IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 10809 OF 2024
WITH
INTERIM APPLICATION (L) NO. 11225 OF 2024
WITH
INTERIM APPLICATION (L) NO. 11117 OF 2024

United India Insurance
Company Limited ....**PETITIONER/APPLICANT**

VERSUS

UPL Limited **.... RESPONDENT**

Mr. Sharan Jagtiani, Senior Advocate with Ms. Surbhi Agarwal & Ms. Netra Haldankar i/b Dhruve Liladhar & Co., for the Petitioner/ Applicant.

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Shreya Parikh, Mr. Archit Jayakar, Ms. Pooja Yadav, Mr. Mihir Kakade & Mr. Kshitij Abbhi i/b Jayakar & Partners, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 1 April, 2026.

Pronounced On: 22 April 2026.

Judgment :

1) When a Gas Turbine Engine is damaged due to an accident and the insured is required to get the Engine overhauled and raises a claim towards the overhauling expenses and the insurer sanctions only the expenses for accidental repairs, whether the dispute relating to non-

payment of balance claim is a dispute of 'quantum' or dispute of 'liability' is the issue that this Court is tasked upon to decide in the present Petition. To paraphrase, whether it is permissible for the insurer to segregate the claim in respect of the damage to the Engine into 'repairs claim' and 'overhaul claim' and take a stand that mere payment for the former claim does not amount to acceptance of liability in respect of the latter claim, making the latter claim non-arbitrable? The issue arises in the light of typical clause in the Insurance Policy providing for arbitration only in respect of disputes involving quantum and not in respect of those for which the liability is not expressly admitted.

2) Petitioner-Insurance Company has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** challenging the arbitral Award dated 8 December 2023 passed by the learned sole Arbitrator. The Tribunal has treated the claim of the Respondent as a single indivisible claim and has held that since the claim is partially awarded, the dispute relates to 'quantum' and not to 'liability'. The Tribunal has further held that the accident was the proximate cause of overhauling of the Gas Turbine Engine. By the impugned Award, the Tribunal has awarded a sum of Rs.41,98,12,970/- in favour of the Respondent along with simple interest @ 12% p.a. on the entire awarded amount from the date of the award. The Tribunal has also awarded costs of arbitration of Rs. 2 crores in favour of the Respondent.

3) This is the second round of arbitration after the previous award by the Three Member Arbitral Tribunal was set aside by this Court.

FACTS

4) Petitioner is a public limited and nationalised general insurance company incorporated in the year 1938 under the Companies Act, 1913. Respondent, who was previously known as United Phosphorus Limited, is a Public Limited Company incorporated in the year 1985 and is engaged in the business of agrochemicals such as pesticides. Respondent is also a successor in interest of its erstwhile subsidiary of Search Chem Industries Ltd. **(SCIL)** which has merged into the Respondent.

5) On 22 February 2001, SCIL purchased Industrial All Risk Policy to insure its Captive Power Plant which was installed by the Respondent in its factory at Jhagadia, Gujarat. The Power Plant used a Gas Turbine Engine bearing No. 185-195 **(GT Engine)** which was manufactured by GE Packard Power Inc. **(GE)**. The policy was valid from 22 February 2001 to 21 February 2002 and covered (i) material damage with the sum insured of Rs.156,00,00,000/- and (ii) business interruption with the sum insured of Rs.11,71,31,000/-

6) The Industrial All Risk Policy included exclusion causes under which the policy did not cover damage to the property incurred by latent defect, gradual deterioration, distortion or wear and tear. The policy also did not include coverage in respect of the damage caused *inter-alia* by corrosion, rusting, etc. Clause 12 of the insurance policy included agreement for arbitration in respect of the disputes relating to quantum to be paid under the policy where the liability is otherwise admitted. However, where the company disputed or not accepted the

liability under or in respect of the policy, the disputes were not agreed to be referred to arbitration.

7) In April 2001, there was an oil leakage in the hot section area of the GT Engine which was decommissioned and sent for repairs. The problem was found in the 4B bearing and a new 4B bearing was installed whereafter the GT Engine was reinstalled sometime in June 2001 and commissioned. Those repairs were carried out at the Air India Workshop. The Petitioner honored the claims for such repairs. On 15 September 2001, the GT Engine started to have issues. A metal chip detector installed in the Oil Sump-B showed a fluctuating resistance reading between 160 to 300 ohms as against the normal level of 500 ohms. The fluctuations continued for about an hour before the resistance returned to the optimum levels. At around 10.49 a.m., on 16 September 2001, the metal chip detector sounded an alarm and again fluctuations were noticed in the resistance. Another alarm was sounded at 12.20 a.m. on the same day whereafter the GT Engine tripped for about 16 seconds. A Borescope Inspection of the GT Engine was carried out on 16 September 2001 by General Electric Energy Plant Operations LLP, **(GEEPO)** a subsidiary of GE and operation and maintenance contractor of the Respondent, which showed that the Sump-B was not in good order and the 4B bearing cage was broken. Upon being informed about the incident, Petitioner appointed Bhatawedekar & Co. and Mehta & Padamsey Pvt. Ltd. as its joint surveyors.

8) On the basis of borescope inspection and in consultation with GEEPO, the Petitioner decided to send the GT Engine to manufacturer's facility at Houston, Texas USA. On 16 October 2001, the GT Engine reached GE facility for inspection. On 19 October 2001 and 22 October 2001, GE issued reports. According to the Petitioner, the issues reported by GE included observations of corrosion, discoloration, reddish yellow rust, etc in diverse components of the GT Engine over and above the Sump-B. On 30 October 2001, the GE recommended that the GT Engine be overhauled. Petitioner appointed M/s. McLarens Toplis as its surveyors in the USA. The US Surveyors informed the Petitioner of GE's recommendations for complete overhaul of the GT Engine.

9) In the above backdrop, the Petitioner issued letters dated 5 December 2001 and 18 December 2001 to the Respondent recommending complete overhaul of the GT Engine. In the letter dated 18 December 2001, Petitioners communicated that if the GT Engine was not overhauled as recommended by GE, future claims were eminent which would cause problem at the time of underwriting of the risk.

10) On 6/7 December 2001, the GT Engine was reassembled and taken for testing after the GE completed limited repairs to Sump-B. During testing, it was found that the GT Engine was still not working properly and heavy vibrations were noticed. GE recommended 3 options to the Respondent, (i) attend only rotating parts of the High Pressure Compressor **(HPC)** and High Pressure Turbine **(HPT)**, (ii) attend to the

repairs of the stator and rotors of both HPC and HPT, (iii) HPC, HPT, LPC and LPT and all assemblers should be inspected and repaired by completing the overhaul of the GT Engine. On 24 December 2001, Respondent wrote to the Petitioner conveying its intention to go for complete overhauling of the GT Engine. On 27 December 2001, Petitioner clarified to the Respondent that the overhauling costs would not fall within the purview of the policy and that Petitioner's liability would only extend to the actual damage directly caused to the GT Engine by the incident. The Respondent communicated its intention to go ahead with complete overhaul of the GT Engine by letter dated 28 December 2001. In response, Petitioner issued a letter on 25 January 2002 reiterating that the expenses claimed towards costs of overhauling were not payable. Respondent once again stated that they would be claiming costs of overhauling and repairs from the Petitioner vide letter dated 4 February 2002. On 17 February 2002, Respondent wrote to the joint surveyors enclosing its claim bill towards material damage in the sum of Rs.24,02,15,358/-. On 26 March 2002, the GT Engine was successfully tested post the completion of repairs. The US surveyors issued its survey report on 23 April 2002 regarding GT Engine and the repairs carried out. On 30 April 2002, Respondent purchased another storage and erection policy from the Petitioner for erection of the GT Engine in its captive power plant at Gujarat by paying premium of Rs.11,58,697/-

11) On 10 May 2002, the joint surveyors issued their first interim report. In May/June 2002, the GT Engine was dispatched from Houston, Texas and it resumed its normal functioning at Respondent's captive

power plant on 13 June 2002. On 25 July 2002, Respondent revised its claim bill for material damage by reducing the same from Rs.24,02,15,358/- to Rs.16,71,61,286/-. It also raised its claim bill for business interruption loss for sum of Rs.5,27,83,000/-. On 1 February 2003, second interim report and final survey report was issued by the joint surveyors. The joint surveyors assessed Respondent's claim by considering the business interruption loss and material damage attributable only to the damage arising out of the incident and not in the context of the overhaul claim. According to the joint surveyors, the breakdown was caused as a result of the incident which necessitated repairs to Sump-B and repairs that would have corrected transient vibrations noticed during the testing on 6/7 December 2001. On 20 March 2003, Respondent submitted a revised claim bill for loss of profit in the sum of Rs.8,23,08,525/- based on the audited balance sheet and gross profit ratio on the basis of the trend of Naphtha price.

12) On 18 December 2003, Petitioner sent the Settlement Intimation Voucher **(SIV)** to the Respondent by which Petitioner offered to pay total of Rs.7,69,69,369/- as full and final discharge of Respondent's claim falling within the policy. The amount included Rs.5,01,41,230/- towards material damage and Rs.2,68,28,139/- towards loss of business profits. Petitioner accepted the voucher under protest on 19 December 2003. Petitioner accordingly issued cheque of Rs.7,69,69,369/- to the Respondent on 29 December 2003.

13) Thus disputes and differences arose between the Petitioner and Respondent over the balance amount of Respondent's claim.

Respondent accordingly initiated arbitration on the basis of arbitration agreement set out at Clause 12 of the policy. The disputes and difference were referred to arbitration before the Three Member Arbitral Tribunal. On 14 September 2012, the Arbitral Tribunal delivered award which was not unanimous. The majority award dismissed Respondent's claim on the ground that amount of Rs.7,69,69,369/- was accepted by the Respondent in full and final satisfaction of its claim and that such acceptance amounted to a complete discharge. It was also held that Petitioner was not liable to pay overhaul costs and was liable to pay only for the damage caused by the incident. In a separate minority award, Respondent was held entitled to entire balance amount of Rs. 17,03,49,393/-

14) The majority award was challenged by the Respondent before this Court under Section 34 of the Arbitration Act. This Court set aside the majority award by order dated 15 February 2019 holding *inter-alia* that the conclusion of Arbitral Tribunal about acceptance of Rs.7,69,69,369/- amounting to complete discharge was contrary to the admitted records of the case and was an impossible view. The majority award was also set aside on the ground that it did not discuss the extensive evidence led on merits by the Petitioner and the Respondent.

15) Upon setting aside of the majority award in the first arbitration, Respondents once again invoked arbitration on 28 January 2020. Parties jointly appointed learned sole Arbitrator (Mr. Justice R.M. Lodha, former Chief Justice of India) and Arbitral Tribunal was thus constituted on 5 February 2020. Respondent filed its Statement Of Claim before the Tribunal on 30 June 2020 claiming Rs. 69,52,41,839/- with

interest as well as costs of first round of arbitration. Petitioner filed application under Section 16 of the Arbitration Act contending that determination of issue of Petitioner's liability to pay for overhauling costs was not arbitrable since the same did not concern quantum under Section 12 of the policy and contended that Respondent's acceptance of Rs.7,69,69,369/- amounted to complete accord and satisfaction. The Arbitral Tribunal however deferred adjudication of Section 16 application and directed the same to be heard after leading of evidence by the parties. Section 16 application was thus heard at the final hearing stage.

16) At the end of the arbitral proceedings, the Tribunal has passed final Award dated 8 December 2023 holding *inter-alia* that the disputes in the subject arbitration pertained only to quantum and not to liability. The Tribunal has rejected Petitioner's objections and has partly allowed Respondent's claim including the claim towards business interruption losses and awarded total sum of Rs.43,98,12,970/- which includes an amount of Rs.41,98,12,970/- towards claim and Rs.2 crores towards costs. The Tribunal has also granted post award interest @ 12% p.a. from the date of the award.

17) Aggrieved by the Award dated 8 December 2023, the Petitioner has filed the present petition under Section 34 of the Arbitration Act. By order dated 5 February 2025, this Court permitted the Petitioner to deposit the awarded amount along with interest upto 5 February 2023 and subject to deposit being made, execution of the Award was stayed. Accordingly, the Petitioner has deposited an amount of Rs. 50,14,10,885/- on 5 March 2025. There is delay of 19 days in filing the

present Petition, for condonation of which Petitioner has filed I.A.(L) No. 11117 of 2024. Considering the averments in the interim application and the length of delay, in my view same deserves to be condoned. The delay is accordingly condoned.

18) With the consent of the learned counsel appearing for parties, the petition is taken up for final hearing. Accordingly, I have heard extensive submissions canvassed by the learned counsel appearing for the parties.

SUBMISSIONS

19) Mr. Jagtiani the learned Senior Advocate appearing for Petitioner would submit that the impugned award distorts the arbitration agreement contained in Clause 12 of the policy to hold that the dispute between the parties pertained only to quantum and was therefore arbitrable. That Clause 12 confines arbitration to cases only where there is difference as to quantum to be paid under the policy and where the liability is otherwise admitted. That both conditions must be cumulatively satisfied. That second part of Clause 12 reinforces this by providing that no difference or dispute shall be referable to arbitration if the insurer has disputed or not accepted liability under or in respect of the policy. That the fundamental interpretation of arbitration agreement is that there has to be admission of liability and that the dispute cannot be submitted to arbitration if the liability has been disputed or not accepted under the policy. That this aspect is completely ignored by the Arbitral Tribunal and

the standard which has been applied by the Tribunal is that Petitioner's absence of repudiation or denial of liability renders the dispute arbitrable.

20) Mr. Jagtiani further submits that award relies on letters dated 5 and 18 December 2001 regarding overhauling of GT Engine without appreciating that nothing in those letters amounted to admission or acceptance of liability of overhauling costs. Those letters were issued prior to raising of any claim for overhauling of GT Engine and were issued at the time when Respondent's own decision was to undertake limited repairs to address the incident dated 16 September 2001. That Petitioner denied liability to pay overhauling by letters 27 December 2001 and 25 January 2002. That once the liability for overhauling claim was denied, the dispute ceased to be the one of mere quantum for it to be arbitrable. He relies on judgment of English Court in ***New Hampshire Insurance Company Versus. Strabag Bau AG*** [1]. That Respondent's argument to negate letters dated 27 December 2001 and 25 January 2002 that they have been issued before raising of claim is completely incorrect as Respondent in its letter dated 24 December 2001 had clearly referred to a "claim". That mere absence of claim bill at that stage was irrelevant since there was a claim in the form of Respondent's letter dated 27 December 2001. That itemization of overhauling cost of GT Engine in letter dated 24 December 2001 is identical to claim bill dated 17 February 2002. That therefore Arbitral Tribunal's finding that Respondent's claim was not repudiated is patently erroneous and perverse.

