically provides for when the interest would commence and the rate of interest and the same tantamounts to ignoring the specific terms of the policy, which binds the parties and is contrary to Section 28(3) of the Act?

16. Apart from the above four issues, certain incidental issues have also been *inter alia* canvassed by either side to the effect that the award itself is untenable, since it lacks any quantification of the amount and that the award ignores the entire portions of the binding commercial contract (insurance policy) and adopts a wholly misinterpretation thereof, more particularly, while dealing with the term 'item' and that the award mostly proceeds on the basis of equitable considerations rather than interpreting the commercial contract in a commercial manner and therefore, it suffers from patent illegality.

17. The incidental issues that were raised in the course of arguments will

be dealt with simultaneously while dealing with each of the four major issues that falls for consideration in the present petition.

18. The first issue which actually had given rise to the entire dispute is that the Surveyor, while submitting the final adjustment report dated 11.03.2017, assessed the insurer's net liability at Rs.5,40,95,535/- by calculating the entire loss on a market value basis. According to the insurance company, the terms of the policy mandated the calculation of loss either on the reinstatement value basis (RIV basis) or on the market value basis (MV basis) and it can never be based on a part reinstatement basis and part market value basis. While dealing with this issue, the incidental issue that has been raised on the term 'item' can also be gone into.

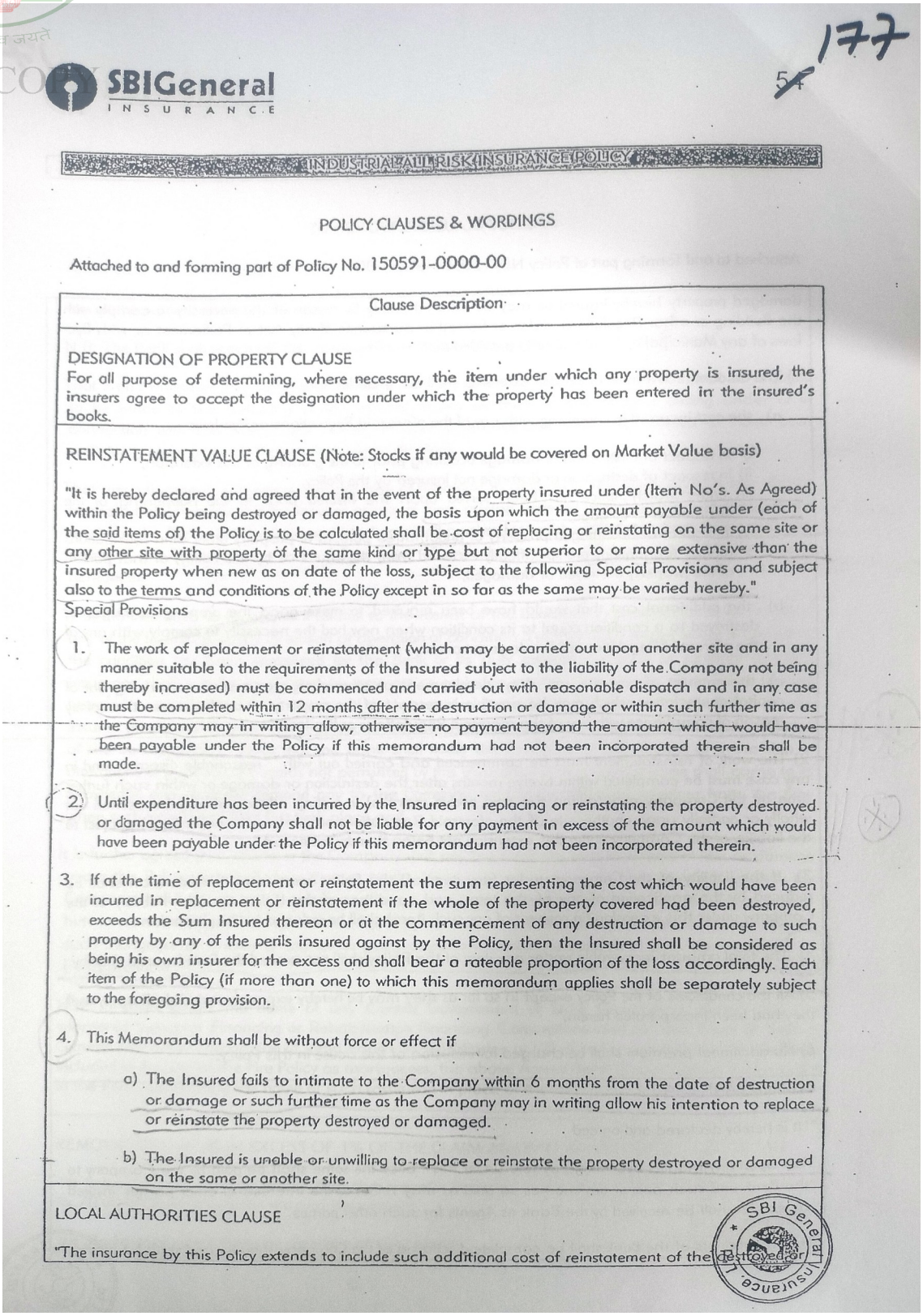
19. In the case on hand, the respondent/claimant admittedly could not complete the reinstatement process within the stipulated period of one year owing to various reasons. According to the respondent, they managed to reinstate a portion of the assets valued at total of approximately Rs.3.25 crores and they had provided all the necessary documents supporting the reinstatement to the Surveyor and sought the settlement of the said amount on RIV basis. Apart from that, the respondent/claimant also sought for compensation on MV basis for the rest of the assets, which the respondent was not able to reinstate

within the stipulated time period. The specific stand taken by the respondent is that there is no clause available under the policy, which prohibits awarding compensation on part RIV basis and part MV basis and therefore, both the assessments can be taken into consideration while calculating the compensation and quantifying the monies payable to the respondent.

20. The learned counsel for respondent submitted that the sole Arbitrator had awarded compensation by accepting the assessment made partly on RIV basis and partly on MV basis and such a decision was arrived at by the sole Arbitrator on a fair reading of sub-section (3) of Section 2.2 of the Special Provisions of the IRA policy. According to the respondent, such a view taken by the sole Arbitrator is a possible view and therefore the same cannot be interfered by this Court in exercise of its jurisdiction under Section 34 of the Act. While addressing this issue, the incidental issue on the interpretation of the word 'item' was also explained on the side of the respondent to the effect that the word 'item' refers to each of the items replaced and since the understanding of the term 'item' is ambiguous, the rule of *contra proferentem* can be applied and it was rightly applied by the sole Arbitrator.

