IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28.10.2021

\+ **O.M.P. (COMM) 14/2020 & I.A. 315/2020 & 950/2020**

ORIENTAL INSURANCE COMPANY LIMITED ..... Petitioner

versus

APRIL USA ASSISTANCE INC. ..... Respondent

Advocates who appeared in this case:

For the Petitioner	: Mr. Preetesh Kapur, Sr. Adv. with Mr. Amit Kr. Singh & Mr. Apratim Animesh Thakur, Advs.
For the Respondent	: Mr. Nakul Dewan Sr. Adv. with Mr. Pradhuman Gohil, Ms. Neelu Mohan, Ms. Ranu Purohit, Ms. Tanya Srivastava & Ms. Jasleen Bindra, Advs.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act') impugning an Arbitral Award dated 15.09.2019 (hereafter the 'impugned award') delivered by the Arbitral Tribunal comprising of a Sole Arbitrator (hereafter the 'Arbitral Tribunal').

2. The impugned award was rendered in the context of the claims made by the respondent. The respondent is a company incorporated under the laws of the United States of America and consequently, the impugned award was rendered in an international commercial arbitration as defined under Section 2(1)(f) of the A&C Act.

3. The petitioner is one of the Public Sector General Insurance Companies. It assails the impugned award, principally, on the ground that it is opposed to the public policy of India. According to the petitioner, the claims made by the respondent were barred by the Limitation Act, 1963 (hereafter the 'Limitation Act') and the impugned award allowing the claims falls foul of the fundamental policy of Indian Law.

Factual Context

4. The respondent is, *inter alia*, engaged in the business of providing assistance to Overseas Medical Policy Holders and services the claims made under the Medial Insurance Policies.

5. In the year 2006, the Association of Public Sector General Insurance Companies in India invited tenders for selection of service providers for providing services in respect of Overseas Medical Policies (hereafter also referred to as 'OMPs') issued by their members including the petitioner.

6. The respondent participated in the tender process and was selected as the Overseas Service Provider for policies issued by the

petitioner. Thereafter, the petitioner, the respondent (known as Coris S.A. at the material time), and its Indian affiliate M/s Heritage Health TPA Pvt. Ltd, entered into a Service Provider Agreement dated 15.03.2007. This agreement is referred to as the '2007 Agreement' in the impugned award and is referred to as such in this order as well.

7. The 2007 Agreement continued till the year 2009 and, on its expiry, the said parties entered into a similar Tripartite Agreement dated 29.06.2009 (referred to as the '2009 Agreement') and on expiry of the 2009 Agreement, the parties had entered into another Service Provider Agreement dated 31.05.2012 (referred to as the '2012 Agreement'). The term of the 2012 Agreement was valid till April 2015, but was extended till October, 2015.

8. The rights and obligations of the parties under the three Agreements (2007 Agreement, 2009 Agreement and 2012 Agreement) were similar in material aspects. However, the fees payable by the petitioner for the services rendered under the said Agreements differed.

9. Under the 2007 Agreement, the respondent was entitled to receive fees as well as an Annual Bonus in respect of the services rendered by it. The said fees, Annual Bonus and Annual Additional Bonus were required to be calculated on the 'annual audited premium' by the petitioner. The fees were to be paid on quarterly basis and the Annual Bonus (and Additional Annual Bonus) was agreed to be paid within a period of thirty days from the finalization of the annual audited premium.

10. The controversy between the parties, essentially, relates to the fees payable by the petitioner in respect of certain group medical policies or certain medical policies issued under the name '*TrawellTag*'. These medical policies were issued through one Karvat Travel Services Private Limited (hereafter 'Karvat'). The *TrawellTag* policies were issued at a discounted premium of 69% and it is stated that the said discount was retained by Karvat. It appears that these policies were issued in bulk to groups of travellers. The respondent claimed that it had sought details of the premium collected under various policies including *TrawellTag* policies but the necessary details were not provided. It claimed that by an email dated 28.11.2014, the petitioner had provided the details of the audited premium for the financial years 2009-10 to 2013-14. However, the premium amounts received under the *TrawellTag* policies were not provided.