1 1990 ILPR 334

21) Mr. Jagtiani further submits that the Petitioner itself maintained a clear distinction between incident claim and overhauling claim. That GE's letter dated 15 January 2002 to the Respondent uses the term 'rebuild the engine' signifying overhauling. That from Petitioner's standpoint, incident claim and overhaul claim arose from distinct legal obligations, one that was admitted and another that was not. The payment under settlement intimation voucher is of only that part of claim for which liability was always accepted. For the remaining, the liability for overhaul claim was expressly denied.

22) Mr. Jagtiani further submits that liability is a legal obligation and under the policy, the claims may involve distinct legal obligations. That insurer may treat them distinctly either because of time at which they arise or separate coverage for equipment or nature of claim being only partly covered. That in each case where there was no admission or acceptance of liability, the claim was not arbitrable in respect of that part.

23) Mr. Jagtiani further submits that the award suffers from another legal perversity as it draws wholly unsustainable conclusion from the two interim survey reports by the joint surveyors to suggest that Respondent's claim was admissible under the policy as a singular claim arising out of the incident. That none of the two reports give any suggestion of admissibility of Respondent's claim arising out of the incident. He takes me through both the interim reports in support of his contention that the survey assessment was limited by surveyors only to

Option 1 and that therefore admissibility was in respect of the claim covered by Option 1 only.

24) Mr. Jagtiani further submits that while interpreting similar arbitration clause, Courts have repeatedly held that an insurer can always reject liability in respect of part of the claim and that mere sanction of part of claim does not mean that there is dispute relating to quantum in respect of that part for which liability itself is disputed. In support of his contention, he relies on following judgments:

1) ***United India Insurance Company Limited and Another Versus. Hyundai Engineering And Construction Company Limited And Others*** [2]
2) ***Oriental Insurance Company Limited Versus. Narbheram Power And Steel Private Limited*** [3]
3) ***The Vulcan Insurance co. Ltd. Versus. Maharaj Singh and Another*** [4]
4) ***M/s. Mallak Specialties Pvt. Ltd. Versus. The New India Assurance Co. Ltd.*** [5]
5) ***Sanghi Industries Ltd. Versus. United India Insurance Company Limited*** [6]
6) ***Kohinoor Steel Pvt. Ltd. Versus. Bajaj Allianz Insurance Company*** [7]
7) ***Metal Crafts Engineering Pvt. Ltd. Versus. National Insurance Company Limited and another*** [8]
8) ***New India Assurance Co. Ltd. Versus. M/s. Ampoules and Vails Manufacturing Co. Ltd.*** [9]
9) ***Ec Wheels India Private Limited Versus. Shriram General Insurance Company Limited*** [10]

2 2018 17 SCC 607
3 2018 6 SCC 534
4 1976 1 SCC 943
5 CARAP No. 65 Of 2022 decided on 30 November 2022
6 2013 SCC Online Guj 5732
7 2011 SCC Online Cal 3252
8 2011 SCC Online Cal 1929
9 2018 SCC Online Bom 5845
10 2025 SCC Online Cal 4267

10) ***D.C. Bars Limited and another Versus. QIC Europe limited*** [11]

25) About merits of the award, Mr. Jagtiani submits that there is perversity in findings of the Arbitral Tribunal while holding that accident was proximate cause for overhauling of GT Engine. That Arbitral Tribunal has conflated two distinct issues of excluded causes and the accident being the proximate cause of overhauling. That the finding on one issue cannot support the findings on the other. That excluded causes would entail that the claim is not covered by the policy at all. That even if it is assumed arguendo that the claim falls outside the excluded causes, the Tribunal was required to record clear and independent findings for holding that the accident was the proximate cause for overhauling. That on the issue of proximate cause, the Tribunal has merely recorded a vague finding in para 153 of award about availability of ample material on record including various letters/communication of GE, McLarens Toplis and the letters of the Respondent. However, none of the said material indicates accident as proximate cause of overhauling of the GT Engine. The Tribunal itself has not identified letters/reports or communications which purportedly establish the incident as the proximate cause for overhauling. That this finding is completely perverse. Mr. Jagtiani takes me through letters and communications of GE, McLarens Toplis report as well as letters of Respondent to demonstrate that none of them state, in any manner, that the accident was proximate cause of overhauling. He submits that the ratio of the judgment of the Apex Court in ***OPG Power Generations Private Limited Versus. Enexio Power Solution India***

11 2023 EWHC 245 COMM

Private Limited [12] cannot be invoked in the present case for upholding an unreasoned award. That new documents referred to by Respondent during final hearing of petition cannot be relied upon to fill any gaps of Respondent's case by misapplying the ratio of the judgment in ***OPG Power Generations Private Limited***. That on the contrary, the contemporaneous documents and reports consistently establish that overhauling was not carried out on account of the incident.

26) Mr. Jagtiani further submits that Tribunal applied inconsistent evidentiary standards while dealing with GE documents. That it has disregarded GE Reports suggesting rust, corrosion, oxidation, wear and tear and other pre-existing conditions on the ground of Petitioner not leading oral evidence of GE personnel. However, on the other hand, the Tribunal relies on various letters/communications of GE to conclude that the incident was proximate cause of overhauling.

27) Mr. Jagtiani submits that Respondent's reliance of judgment of the Apex Court in ***SBI General Insurance Company Limited Versus Krish Spinning*** [13] is misplaced as the same is rendered in the context of limited jurisdiction of Court under Section 11 of the Arbitration Act. That the same is the case with various other judgments relied upon by the Respondent. That in none of the judgments cited by the Respondent, the insurer had expressly repudiated or denied its liability for a particular claim as is done in the present case. Mr. Jagtiani concludes by submitting

12 2025 2 SCC 417

13 Civil Appeal No. 7821 of 2024 decided on 18 July 2024.

that Petitioner's clear and consistent denial of liability for overhaul claim takes the dispute outside the scope of arbitration agreement rendering the award patently illegal and perverse and not a plausible view. That the award is woefully short of reasons, ignores vital evidence and misapplies the arbitration agreement. He prays for setting aside the award.

28) Mr. Rustomjee, the learned Senior Advocate appearing for the Respondent submits that no interference is warranted in the impugned award in limited scope for interference under Section 34 of the Arbitration Act. That interpretation of contract and evaluation of evidence falls within the purview of the Arbitral Tribunal. That Court cannot re-evaluate evidence or substitute its own interpretation of contract merely because another interpretation is preferable. That the Petitioner has urged this Court to re-examine and re-evaluate the evidence with a view to arrive at a different conclusion, which is impermissible. That the view taken by the arbitrator is not egregious or perverse to such an extent that no reasonable person could ever take the same. That the mandate under Section 34 is to respect the finality of the arbitral award. He relies on judgments of the Apex Court in ***Ssangyong Engineering and Construction Company Limited Versus National Highways Authority of India (NHAI)*** [14], ***Prakash Atlanta (JV) Versus. National Highways Authority of India*** [15] and ***OPG Power Generations Private Limited*** (supra).

14 2019 15 SCC 131
15 2026 SCC Online SC 98

29) Mr. Rustomjee further submits that the dispute is clearly arbitrable under Clause 12 of the Industrial All Risk Policy. That the dispute between the parties is primarily a question of "how much" and not "whether" an amount is payable. That the Tribunal has correctly held that the dispute with respect to balance claim is an issue of quantum and not liability. He submits that on 18 December 2003, when Petitioner issued its settlement intimation voucher, it accepted its liability regarding the accident. That Petitioner never repudiated its liability with respect to the overhauling cost. That even at the stage of issuing of cheque, Petitioner did not state that it was disputing the liability. That no statement was made as to which part of the claim was paid and which was rejected. That the clarification came for the first time when statement of defense was filed. That liability is admitted as Petitioner claims to have made payment towards Respondent's claims under both heads of "material damage" and "business interruption". That even joint surveyors held that the claim was admissible and that no exclusions applied with respect of the same. That even 2nd interim survey report treated claim as admissible under the policy. That the tone and tenor of letters dated 5 and 18 December 2001 clearly suggest that the Petitioner would cover the costs of overhauling.

30) Mr. Rustomjee further submits that it is impermissible to split the cause of action or claim. That Petitioner has sought to create artificial bifurcation of cause of action into "incident claim" and "overhauling claim". That such bifurcation is artificially aimed at creating disputes with regard to liability for portion of the claim. That this is

evident from three options of repairs presented in the joint surveyor's first report dated 10 May 2002, which shows that the difference in the options were only to the extent of repairs. That Options 1 and 2 were included in Option 3. That by accepting Option 1, Petitioner has effectively admitted/accepted liability for Option 3 as well. That the arbitrator has rightly rejected this approach of artificial bifurcation.

31) Mr. Rustomjee further submits that Petitioner's reliance on letters 27 December 2001 and 25 January 2002 is misplaced as none of the letters bear out an unequivocal denial of liability of the Petitioner with respect to overhauling costs. That the wordings of the letters shows that the view expressed therein was tentative and qualified and did not reflect Petitioner's final position on the matter. That letters were issued at an earlier stage before filing of claim. That subsequent conduct and correspondence between the parties show that the issue as to whether accident was the proximate cause of overhauling was still being considered and discussed by the Petitioner as late as in 2003. That there was no repudiation of liability at any point of time after issuance of claim bills by the Respondent. That the said two letters were, in any case, premature as the same didn't discuss the three repair options. That the issue of overhauling remained under consideration for long after issuance of letters. That letters dated 27 December 2001 and 25 January 2002 cannot be read in isolation by ignoring letters of 5 December 2001 and 18 December 2001.

32) Mr. Rustomjee further submits that the Petitioner expressly admitted that the issue is one of quantum and not of liability, which is clear from Petitioner's response to the previous Section 34 petition (challenging award dated 14 September 2012) in which it took a stand that the dispute between the parties with respect to balance claim was one of quantum and not a liability issue. That Petitioner cannot now be permitted to alter its stand by seeking to blow hot and cold in the same breath. That even in the joint surveyor's report the claim has been admitted.

33) Mr. Rustomjee further submits that the view taken by Arbitral Tribunal is strongly supported by several judgment of Apex Court and various High Court. He relies on judgments in ***Amlagora Cold Storage Versus. National Insurance Company Limited*** [16] ***,Krish Spinning*** (supra), ***Oriental Insurance Company Limited Versus. Nagarjuna Agrichem Limited*** (supra), ***Tagros Chemicals India Private Limited Versus. United India Insurance Company Limited*** [17] **,** ***M/s. LS Automotive India Private Limited Versus. Oriental Insurance Company Limited*** [18]**,** ***M/s. TRS Lift and Shift Servises Pvt Ltd. Versus. Reliance General Insurance Company Limited*** [19]**,** and ***Karan Synthetics India Private Limited Versus. Divisional Manager*** [20]. That in those judgments it is repeatedly held that where part payment has been approved/made under the policy and the balance amount is claimed, the dispute relates to

16 1993 SCC Online Cal 89
17 ARB. O.P. Comm Div No. 319 of 2024 decided on 6 December 2024
18 ARB. O.P. Comm Div No. 174 of 2025 decided on 19 June 2025
19 AP-COMM 344 of 2024 decided on 4 July 2024
20 Petition Under Arbitration Act No. 35 of 2015 decided on 14 August 2015

quantum and not to the liability. It is held in those judgments that even if payment is made towards one head of claim for 'material damage' but was refused in respect of another, the dispute relates to quantum and not to the liability. There has been a shift in the legal position with the judgment of the Apex Court in ***SBI Vs. Krish Spinning***, (supra) by which principles discussed in various judgments relied upon by Petitioner have been watered down. Mr. Rustomjee also relies upon judgment of United State District Court ***Keller N. AM Inc. Versus. Certain Underwriters***[21] wherein it is held that once insurer admits the liability to some extent, it is reasonable to describe the remaining dispute as a dispute as to "how much" the insurer is required to pay rather than "whether" it is required to pay. That the judgment also recognizes the heavy presumption of arbitrability and that the Court should decide the question in favour of arbitration. He also relies on judgment of Federal Court of Malaysia in ***Press Metal Sarawak SDN BHD Versus. Etiqa Takaful BHD***[22] in support of his contention that where insurer has admitted liability in respect of part of the claim, the question as to whether the remaining part of the claim was barred by exclusions was a part of quantum dispute falling within the ambit of arbitration clause.

34) Mr. Rustomjee further submits that in the event this Court arrives at conclusion that reasons provided in the award are inadequate or insufficient, the same can be explained while upholding the award and in support he relies on judgment of the Apex Court in ***OPG Power Generations Private Limited*** (supra) as followed by this Court in ***Sanjeev***

21 687 F. Supp 3d 712
22 2016 MLJU 404

Malhotra Versus. SBI Global Factors Ltd. And Another [23] and ***Securitrans India Pvt Limited Versus FIS Payment Solutions and Services Pvt Limited***[24] . Mr. Rustomjee also distinguishes various judgments cited by Mr. Jagtiani.

35) Mr. Rustomjee further submits that the claim was not barred by excluded causes and that the accident was proximate cause for damage, necessitating overhauling. That the onus of proving applicability of exclusion causes is rightly put by the Arbitral Tribunal on the Petitioner and it has concluded that the Petitioner has failed to discharge the said onus. That Petitioner's reliance on GE Reports of 19 October 2001 and 22 October 2001 for suggesting that GT Engine was suffering from pre-existing damage of corrosion, erosion, discoloration etc is misplaced as the reports themselves do not state or indicate that there were any preexisting conditions in the engine. That additionally the Tribunal has held that Petitioner did not lead evidence of any personnel from the GE. On the other hand, Respondent led evidence of expert whose testimony is accepted by Arbitral Tribunal. He takes me through various findings in the arbitral award to demonstrate that the findings are based on comprehensive evaluation of evidence. That the Arbitral Tribunal has recorded finding of fact that the accident was the proximate cause of damage rectified by overhauling. That therefore findings of the Arbitral Tribunal on merits of the claim also do not warrant any interference by this Court in exercise of powers under Section 34 of the Arbitration Act.

23 2025 SCC Online Bom 5402
24 2025 SCC Online Bom 5401

On above broad submissions, Mr. Rustomjee prays for dismissal of the Petition.