21. To appreciate the above submissions, this Court must first take into consideration the relevant clauses in the policy dealing with the reinstatement

value. The same is scanned and extracted hereunder:-



SBIGeneral INSURANCE

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INDUSTRIAL ALL RISK INSURANCE POLICY

POLICY CLAUSES & WORDINGS

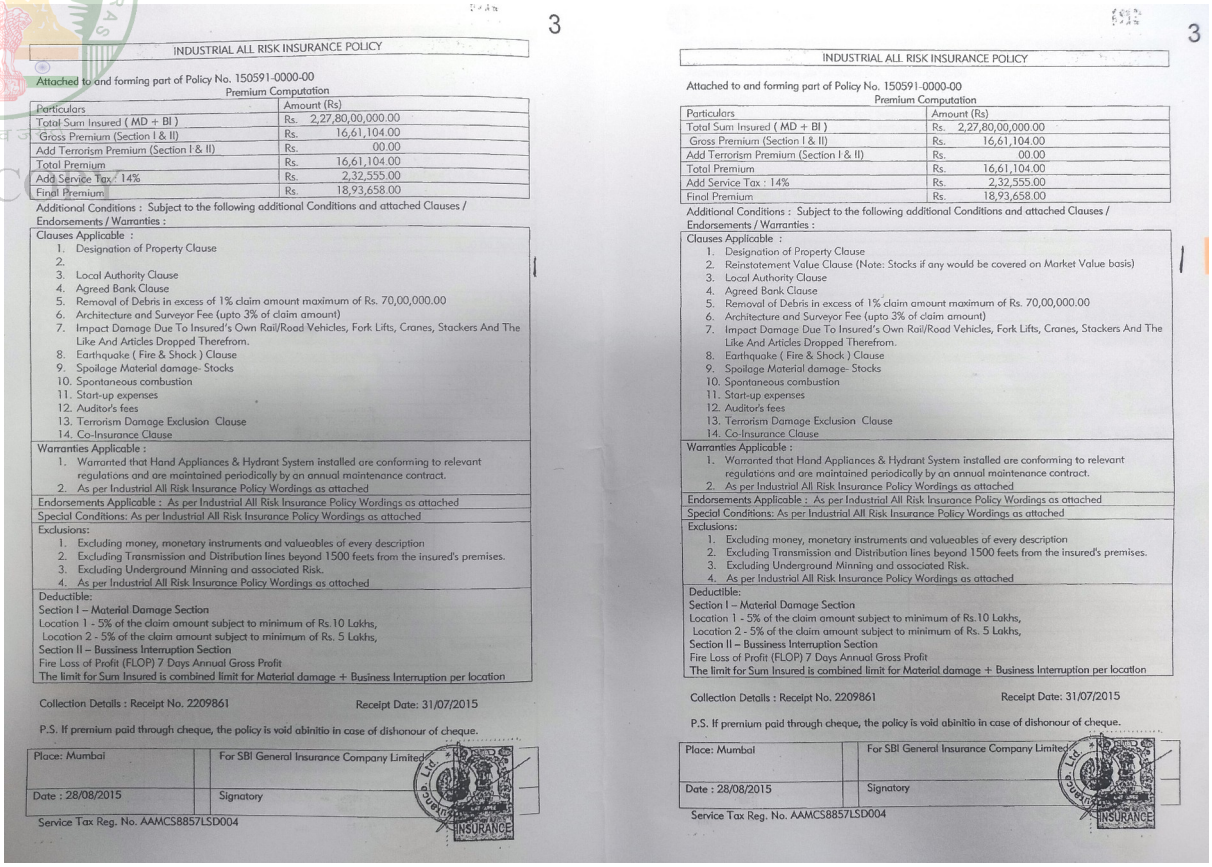
Attached to and forming part of Policy No. 150591-0000-00

Clause Description
DESIGNATION OF PROPERTY CLAUSE For all purpose of determining, where necessary, the item under which any property is insured, the insurers agree to accept the designation under which the property has been entered in the insured's books.
REINSTATEMENT VALUE CLAUSE (Note: Stocks if any would be covered on Market Value basis) "It is hereby declared and agreed that in the event of the property insured under (Item No's. As Agreed) within the Policy being destroyed or damaged, the basis upon which the amount payable under (each of the said items of) the Policy is to be calculated shall be cost of replacing or reinstating on the same site or any other site with property of the same kind or type but not superior to or more extensive than the insured property when new as on date of the loss, subject to the following Special Provisions and subject also to the terms and conditions of the Policy except in so far as the same may be varied hereby." Special Provisions 1. The work of replacement or reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the Insured subject to the liability of the Company not being thereby increased) must be commenced and carried out with reasonable dispatch and in any case must be completed within 12 months after the destruction or damage or within such further time as the Company may in writing allow, otherwise no payment beyond the amount which would have been payable under the Policy if this memorandum had not been incorporated therein shall be made. 2. Until expenditure has been incurred by the Insured in replacing or reinstating the property destroyed or damaged the Company shall not be liable for any payment in excess of the amount which would have been payable under the Policy if this memorandum had not been incorporated therein. 3. If at the time of replacement or reinstatement the sum representing the cost which would have been incurred in replacement or reinstatement if the whole of the property covered had been destroyed, exceeds the Sum Insured thereon or at the commencement of any destruction or damage to such property by any of the perils insured against by the Policy, then the Insured shall be considered as being his own insurer for the excess and shall bear a rateable proportion of the loss accordingly. Each item of the Policy (if more than one) to which this memorandum applies shall be separately subject to the foregoing provision. 4. This Memorandum shall be without force or effect if a) The Insured fails to intimate to the Company within 6 months from the date of destruction or damage or such further time as the Company may in writing allow his intention to replace or reinstate the property destroyed or damaged. b) The Insured is unable or unwilling to replace or reinstate the property destroyed or damaged on the same or another site.
LOCAL AUTHORITIES CLAUSE "The insurance by this Policy extends to include such additional cost of reinstatement of the destroyed or

SBI General Insurance

22. The loss assessment can either be on RIV basis and if the terms for reinstatement are not met, then it can be on MV basis. The above clause provides that the process of reinstatement must be completed within 12 months, otherwise no payment beyond the amount which would have been payable under the policy, shall be made as if the special provision, namely, assessment on RIV basis is not incorporated in the policy. In other words, the reinstatement clause shall be deemed to have not existed in the policy and the amount that will be payable would be only on the market value. The mandatory nature in which the clause is structured makes it abundantly clear that in the absence of satisfying the requirements for claiming compensation on RIV basis, no claim can be made on that basis and the only other alternative is to calculate the compensation on MV basis.