11. The respondent claimed that it was entitled to the fees and Annual Bonus on the basis of the standard rates of insurance premium and not on the deep discounted premiums in respect of the *TrawellTag* policies. The respondent also claimed that it was assured that the outstanding payments would be made, however, the petitioner failed and neglected to pay the same. According to the petitioner, the respondent was entitled to the fees calculated on the basis of the premiums received and not on the basis of the standard rates of insurance premium on the OMPs.

12. On 04.08.2015, the petitioner released a sum of ₹47,75,750/- against the claims made by the respondent. The respondent protested and demanded that it be paid its full entitlement.

13. In view of the above, on 04.11.2016, the respondent issued notices of dispute in respect of the three agreements – 2007 Agreement, 2009 Agreement and 2012 Agreement. The respondent claimed ₹2,50,99,761/- towards Annual Bonus; and ₹41,49,919/- as fees under the 2007 Agreement; it claimed ₹6,93,85,701/- towards Annual Bonus and ₹1,29,913/- towards fees under the 2009 Agreement; and, it claimed ₹20,11,980/- towards Annual Bonus and ₹12,418/- towards fees under the 2012 Agreement.

14. The petitioner did not respond to the said notices of dispute and consequently, the respondent issued three separate notices dated 27.02.2017 invoking arbitration in respect of the three Agreements. Thereafter, the respondent filed three separate petitions under Section 11 of the A&C Act before the Supreme Court seeking appointment of an arbitrator in respect of the three Agreements. The said petitions (Arbitration Petition Nos. 8 to 10 of 2018) were allowed and by an order dated 24.01.2019, the Supreme Court appointed Mr Banerjee, Senior Advocate, as the Sole Arbitrator to adjudicate the disputes arising between the parties in respect of the three Agreements.

15. Since, the controversy involved in respect of the three Agreements in question was similar, the same were taken up together.

16. Before the Arbitral Tribunal, the respondent, *inter alia*, claimed a sum of ₹9,59,53,917/- towards Annual Bonus and fees as well as interest on the said amount. The petitioner also filed a counter claim for a sum of ₹94,07,595/- along with interest at the rate of 18% per annum,

which was subsequently restricted to ₹47,75,770/-. The petitioner claimed that it had over paid the Annual Bonus and fees under coercion and was entitled to recover the same.

17. The Arbitral Tribunal framed several issues including whether the claims were barred by limitation. The Arbitral Tribunal found that the petitioner was in breach of Clause 3 of the 2007 Agreement; Clause 3 of the 2009 Agreement; and Clause 3 of the 2012 Agreement, which contained provisions regarding the petitioner's obligations to pay the fees and Annual Bonus. The Arbitral Tribunal awarded a sum of ₹9,95,53,915/- in favour of the respondent in respect of its entitlement for Annual Bonus and fees. The Arbitral Tribunal further awarded interest at the rate of 9% per annum from the date when the amount became due and payable [07.07.2017 till the date of filing of the Statement of Claims, that is, 15.03.2019], which was quantified at ₹1,51,21,285/-. In addition, the Arbitral Tribunal awarded interest at the rate of 9% per annum on the sum of ₹9,95,53,915/- from the date of the award till its realization. The Arbitral Tribunal also awarded costs quantified at ₹99,29,975/- to the respondent. The counter claims made by the petitioner were rejected.