REASONS AND ANALYSIS

36) Petitioner has sought invalidation of the arbitral award on two broad grounds: (i) that the dispute relating to rejection of claim for overhauling of GT engine is not arbitrable under Clause 12 of the Industrial All Risk Policy and (ii) that the accident/incident is not the proximate cause for overhauling of GT Engine and that the claim is otherwise liable to be rejected on merits. The Tribunal has answered both the issues against the Petitioner. It has held that Respondent's claim for balance amount towards overhauling cost of GT Engine was a 'quantum' dispute and therefore arbitrable under Clause-12 of the Industrial All Risk Policy. The Arbitral Tribunal has further held that the accident/incident was the proximate cause for overhauling of GT Engine and that therefore rejection of claim for overhauling was erroneous.

37) In the present case, the incident/accident occurred on 16 September 2001, when the GT Engine tripped and was required to be sent for repairs to the facility of GE in the USA. There were two options for the Respondent viz. to carry out repairs necessary for recommissioning of GT engine or to overhaul the entire GT Engine. Initially Respondents opted for the first option but since mere repairs to the damaged parts were not found sufficient, the Respondent opted for overhauling the GT Engine and claimed the entire expenses incurred for overhauling in addition to

claim for business interruption. The Petitioner has sanctioned only the claims for repairs/costs in respect of the actual damages directly caused during the accident/incident of 16 September 2001 and for business interruption and has accordingly paid an amount of Rs.7,69,69,369/- to the Respondent. This included amount of Rs.5,01,41,230/- towards 'material damage' and Rs. 2,68,28,139/- towards 'loss of business profits/business interruption'. Since the claim for balance expenses incurred towards overhauling of GT Engine is not honored by the Petitioner, the Respondent initiated arbitration, which has resulted in impugned award dated 8 December 2023 by which the Arbitral Tribunal has sanctioned the claim in the sum of Rs.16,38,57,408.84/- under the head 'material damage' which essentially is unpaid amount of expenses incurred by the Respondents towards overhauling of the GT Engine. Additionally, the Arbitral Tribunal has sanctioned claim in sum of Rs.6,23,79,114/- towards 'business interruption'. This is how total claim in the sum of Rs.22,62,36,523/- is awarded by the Arbitral Tribunal in Respondent's favour under the Industrial All Risk Policy. Since amount of Rs.7,69,69,369/- is already paid to the Respondent, the Arbitral Tribunal has directed payment of balance amount of Rs.14,92,66,884/- with simple interest thereon @ 9 percent p.a. from 20 September 2003 upto the date of award. The amount of interest comes to Rs.27,05,46,086/- upto the date of the award. This is how the Arbitral Tribunal has directed payment of total sum of Rs.41,98,12,970/- by the Petitioner to the Respondent. The Arbitral Tribunal has also awarded costs of Rs.2 crores in favour of the Respondent. It has also awarded post award interest @ 12 percent p.a. on the awarded sums.

WHETHER DISPUTE IS ONE OF 'LIABILITY' OR OF 'QUANTUM'

38) Petitioner issued Industrial All Risk Policy to the Respondent for insuring its captive power plant for the period from 22 February 2001 to 21 February 2002. Under the policy, the sum insured for material damage was Rs.156 crores whereas for business interruption, the sum insured was Rs.11.17 crores. The insurance policy contained arbitration agreement under Clause 12 which provided thus:

> 12. If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator, to the decision of two disinterested persons as arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provision of the Arbitration Act, 1940, as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings.
>
> It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.
>
> It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage shall be first obtained.

39) Thus, only differences or disputes as to the quantum to be paid under the policy, where liability is otherwise admitted, were capable of being settled through arbitration. In case where the Petitioner disputed or not accepted the liability under or in respect of the policy, the dispute or difference could not be referred to arbitration.

40) In the light of the above quoted Clause 12 containing the arbitration agreement between the parties, the core issue for consideration is whether Respondent's claim for overhauling cost of GT Engine is a dispute as to 'quantum' to be paid or whether the same relates to 'liability' which is disputed or not accepted by the Petitioner. Respondent contends that it had filed a singular claim in respect of the costs incurred in overhauling, which included the expenses for damage to the GT Engine and that since the Petitioner has admitted liability in respect of part of such claim and has paid to the Respondent partial claim, the dispute essentially is in respect of the quantum and not in respect of the liability. On the other hand, it is the case of the Petitioner that Respondent's claims were under two distinct heads of costs incurred for repairs to GT Engine due to the incident and costs incurred for overhauling the entire GT Engine. It is Petitioner's case that it has treated the two claims as different and distinct and has allowed the former claim while rejecting the latter. That there is rejection of liability in respect of the later claim for overhauling of GT Engine. It is Petitioner's contention that the case involves disputes relating to rejection of liability or non-acceptance of liability *qua* the claim for overhauling of GT engine. The Petitioner contends that the issue does not relate to quantum but the

same relates to liability. This is how the two parties raised a dispute before the learned arbitrator about nature of rejection of claim raised by the Respondent.

41) If rejection of claim for overhauling of GT Engine is treated as rejection of liability under or in respect of the policy, the dispute is not capable of being resolved through arbitration since there is no arbitration agreement for resolution of such dispute. If on the other hand, if the entire claim of the Respondent for costs incurred towards repairs and overhauling of GT Engine is treated as a singular indivisible claim, since the liability in respect of part thereof is admitted, rejection of the other part would be a dispute relating to quantum, which is capable of being resolved through arbitration. Therefore, the issue which is at the heart of controversy is whether the claim raised by the Respondent for incurring of expenditure towards overhauling of the GT Engine is to be treated as a single indivisible claim or there are two distinct claims involved in respect of repairs to engine arising out of accident and overhauling/rebuilding of the entire engine. The Arbitral Tribunal has treated the dispute between the parties as the one relating to quantum and has accordingly answered issue of arbitrability in favour of Respondent and against Petitioner. Correctness of that finding is questioned before this Court.

42) The Gas Turbine Engine is essentially an aero-derivative engine which is often used in airplanes and which is smaller than an industrial gas turbine. Because of its compactness, the clearance between the rotating parts is almost nil. The primary components of GT Engine,

i.e., the compressors, turbines and combustor are all fastened on two shafts that run through the entire GT Engine. The movement of these shafts is facilitated through bearings (including a 4B bearing) which are fixed along the shafts. The 4B bearing is housed in Sump-B Section of the GT Engine.

43) In April 2001, the GT Engine of Respondent encountered oil leakage in the hot section and repairs were carried out by installation of a new 4B bearing. The GT Engine was reinstalled and recommissioned in June 2001. There is no dispute to position that the Petitioner duly paid the claim raised by the Respondent in respect of the incident of oil leakage.

44) On 16 September 2001, the incident/accident occurred when metal chip detector installed in oil Sump-B sounded an alarm and fluctuations were noticed in the resistance and the GT Engine tripped.

45) The GT Engine was under Operation and Maintenance Contract dated 15 September 2000 with GEEPO, a subsidiary/sister concern of GE.

46) GEEPO carried out Borescope Inspection of GT Engine which showed that Sump-B was not in good order and 4B bearing cage was broken. Respondent sent the GT Engine to GE's facility in Houston, Texas and the engine reached the facility of GE in the USA in October 2001. The GE issued two reports dated 19 October 2001 and 22 October 2001.

Petitioner particularly relies on observations in report dated 19 October 2001 which recorded some additional issues over and above the Sump-B issue such as corrosion, discoloration, reddish yellow rust etc. in respect of several components of the engine.

47) The Petitioner appointed McLarens Toplis as its surveyors in the USA. McLarens Toplis issued report on 28 November 2001 to the Petitioner, in which it was stated as under:

> We report that the scope of repairs requested from Search Chem are completed and final Testing will be conducted on Dec. 5 or 6th, 2001. We advise that the repair scope was not what GE had recommended, More particular GE recommended in their inspection report that the LPT also he rebuilt/repaired and possible the entire angine be rebuilt before they would offer a warranty.
>
> Our concern here is a limited repair on this engine that may eventually fail again and thus placing yourselves in another claim for damages/repairs. Though these other areas nay be wear and tear issues and/or aggravated from the previous failure. Experts at GE cannot say which issue this addresses, only that at some time they will need to be addressed.
>
> It appears we are looking at two different possibilities in this case;
>
> A) The loss of oil during the first incident caused the No. 4 bearing to fatigue and ultimately fail.
>
> B) The over torqueing of the bearing resulted in the bearing failure.
>
> C) Or the combination of both the above contributed to the bearings failure.
>
> The data sheet provided shows no remarkable patterns. It is a spreadsheet type data sheet that has the information imputed every 4 hours. (I believe manually, as allegedly read from the sensors.
>
> Over all GE has found the entire engine in need of a complete overhaul due their findings during the break down. As we reported earlier, Search

Chem has not agreed to this and has limited their scope of repair to the areas of failure, only.

48) After receipt of report of McLarens Toplis, the Petitioner wrote to the Respondent on 5 December 2001 stating as under:

> We have received a communication from our Head office regarding report of M/s Mclarens Toplis, Houston, USA.
>
> In terms of the said report, G.E have recommended to overhaul the entire engine and not limit the repairs for the present accident alone. Unless the engine is completely overhauled, another loss could occur in the near future. It is thus evident that engine has to be overhauled thoroughly to fit to run continuously.
>
> Further it is also reported that unless the engine is overhauled, the repairers are also not willing to give guarantee-for the engine with respect to the present repairs.
>
> **From the above, it would be observed that it is imperative to carry out complete overhauling of the entire engine as per G.E. 's recommendations instead of limiting the scope of repairs to the areas of failure (present accident loss only).**
>
> **We would request you to kindly ensure that this is done before the engine is dispatched to India** and Iet us have your confirmation to enable us to revert to our Head Office (We are informed that the final testing is to be conducted on 5th or 6th December, 2001). Kindly treat this matter as most urgent.
>
> *(emphasis and underlining added)*

49) In the meantime, Petitioner sought advice from its Head Office and once again wrote to the Respondent on 18 December 2001 stating as under :

> We had sought the advice of our Head Office/Regional Office with regard to contents of your letter dated 12.12.2001.
>
> Our Head Office have received a communication from M/s. McLarens Toplis in terms of which they had found excessive transit vibration and

> it was also revealed that no.4 bearing failure was not due to bad bearing but something which is not incidental to the earlier accidental damage. **Our Head Office has therefore once again reiterated that it would be advisable for yourselves to repair the entire engine now itself as recommended by G. E. so that the engine may not have any problem in the future. if it is not done as recommended by G. E. then future claim is imminent as observed by McLarens and it will pose problem at the time of underwriting of the risk.**
>
> We would request you to kindly look into the above aspects and let us have your confirmation to enable us to revert to our Head Office. Kindly treat this as most urgent.
>
> *(emphasis and underlining added)*

50) Thus, by its letter dated 5 December 2001, the Petitioner referred to the report of the M/s. McLarens Toplis and suggested that '*it is imperative to carry out complete overhauling of the entire engine as per GE's recommendations instead of limiting the scope of repairs to the areas of failure caused by the accident*'. However, it appears that the Respondents opted for limited repairs of Sump-B bearing. GE completed the repairs of Sump-B bearing and the engine was tested on 7 December 2001. During the testing, core rotor vibrations were noticed during transient conditions beyond acceptable limits. It appears that on 17/18 December 2001, a meeting took place between the representatives of GE and Respondent, minutes whereof were recorded in the subsequent letter dated 24 December 2001, which read thus :

> GE completed the repair of Sump B bearing failure and the engine was tested on December 7, 2001 During this testing the core rotor vibrations were found to be 3.5 to 4.0 mils during transient conditions. the acceptable limit of these vibrations is 3.0 mils.
>
> GE has suggested to attend to these vibrations by opening HPC and HPT modules and performing a balance. But this HPC & HPT balance will

> only take care of transient vibrations, which is not a solution to the complete problems. Therefore GE further suggested to do complete overhaul for which GE would extend a full guarantee SCIL agreed to this.
>
> The complete overhaul will take 50-60 days from the induction and the engine can be inducted earliest on December 27, 2001 for full tear down into each module for complete inspection and repairs.
>
> The estimated cost of repairs indicated above will be $ 2,645,280. This is in addition to Sump B repair cost of $ 454,720

51) Thus, through its two letters dated 5 December 2001 and 18 December 2001, Petitioner specifically advised the Respondent to go for complete overhauling of GT Engine instead of restricting the repairs to the areas of failure caused by the accident. In fact, in the letter dated 18 December 2001, Petitioner expressed apprehension of creation of problems at the time of underwriting of the risk if overhauling of the engine was not done as recommended by the GE.

52) In the above background, the Respondent wrote to the Petitioner on 24 December 2001 giving details of overhauling of the GT Engine and intimated to the Petitioner that it would claim entire costs of repairs and also the incidental expenses incurred by it, which is clear from following portion of letter dated 24 December 2001:

> While we will be claiming on you for the entire cost of repairs as also all incidental expenses incurred by us in connection with repairs to be carried out by G.E. we would request you to send any instruction that you may wish to send your surveyors abroad for their lissing with G.E. and facilitating speedy completion of repairs and turn of the engine to us.
>
> Kindly acknowledge receipt and advise us the steps Inken by you, if we don't receive any reply from you immediately we shall assume that you

> have concurred with our line of action and have advised your surveyors abroad suitably in this connection.

53) Upon receipt of letter dated 24 December 2001 from the Respondent, Petitioner did a U-turn. While it kept on pestering the Respondent vide letters dated 5 December 2001 and 18 December 2001 to go for complete overhauling of the GT Engine, after receipt of details of overhauling costs vide letter dated 24 December 2001, the Petitioner apparently realized the risk involved in recommending overhauling of GT Engine on account of claim of entire costs of overhauling likely to be raised by the Respondent. Accordingly, on 27 December 2001, Petitioner wrote to the Respondent as under:

> We are in receipt of your Letter dated 24 December, 2001 and have noted the contents thereof.
>
> It is observed that you had made a claim totaling to $32.19,497.11 approximately Rs. 15 Crores. In this connection, you will kindly appreciate that our liability, subject to adequacy of sum insured, would be restricted to repair cost in respect of actual damages directly caused during the accident/incident on 16 September, 2001 necessitating despatch of the damaged equipment to Houston, USA for repair. Overhauling coat etc. would not fall within the purview of the policy.
>
> In my case, as you are aware, MC LARENS TOPLIS Houston, USA (M/s Mehta & Padmsey Associates, M/s. Bhatewadekar & Co.) have already been appointed by our Head Office and their detailed report is awaited and we would be in a position to write to you further only on receipt of the same after receiving directives from our Head Office. In the meantime, you may kindly note that at this juncture, we are not in a position to accept liability as per the claim raised by yourselves in your subject letter due to the reasons mentioned above and as per the terms and conditions of the Policy.