23. To properly understand the scope of a policy which provides for assessment on RIV basis and a policy which does not have that special clause, comparative policies with and without reinstatement value clause, which forms the basis of loss settlement, is provided hereunder:-



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INDUSTRIAL ALL RISK INSURANCE POLICY

Attached to and forming part of Policy No. 150591-0000-00

Premium Computation

Particulars	Amount (Rs)
Total Sum Insured (MD + BI)	Rs. 2,27,80,00,000.00
Gross Premium (Section I & II)	Rs. 16,61,104.00
Add Terrorism Premium (Section I & II)	Rs. 00.00
Total Premium	Rs. 16,61,104.00
Add Service Tax : 14%	Rs. 2,32,555.00
Final Premium	Rs. 18,93,658.00

Additional Conditions : Subject to the following additional Conditions and attached Clauses / Endorsements / Warranties :

Clauses Applicable :
1. Designation of Property Clause
2.
3. Local Authority Clause
4. Agreed Bank Clause
5. Removal of Debris in excess of 1% claim amount maximum of Rs. 70,00,000.00
6. Architecture and Surveyor Fee (upto 3% of claim amount)
7. Impact Damage Due To Insured's Own Rail/Road Vehicles, Fork Lifts, Cranes, Stackers And The Like And Articles Dropped Therefrom.
8. Earthquake (Fire & Shock) Clause
9. Spoilage Material damage- Stocks
10. Spontaneous combustion
11. Start-up expenses
12. Auditor's fees
13. Terrorism Damage Exclusion Clause
14. Co-Insurance Clause

Warranties Applicable :
1. Warranted that Hand Appliances & Hydrant System installed are conforming to relevant regulations and are maintained periodically by an annual maintenance contract.
2. As per Industrial All Risk Insurance Policy Wordings as attached

Endorsements Applicable : As per Industrial All Risk Insurance Policy Wordings as attached

Special Conditions: As per Industrial All Risk Insurance Policy Wordings as attached

Exclusions:
1. Excluding money, monetary instruments and valuables of every description
2. Excluding Transmission and Distribution lines beyond 1500 feets from the insured's premises.
3. Excluding Underground Minning and associated Risk.
4. As per Industrial All Risk Insurance Policy Wordings as attached

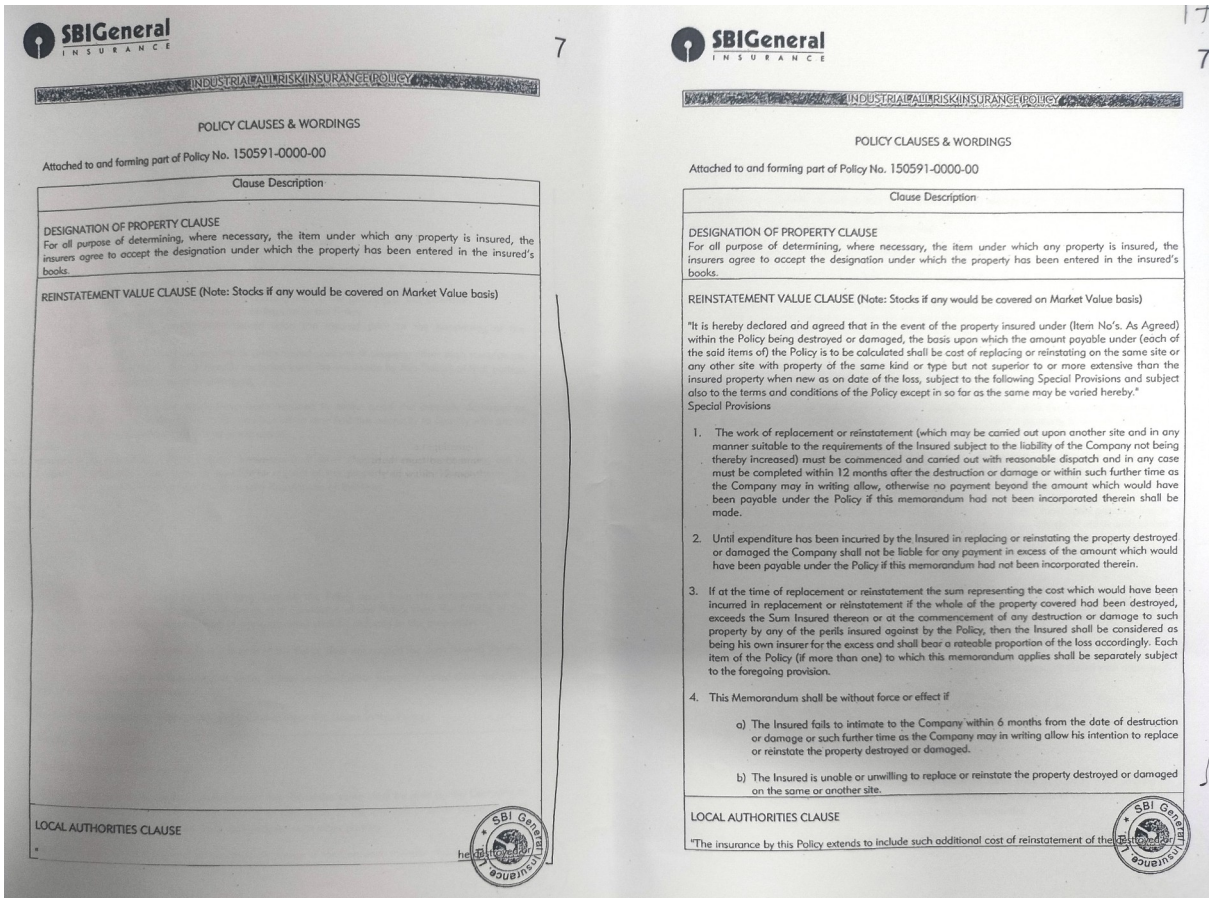
Deductible:
Section I – Material Damage Section
Location 1 - 5% of the claim amount subject to minimum of Rs.10 Lakhs,
Location 2 - 5% of the claim amount subject to minimum of Rs. 5 Lakhs,
Section II – Bussiness Interruption Section
Fire Loss of Profit (FLOP) 7 Days Annual Gross Profit
The limit for Sum Insured is combined limit for Material damage + Business Interruption per location

Collection Details : Receipt No. 2209861 Receipt Date: 31/07/2015

P.S. If premium paid through cheque, the policy is void abinitio in case of dishonour of cheque.