18. Aggrieved by the impugned award, the petitioner has filed the present petition.

19. Mr. Preetesh Kapur, learned senior counsel appearing for the petitioner submitted that the claims made by the respondent were clearly barred by limitation. He submitted that the respondent's entire

claim for fees and bonus was premised on Clause 3 of the respective Agreements, which also provided the period within which the said amounts were to be paid. In terms of Clause 3.2.1 of the respective Agreements, the respondent was entitled to payment of the fees within a period of sixty days from the last date of the 'OMPs issued period' and in terms of Clause 3.2.2 of the respective Agreements, the respondent was entitled to bonus within a maximum period of thirty days of finalization of the annual audited premium. He submitted that, therefore, the cause of action with regard to the payment of fees and bonus arose sixty days from the last date of the relevant financial years. However, the arbitration notices were issued on 23.05.2017, which was beyond the period of three years from the date of cause of action. He referred to the decision of the Supreme Court in ***Geo Miller & Co. Pvt. Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd.: (2020) 14 SCC 643*** and, submitted that merely writing representations and reminders would not extend the period of limitation.

20. He further submitted that the Arbitral Tribunal's finding that the accounting between the parties was to be done on a re-conciliation basis until 2015 was contrary to the terms of the relevant Agreements as well as the testimony of the respondent's witness, who had admitted that the petitioner had never assured the respondent that the discount of 69% on premiums would be reconciled.

21. Next, Mr Kapur, submitted that the impugned award was contrary to the expressed terms of the Agreement. He referred to Clauses 3.2.1, 3.2.2 as well as Clauses 1.1.6 and 1.1.21 of the

Agreement and submitted that the fees and Bonus payable to the respondent was agreed to be calculated as the percentage of the annual audited premium, booked in respect of the OMPs. Therefore, the Arbitral Tribunal could not have awarded fees based on the notional premium, which was not collected by the petitioner. Such notional premium could not be considered as 'annual audited premium'. He referred to the decision of the Supreme Court in ***Ssangyong Engineering and Construction Co. Ltd. v. National Highway Authority of India: (2019) 15 SCC 131*** and contended that substituting the expressed terms of the Contract would breach fundamental principles of justice and therefore, the impugned award falls foul of the fundamental policy of Indian law.

22. Mr. Nakul Dewan, learned Senior Counsel appearing for the respondent, countered the aforesaid submissions. He contended that the claims made by the respondent were not barred by limitation. He further submitted that the respondent had not raised any such plea in its Statement of Defence and therefore, could not be permitted to agitate the same for the first time in a petition under Section 34 of the A&C Act. He referred to the decisions of this Court in ***Gail Gas Limited v. Palak Construction Pvt. Ltd.: 2019 SCC OnLine Del 11636*** and ***Motilal Oswal Securities Ltd. v. Rakshak Kapoor and Another: 2019 SCC OnLine Del 11438,*** in support of his contention.

23. Next, he submitted that the Arbitral Tribunal had examined the question of limitation and found that there was no denial of any claim till the year 2017 and therefore, the period of limitation began in 2017.

24. Insofar as the petitioner's contention that the impugned award is contrary to the Agreements is concerned, he submitted that the Arbitral Tribunal had interpreted the relevant Agreements between the parties. The Arbitral Tribunal had found that the policies required to be serviced under the Agreements in question were policies issued to individuals and not group policies. He pointed out that the term 'annual audited premium' was not defined and the same was required to be calculated on the basis of the annual audited premium due from individual policy holders and not premium recovered under the Group Medical Claim Policies. He submitted that there was irrefutable evidence that the petitioner had provided an average discount of 69% on *TrawellTag* OMPs.

25. Lastly, he submitted that the matter related to interpretation of the contract (the three Agreements in question) and, the same was within the jurisdiction of the Arbitral Tribunal. He referred to the decisions of the Supreme Court in ***G. Ramachandra Reddy and Company v. Union of India & Anr.: (2009) 6 SCC 414*** and ***Ssangyong Engineering and Construction Co. Ltd. v. National Highway Authority of India*** (*supra*), in support of his contention.