54) Thus, after realising that the Respondent was likely to raise a claim of Rs.15 crores towards overhauling of the GT Engine, Petitioner

clarified on 27 December 2001 that it would restrict the claim only to repairs costs in respect of the actual damage directly caused by the incident and that overhauling costs would not fall within the purview of the policy. Respondent protested against the *volte-face* taken by the Petitioner vide letter dated 28 December 2001, in which it stated as under :

> We are suprised to receive a casual letter of this nature from you in connection with the claim which you will appreciate is very serious and sensitive.
>
> In this circumstances we repeat and reiterate that our total expenses(which may not be restricted to Rs. 15 Crores as is indicated in your letter and may be more because of duty element and other incidental expenses until the equipment reaches our site) is payable by you in full as per the terms of the policy. It is your responsibility to explain to our satisfaction that some of the heads of expenses that we might have incurred or be incurring fall under the exclusions of the said policy in case you deny payment of the same to us.
>
> Now that you have not advised us anything as regards further active involvement of your surveyors abroad during the whole process of repairs until the dispatch by GE, we are going ahead with the process as indicated in our Jetter dt.24.12.2001.

55) Thus, Respondent made it clear to the Petitioner that it would go ahead with the overhauling of the GT Engine as indicated in letter dated 24 December 2001. Petitioners wrote to the Respondent on 25 January 2002 once again intimating that the liability would be limited to the extent of actual damages before the turbine was dispatched to USA for repairs and that the expenses claimed towards costs of overhauling were not payable as per the terms and conditions of Industrial All Risk Policy. The letter dated 25 January 2002 reads thus:

> Further to our letter dated 30 December, 2001 in response to your letter dated 28 December, 2001 we have now received advices from our controlling office as under.
>
> 1) The detailed report from Mclarens Toplis North America, Inc. Houston, USA is awaited and a detailed Letter will be issued on receipt of the same.
>
> 2) In the meanwhile, it may please be noted that our liability would be limited to the extent of actual damages before tire turbine was despatched to USA for repairs. The expenses claimed towards cost of overhauling are not payable as per the terms and conditions of IAR Policy.
>
> We shall revert to yourselves on receipt of detailed letter/advises from our controlling offices.

56) Based on letters dated 27 December 2001 and 25 January 2002, Petitioner has raised the plea that part of the claim relating to overhauling of GT Engine is rejected and/or not accepted by it and that therefore, adjudication of disputes relating to that claim is not arbitrable. Petitioner has criticized the Award of the Arbitral Tribunal contending that both the letters are virtually ignored by the Tribunal, which has given unnecessary weightage to the letters dated 5 December 2001 and 18 December 2001.

57) The Arbitral Tribunal has recorded nine reasons for holding that even part of the claim relating to overhauling of GT Engine is covered by one and the same incident and that it is impermissible to split a single claim or cause of action in two separate parts. It would be apposite to reproduce the relevant parts of the nine findings recorded by the Arbitral Tribunal in the Award as under:

40. The Tribunal has considered the rival submissions carefully. In the Tribunal's view the submissions made on behalf of the Respondent are not found to be meritorious for more than one reason.

41. *First*, admittedly the incident which caused damage to GT Engine occurred on 16.09.2021 and the part of such claims was admittedly paid by the Respondent to the Claimant. Rest of the claims was not accepted being claim of Overhauling. As a necessary corollary, the dispute between the parties is clearly seen to be relating to quantum, which is squarely covered by Arbitration Clause 12 of the Policy.

42. *Second*, following the above aspect, the fact of the matter is that the Respondent made the part payment of Rs. 7,69,69,369 to the Claimant against the Claimant’s claim of Rs. 24,73,18,765 under the Policy. At the time of making payment, the Respondent did not indicate that the balance of Rs. 17,03,49,396 was not being paid for the reason that Respondent has denied its liability for the same. That was the first occasion when the Respondent ought to have made its position clear which it never did.

43. *Third*, and very significantly, the Respondent has not repudiated its liability with respect to Claimant's claim at any point of time. This is not even disputed by the Respondent. In the absence of any repudiation by the Respondent of the Claimant's claim arising out of the incident that occurred on 16.09.2001, no inference can be drawn that there is denial of liability by the Respondent under or in respect of the Policy.

44. *Fourth*, in what has been noticed in the three reasons above, the question of inference of implied denial of liability for the unpaid amount does not arise.

45. *Fifth*, for the purpose of arbitrability of claim, the distinction drawn by the Respondent between the 'incident claim' which was paid and 'overhauling claim' which was not paid by the Respondent, is wholly misconceived. It is admitted case of the Respondent that even Respondent recommended to the Claimant to have the GT Engine overhauled. In this regard, the two letters of the Respondent dated 05.12.2001 and 18.12.2001 deserve to be noticed.

47. For whatever reason, if the Respondent was of the view that Overhauling Claim was out of coverage or unpayable by them, there was no occasion for the Respondent to insist for overhauling the engine. The Insurance Company would have denied its liability of Overhauling Costs when the G.E. recommended to overhaul the entire engine and not further recommend to the Claimant to go in for overhauling. Rather, the Insurance Company represented to the Claimant that it was imperative

to carryout complete overhauling of the entire engine as per G.E. 's recommendations.

48. Two things, in the Tribunal's view, were in the mind of the Respondent and that was because the Engine was covered under the Policy that, (i) the engine has to be overhauled thoroughly to fit to run continuously and (ii) the repairs guarantee for the engine's present repairs was a must. These could be achieved only if the engine was overhauled. But for the coverage of Overhauling Costs under the Policy, in the Tribunal's view, no recommendation of overhauling would have been made by the Respondent. Why would the Insurance Company give an unsolicited advice to the Claimant if overhauling costs under the Policy were not covered?

50. Both these letters of 05.12.2001 and 18.12.2001 bear the Reference: *IAR POLICY NO. 022000/11/23/2990/2000-2001 CLAIM NO. 022000/11/23/0100001/2001-2002- DAMAGE TO GAS TURBINE*.

51. In the Tribunal's view, the coverage of Overhauling Costs under and in respect of the Policy becomes very clear in view of the above two letters from the Respondent.

52. In light of the above two letters of the Respondent and what has been discussed above, the conduct of the Respondent in communicating to the Claimant vide subsequent letters, dated 27.12.2001 that "*Overhauling cost etc. would not fall within the purview of the policy*", and dated 25.01.2002 that "*The expenses claimed towards cost of overhauling are not payable as per the terms and conditions of IAR Policy*" would not take the dispute out of arbitrability clause.

53. *Sixth*, the construction of the expression, "*such difference shall independently of all other questions be referred to the decision of an arbitration*" does not mean that each claim may be taken a separate dispute as contended by the learned senior counsel for the Respondent. Rather reading the clause in a holistic manner would rather show that dispute with regard to amount payable as claimed by the Claimant or unpayable part of the claim as per the Respondent would relate to quantum dispute and shall be referred to the decision of an arbitration.

54. *Seventh*, the Joint Surveyors in their two Interim Survey Reports have noted in unambiguous terms that claimant's claim was admissible under the Policy. The only dispute between the parties, therefore, is about quantum in as much as whether the Claimant is entitled to Rs. 7,69,69,369 which has been paid by the Respondent to the claimant or claimant is entitled to full repair costs of the engine in the sum of Rs. 24,73, 18,765 as claimed by the Claimant.

55. *Eighth*, in the Tribunal's view, none of the Judgments cited by the learned senior counsel for the Respondent actually helps the Respondents. The cited Judgments are distinguishable on facts.

63. *Ninth*, the submission of the learned senior counsel for the Respondent that Respondent has a right to split the cause of action between the '*Incident Claim*' and '*Overhauling Claim*', in the Tribunal's view is wholly misconceived. What Respondent seeks, is to divide a single claim or cause of action into two separate parts which is impermissible. The Arbitration and Conciliation Act, 1996 does not provide for splitting up of the cause of action which is capable of resolution through the mechanism of arbitration.

64. In the Tribunal's view the entire claim raised by the claimant is arising out of one incident which cannot be split up as is sought to be done by the Respondent to keep part of claim outside the arbitration. As a matter of fact, the facts as noted in above discussion are eloquent and clearly lead to the conclusion that in the absence of repudiation of Claimant's Claim by the Respondent, the parties have their dispute about quantum alone which is clearly arbitrable.

65. Even on the analogy of rule provided in Order 2 Rule 2 CPC, such split of single claim into two is impermissible. The rule contained in Order 2 Rule 2 CPC bars such split. What the rule lays down is that where there is one entire cause of action, the plaintiff cannot split the cause of action into parts so as to bring separate suits in respect of those parts. This rule will equally apply in a situation such as this where the Respondent intends to split cause of action and single claim of the Claimant into two, namely, 'Incident Claim' and 'Overhauling Claim'.

66. Law does not countenance, rather discourages, splitting of claim and remedies based on same cause of action.

67. The Tribunal, thus, holds that the dispute arising in this arbitration between the parties is a quantum dispute and not a liability dispute. The present dispute is therefore arbitrable.

58) Thus, broadly the Arbitral Tribunal has held that in respect of damage caused to GT Engine in the incident occurring on 16 September 2001, part of the claim is admittedly paid by the Petitioner and since rest of the claim relating to overhauling is not accepted, the dispute between

parties relates to 'quantum' which is squarely covered by arbitration Clause-12 of the policy. The Tribunal has further held that while making part payment of Rs.7,69,69,369/- to the Respondent, Petitioner did not indicate that the balance amount was not being paid because liability was denied. It is further held that the liability has never been repudiated at any point of time. It is further held that the distinction between 'incident claim' and 'overhauling claim' is misconceived as Petitioner itself recommended that GT Engine must be overhauled vide letters dated 5 December 2001 and 18 December 2001. It is further held that there was no reason for Petitioner-Insurance Company to give unsolicited advice for carrying out overhauling if liability in respect of that part of claim was denied. The Tribunal has held that subsequent letters dated 27 December 2001 and 25 January 2002 did not take disputes out of arbitration clause on account of the previous letters dated 5 and 18 December 2001. The Tribunal has further held that the joint surveyors noted that the Respondent's claim was admissible under the policy and the dispute was only relating to quantum.

59) I am in broad agreement with the above findings recorded by the Arbitral Tribunal. The Tribunal had two sets of letters of Petitioner before it. The first set of letters issued on 5 December 2001 and 18 December 2001 virtually directed Respondent to overhaul GT Engine rather than limiting the repairs to damage caused by the incident/accident. The Petitioner stated in letter dated 5 December 2001 that "it is *imperative* to carry out complete overhauling of the entire engine". In further letter dated 18 December 2001, Petitioner virtually

issued a threat to the Respondent that it would not underwrite the risk if overhauling of GT Engine is not carried out. There was no occasion or reason for the Petitioner to insist for overhauling of the GT Engine. It did so with a view to avoid further breakdown of the GT Engine resulting in multiple and frequent claims. The Tribunal has rightly questioned as to why Petitioner would give an unsolicited advice to the Respondent if overhauling cost was not to be considered as covered under the policy. The findings recorded by the Arbitral Tribunal based on the first set of letters dated 5 and 18 December 2001 are plausible findings and it cannot be held, by any stretch of imagination, that the findings are of such nature that no fair-minded person would ever record the same.

60) Coming to the next set of letters dated 27 December 2001 and 25 January 2002, I am in agreement with the Arbitral Tribunal that the said letters do not take the dispute out of arbitration clause. It is Petitioner's contention that the Tribunal has not recorded any reasons for holding so. I am unable to agree. The Tribunal has considered the effect of the said two letters in the context of earlier letters dated 5 and 18 December 2001. This Court can undertake the exercise of explaining the existence of underlying reasons, which exercise does not supplant the reasons in the award but only explains it for better and clearer understanding thereof. In ***OPG Power Generation Private Limited*** (supra) the Apex Court has held in paragraph 168 as under:

> 168. We have given due consideration to the above submission. In our view, a distinction would have to be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award where reasons are there but appear inadequate or

> insufficient [See paras 79 to 83 of this judgment.] . In a case where reasons appear insufficient or inadequate, if, on a careful reading of the entire award, coupled with documents recited/relied therein, the underlying reason, factual or legal, that forms the basis of the award, is discernible/intelligible, and the same exhibits no perversity, the Court need not set aside the award while exercising powers under Section 34 or Section 37 of the 1996 Act, rather it may explain the existence of that underlying reason while dealing with a challenge laid to the award. In doing so, the Court does not supplant the reasons of the Arbitral Tribunal but only explains it for a better and clearer understanding of the award.

61) Following the ratio of the judgment in ***OPG Power Generation Private Limited*** (supra) this Court has held in ***Sanjeev Malhotra*** (supra) in paragraphs 39 to 43 as under:

> 39. It is a well settled position that inadequacy or insufficiency of reasons in the Arbitral Award cannot be a ground for setting aside the same. An Award would become susceptible to challenge as being unintelligible when the Arbitral Tribunal fails to record any reasons for arriving at a particular conclusion. On the other hand, the Arbitral Tribunal may record some reasons, which may appear to be insufficient or inadequate or inelaborate to the losing party. While deciding a particular issue, the Arbitral Tribunal may not express itself by recording very detailed and elaborate reasons, but may set forth some reasons to support the conclusion. So long as the Court agrees with the ultimate conclusion recorded by the Arbitral Tribunal, the Court cannot set aside the Award on technicality of absence of elaborate or extensive reasons, which the Court may expect the Arbitral Tribunal to record. The test is, on meaningful reading of the entire Award, whether the Court can extract what the Arbitral Tribunal wants to hold and why it has held so. The test is not to match the expectation of the Section 34 Court about the level of elaborateness of reasons. Given that the Court needs to show significant deference to the arbitral awards and must grant broad latitude to the factual findings recorded therein, all that needs to be seen is whether the reasons are discernible from the award. Reasons in the award need not be elaborate always, they can also be compendious. So long as the recorded reasons pass the muster of conveying to the Court what is meant to be said and why it is said, interference in the Award on the objection of lack of reasons would be avoided. Arbitral Tribunal is not a Court which is expected to record very detailed or elaborate reasons in support of each of the finding. The Arbitral Tribunal can be accused of passing non-speaking Award only if the Award contains no

reasons at all. However, where some reasons can be discerned supporting the ultimate conclusion reached, with which Section 34 Court ultimately concurs, there is no room for setting aside the award. Under Section 34 of the Arbitration Act, the Court ultimately does not sit as a court of appeal over the arbitral award.