Place: Mumbai	For SBI General Insurance Company Limited
Date : 28/08/2015	Signatory

Service Tax Reg. No. AAMCS8857LSD004



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SBIGeneral INSURANCE

INDUSTRIAL ALL RISK INSURANCE POLICY

POLICY CLAUSES & WORDINGS

Attached to and forming part of Policy No. 150591-0000-00

Clause Description

DESIGNATION OF PROPERTY CLAUSE
For all purpose of determining, where necessary, the item under which any property is insured, the insurers agree to accept the designation under which the property has been entered in the insured's books.

REINSTATEMENT VALUE CLAUSE (Note: Stocks if any would be covered on Market Value basis)

"It is hereby declared and agreed that in the event of the property insured under (Item No's. As Agreed) within the Policy being destroyed or damaged, the basis upon which the amount payable under (each of the said items of) the Policy is to be calculated shall be cost of replacing or reinstating on the same site or any other site with property of the same kind or type but not superior to or more extensive than the insured property when new as on date of the loss, subject to the following Special Provisions and subject also to the terms and conditions of the Policy except in so far as the same may be varied hereby."
Special Provisions

1. The work of replacement or reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the Insured subject to the liability of the Company not being thereby increased) must be commenced and carried out with reasonable dispatch and in any case must be completed within 12 months after the destruction or damage or within such further time as the Company may in writing allow, otherwise no payment beyond the amount which would have been payable under the Policy if this memorandum had not been incorporated therein shall be made.

2. Until expenditure has been incurred by the Insured in replacing or reinstating the property destroyed or damaged the Company shall not be liable for any payment in excess of the amount which would have been payable under the Policy if this memorandum had not been incorporated therein.

3. If at the time of replacement or reinstatement the sum representing the cost which would have been incurred in replacement or reinstatement if the whole of the property covered had been destroyed, exceeds the Sum Insured thereon or at the commencement of any destruction or damage to such property by any of the perils insured against by the Policy, then the Insured shall be considered as being his own insurer for the excess and shall bear a rateable proportion of the loss accordingly. Each item of the Policy (if more than one) to which this memorandum applies shall be separately subject to the foregoing provision.

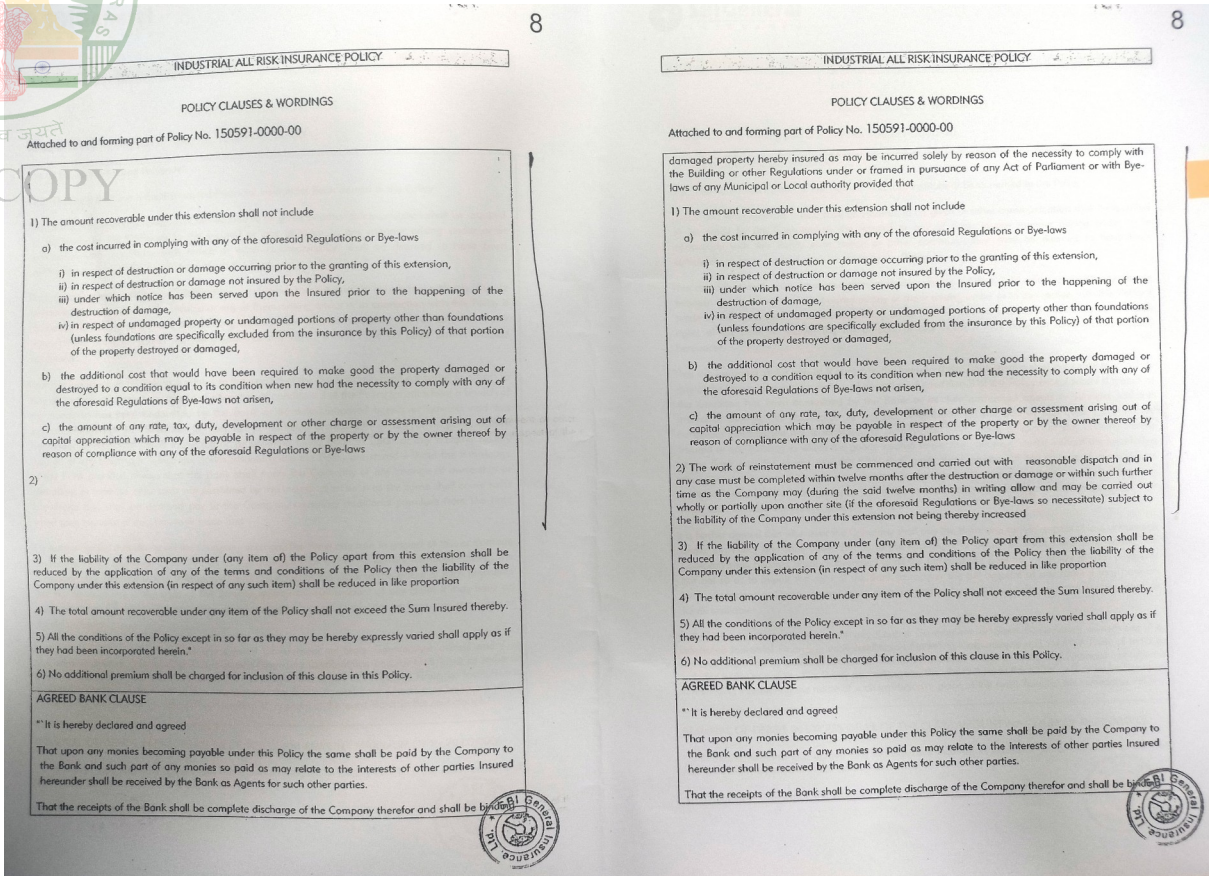
4. This Memorandum shall be without force or effect if

   a) The Insured fails to intimate to the Company within 6 months from the date of destruction or damage or such further time as the Company may in writing allow his intention to replace or reinstate the property destroyed or damaged.

   b) The Insured is unable or unwilling to replace or reinstate the property destroyed or damaged on the same or another site.