Reasons and Conclusion

26. At the outset, it is necessary to observe that the scope of interference with an arbitral award under Section 34 of the A&C Act is limited. The impugned award was rendered in an international commercial arbitration and concededly, the same cannot be set aside as

vitiated on account of any patent illegality. The grounds for setting aside the award as contemplated under Section 34 (2A) of the A&C Act is not available to the petitioner. According to the petitioner, the impugned award is liable to be set aside under Section 34(2)(b)(ii) as it is in conflict to the Public Policy of India.

27. Explanation - 1 to Section 34 (2) of the A&C Act clarifies that an award would be in conflict with Public Policy of India only if (i) it was induced or affected by fraud or corruption or otherwise in violation of Sections 75 or Section 81 of the A&C Act; or (ii) it is in contravention of the fundamental policy of Indian law; or (iii) is in conflict with the most basic notions of morality or justice. There is no allegation that the impugned award has been induced or affected by fraud or otherwise is in violation of Section 75 or Section 81 of the A&C Act. Thus, the examination of the impugned award is limited to whether the same falls foul of the '*fundamental policy of Indian law*' or is in conflict with '*the most basic notions of morality or justice*'.

28. It is also necessary to bear in mind that an examination whether the impugned award falls foul of the fundamental policy of Indian law does not entail a review on the merits of the dispute.

29. One of the principal grounds on which the impugned award is assailed is that it allows claims, which are barred by limitation. It is settled law that the statute of limitations does not extinguish a debt or a cause but bars the recourse to a remedy. Thus, clearly entertaining a claim, which may otherwise be barred by limitation, does not offend

any basic notion of morality or justice, as extending a remedy for redressal of a grievance, which may otherwise be barred, does not offend any sense of justice. In this view, the examination in the present petition is confined to whether the impugned award contravenes the fundamental policy of Indian law.

30. The petitioner has assailed the impugned award on, essentially, two fronts. First, that it allows claims that are barred by limitation and second, that it is contrary to the Agreements entered into between the parties.

31. It was the respondent's case that it was entitled to fees and Annual Bonus based on the premium paid by the insured. It further claimed that the petitioner had never disputed its entitlement on the aforesaid basis but in fact had assured the respondent from time to time that the fees and Annual Bonus would be paid on the aforesaid basis. The respondent had also asserted that it continued to demand the details of the premiums collected. Even though the said details were not provided, the petitioner continued to assure the respondents that the payments would be made on the aforesaid basis. Thus, the case projected by the respondent was that the parties continued to engage in discussions solely for the purposes of reconciling the premiums paid and the petitioner had never repudiated or disputed its liability to pay the fees and bonus on the premiums paid by the insured individuals. The petitioner had denied its claim for the first time in response to the notice issued under the A&C Act.

32. In its Statement of Defence, the petitioner did not assert that the claims were barred by limitation. Concededly, the said assertion was made by the petitioner for the first time in a sur-rejoinder.

33. The petitioner had disputed the aforesaid contention. It contended that the respondent was aware that certain policies had been issued at a discount and, audited data for the financial years 2006-07 to 2009-10 were made available to the respondent on 23.04.2010. The petitioner relied upon an email dated 04.10.2010 sent to the respondent as well as an email dated 23.04.2010, in support of its contention. The petitioner also relied on the cross-examination of the respondent witness (Mr Vincent Cheth - RW 1) and contended that his cross-examination indicated that the respondent had doubts about the discount given to Karvat since the year 2007. The petitioner also contended that RW1's testimony also established that the respondent had details of the policies issued by the petitioner and that the premium payable on the policies could have therefore, be calculated.

34. It is apparent from the above that if the respondent succeeded in its claim that the parties were in negotiations for reconciliation of the premiums paid, its claim would be within the period of limitation. Undeniably, if the liability is acknowledged and not disputed but the parties engaged in the exercise of quantifying the same, the period within which a claim can be made would require to be reckoned from the date when the disputes are crystalized; that is either on completion of reconciliation or on any party terminating the same.