40. The principles discussed above find support in the judgment of the Apex Court in ***OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Pvt. Ltd. and Another*** in which it is held thus:

x x x

41. The issue of adequacy of reasons has also been dealt with by the Apex Court in ***Dyna Technologies Pvt. Ltd. vs. Crompton Greaves Limited***[25]***,*** In which the Court has held in paragraph 35 as under:

> 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. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner.** 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.
>
> *(emphasis added)*

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42. In ***Ravi Raghunath Khanjode and others vs. Harasiddh Corporation***[26], I have followed the ratio of the judgment in ***OPG Power Generation Private Limited*** (supra) and it is held in paragraphs 46 and 47 as under:

> **46.** It is also settled law that the Award need not be set aside on the ground of inadequacy of reasons so long as the ultimate conclusions reached by the Arbitral Tribunal are found to be correct. Reference in this regard can be made to the judgment of the Apex Court in *OPG Power Generation Private Limited* v. *Enexio Power Cooling Solutions India Private Limited* in which it is held in para-168 as under :—
>
> 168. xxx
>
> **47.** Therefore even if the reasons recorded by the arbitral tribunal for repelling the objection of requirement to secure permission under Section 43 of BTAL Act or Section 36A of the MLRC are to be construed as inadequate or insufficient, I am of the view that the Award is not rendered bad on that ground alone. It is not that the learned Arbitrator has recorded absolutely no reasons. I am in agreement with the ultimate conclusion reached by the learned Arbitrator for the reasons indicated in the later part of the judgment. The objection of failure to record reasons is accordingly rejected.

43. In my view therefore, the Award cannot be annulled only because the Petitioner expects the Arbitral Tribunal to have recorded better reasons while rejecting the objection of variation/novation of contract.

62) In ***Securitrans India Pvt. Ltd.*** (supra), this Court has once again followed the ratio of the judgment of the Apex Court in ***OPG Power Generation Private Limited*** (supra) and it is held in paragraphs 53 and 54 of the judgment as under:

> **53.** Also the Award has to be read in its entirety and the finding of perversity can be recorded when there are absolutely no reasons for reaching the conclusion. An arbitral award is not to be readily set aside on the ground of inadequacy of reasons. Where the reasons do not appear to be sufficient, Section 34 Court can consider all the documents

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and discern the underlying reason from reading of the entire award. Here, the judgment of the Apex Court in *OPG Power Generation Private Limited* (supra) would be relevant, in which the Apex Court has held in paragraphs 168 and 169 as under:—

> xx
>
> **54.** Thus in a case where reasons appear to be insufficient or inadequate, but on a careful reading of the entire Award, the underlying reason is intelligible, the Court need not set aside the Award and rather it can explain the existence of that underlined reason while examining the issue of invalidation of Award. Mere omission on the part of Arbitral Tribunal to refer to a particular contractual clause would not ipso facto render the conclusion recorded by Arbitral Tribunal perverse. The Court can make meaningful reading of the entire reasons recorded by the Arbitral Tribunal and can explain what exactly is meant to be said by the Arbitral Tribunal. The ratio of the judgment in *OPG Power Generation Ltd.* (supra) has been followed by me in *CDSL* v. *Daksha Narendra Bhausar* (supra) in which it is held in paragraph 76 as under:
>
> > In the present case, the Arbitral Tribunal has recorded the underlying reason of BRH acting in its capacity as DP during some of its negligent and fraudulent acts and has accordingly applied the provisions of Section 16 of the Depositories Act and Clause 5.3.2 of CDSL Bye laws. The underlying reason discernible from reading of the award cannot be termed as perverse. The manner of enquriy conducted by Arbitral Tribunal or the detailed findings recorded by it may not be to the liking of the Petitioner, however so long as this Court has not found the final conclusion of Arbitral Tribunal treating role of BRH as DP to be not perverse, there is no warrant for exercising the powers under Section 34 of the Arbitration Act for invalidating the Award.

63) Following ratio of the above quoted judgments, I now undertake the exercise of explaining existence of underlying reasons to the finding recorded by the Arbitral Tribunal in paragraph 52 of the Award in which it is held that letters dated 27 December 2001 and 25 January 2002 do not take the dispute out of arbitrability clause. Firstly, it must be observed that the conclusion is reached on the basis of the findings that "*in the light of the above two letters of the Respondent and what has been*

discussed above.....". Thus, the Tribunal has read letters dated 27 December 2001 and 25 January 2002 in the light of the previous letters dated 5 December 2001 and 18 December 2001. Secondly, after going through letters dated 27 December 2001 and 25 January 2002, it is difficult to conclude that Respondent repudiated the claim in respect of overhauling expenses of the GT Engine. This is clear from the following:

i) The contents of letters are not conclusive in nature as they use words such as "in the meantime", "at this juncture", etc. and the letters were issued awaiting directives from head office and detailed report from M/s. McLarens Toplis. The letters are thus both, tentative as well as qualified. It therefore cannot be contended that the letters had the effect of final repudiation of the claim for overhauling of GT Engine.

ii) Both the letters were issued before submission of claim bills to the Petitioner by the Respondent. The claim bill was submitted by the Respondent on 17 February 2002 towards material damage.

iii) Though tentative views about non-acceptance of overhauling claim was expressed in the letters dated 27 December 2001 and 25 January 2002, after receipt of claim bill actually raising the claim towards overhauling of GT Engine, Petitioner never repudiated the said claim bill at any point of time. For the first time, artificial distinction of 'incident claim' and 'overhaul claim' was sought to be raised in the Statement of Defense.

iv) Long after issuance of the two letters, parties were in regular discussion regarding condition of GT Engine prior to the accident, necessity to overhaul the same and the extent of damage caused by accident. This is evident from GE letter dated 28 January 2003 explaining that vibration noticed during testing were relatable to accident. By its letter dated 19 June 2003 Petitioner raised the queries about technical problems with the GT Engine, details of overhauling carried out prior to accident, manufacturer's specification of overhauling etc. This is also clear from Respondent's response dated 24 June 2003 to the Petitioner's letter. If liability in respect of the overhauling claim was already denied in toto and if the Petitioner was firm with such denial, why Petitioner called for details of overhauling carried out by the Respondent vide letter dated 19 June 2003 is incomprehensible. This shows that the admissibility of claim relating to overhauling remained under active consideration of the Petitioner long after issuance of the letter dated 27 December 2001 and 25 January 2002.

v) The Tribunal was also justified in relying on letters dated 5 December 2001 and 18 December 2001 advising the Respondent to overhaul the GT Engine for the purpose of concluding that the subsequent two letters of 27 December 2001 and 25 January 2002 do not take the dispute out of the arbitrability clause.

64) Mr. Jagtiani has strenuously contended that though the two letters of 27 December 2001 and 25 January 2002 were issued before

submission of actual 'claim bills', the same were issued in response to the 'claim' raised by the Respondent on Petitioner on 24 December 2001. He has contended that the 'claim bill' ultimately submitted on 17 February 2002 exactly matches the 'claim' indicated in letter dated 24 December 2001. He submits that even letter dated 27 December 2001 refers to making of 'claim' by the Respondent. However, I am unable to read letters dated 27 December 2001 and 25 January 2002 as rejection/repudiation of the claim. By letter dated 24 December 2001, Respondent had given details of overhauling cost in response to Petitioner's own letter dated 18 December 2001. By that letter dated 18 December 2001, Petitioner had virtually threatened the Respondent of not underwriting the risk if GT Engine was not overhauled. Respondent unwillingly went for overhauling of GT Engine on account of letters dated 5 December 2001 and 18 December 2001. Before actually commencing overhauling work, it merely gave idea to the Petitioner of cost that would be incurred for overhauling of GT Engine. It therefore cannot be contended that on 24 December 2001, Respondent raised a 'claim' which was capable of being adjudicated by the Petitioner. It therefore cannot be held that the letter dated 24 December 2001 raised a claim, which was considered and rejected/repudiated by the Petitioner vide letters dated 27 December 2001 and 25 January 2002. On the other hand, Petitioner received the claim bill only on 17 February 2002 claiming sum of Rs.24.02 crores for material damage alone, which included overhauling cost. Far from communicating the Respondent that it would treat the 'incident claim' distinct from 'overhauling claim', the Petitioner treated the claim bill of the Respondent as 'one single composite claim' and proceeded to sanction

amount of Rs 7.69 crores. Even while sanctioning and releasing the payment of Rs.7.69 crores, Petitioner did not indicate to the Respondent that it was treating 'incident claim' separately from 'overhaul claim' and was repudiating the latter.

65) Even Joint Surveyors' interim reports which are discussed by the Arbitral Tribunal in paragraph 54 of the Award leave no manner of doubt that there was no dispute about admissibility of the claim. Merely because the survey assessment was done with regard to only Option No.1, it cannot be contended that the surveyors seggregated the claims into two and denied any liability in respect of Option No.3. Even joint surveyors held that the claim was admissible and that no exclusions applied with respect of the same. Even 2nd interim survey report treated claim as admissible under the policy

66) What is more shocking in the present case is the fact that the Petitioner, who is now enthusiastically and strenuously treating the dispute to be one of liability and not of quantum, pleaded to the contrary in Affidavit-in-Reply filed in Arbitration Petition No.430 of 2013, in which it contended that "*I say that there being a dispute with regard to quantum, Petitioner had raised arbitration clause and the Respondent had, keeping in mind the said arbitration clause, named the Arbitrator and voluntarily submitted to arbitration*". Again, the Petitioner contended that "*the Respondent had offered to settle the claim as the liability was admitted and the Respondent had offered to settle the claim, there arose dispute with regard to quantum*". Having admitted that the dispute between parties

related to quantum and not to liability in Affidavit-in-Reply filed in Arbitration Petition No.430 of 2013, Petitioner cannot now turn around and contend to the contrary.

67) Considering the above position, in my view, the finding recorded by the Arbitral Tribunal about arbitrability of dispute relating to rejection of claim for overhauling of GT Engine cannot be termed as so grossly perverse that this Court must interfere in the Award. Before proceeding to discuss the case laws relied upon by rival parties, it would also be necessary to make a quick observation about rejection of Petitioner's contention before Arbitral Tribunal that since overhauling claim was covered by exclusion causes, the same was not arbitrable. The Tribunal has rejected Petitioner's contention by holding in paragraph 93 as under:

> 93. Having regard to the above legal position, the Tribunal. or consideration of the factual aspects of the matter, finds it difficult to hold that the Respondent-Insurer has discharged its burden for the following reasons:
> (i) The two inspection reports of GE dated 19.10.2001 and 22.10.2001, in the absence of any oral evidence of GE official let in by the Insurer, do not establish the pre-existing condition of the Engine prior to its dismantling and disassembling.
> (ii) The Chart which has been placed on record by the Insurer indicating break down repairs during the period March 1999 to September 2001 does not lead to any conclusion that repairs were necessitated or break down happened because of erosion, corrosion, rust, oxidation or wear and tear or lack of maintenance.
> (iii) The incident that happened to the Engine on 30.04.2001 led to its repairs by Air India. The Engine was reinstalled in the month of June, 2001 after the repairs were carried out to the satisfaction of GE. The repairs by Air India only few months before the subject Accident do not show anything like erosion, corrosion, oxidation etc, the grounds on which the Respondent seeks to avoid its liability by invoking *Excluded Causes*.

(iv) The Joint Surveyors (RW-1 and RW-2) in their oral evidence have stood by their First Interim Survey Report and Second Interim Survey Report which record that from March 1999, until subject Accident after necessary repairs, the GT Engine was functioning smoothly.
(v) During the period March 1999 to June 2001, the Respondent has renewed Insurance policy on year-on-year basis.
(vi) The Joint Surveyors in their First Interim Survey Report were very clear and categorical that the damage was accidental and the claim was admissible under Industrial All Risk Policy issued to and held by Insured.

68) Again, the above findings do not warrant interference in exercise of jurisdiction under Section 34 of the Arbitration Act as the same are well supported by evidence on record. In any case, no serious attempt is made before me to demonstrate that the overhauling claim was covered by exclusion causes. The only complaint is about conflating of issues relating to excluded causes and accident being proximate cause of overhauling. The issue of accident being proximate cause for overhauling is discussed in latter part of the judgment. The argument of overhauling claim being based on the exclusion causes is raised to support the contention of absence of arbitration agreement and the said contention is rightly rejected by the Arbitral Tribunal.

69) Both the sides have relied upon judgments in support of their contentions about dispute relating to overhauling claim being dispute of quantum and dispute of liability. It would be apposite to first take stock of various judgments relied upon by Mr. Jagtiani on behalf of the Petitioner:

A) In ***United India Insurance Company Versus. Hyundai Engineering and Construction Company Limited*** (supra), there was a similar clause in the policy. The case involved an accident, and the claim

was repudiated by the insurance company. The Apex Court relied upon its judgment in ***Vulcan Insurance Company Limited Versus. Maharaj Singh*** (supra) and held in paragraphs 11 and 12 of the judgment as under:

> **11.** The other decision heavily relied upon by the High Court and also by the respondents in *Duro Felguera* [(2017) 9 SCC 729] , will be of no avail. Firstly, because it is a two-Judge Bench decision and also because the Court was not called upon to consider the question which arises in the present case, in reference to Clause 7 of the subject Insurance Policy. The exposition in this decision is a general observation about the effect of the amended provision and not specific to the issue under consideration. The issue under consideration has been directly dealt with by a three-Judge Bench of this Court in *Oriental Insurance Co. Ltd.* [(2018) 6 SCC 534] , following the exposition in *Vulcan Insurance Co. Ltd.* v. *Maharaj Singh* [(1976) 1 SCC 943] , which, again, is a three-Judge Bench decision having construed clause similar to the subject Clause 7 of the Insurance Policy. In paras 11 and 12 of *Vulcan Insurance Co. Ltd.* , the Court answered the issue thus : (SCC pp. 948-49)
>
> > "*11*. Although the surveyors in their letter dated 26-4-1963 had raised a dispute as to the amount of any loss or damage alleged to have been suffered by Respondent 1, the appellant at no point of time raised any such dispute. *The appellant company in its letters dated 5-7-1963 and 29-7-1963 repudiated the claim altogether. Under Clause 13 the company was not required to mention any reason of rejection of the claim nor did it mention any. But the repudiation of the claim could not amount to the raising of a dispute as to the amount of any loss or damage alleged to have been suffered by Respondent 1. If the rejection of the claim made by the insured be on the ground that he had suffered no loss as a result of the fire or the amount of loss was not to the extent claimed by him, then and then only, a difference could have arisen as to the amount of any loss or damage within the meaning of Clause 18*. In this case, however, the company repudiated its liability to pay any amount of loss or damage as claimed by Respondent 1. In other words, the dispute raised by the company appertained to its liability to pay any amount of damage whatsoever. In our opinion, therefore, the dispute raised by the appellant company was not covered by the arbitration clause.
> >
> > *12. As per Clause 13 on rejection of the claim by the company an action or suit, meaning thereby a legal proceeding which almost invariably in India will be in the nature of a suit, has got to be commenced within three months from the date of such rejection; otherwise, all benefits under the policy stand forfeited*. The rejection

of the claim may be for the reasons indicated in the first part of Clause 13, such as, false declaration, fraud or wilful neglect of the claimant or on any other ground disclosed or undisclosed. But as soon as there is a rejection of the claim and not the raising of a dispute as to the amount of any loss or damage, the only remedy open to the claimant is to commence a legal proceeding, namely, a suit, for establishment of the company's liability. It may well be that after the liability of the company is established in such a suit, for determination of the quantum of the loss or damage, reference to arbitration will have to be resorted to in accordance with Clause 18. *But the arbitration clause, restricted as it is by the use of the words 'if any difference arises as to the amount of any loss or damage', cannot take within its sweep a dispute as to the liability of the company when it refuses to pay any damage at all*."