LOCAL AUTHORITIES CLAUSE

"The insurance by this Policy extends to include such additional cost of reinstatement of the



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INDUSTRIAL ALL RISK INSURANCE POLICY

POLICY CLAUSES & WORDINGS

Attached to and forming part of Policy No. 150591-0000-00

1) The amount recoverable under this extension shall not include

a) the cost incurred in complying with any of the aforesaid Regulations or Bye-laws

i) in respect of destruction or damage occurring prior to the granting of this extension,
ii) in respect of destruction or damage not insured by the Policy,
iii) under which notice has been served upon the Insured prior to the happening of the destruction of damage,
iv) in respect of undamaged property or undamaged portions of property other than foundations (unless foundations are specifically excluded from the insurance by this Policy) of that portion of the property destroyed or damaged,

b) the additional cost that would have been required to make good the property damaged or destroyed to a condition equal to its condition when new had the necessity to comply with any of the aforesaid Regulations of Bye-laws not arisen,

c) the amount of any rate, tax, duty, development or other charge or assessment arising out of capital appreciation which may be payable in respect of the property or by the owner thereof by reason of compliance with any of the aforesaid Regulations or Bye-laws

2)

3) If the liability of the Company under (any item of) the Policy apart from this extension shall be reduced by the application of any of the terms and conditions of the Policy then the liability of the Company under this extension (in respect of any such item) shall be reduced in like proportion

4) The total amount recoverable under any item of the Policy shall not exceed the Sum Insured thereby.

5) All the conditions of the Policy except in so far as they may be hereby expressly varied shall apply as if they had been incorporated herein."

6) No additional premium shall be charged for inclusion of this clause in this Policy.

AGREED BANK CLAUSE

"It is hereby declared and agreed

That upon any monies becoming payable under this Policy the same shall be paid by the Company to the Bank and such part of any monies so paid as may relate to the interests of other parties Insured hereunder shall be received by the Bank as Agents for such other parties.

That the receipts of the Bank shall be complete discharge of the Company therefor and shall be binding

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INDUSTRIAL ALL RISK INSURANCE POLICY

POLICY CLAUSES & WORDINGS

Attached to and forming part of Policy No. 150591-0000-00

damaged property hereby insured as may be incurred solely by reason of the necessity to comply with the Building or other Regulations under or framed in pursuance of any Act of Parliament or with Bye-laws of any Municipal or Local authority provided that

1) The amount recoverable under this extension shall not include

a) the cost incurred in complying with any of the aforesaid Regulations or Bye-laws

i) in respect of destruction or damage occurring prior to the granting of this extension,
ii) in respect of destruction or damage not insured by the Policy,
iii) under which notice has been served upon the Insured prior to the happening of the destruction of damage,
iv) in respect of undamaged property or undamaged portions of property other than foundations (unless foundations are specifically excluded from the insurance by this Policy) of that portion of the property destroyed or damaged,

b) the additional cost that would have been required to make good the property damaged or destroyed to a condition equal to its condition when new had the necessity to comply with any of the aforesaid Regulations of Bye-laws not arisen,

c) the amount of any rate, tax, duty, development or other charge or assessment arising out of capital appreciation which may be payable in respect of the property or by the owner thereof by reason of compliance with any of the aforesaid Regulations or Bye-laws

2) The work of reinstatement must be commenced and carried out with reasonable dispatch and in any case must be completed within twelve months after the destruction or damage or within such further time as the Company may (during the said twelve months) in writing allow and may be carried out wholly or partially upon another site (if the aforesaid Regulations or Bye-laws so necessitate) subject to the liability of the Company under this extension not being thereby increased

3) If the liability of the Company under (any item of) the Policy apart from this extension shall be reduced by the application of any of the terms and conditions of the Policy then the liability of the Company under this extension (in respect of any such item) shall be reduced in like proportion

4) The total amount recoverable under any item of the Policy shall not exceed the Sum Insured thereby.

5) All the conditions of the Policy except in so far as they may be hereby expressly varied shall apply as if they had been incorporated herein."

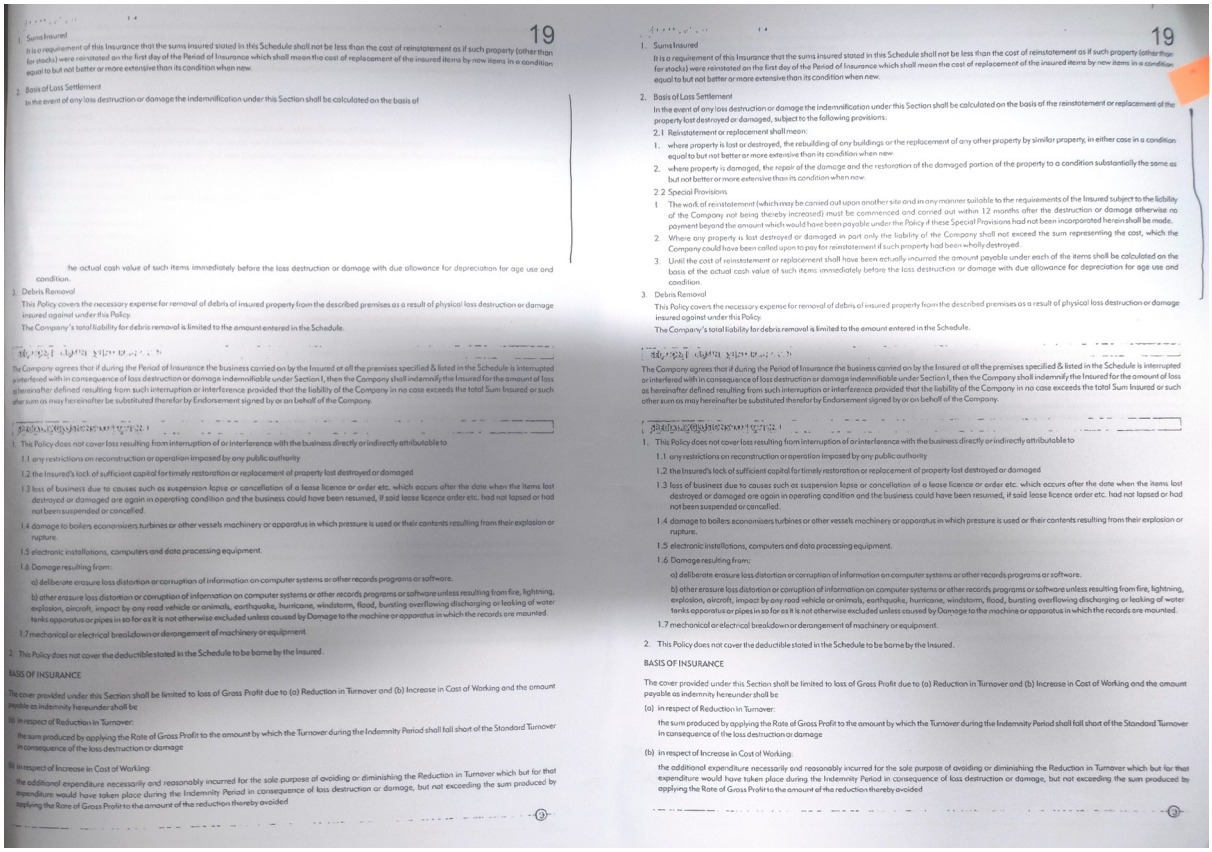
6) No additional premium shall be charged for inclusion of this clause in this Policy.