35. The Arbitral Tribunal evaluated the material on record including the correspondence between the parties and the oral evidence adduced during the arbitration. After appreciating such evidence, the Arbitral concluded as under:-

> "10.3.13. The course of correspondence between the parties, as also the oral evidence adduced during the arbitration, leads the Tribunal to conclude that there was an ongoing business relationship, the transactions were on a running account basis and the Claims were all along kept alive, at least till 2015, when on 4.8.2015, the Respondent only sanctioned a sum of INR 48,35,775."

36. The Arbitral Tribunal further held that the petitioner had denied the claims explicitly in its response to the respondent's notice of arbitration and not prior to that date. The Arbitral Tribunal found that the petitioner had sent an email dated 12.05.2015 to the CEO of the respondent informing him that the petitioner was processing the fees and Bonus as per the contractual document and would close the issue at the earliest. Pursuant to the aforesaid assurance, the petitioner had also made a payment of ₹47,00,000/- in August, 2015. The petitioner had sanctioned a sum of ₹48,35,775/- against the respondent's demand on 04.08.2015. Thus, even if it was considered that the disputes had crystalized on that date, the claims would be within the period of limitation.

37. Mr Kapur, had contended that the Arbitral Tribunal had failed to distinguish the period of limitation as applicable for a substantive claim

and the period of limitation available for the appointment of an arbitrator. He had earnestly contended that the limitation period for the appointment of an arbitrator would run after the notice of arbitration and, the Arbitral Tribunal had erroneously considered the date of response to the arbitration notices as the date for commencement of the disputes. The said contention is unmerited. The Arbitral Tribunal had examined the controversy not in the perspective of the period of limitation for filing an application/petition for the appointment of an arbitrator but in the perspective whether the claims were barred by limitation.

38. It was further contended that since the agreements itself provided for a time for making the payment of fees and Bonus, the finding of the Arbitral Tribunal that the parties had maintained accounts on running basis was patently erroneous and contrary to the Agreements. This contention is also, unpersuasive. The Arbitral Tribunal had examined the evidence and material on record and after evaluating the same, had concluded that the accounting between the parties was done on a running account basis. The testimony of the petitioner's witness (PW 2) also supports the aforesaid conclusion.

39. The Arbitral Tribunal's finding that the parties were in the process of reconciling the accounts and the claims of the petitioner were kept alive at least till 2015 is a finding of fact arrived at after examination of evidence and material on record and, warrants no interference in these proceedings. As noticed at the outset, Explanation 2 of Section 34 (2) of the A&C Act clarifies that the question whether

there is any contravention of the fundamental policy of Indian law does not entail a review on the merits of the dispute. Even if it is assumed that the statute of limitation is a part of the fundamental policy of Indian law, the question whether a claim is barred by limitation is in some cases a mixed question of fact and law.

40. Insofar as the decision on the question of fact is concerned, it is settled law that the Arbitral Tribunal is the final adjudicator of such questions. In ***Dyna Technologies Private Limited v. Crompton Greaves Limited: (2019) 20 SCC 1,*** the Supreme Court had held that courts would not interfere merely because an alternative view on facts exists. Similarly, in the case of ***Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49,*** the Supreme Court had held that "*a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award.*"

41. Thus, the Arbitral Tribunal's decision on the question of fact must be accepted. Thus, even if it is accepted that the law of limitation embodies a fundamental policy of Indian law, an arbitral award cannot be set aside by re-examining and re-evaluating the evidence and reviewing the decision on a disputed question of fact, which may be involved in addressing the controversy whether a dispute is barred by limitation.

42. The next question to be examined is whether the conclusion of the Arbitral Tribunal that the fees and Bonus payable under the

Agreements required to be paid on the standards rates of premium, is perverse and is contrary to the expressed terms of the Agreements in question.

43. It was contended on behalf of the petitioner that in terms of Clauses 3.2.1 and 3.2.2 of the relevant Agreements, the fees and Bonus was payable to the respondent as a percentage of the annual audited premium booked by the petitioner. The petitioner claimed that since only the premiums received would be booked, the question of the respondent being paid on any notional basis would militate against the expressed terms of the Contract.