(emphasis supplied)

Again in para 22, after analysing the relevant judicial precedents, the Court concluded as follows : (SCC p. 952)

"*22*. The two lines of cases clearly bear out the two distinct situations in law. A clause like the one in *Scott* v. *Avery* [*Scott* v. *Avery*, (1856) 5 HLC 811 : 10 ER 1121] bars any action or suit if commenced for determination of a dispute covered by the arbitration clause. *But if on the other hand a dispute cropped up at the very outset which cannot be referred to arbitration as being not covered by the clause, then*Scott v. *Avery* [*Scott* v. *Avery*, (1856) 5 HLC 811 : 10 ER 1121] *clause is rendered inoperative and cannot be pleaded as a bar to the maintainability of the legal action or suit for determination of the dispute which was outside the arbitration clause*."

(emphasis supplied)

12. From the line of authorities, it is clear that the arbitration clause has to be interpreted strictly. The subject Clause 7 which is in pari materia to Clause 13 of the policy considered by a three-Judge Bench in *Oriental Insurance Co. Ltd.* [*Oriental Insurance Co. Ltd.* v. *Narbheram Power and Steel (P) Ltd.*, (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484] , is a conditional expression of intent. Such an arbitration clause will get activated or kindled only if the dispute between the parties is limited to the quantum to be paid under the policy. The liability should be unequivocally admitted by the insurer. That is the precondition and sine qua non for triggering the arbitration clause. To put it differently, an arbitration clause would enliven or invigorate only if the insurer admits or accepts its liability under or in respect of the policy concerned. That has been expressly predicated in the opening part of Clause 7 as well as the second paragraph of the same clause. In the opening part, it is stated

> that the "(liability being otherwise admitted)". This is reinforced and restated in the second paragraph in the following words:
>
> > "It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this Policy."
>
> Thus understood, there can be no arbitration in cases where the insurance company disputes or does not accept the liability under or in respect of the policy.

Thus, the judgments in ***Hyundai Engineering and Construction Company Limited*** (supra) and ***Vulcan Insurance Company Limited*** (supra) are authorities on the issue that there must be unequivocal admission of liability by the insurer which is a pre-condition and *sine qua non* for triggering the arbitration clause. I do not see much difficulty in accepting the proposition that for triggering of arbitration clause, unequivocal admission of liability is necessary. The judgment however provides little assistance for deciding the issue at hand as the ratio of the judgment would have been helpful only if this Court was to hold that the claim for overhauling was segregable or that the liability in respect thereof was denied by the Petitioner by repudiating the claim.

B) In ***Oriental Insurance Company Limited Versus. Narbheram Power and Steel Pvt. Ltd.*** (supra), clause 13 of the policy did not permit reference to arbitration if the insurer had disputed or not accepted the liability. In the facts of that case, the insurer had repudiated the claim by denying to accept the liability for various reasons. In the present case, this Court is unable to record a finding that there is any denial of liability by the Petitioner in respect of claim for overhauling of the GT Engine.

C) In ***M/s. Malak Specialities (P) Ltd*** (supra), the claim was rejected despite surveyor assessing the amount payable to the insured. By relying on judgments in ***Narbheram Power & Steel Private Limited*** and ***Hyundai Engineering & Construction Company Limited*** (supra), this Court held that the insurer had not accepted the liability under the policy and had in fact repudiated the claim by denying to accept the liability. The judgment is thus rendered in the facts of that case and cannot have any possible application to the present case.

D) In ***Sanghi Industries Limited*** (supra), there was similar arbitration clause No.12 restricting arbitration only to quantum disputes. The insurer treated the claim in two parts as the insured had claimed reimbursement of damage because of breakdown of machinery and a claim for loss of profits. The first claim of damage caused to the plant and machinery was cleared by the insurer and the claim for loss of profits was rejected. It is in the facts of that case that the Gujarat High Court held that the claim was in two parts and sanctioning of first part did not have any correlation with rejection of the second part.

E) In ***Kohinoor Steel Pvt. Ltd.*** (supra), Single Judge of Calcutta High Court has decided the application under Section 11 of Arbitration Act in a case involving similar arbitration clause. During commissioning of the plant, a thunderstorm had seriously damaged the crane and overhead water-tank. The insurer allowed the claim for overhead tank but refused the same in respect of the crane on the ground that the crane was already operationalised and a clause in the policy did not cover something

which was already operationalised. Therefore, liability in respect of the crane was denied. Thus, the case involved inadmissibility of claim in respect of the crane which was already operationalised and rejection of liability in respect thereof by the insurer. The judgment is clearly distinguishable and cannot have any application to the present case where the claim for overhauling is neither separable nor capable of being rejected by segregating the same from repair claim arising out of incident. The judgment in ***Kohinoor Steel Private Limited*** (supra) is otherwise distinguished in judgments relied upon by Mr. Rustomjee.

F) In ***Metal Crafts Engineering Pvt. Ltd.*** (supra), Single Judge of Calcutta High Court has again decided Application under Section 11 of Arbitration Act and the case involved total rejection of the claim in entirety unlike splitting of one claim into two parts as is done in the present case. The judgment is thus clearly distinguishable.

G) In ***New India Assurance Company Limited Versus. Ampoules and Vials Manufacturing Co. Ltd.***(supra), Single Judge of this Court has dealt with similar clause in the insurance policy. The insurer had approved the claim for Rs 1.59 crores as against the claim of the insured of Rs.3.55 crores. The insured signed discharge voucher for Rs.1.59 crores and sought to raise claim in respect of balance non-sanctioned amount. The insurer repudiated the liability under the policy in respect of balance amount. In the facts of that case, this Court held that there was accord and satisfaction and complete discharge of liability upon signing of discharge voucher and the case involved repudiation of

liability. It must be observed here that the judgment in ***Ampoules and Vials Manufacturing Co. ltd.*** (supra) does not contain detailed discussion as to why non-sanctioning part of the claim could not be treated as dispute relating to quantum. Also, in view of law subsequently developed, it is difficult to hold that the judgment in ***Ampoules and Vials Manufacturing Co. ltd.*** can be read to mean an abstract proposition that in every case where discharge voucher is signed, the dispute relating to balance unpaid amount would be that of liability and not quantum. In recent judgment in ***Krish Spinning*** (supra) the Supreme Court has held to the contrary.

H) In ***EC Wheels India Private Ltd.*** (supra), a Single Judge of the Calcutta High Court has decided an application under Section 11 of the Arbitration Act for appointment of Arbitrator. The case involved repudiation of entire claim and not one part of the claim raised by the insured. An argument was sought to be raised before the High Court that negation of claim was also a dispute regarding quantum, which is not accepted in the judgment. The judgment in my view is clearly distinguishable and has no application to the facts of the present case.

I) In English judgment in ***New Hampshire Insurance Company Versus. Strabag Bug AG*** (supra) the case involved total repudiation of the entire claim which is the first distinguishing factor from the present case. The judgment is cited in support of proposition that though a dispute relates to amount arising out of *prima-facie* acceptance of liability, if it depends on application of particular provisos or exemptions in the policy,

the same would raise a question of liability rather than mere dispute of quantum. The judgment would have been relevant in the present case if Petitioner was in a position to demonstrate that the claim for overhauling of GT Engine was covered by exclusion causes, which the Petitioner has failed to demonstrate. The judgment therefore has no application to the facts of the present case.

J) Lastly, Mr. Jagtiani has relied on judgment of High Court of England in ***DC Bars Ltd.*** (supra). Apart from the fact that the decision would only have persuasive value, the case involved rejection of claims towards distinct and separate periods for which losses were claimed. It was held that the dispute related to liability in respect of each of those periods and the same did not relate to quantum. The judgment again is of little assistance to the Petitioner since the present case does not involve raising of multiple claims for different periods.

70) On the other hand, Mr. Rustomjee has relied upon various judgments in support of his contention that the dispute relating to overhaul claim is a dispute of quantum and not of liability. It would be apposite to discuss the ratios of the judgments relied upon by Mr. Rustomjee.

A) In ***M/s. LS Automotive India Private Limited*** (supra), Single Judge of Madras High Court, while deciding Section 11 Application has dealt with a case where the insurer's policy gave coverage for raw material as well. The insurer however sanctioned only the claim relating to damage

caused by floods. The insurer treated non-sanctioning of claim for damage/loss of raw materials as rejection of liability. The Single Judge of Madras High Court however held that the case involved making of part payment in respect of a single claim and that therefore the dispute was arbitrable. Though Mr. Jagtiani has sought to distinguish the judgment on the ground that Madras High Court has done only a limited scrutiny under Section 11 of the Arbitration Act, the judgment is ultimately based on Supreme Court judgment in ***Krish Spinning*** (supra), which is being discussed in latter part of the judgment.

B) In ***M/S. TRS Lift and Shift Services Pvt. Ltd.*** (supra) a Single Judge of Calcutta High Court, while dealing with application under Section 11 of Arbitration Act and dealing with similar clause in insurance policy, has held that the liability was partially admitted and that therefore dispute relating to non-payment of balance amount was that of quantum and not of liability.

C) In ***Tagros Chemicals India Pvt Ltd*** (supra), a Single Judge of Madras High Court, while deciding application under Section 11 of Arbitration Act, has discussed the entire case law on the subject. The case involved two claims for material damage and business interruption. The insurer sanctioned the claim for material damage, but disputed its liability in respect of business interruption claim. The Madras High Court considered the judgments in ***Hyundai Engineering & Construction Company Limited, Narbheram Power & Steel Pvt. Ltd.,*** (supra) as well as judgment of the Delhi High Court in ***Kohinoor Steel Pvt. Ltd.*** (supra) and

held that the incident which triggered the claim was one and that the loss claimed under the head ‘business interruption’ was directly and substantially connected to claim for ‘material damage’, for which liability was admitted. It is held that the judgment of the Apex Court in ***Krish Spinning*** (supra) has watered down the ratio of the judgments in ***Hyundai Engineering and Construction Company Limited, Narbheram Power*** and ***Kohinoor Steel Private Limited*** (supra). The Madras High Court has held in paragraphs 22 to 24 and 26 as under:

> 22. I am unable to agree with the submissions of the learned Senior Counsel appearing for the Respondent. The incident that has triggered the claim is admittedly one, unlike in the case of Kohinoor Steel and the loss claimed under the head 'business interruption' is directly and substantially connected to 'material damage' which is admittedly accepted to be indemnified by the insurance company. In fact, as already discussed above, the Respondent has already released substantial payments towards 'material damage' and they are only disputing the claim of the Petitioner on quantum. Therefore, in my considered view the claim for business interruption cannot be dissected or segregated from the total claim made by the Petitioner, though it may be under two heads for which separate premiums have been paid. The documents that may be relied on by the parties and the evidence that may be let in would also be the same, leave alone the same parties being examined as witnesses before either the Arbitrator or the Court.
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> 23. As held by Hon’ble Supreme Court in SBI General Insurance Co. Ltd., (referred herein supra) when a valid arbitration agreement exists, then the reference cannot fall back on ‘Eye of the Needle’ and 'ex facie meritless' tests, since the principles of modern arbitration place arbitral autonomy and judicial non-interference on the highest pedestal. Here having found that business interruption loss is related to material damage, it is not open to the Insurance Company to contend that since the claim 'business interruption loss' is repudiated, the said issue cannot be referred to the decision of the Arbitrator.
>
> 24. The decisions relied on by learned Senior Counsel Mr.M.S.Krishnan appearing for the Respondents is also clearly distinguishable on facts. **In fact, as held by the Hon’ble Delhi High Court in Payoo Payment's case, (referred herein supra), there has been a shift in the legal**

> **position with the pronouncement of the Hon'ble Supreme Court in SBI General Insurance Co. Ltd. v. Krish Spinning, and consequently the decisions of the Hon'ble Supreme Court in Oriental Insurance Company and United India Insurance Company, have been watered down.** In the decision of the Hon'ble Calcutta High Court, the claim was in respect of two distinct items, namely, a crane and an overhead tank and with the High Court finding that the claim on the count of the crane was beyond the scope of the arbitration agreement, it was held that the arbitration could proceed only in respect of the overhead tank and not the crane. Though much reliance has been placed on by learned Senior Counsel on this decision, to apply to the facts of the case, I am unable to countenance the said contention, because in the said case before the Hon'ble Calcutta High Court, the items in respect of which the claim was made were entirely distinct and different, namely, a crane and an overhead tank. However, in the present case, there is no such distinctiveness in respect of the subject matter of the claim. Both the 'material damage' as well as the 'business interruption claim' arise out of the fire accident that occurred on 07.04.2020 and in fact, as already discussed even the claim under ' business interruption loss' is directly associated with the 'material damage' claim.
>
> 26. Be that as it may, in the present case I am unable to accept the contention of the Insurance Company that since they are repudiating the business interruption claim part, the same cannot be referred to arbitration. **Since the business interruption loss claim is clearly dependent on the material damage claim which is accepted even by the Insurance Company under the policy, it has to be decided by arbitration alone. It is not as though the claims for material damage and business interruption are totally distinct and unconnected altogether.** The very business interruption Clause in Section II itself, clearly refers to the indemnity Clause to material damage suffered by the policy holder. Therefore, both the claims are intertwined and cannot be separated, relegating the parties to litigate before different Forums, one before the Arbitrator and another before the Civil Court.
>
> *(emphasis added)*

Thus in ***Tagros Chemicals India Pvt Ltd*** Madras High Court has held rejection of business interruption claim did not mean that the same was non-arbitrable. The present case is far better than ***Tagros Chemicals India Pvt Ltd*** since both the claims are sanctioned here. The dispute

relates to only non-payment of part of the claim for repairs arising out of the accident.