AGREED BANK CLAUSE

"It is hereby declared and agreed

That upon any monies becoming payable under this Policy the same shall be paid by the Company to the Bank and such part of any monies so paid as may relate to the interests of other parties Insured hereunder shall be received by the Bank as Agents for such other parties.

That the receipts of the Bank shall be complete discharge of the Company therefor and shall be binding



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1. Sums Insured
It is a requirement of this Insurance that the sums insured stated in this Schedule shall not be less than the cost of reinstatement as if such property (other than for stocks) were reinstated on the first day of the Period of Insurance which shall mean the cost of replacement of the insured items by new items in a condition equal to but not better or more extensive than its condition when new.

2. Basis of Loss Settlement
In the event of any loss destruction or damage the indemnification under this Section shall be calculated on the basis of

the actual cash value of such items immediately before the loss destruction or damage with due allowance for depreciation for age use and condition.

3. Debris Removal
This Policy covers the necessary expense for removal of debris of insured property from the described premises as a result of physical loss destruction or damage insured against under this Policy.
The Company's total liability for debris removal is limited to the amount entered in the Schedule.

The Company agrees that if during the Period of Insurance the business carried on by the Insured at all the premises specified & listed in the Schedule is interrupted or interfered with in consequence of loss destruction or damage indemnifiable under Section I, then the Company shall indemnify the Insured for the amount of loss as hereinafter defined resulting from such interruption or interference provided that the liability of the Company in no case exceeds the total Sum Insured or such other sum as may hereinafter be substituted therefor by Endorsement signed by or on behalf of the Company.

1. This Policy does not cover loss resulting from interruption of or interference with the business directly or indirectly attributable to
1.1 any restrictions on reconstruction or operation imposed by any public authority
1.2 the Insured's lack of sufficient capital for timely restoration or replacement of property lost destroyed or damaged
1.3 loss of business due to causes such as suspension lapse or cancellation of a lease licence or order etc. which occurs after the date when the items lost destroyed or damaged are again in operating condition and the business could have been resumed, if said lease licence order etc. had not lapsed or had not been suspended or cancelled.
1.4 damage to boilers economizers turbines or other vessels machinery or apparatus in which pressure is used or their contents resulting from their explosion or rupture.
1.5 electronic installations, computers and data processing equipment.
1.6 Damage resulting from:
a) deliberate erasure loss distortion or corruption of information on computer systems or other records programs or software.
b) other erasure loss distortion or corruption of information on computer systems or other records programs or software unless resulting from fire, lightning, explosion, aircraft, impact by any road vehicle or animals, earthquake, hurricane, windstorm, flood, bursting overflowing discharging or leaking of water tanks apparatus or pipes in so far as it is not otherwise excluded unless caused by Damage to the machine or apparatus in which the records are mounted.
1.7 mechanical or electrical breakdown or derangement of machinery or equipment.

2. This Policy does not cover the deductible stated in the Schedule to be borne by the Insured.

BASIS OF INSURANCE

The cover provided under this Section shall be limited to loss of Gross Profit due to (a) Reduction in Turnover and (b) Increase in Cost of Working and the amount payable as indemnity hereunder shall be

(a) in respect of Reduction in Turnover:
the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall fall short of the Standard Turnover in consequence of the loss destruction or damage

(b) in respect of Increase in Cost of Working:
the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the Reduction in Turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of loss destruction or damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided

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1. Sums Insured
It is a requirement of this Insurance that the sums insured stated in this Schedule shall not be less than the cost of reinstatement as if such property (other than for stocks) were reinstated on the first day of the Period of Insurance which shall mean the cost of replacement of the insured items by new items in a condition equal to but not better or more extensive than its condition when new.

2. Basis of Loss Settlement
In the event of any loss destruction or damage the indemnification under this Section shall be calculated on the basis of the reinstatement or replacement of the property lost destroyed or damaged, subject to the following provisions:
2.1 Reinstatement or replacement shall mean:
1. where property is lost or destroyed, the rebuilding of any buildings or the replacement of any other property by similar property, in either case in a condition equal to but not better or more extensive than its condition when new.
2. where property is damaged, the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.
2.2 Special Provisions
1 The work of reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the Insured subject to the liability of the Company not being thereby increased) must be commenced and carried out within 12 months after the destruction or damage otherwise no payment beyond the amount which would have been payable under the Policy if these Special Provisions had not been incorporated herein shall be made.
2. Where any property is lost destroyed or damaged in part only the liability of the Company shall not exceed the sum representing the cost, which the Company could have been called upon to pay for reinstatement if such property had been wholly destroyed.
3. Until the cost of reinstatement or replacement shall have been actually incurred the amount payable under each of the items shall be calculated on the basis of the actual cash value of such items immediately before the loss destruction or damage with due allowance for depreciation for age use and condition.

3. Debris Removal
This Policy covers the necessary expense for removal of debris of insured property from the described premises as a result of physical loss destruction or damage insured against under this Policy.
The Company's total liability for debris removal is limited to the amount entered in the Schedule.

The Company agrees that if during the Period of Insurance the business carried on by the Insured at all the premises specified & listed in the Schedule is interrupted or interfered with in consequence of loss destruction or damage indemnifiable under Section I, then the Company shall indemnify the Insured for the amount of loss as hereinafter defined resulting from such interruption or interference provided that the liability of the Company in no case exceeds the total Sum Insured or such other sum as may hereinafter be substituted therefor by Endorsement signed by or on behalf of the Company.