44. The Arbitral Tribunal had, *inter alia*, struck the following issues:-

> "Issue 3: Whether the Service Provider Agreements contemplated calculation and payment of Assistance Fee and Annual Bonus for servicing Overseas Mediclaim Policies on the basis of 'standard' rates of premium, as alleged by the Claimant?
>
> Issue 4: xxxx xxx xxx
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> Issue 5: Whether the Service Provider Agreements permitted issuance of Group/Bulk Insurance Policies at discounted rates of premium, as alleged by the Respondent?"

45. The respondent had contended that the fees was payable on the annual audited premium and the same had to be calculated on the basis of the standards rates of insurance premium. The term 'annual audited premium' is not defined in the Agreements and according to the

respondent, the same was required to reflect the premiums corresponding to the standard retail rates of insurance premium that were required to be collected under the policies issued to individuals. In support of its contention, the respondent had relied upon the tender requirements on the basis of which it had submitted the bids. Sample copies of OMPs was enclosed with the tendered documents.

46. The respondent also claimed that the *TrawellTag* policies were contrary to the representations made under the tender documents.

47. In addition to Clause 3 of the Agreements, which provided for payment of service fees, Clauses 1.1.6 and 1.1.21 of the Agreements are also relevant. The said clauses are set out below: -

> "Clause 1.1.6: "Fees" shall mean the agreed fees as detailed in clause 3 hereunder, payable by the Insurer to the OSP in US Dollars or any other mutually accepted currency for the Services rendered by it at the rate of 0.98% of the annual audited premium booked by the Insurer on the OMPs and or any other Health Insurance Policies issued for the benefit of Indian going abroad.
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> Clause: 1.1.21 "Annual Bonus" shall mean Bonus Payable by the Insurer to the asp (as a percentage a/Premium) for achieving the Incurred Claim Ratio (as Condition No.2 of Section V of the Commercial Bid) as per scale given below:

Incurred Claim Ratio (ICR) Achieved	Bonus Percentage over and above the fees
Between 60% and 50%	2% of the Annual Audited Premium
Between 50% and 40%	3% of the Annual Audited Premium
Below 40%	4% of the Annual Audited Premium

48. In addition to referring to the aforesaid clauses, it is also necessary to refer to Clauses 1.1.10, 1.1.14, 1.1.15 of the Agreements that define the expressions 'Insured Person', 'Policy' and the 'Policy holders'. The said clauses are set out below:-

> "Clause1.1.10 "Insured Person(s)" shall mean Policyholders who are entitled to Benefits tender a valid OMP of the Insurer.
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> Clause 1.1.14 "Policy" shall mean Overseas Mediclaim Policy of the Insurer and or any other Health Insurance policies issued to Indians going abroad.
>
> Clause 1.1.15 "Policy Holder" shall mean the customer of the Insurer who has paid premium for availing the Policies as defined in 1.1.14"

49. The Arbitral Tribunal had examined the aforesaid clauses and concluded that the policies required to be serviced under the

Agreements were policies issued to individual insured persons and the aforesaid definitions did not support issuance of Group Overseas Medical Policies. The conclusion of the Arbitral Tribunal in this regard is set out below:-

> "13.3.9. For this limited purpose, the Tribunal has looked at the context with a view to understand the text of the three Agreements. *[Sumitomo Heavy Industries Ltd.* v. *ONGC Ltd.* (20I0) 11 sec 296] The tender was floated by GIPSA on behalf of all the four public sector insurance companies. The tender requirements, on the basis of which the bid was submitted, set out certain premium figures as well as Claim figures which were based on rates of insurance premiums for individual insured persons. The sample policy, which is incidentally of the Respondent company, itself also suggested that it was in respect of an individual policy holder. This broad commercial understanding also supports then interpretation arrived at by the Tribunal on a construction of the various clauses of the Agreements read as a whole. The Tribunal reiterates that the reference to the figures in the tender and the sample policy are merely to understand the commercial context and that the Tribunal has reached its conclusion on the basis of true and proper construction of the relevant clauses of the Agreements.
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> 13.3.10. In these circumstances, the Tribunal accepts the Claimant's submission that the true and correct interpretation of the phrase *"annual audited premium"* would be the annual audited premium recovered from individual policy holders, which the Claimant has characterised as standard

> premium rates, and not the premium recovered under a Group Medical Policy."