D) The Delhi High Court, in ***Nagarjuna Agrichem Ltd.*** (supra), has decided Section 34 Petition. The issue before the Delhi High Court was about coverage in respect of stock when fire had caused damage to the plant. The Delhi High Court held that since part payment was made for material damage, the liability under the insurance policy was admitted and that therefore, the dispute related to the quantum which was clearly arbitrable. The Delhi High Court held in paragraphs 98, 120 and 121 as under:

> 98. It is pertinent to mention here that in the present case, the insurance company has made part payment from the material damage process of the respondent. It is also pertinent to mention here that if the liability under the BPM Policy has been admitted, it is unjustified to deny the liability under the stock policy. The Court considers that no fault can be found with the finding of the learned AT.
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> 120. Learned counsel for the petitioner has heavily relied upon ***United India Insurance Co. Ltd. v. Hyundai Engineering and Construction Co. Ltd.*** (2018) SCC OnLine SC 1045 and ***Oriental Insurance Co. Ltd. v. Narbheram Power and Steel Pvt. Ltd.*** (2018) 6 SCC 534. However, the case at hand is distinct from United India Insurance Co. Ltd. (Supra) and Narbheram Power and Steel Pvt. Ltd. (Supra) on several fundamental legal and factual grounds. Though, the cases concern insurance disputes, yet they differ significantly in terms of arbitrability, the enforceability of discharge vouchers, policy interpretation, and the weight given to surveyor reports.
>
> 121. A key distinguishing factor is the question of arbitrability, which played a decisive role in ***United India Insurance Co. Ltd.*** (Supra) and ***Narbheram Power and Steel Pvt. Ltd.*** (Supra). In the aforesaid cases, the Apex Court unequivocally ruled that when an insurance company entirely denies liability, arbitration is not permissible under the terms of the insurance contract. It was, inter alia, held that if the insurer repudiates the claim altogether and there exists no dispute over quantum. The Court, inter alia, held that such matters must be adjudicated in a civil court. However, in the present case, the petitioner

> did not completely repudiate liability but instead partially admitted liability and even made partial payments under the material damage policy. In the present case, the learned Arbitral Tribunal, inter alia, found that the insurer, by making partial payments and engaging in negotiations, had waived its right to object to arbitrability.

E) In ***Karan Synthetics (I) Pvt. Ltd.*** (supra), the issue before Single Judge of Gujarat High Court, involved fire causing loss in the factory and sanctioning of part of the claim. The Gujarat High Court has held in paragraph 4 as under:

> 4. Having heard learned counsel for the parties and having perused the material on record, none of the objections can be accepted. Firstly, the arbitration clause does envisage arbitration only in case of disputes in quantum of the insurance to be paid and would not cover a case where entire liability has been repudiated by the insurance company. It is in this context clause13 provides that if any disputes of difference arises as to quantum to be paid under the policy (liability being otherwise admitted) such difference shall be referred to arbitration. However, in the present case, there is nothing on record to suggest that the insurance company disowned its liability. Firstly, admittedly the insurance company has not formally repudiated the claim by accepting its surveyor's opinion that the cause of fire would not justify paying any insurance sum at all. Secondly, the act of insurance company to appoint an arbitrator itself would demonstrate that it is not a case of total denial of the liability. Thirdly, the very offer of payment of Rs.1,56,000/ would negate any such stand of the company. Lastly the opinions of the arbitrators already appointed by the parties also would not be conclusive. The arbitration Tribunal would be constituted only in the manner provided in clause13 when two arbitrators appointed by rival parties would select and appoint a third arbitrator. Till this time, this is done any opinion by the arbitrator would not form final and binding opinion since no such Tribunal ever came in existence. Regarding jurisdiction admittedly the insurance policy was issued by the insurance company from Ahmedabad office. Such objection is therefore, turned down.

F) In ***Amlagora Cold Storage (P) Ltd.*** (supra), Single Judge of Calcutta High Court has held in paragraphs 98 and 99 as under:

> 98. It was submitted on behalf of the Insurance Company that the said arbitration clause provides that if the company disclaims liability to the insured for any claim and such claim was not within 12 calendar months from the date of such disclaimer, made the subject-matter of a suit in a Court of law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable under the policy. The policy also provides that if there is any difference with regard to the quantum to be paid up under the said policy, the liability being otherwise admitted such difference is referable to arbitration. The point raised is, was it a case of disclaimer of liability or was it a case of difference as to quantum to be paid where the liability was otherwise admitted. It is apparent that the insurance company admitted the liability and its Board of Directors approved the payment of such liability. The quantum of such liability was fixed by the insurance company at Rs. 12,19,060/-. Therefore in my opinion this was a case where the dispute was with regard to the quantum to be payable. This was not a case where the insurance company disclaimed liability. I am unable to accept the submission made on behalf of the insurance company that since the quantum was disputed by the insurance company therefore there was a disclaimer of liability in respect of the balance of the unpaid amount. If that contention is to be accepted then it will lead to absurdities because in each and every case whereever there is dispute as to the quantum of the liability the same cannot go to arbitration as balance amount will in all cases be disclaimed. Such interpretation will defeat the very purpose of the amended arbitration clause which provides that in case where the quantum of the liability is in dispute the same will be determined by reference to the arbitration.
>
> 99. In the instant case since there was a dispute as to the quantum of liability, the plaintiff did commence the arbitration proceedings. The said arbitration proceedings were ultimately disposed of by a consent order made in the appeal being the order dated April 2, 1981.

G) In ***Keller N Am Inc.*** (supra), the US District Court has dealt with slightly similar clause and has held that when some liability is admitted, the question is about ‘how much’ the defendants are required to pay and not ‘whether’ they are required to pay.

H) In ***Press Metal Sarawak SDN BHD*** (supra), the Malaysian Federal Court has held that the question as to whether remaining part of

claim was barred by exclusion cause was a quantum dispute falling within the arbitration clause.

71) This brings the Court to the ratio of judgment of the Supreme Court in ***Krish Spinning*** (supra). The case before the Apex Court involved identical arbitration clause. Two incidents of fire had taken place at the factory premises of the Respondent therein. In respect of the first fire incident, a claim for Rs. 1.76 crores was raised, but the Appellant therein allowed the claim only in the sum of Rs. 84.19 lakh. The Respondent therein signed the advance discharge voucher and received Rs. 84.19 lakh towards full and final settlement of the claim arising out of the first fire incident. Thereafter, claim relating to second fire incident was raised and total amount of Rs.4.86 crores was released in three installments. Before release of second and third installments, Respondent sought to create dispute relating to surveyor's final assessment report in respect of the first fire incident and took a position that final discharge voucher was signed under duress. The Respondent therein pressed the claim for balance amount in respect of first fire incident. Petition under Section 11 was filed before the High Court which was resisted by the insurer The Apex Court held that since amount of Rs.84.19 lakhs was paid, there was admission of liability and the issue related only to quantum of liability. The Apex Court held as under:

> 38. A preliminary objection was raised on behalf of the appellant that the arbitration clause as contained in the insurance policy referred to above is not attracted in the present case as there is no admission of liability on the part of the appellant, whereas the said arbitration clause

envisages reference to arbitration only in cases where liability is admitted and there is a dispute as regards the quantum of liability.

39. However, we find no merit in the aforesaid submission of the appellant. It is evident from the record that the appellant had admitted its liability with respect to the first claim and had even disbursed an amount of Rs 84,19,579/- in pursuance of the signing of the advance discharge voucher by the respondent. Thus, it is clearly a case of admission of liability by the appellant. However, the quantum of liability is in dispute as the amount claimed by the respondent is at variance with the amount admitted by the appellant. Thus, the dispute being one of quantum and not of liability, it falls within the ambit of the conditional arbitration clause as contained in the insurance policy.

55. Thus, even if the contracting parties, in pursuance of a settlement, agree to discharge each other of any obligations arising under the contract, this does not *ipso facto* mean that the arbitration agreement too would come to an end, unless the parties expressly agree to do the same. The intention of the parties in discharging a contract by "accord and satisfaction" is to relieve each other of the existing or any new obligations under the contract. Such a discharge of obligations under the substantive contract cannot be construed to mean that the parties also intended to relieve each other of their obligation to settle any dispute pertaining to the original contract through arbitration.

57. The aforesaid position of law has also been consistently followed by this Court as evident from many decisions. In ***Boghara Polyfab*** *(supra)*, while rejecting the contention that the mere act of signing a "full and final discharge voucher" would act as a bar to arbitration, this Court held as follows:

> *"44. … None of the three cases relied on by the appellant lay down a proposition that mere execution of a full and final settlement receipt or a discharge voucher is a bar to arbitration, even when the validity thereof is challenged by the claimant on the ground of fraud, coercion or undue influence. Nor do they lay down a proposition that even if the discharge of contract is not genuine or legal, the claims cannot be referred to arbitration. […]"*

59. The position that emerges from the aforesaid discussion is that there is no rule of an absolute kind which precludes arbitration in cases where a full and final settlement has been arrived at. In Boghara Polyfab[National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] , discussing in the context of a case similar to the one at hand, wherein the discharge voucher was alleged to have been obtained on ground of coercion, it was observed that the

> discharge of a contract by full and final settlement by issuance of a discharge voucher or a no-dues certificate extends only to those vouchers or certificates which are validly and voluntarily executed. Thus, if the party said to have executed the discharge voucher or the no-dues certificate alleges that the execution was on account of fraud, coercion or undue influence exercised by the other party and is able to establish such an allegation, then the discharge of the contract by virtue of issuance of such a discharge voucher or no-dues certificate is rendered void and cannot be acted upon.

72) Thus, in ***Krish Spinning*** (supra) though a discharge voucher was signed and executed and claim was later raised for balance unpaid amount, the Apex Court has held that there was admission of liability of part of claim and that therefore the dispute related to quantum and not of liability. Though the judgment in ***Krish Spinning*** essentially applies to a case involving accord and satisfaction, it underscores an important point that once the liability is admitted and part payment in respect of the claim is made, the dispute relating to unpaid part is a dispute of quantum and not of liability. The Three Judge Bench judgment in ***Krish Spinning*** (supra) thus settles the law relating to arbitrability of disputes involving insurance claim where part of the liability is admitted and dispute exists in respect of unpaid part.

73) In the present case, one singular claim relating to expenses incurred by Respondent for repairing GT Engine was submitted. Petitioner admitted its liability in respect of part of the claim and paid amount of Rs.7.69 crores. The dispute was thus about 'how much' amount was payable and not 'whether' any amount is at all payable. *Qua* part of claim for which payment is not made, the dispute would obviously be the one relating to quantum and not a dispute relating to liability. I am not

inclined to accept the hair-splitting exercise sought to be now suggested by Petitioner that it always treated Respondent's claim as in two parts. It never did so. It always treated the entire claim as a single indivisible claim, but sanctioned part of it. It has taken a position that it would pay only the claim for part of repairs and not for the entire repairs. Repairs to the engine due to accident would also get covered by overhauling. If one considers the options given by GE, Option No.1 gets included in Option No.3. In Option No.1, repairs to only rotating parts (HPC, HPT) were to be carried out. In option No.3, which envisaged overhauling of the engine, in addition to repairs of rotating parts of HPT and HPC, several other repairs in respect of various other parts of the engine were to be carried out. Thus even the option for overhauling ultimately included repairs to the GT Engine. In my view, the extent of repairs could not have been a factor for sub-dividing the claim into 'incident repairs' and 'overhauling'. The Petitioner itself never segregated the same into two claims. Therefore, the submission from Petitioner's standpoint, that incident claim and overhaul claim arose from distinct legal obligations is misplaced. Petitioner never directed Respondent to submit two separate claims for 'incident repairs' and for 'overhauling'. Initially it coaxed the Respondent to go for overhauling and later sought to restrict the insurance claim only for part of the repairs. Therefore, non-sanction of remaining part would clearly be a dispute relating to quantum. More importantly even at the stage of issuing of the cheque, Petitioner did not state that it was disputing liability for overhaul claim by segregating the Respondent's claim in two parts.

74) Respondent raised two claims arising out of the incident, the first claim being the material damage and the second one being for business interruption. Both the claims are sanctioned by the Petitioner. However the sanction of the first claim was only partial. Therefore non-sanction of the full amount for the first claim is obviously a dispute relating to quantum, which is arbitrable. Clause 12 would make a dispute non-arbitrable only if there is total denial of liability in respect of the claim. Once the claim is entertained and sanctioned partly, non-sanction of remaining part does not amount to denial of liability in respect of the claim. Once part of the claim is not accepted, dispute raised in respect of denied part cannot tantamount to non-acceptance or denial of liability in respect of the 'claim'. For being non-arbitrable the entire claim must be repudiated in toto. The moment the claim is sanctioned in part, the dispute relating to denied part becomes dispute relating to the quantum of the raised claim. The case thus involves admission of liability in respect of the first claim and the dispute was clearly arbitrable.

75) Therefore, no case is made out for invalidating the Arbitral Award in so far as it relates to the findings on the issue of arbitrability.

WHETHER INCIDENT/ACCIDENT IS A PROXIMATE CAUSE OF OVERHAULING OF GT ENGINE

76) A defense was taken by Petitioner-Insurance Company that overhauling of GT Engine was required to be undertaken on account of wear and tear resulting out of corrosion, rust etc. Petitioner contended that the incident of 16 September 2001 did not necessitate the

overhauling. The Tribunal has rejected the defence of the Petitioner and has held that the incident/accident was the proximate cause of overhauling. The Tribunal held in paragraphs 149 to 153 of the Award as under:

> 149. The question for consideration by the Tribunal is, whether the Respondent was justified in declining to cover overhauling costs of the GT Engine? The determination of this question would necessarily require determination of the question, whether or not, overhauling was necessitated by the incident of 16.09.2001.
>
> 150. As a matter of fact, the Respondent in its written submissions under the head '*REASONS FOR DENIAL OF LIABILITY OF THE OVERHAULING COSTS THE GT ENGINE'* as taken up the position that Overhauling Costs are specifically excluded in terms of '*Excluded Causes*' under the Policy. While dealing with the arbitrability issue, the Tribunal has already negated this contention of the Respondent. The consideration of the matter by the Tribunal in preceding paragraphs on the aspect of *Excluded causes* shall form of part of consideration of this aspect here as well. However, the reasons for the Tribunal's finding that the coverage of Overhauling Costs under and in respect All Risk Policy is not excluded under '*Excluded Causes*' may be briefly noted here as well.
>
> (i) First, the Respondent itself had insisted the Claimant to have GT Engine overhauled as recommended by GE and its Surveyors (Inspectors) in America. This is very clear from the Respondent's letter dated 05.12.2023. It the Overhauling costs were excluded and if they were out of coverage or unpayable by them, there was no occasion for the Respondent to insist for overhauling the Engine.
>
> (ii) Second, By the time the above letter dated 05.12.2001 was sent by the Respondent to Claimant, the Respondent had full knowledge about the condition of the GT Engine which was recorded by GE in its Detailed Report dated 19.10.2001. All issues with the diverse components of GT
> Engine including *inter alia* erosion, corrosion, rust, wear and tear were
> within the knowledge of the Respondent. If the Detailed Report of GE dated 19 10 2001 were sufficient to bring the GT Engine under *Excluded Causes*, the Respondent would not have written the letter dated 05.12.2001 which it did. Rather on the other hand, the Respondent made a clear representation to the Claimant to go in for overhauling of the GT Engine in the backdrop of entire available material available with it depicting the condition of the GT Engine.