1. This Policy does not cover loss resulting from interruption of or interference with the business directly or indirectly attributable to
1.1 any restrictions on reconstruction or operation imposed by any public authority
1.2 the Insured's lack of sufficient capital for timely restoration or replacement of property lost destroyed or damaged
1.3 loss of business due to causes such as suspension lapse or cancellation of a lease licence or order etc. which occurs after the date when the items lost destroyed or damaged are again in operating condition and the business could have been resumed, if said lease licence order etc. had not lapsed or had not been suspended or cancelled.
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the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the Reduction in Turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of loss destruction or damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided

24. It is not in dispute that the reinstatement of the entire loss had not taken place within twelve months of the date of incident. In fact, the respondent, through letter dated 31.08.2016 (Annexure 25) sought assessment on MV basis. Therefore, even the respondent at one point of time understood that if the monetary requirement that has to be satisfied to workout the special provision for assessment under RIV basis is not satisfied, compensation can only be assessed on MV basis.

25. The sole Arbitrator has allowed loss assessment to be conducted on part reinstatement and part market value basis. To come to such a conclusion, the sole Arbitrator accepts the stand taken by the respondent/claimant that there is no bar in assessment of compensation on part reinstatement and part market value basis.

26. In the considered view of this Court, the above finding rendered by the sole Arbitrator is neither a possible view nor a plausible view and such a view taken by the sole Arbitrator is in total disregard to the express terms provided in the policy. A careful reading of the relevant clauses makes it abundantly clear that the loss assessment can either be on reinstatement value basis and if the terms of reinstatement are not met, then on market value basis.

27. The sole Arbitrator also renders a particular interpretation for the word 'items'. According to the sole Arbitrator, this word is ambiguous and it is not clear as to what it means 'by each of the items' and therefore, the said term must be interpreted in favour of the insured by applying the rule of *contra proferentem*. To strengthen the said finding, the sole Arbitrator has also relied upon the judgment of the Apex Court in the case of *Haris Marine Products v. Export Credit Guarantee Corporation Limited* reported in *AIR 2022 SC 3036*.

28. A careful reading of the provisions of the policy and more particularly, the clause description of Designation of Property Clause, Local Authority Clause and Section 1, which provides the meaning of Material Damage and which all forms part of Annexure I, makes it clear that the term 'items' must be construed as an asset class, as opposed to each individual asset owned by the insured. The sole Arbitrator in fact holds that reinstatement basis indemnification can take place even for parts of the machines, since the sole Arbitrator has understood the term 'items' to even mean individual machines and parts thereof. If this interpretation is accepted, it would not only lead to causing violence to the express terms of the policy and it would also lead to an absurdity to an extent where compensation will be sought for every nut and bolt and whereas what is contemplated under the agreement is only the asset. This interpretation has been given by the sole Arbitrator in the teeth of the

fundamental principle that a contract must be read as a whole to understand the scope of each term that has been used in the contract and if an attempt is made to ascribe different meanings to specific words, without understanding the context in which the parties had understood and agreed upon, it will lead to absurd interpretation of the terms of the contract and that it will tantamount to a patent illegality under Section 34(2A) of the Act.

29. While dealing with this issue, this Court must also take into consideration the manner in which the sole Arbitrator fixed the compensation amount at Rs.3.25 crores for the expenses incurred by the respondent/claimant for reinstatement. It is not in dispute that the respondent/claimant did not submit or file documents such as purchase orders/invoices/bank statements/ledgers to substantiate the monetary compensation sought for. The sole Arbitrator took into consideration the evidence of RW2-Surveyor, who stated that the respondent/claimant spent a sum of Rs.3.25 crores on reinstatement. He further stated that the respondent/claimant had also sent the bills in this regard on various dates. What was submitted by the respondent was only the quotations from various vendors to support their purported expenditure on reinstatement. The factum of incurring expenditure has been denied by the petitioner. Therefore, the burden of proof is upon the respondent/claimant to substantiate the claim by filing necessary documents in the course of trial. The amount

cannot be decided merely based on the statement of the Surveyor and the report of the Surveyor. In other words, the burden of proof was on the respondent/claimant to substantiate the claim by marking the relevant documents and at the best, the report of the Surveyor and the answers given by the Surveyor during cross examination can corroborate the evidence adduced by the respondent/claimant. In the absence of discharging this burden by the respondent, the amount of compensation towards reinstatement cannot be automatically fixed at Rs.3.25 crores. It is not necessary to even go into this issue, since this Court has held that the loss can be assessed either on RIV basis or on MV basis and since the respondent/claimant failed to satisfy the requirement for reinstatement, the only other option available is to assess the compensation on MV basis. In view of the same, the amount of Rs.3.25 crores fixed by the sole Arbitrator towards reinstatement pales into insignificance.

30. In the light of the above discussion, this Court holds that the finding of the sole Arbitrator on the loss assessment-partly on RIV basis and partly on MV basis itself, is in violation of Section 28(2) of the Act and such a view is neither a possible view nor a plausible view and consequently suffers from perversity and patent illegality under Section 34(2A) of the Act. The first issue is answered accordingly.

31. The second issue pertains to the deduction made by the Surveyor on the ground of underinsurance. The respondent/claimant took a stand that the Surveyor, while computing the claim, wrongly applied underinsurance and had used the wrong RBI indexation and further committed an error of double counting in respect of the provision of old items and arbitrarily applied higher percentage of calculating underinsurance, thereby deducted a sum of Rs.60,01,040/- towards underinsurance.

32. The stand taken by the respondent/claimant is that if the Surveyor had applied the correct RBI indexation and rectified the calculation error in double counting in respect of the provision of old items, the underinsurance would be within the permissible limit of 15 percent. According to the respondent/claimant, the Surveyor ought to have applied the Indexation based on non-electrical machinery, for which the RBI indexation is only 127.6 and whereas the Surveyor used the indexation under “all commodities” category and calculated underinsurance at 184.9 for the year 2015-16. If that had been done, the underinsurance would have been less than 15 percent and hence there will be no ground for deduction while computing the claims.

33. The sole Arbitrator, while deciding this issue, has merely gone by the evasive answers that were given by the Surveyor, who was examined as a

witness on the side of the petitioner.

34. The entire issue boils down to the fact as to whether the RBI indexation 184.9 has to be applied or 127.6 must be applied as was claimed by the respondent/claimant. The parties were at loggerheads only with respect to the RBI indexation values that were applied by the Surveyor.