50. The Tribunal further noted that the expression 'annual audited premium' was not defined under the Agreements and therefore, the expression was required to be interpreted in the context of the commercial understanding between the parties.

51. However, the Tribunal did not hold that the petitioner was not entitled to issue Group Policies as the Tribunal was of the view that the Agreement must be read to give efficacy to the Contract between the parties rather than to invalidate the same.

52. This Court finds no ground to interfere with the aforesaid reasoning or conclusion. Concededly, the disputes regarding interpretation of Contract falls squarely within the jurisdiction of an Arbitral Tribunal and its decision warrants no interference unless it is found that it is perverse or patently erroneous.

53. In ***McDermott International Inc. v. Burn Standard Co. Ltd & Ors.: (2006) 11 SCC 181***, the Supreme Court held as under:

> "112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties

> are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See *Pure Helium India (P) Ltd.* v. *ONGC* [(2003) 8 SCC 593] and *D.D. Sharma* v. *Union of India* [(2004) 5 SCC 325] .)
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> 113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award."

54. In the facts of this case, this Court is unable to accept that the aforesaid conclusion of the Arbitral Tribunal is contrary to the expressed language of the Agreement between the parties. The term 'annual audited premium' has not been defined under the Agreement. According to the petitioner, it would mean only the quantum of premium as recorded in its books and as audited. However, the Agreements do not expressly stipulate so. The expression 'audited' in normal parlance is understood to mean reviewed from an accounting and regulatory perspective. Thus, the expression 'annual audited premiums' would normally be understood as annual premiums as reviewed from accounting and regulatory perspective. The contention that the expression 'annual audited premiums' must necessarily mean net premiums (premiums less discounts) as accounted in the books and the decision of the Arbitral Tribunal to not accept so, falls foul of the fundamental policy of Indian law is plainly, unmerited.

55. The dispute between the parties is, essentially, with regard to the discounts given by the petitioner to Karvat in respect of *TrawellTag* policies. A plain reading of the impugned award indicates that the Arbitral Tribunal was of the view that since the Agreements did not contemplate any group insurance policies, the expression 'annual audited premiums' would denote those standard premiums payable on OMPs issued to individuals. In other words, the Arbitral Tribunal did not accept that the discount provided by the petitioner in respect of *TrawellTag* policies was required to be deducted from the premiums.

56. This Court finds no infirmity with this view. A discount given by a seller is not necessarily required to be reflected by reducing the consideration for sale of the product. The sale consideration is required to be accounted for in full and a discount may be reflected as a separate expense item.

57. Merely, because the petitioner had given discounts on its premium or policies, does not necessarily mean that it was only required to book the premiums at a net value and not reflect the discount separately in its books of accounts.

58. It is not necessary for this Court to examine the aspect as to how a discount and premium is required to be reflected in the books of accounts. Suffice it to state that the expression 'annual audited premiums' does not necessarily mean the net value of premiums realized by the petitioner. Therefore, the premise that the impugned award (which requires the discounts to be disregarded for calculation of

the premiums on which the fees was required to be ascertained) runs contrary to the plain language of the Agreements, is erroneous.

59. In the given circumstances, this Court finds no ground to interfere with the impugned award. The petition is unmerited and is, accordingly, dismissed. All pending applications are disposed of.

VIBHU BAKHRU, J

OCTOBER 28, 2021
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