(iii) Third, if the overhauling costs were not admissible under the Policy, the first thing the Respondent would have done once it got to know GE's Report dated 19.10.2001, and got its Inspectors' communication for overhauling of the Engine to communicate to the Claimant that Overhauling Costs fall in *Excluded Causes* and therefore such claim was inadmissible. On the other hand, the Respondent's letter dated 05.12.2001 to the Claimant was followed by another letter dated 18.12.2001 (By that time limited repairs of GT Engine were already carried out but transient vibrations beyond permissible limits were detected in the Engine during testing and GE had given three options including overhauling to the Claimant) wherein the Respondent reiterated that it would be advisable for the Claimant to repair the entire Engine as recommended by GE.

(iv) Fourth, the two inspection reports of GE dated 19.10.2001 and 22.10.2001, in the absence of any oral evidence of GE official let in by the Respondent, do not establish the pre-existing condition of the Engine prior to its dismantling and disassembling.

(v) Fifth, the events which the Respondent has highlighted about the GT Engine from January 1999 to September 2001 in the written submissions under the head *'The GT Engine was in poor condition even pre-accident'* are also summarised by way of chart on arbitrability issue. In the Tribunal's considered opinion, the chart does not lead to any conclusion that repairs were necessitated or breakdown happened because of erosion, corrosion, rust, oxidation or wear and tear or lack of maintenance. As a matter of fact, the Respondent has admitted in the written submissions that the GT Engine has been running for the durations of 535- 735 hours per month in the year 1999. It the Engine had the Issues which the Respondent has highlighted, the GT Engine would not have been in position to run for so many hours every month. GT Engine is a highly sophisticated machine. While in use, it may have had certain issues which needed corrections and in fact such corrections were done. This leads to an inference that GT Engine was not in poor condition prior to Accident as is sought to be made out by the Respondent. As late as on 30.04.2001, some bearing issue with the Engine arose. For repairs of this, the Engine was sent to Air India workshop. The Engine was reinstalled in the month of June 2001 after the repairs were carried out to the satisfaction of GE. The repairs by Air India carried out only few months before the subject Accident do not show something like erosion, corrosion, oxidation, rust etc., the grounds on which the Respondent seeks to bring the case for overhauling costs under the *Excluded Causes*.

151. Respondent's own witness Mr. Soumil Menta (RW-3) has deposed in his cross-exanimation that if overhauling was not carried out, GT Engine would not have run after the accident. That the GT Engine was in a poor condition prior to Accident has not been found meritorious by the Tribunal. The Claimant at the first instance, despite recommendation of GE for overhauling of the Engine and Respondent's insistence to go in for overhauling of the Engine as advised by GE and the report of McLarens Toplis, asked GE to carry out limited repairs. This act of the Claimant was in consonance with the principle that as a prudent insured, the Claimant was required to do a thing that would have mitigated the loss to the insurer. However, the limited repairs were not successful. The other two options given by the GE would not have rendered the Engine fully fit and functional. It is, therefore, established on record that GT Engine required overhauling after the Accident to run smoothly and continuously.

152. In the Survey Reports, the Joint Surveyors have opined that the damage suffered by the GT Engine could be rectified by the balancing of HPC and HPT rotors. The Tribunal finds it difficult to accept the above conclusion of the Joint Surveyors as RW3 has admitted in his cross-examination that there was no technical basis to indicate that the GT Engine would have run smoothly without overhauling.

153. As a matter of fact, there is ample material on record including various letters/communications of GE, McLarens Toplis and the letters of the Respondent itself which clearly show that it was imperative to overhaul the GT Engine and the accident was the proximate cause of the overhauling. The Tribunal does not find any merit in the argument of the learned senior counsel for the Respondent that Claimant has failed to discharge its burden of proving that overhauling was necessitated due to the Accident. The judgment of the Supreme Court in *Bajaj Allianz General Insurance Company (supra),* in the light of observations made above, has no application to the fact situation of the present case.

77) Mr. Jagtiani has criticized the Arbitral Tribunal for having recorded the finding of accident being proximate cause of overhauling on the basis of "*various letters/communications of GE, M/s. McLarens Toplis and letters of the Respondent*". According to Mr. Jagtiani, none of the three quoted material even remotely suggest the accident to be the proximate cause requiring the overhauling. I am unable to accept the contention

raised by Mr. Jagtiani. The Arbitral Tribunal has used the word "including" meaning thereby that the material enumerated by it is not exhaustive and that the finding is recorded by considering several other materials available on record. Whether the incident/accident is a proximate cause for overhaul of GT Engine or not is a question of fact on which the Tribunal has ruled in favour of the Respondent. I have my own limitations in exercising jurisdiction under Section 34 of the Arbitration Act in examining correctness of those findings of fact. It is not necessary to discuss the settled position of law relating to limitations on jurisdiction of Section 34 Court in considering objections to Arbitral Award. It is only in cases where an extreme perversity is demonstrated or where the finding recorded by the Arbitral Tribunal is such that no fair-minded person can ever record the same that Section 34 Court would be justified in reversing the finding on fact. In my view, Petitioner has thoroughly failed to make out a case for interference in finding of fact recorded by the Arbitral Tribunal on the issue of accident/incident being the proximate cause for overhauling of the GT Engine. None the less I briefly discuss the material available on record of Arbitral Tribunal which can support its finding since this Court can explain existence of underlying finding even when reasons do not appear to be adequate enough as held in the judgment of the Apex Court in ***OPG Power Generation Private Limited*** (supra).

78) Petitioner has strenuously relied on the two GE's Reports of 19 October 2001 and 22 October 2001 to suggest that the GT Engine was suffering from pre-existing damage of corrosion, rust, erosion,

discolouration etc. However, GE's letter dated 15 January 2002 clearly suggests that overhauling was needed on account of damage caused to various parts of GT Engine as a result of accident of 16 September 2001. Relevant part of GE's letter dated 15 January 2002 reads thus:

> The Sump B repair was carried out and testing done on December 7, 2001. During this testing, the core rotor vibrations were found to be 3.5 to 4.0 mils during transient conditions. The acceptable limit of these vibrations is 3.0 mils.
>
> On December 7, 2001, GE suggested to attend to these vibrations by opening HPC and HPT modules and performing a balance. In adition, GE also suggested to do complete disassembly and conudct a full examination and rebuild the engine to take care of all other damages noted during prior inspections. GE believes that performing the HPC and HPT balance would only take care of the transient vibration issues and would not be a good solution to the complete possible problems with this engine. GE offered to extend a full guarantee only if the engine is fully overhauled per GE guidelines at a GE qualified shop.
>
> As per Search Chem records, the engine has put in 21000 hours and the type of vibrations seen during testing (Engine indicated to have no transient vibration per the on site Plant Manager) indicate that the **damage to other parts also might be result of accident on September 16, 2001.**
>
> *(emphasis added)*

79) Thus, in the present case, the Sump B repairs were first carried out on 7 December 2001 whereafter the GT Engine was put for testing and core rotor vibrations were noticed during transient conditions beyond acceptable limits. Therefore, on 7 December 2001, GE gave suggestions for attending to those vibrations by opening HPC and HPT modules. Additionally, it also suggested to completely disassemble the engine and conduct full examination and to rebuild the engine and to take care of other damage noted during prior inspection. GE suggested that performing HPC and HPT balance would only take care of transient

vibration issues and was not a complete solution to problems in the engine. With these observations, GE concluded that since the engine had not indicated any transient vibrations as reported by Site Plant Manager of the Respondent, the damage to other parts would also be a result of the accident. The letter thus conclusively establishes accident to be the proximate cause for overhauling the GT Engine. If pre-existing condition of corrosion, rust, etc necessitated overhaul, the engine ought to have run smoothly after effecting the incident repairs. The engine used to run smoothly without vibration before the incident as reported by the Site Plant Manager. This is why GE opined that the accident must have damaged other parts which was causing vibrations in the engine even after carrying out incident repairs.

80) Respondent also led evidence of expert whose testimony is accepted by the Arbitrator and who deposed that GT Engine, being highly sophisticated one, the same could not have functioned if it suffered from corrosion, rust or wear and tear and that the accident might have caused oil to travel inside turbine parts causing coking and that the condition noted in GE reports must have been a result of accident or subsequent transportation or dismantling of the engine. The Arbitrator has also relied upon joint Surveyors' report, all three of which made a categorical observation that the GT Engine was operating smoothly, and was in good healthy condition and did not suffer from any pre-existing damage prior to the accident. Additionally, the Arbitral Tribunal has also relied upon letter of GE dated 27 September 2001 stating that GT Engine suffered serious internal component damage, GEEPO's letter dated 27 September

2001, GE's letter dated 12 April 2002 to the Respondent reporting sufferance of widespread damage of oil leakage extensively damaging various parts and GE's letter dated 28 May 2003 emphatically stating that the vibrations in LP and HP could be related to accident of 16 September 2001. The Tribunal has also noted that GE recommended overhauling of GT Engine only after 50,000 hours of running and that the subject engine had run for only 27,000 hours and that the same was therefore not due for overhauling. The Tribunal has also noted performance of GT Engine at the optimum level prior to the accident based on joint surveyors' reports.

81) The Arbitral Tribunal thus had ample material before it for arriving at the conclusion that the accident was the proximate cause for overhauling of GT Engine. By no stretch of imagination, can it be contended that the findings recorded by the Arbitral Tribunal are so grossly perverse that this Court must invalidate the Award in exercise of powers under Section 34 of the Arbitration Act.

82) Mr. Jagtiani's criticism of the learned Arbitrator of giving discriminatory treatment is unfounded. He has relied upon finding recorded by the Arbitral Tribunal in paragraph 83 of the Award where the Tribunal has expected Petitioner to examine witness from GE to make out its case for pre-existing conditions of GT Engine. However, according to Mr. Jagtiani, several letters of GE favouring Respondent have been relied upon by the Arbitrator without any oral testimony of GE's personnel. In my view however, the contention is raised out of myopic reading of findings recorded in paragraph 83 of the Award. What the Tribunal has

observed in paragraph 83 of the Award is that the condition of GT Engine depicted in the two GE reports of 19 October 2001 and 22 October 2001 was the condition that was found after the accident and at the time when the engine was already disassembled and opened. The Tribunal has held that reports by themselves did not establish 'pre-existing' condition of the GT Engine. The Tribunal has therefore held that if Petitioner wanted to prove that the condition of the engine found after disassembling was the same which existed prior to the accident, Petitioner ought to have examined a witness from GE to support its case and ought to have granted an opportunity to the Respondent to cross-examine such witness. The findings in paragraph 83 therefore cannot be read to mean as if the Tribunal has refused to take into consideration the GE's reports dated 19 October 2001 or 22 October 2001. The Tribunal has considered both the reports, and has recorded a finding against Respondent that the reports depicted rusting etc. but has refused to believe that the rusting was pre-existing before the accident.

83) Therefore, the finding of fact recorded by the Arbitral Tribunal about accident being the proximate cause of accident does not warrant any interference in exercise of powers under Section 34 of the Arbitration Act.

CONCLUSIONS

84) Considering the overall conspectus of the case, in my view, the Petitioner has failed to make out any valid ground of challenge to the impugned Arbitral Award. The findings recorded by the Arbitral Tribunal

are well supported by the material on record. The scope of powers of this Court in examining objections to the Arbitral Award is well settled in several judgments, and I do not wish to burden this Judgment by discussing ratio of those judgments. In recent judgment of the Apex Court in ***Prakash Atlanta (JV)*** (supra) all the judgments relating to scope of interference by Section 34 Court are surveyed. Considering the extremely narrow scope of interference by Section 34 Court in the Arbitral Award, in my view, no case is made out for tracing an element of patent illegality, gross perversity, conflict with public policy of India or contravention with fundamental policy of Indian laws. The Tribunal has not violated the principles of natural justice nor has travelled beyond the scope of contractual terms. It has not ignored any vital piece of evidence or binding effect of any judgment. The findings recorded by the Tribunal are not such that no fair-minded person would ever record the same. The attempt on the part of the Petitioner is to impress upon the Court to take a different view based on the material considered by the Tribunal, which is impermissible. In fact the Petitioner has taken a *volte-face* in the second round of arbitration as it had pleaded in the first round that the dispute was about the quantum and therefore arbitrable.

85) No submissions are canvassed with regard to the quantum of claim awarded by the Arbitral Tribunal, award of interest as well as award of costs. The Award appears, to my mind, to be unexceptional. In that view of the matter, the Award deserves to be upheld by dismissing the Arbitration Petition.

ORDER

86) Accordingly, I proceed to pass the following order:

Commercial Arbitration Petition is **dismissed**. However, considering the facts and circumstances of the case, I deem it appropriate not to award any further costs in the Commercial Arbitration Petition. All pending Interim Applications are disposed of. The amount deposited in this Court in pursuance of order dated 5 February 2025 shall be paid over to the Respondent alongwith accrued interest.

[SANDEEP V. MARNE, J.]

87) After the judgment is pronounced, Mr. Jagtiani, the learned Senior Advocate appearing for the Petitioner prays for stay of direction for payment of deposited amount to the Respondent. Request is opposed by the learned counsel appearing for the Respondent. there shall be stay to the direction for payment of amount deposited in this Court for a period of six week.

[SANDEEP V. MARNE, J.]

Note : Corrections are carried out in paras-73 and 74 of the judgment only pursuant to speaking to minutes order dated 24 April 2026. The rest of the judgment remains undisturbed.