35. The sole Arbitrator, while deciding this issue, should have made an individual assessment and assigned proper reasons as to why the calculation adopted by the Surveyor is wrong and as to why the indexation of 127.6 must be applied to the facts of the present case. In this process, the evasive answers given by the Surveyor can also be an added reason to strengthen the findings of the sole Arbitrator. However, that fact, by itself, cannot be the sole reason for the Arbitrator to hold the issue in favour of the claimant. The finding rendered by the sole Arbitrator tantamounts to a subjective finding to the effect that the Surveyor failed to sufficiently explain his position in the cross examination and therefore the claim made by the respondent/claimant was allowed. When a contentious issue is raised by the parties and each party has put forth divergent stands, the sole Arbitrator is expected to deal with these divergent stands taken by the parties and assign independent reasons while rendering the finding in favour of one party. The sole Arbitrator has not undertaken that exercise while

rendering the finding on this issue. Rather the sole Arbitrator was swayed on account of the ambiguity in the answers given by the Surveyor at the time of cross examination. In view of the same, the finding suffers from perversity and patent illegality, since it is devoid of any independent reasoning assigned by the sole Arbitrator. The second issue is answered accordingly.

36. The third issue pertains to depreciation, which was awarded at the rate of 50 percent in favour of the respondent/claimant. As many as nine items of machineries were taken for calculation of depreciation and the respondent/claimant accepted the calculation of depreciation for eight items and disputed the percentage of depreciation applied by the Surveyor for kiln furniture at the rate of 75 percent. According to the respondent, the Surveyor only placed reliance upon the period of usage and the monies spent on refurbishment without considering the number of cycles of use. If the same had been taken into consideration, the depreciation would have been 29 percent and not 75 percent. The respondent/claimant also placed reliance upon the second interim report submitted by the Surveyor, where the depreciation was shown to be 50 percent. As a result, on the finding of depreciation, there is an impact to the extent of Rs.2,15,03,762/-.

37. The sole Arbitrator broadly had three figures indicating the

percentage of depreciation that ought to have been applied for kiln furniture. The respondent/claimant came up with a stand that it is 29 percent. The calculation of the Surveyor in respect of kiln furniture is 75 percent. The second interim report submitted by the Surveyor came up with 50 percent depreciation.

38. The sole Arbitrator, without deciding the correct depreciation percentage to be applied by assigning proper reasons, eventually to strike a balance, fixed the depreciation value as 50 percent. The issue that arises for consideration is as to whether the arbitral tribunal can render a finding on equity disregarding the mandate under Section 28(2) of the Act. For proper appreciation, Section 28(2) of the Act is extracted hereunder:-

> "28. Rules applicable to substance of dispute.(1)...
>
> (2) The arbitral tribunal shall decide *ex aequoet bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so."

39. The arbitral tribunal can decide by applying the principle of fairness, justice and good conscience rather than strictly by the letter of the law or can act like a mediator to find a just solution only if the parties have expressly authorised the arbitral tribunal to do so. In the absence of the same, such a jurisdiction can never be exercised by the arbitral tribunal. Useful reference can be made to the judgment of the Apex Court in the case of ***Ssangyong***

Engineering & Construction Company Limited v. NHAI, (2019) 15 SCC 131 (paragraph 39) and the judgment of the Bombay High Court in the case of ***Board of Control for Cricket in India v. Deccan Chronicle Holdings Limited, 2021 SCC OnLine Bom 834*** (paragraph 224).

40. If the sole Arbitrator does not assign independent reasons while granting an award and acts in contravention of Section 28(2) of the Act, it will result in patent illegality, apart from the fact that it is in violation of Section 28(2) of the Act. While deciding the issue of depreciation, the sole Arbitrator has not assigned any reason and has indulged in the act of approximation to strike a balance and the same is clearly impermissible under the scheme of the Act. The third issue is answered accordingly.

41. The last issue pertains to the interest awarded by the sole Arbitrator. The sole Arbitrator has awarded interest right from the day of incident i.e., from 09.11.2015 till the date of the award at the rate of 18 percent. According to the petitioner, such interest has been awarded in total disregard to the 2002 Regulations. Regulation 9(6) provides that the insurance company will settle the claim under the policy within thirty days from the date of receipt of necessary documents required for assessing the claim. Thus, the insurer's liability to indemnify the insured will arise once the loss is assessed after

carrying out the survey and the final survey report is issued as per Regulation 9(5) of the 2002 Regulations. Regulation 9(6) provides that interest can be calculated at 2 percent above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by the insurance company. None of these Regulations were taken into consideration by the sole Arbitrator and both the period and the rate of interest fixed by the sole Arbitrator are not in line with Regulation 9(5) and 9(6) of the 2002 Regulations. The Delhi High Court in the case of ***Eternity Footwear Limited v. The Oriental Insurance Company Limited, 2018 SCC OnLine Del 9504*** held that the date on which interest would accrue would be as per Regulation 9(6). Yet another judgment of the Delhi High Court in the case of ***New India Assurance v. Khanna Paper Mills Limited, 2022 SCC OnLine Del 4269*** held that the arbitral tribunal cannot grant higher rates of interest beyond what is provided under the 2002 Regulations and doing so would amount to patent illegality.

42. In the light of the above discussion, this Court finds that the interest awarded by the sole Arbitrator, which covers both the period (from the date of incident till the date of award) and also the percentage of interest, is not in line with the 2002 Regulations which binds the parties and hence would amount to patent illegality. The fourth issue is answered accordingly.

43. One of the incidental issues that was raised in the course of arguments is that the award has ignored the binding commercial contract and it has been interpreted more out of equitable considerations than interpreting it in a commercial manner. It is not necessary to go into this issue independently, since some of the findings that have been rendered supra while dealing with the main issues, incidentally touches upon this issue also.

44. Insofar as yet another incidental issue that was raised to the effect that the ultimate relief lacks any quantification in spite of being a money decree, it is not necessary for this Court to go into this issue also, in the light of holding all four major issues in favour of the petitioner and against the respondent/claimant.

45. The conspectus of the above discussion leads to the only conclusion that the award passed by the sole Arbitrator is liable to be interfered by this Court in exercise of its jurisdiction under Section 34 of the Act. Accordingly, the award dated 02.02.2024 passed by the sole Arbitrator is hereby set aside and the original petition stands allowed. There shall be no order as to costs.

46. It is seen from records that in compliance of the interim order passed by this Court, the petitioner had deposited a sum of Rs.4,00,00,000/- with the

Registrar General of this Court, which is lying in interest bearing account with the Indian Bank, High Court Branch. In the light of the final order passed by this Court in this original petition, the petitioner is permitted to withdraw the said amount along with accrued interest and the Registrar General is directed to settle the proceeds to the petitioner as early as possible under due acknowledgement.

18-12-2025

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes

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To

1. The Registrar General
   Madras High Court
   Chennai

N.ANAND
VENKATESH J.

SS

Order in Arb O.P(Com.Div.) No. 266 of 2024

18-12-2025