

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 164 of 2022

Applicant :- M/S Indo Prosoya Foods Pvt. Ltd.

Opposite Party :- Oriental Insurance Company Ltd.

Counsel for Applicant :- Rahul Agarwal

Counsel for Opposite Party :- Pawan Kumar Singh

Hon'ble Ashwani Kumar Mishra,J.

This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

Clause 13 of the agreement contains an arbitration clause, which is extracted hereinafter:-

"13. If any dispute or 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 a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996."

According to the applicant, dispute has arisen between the parties in respect of a contract and the arbitration clause has also been invoked by sending a notice on 27.06.2022.

Existence of arbitration clause or raising of a claim is not disputed by the opposite party. What, however, is stated is that arbitration clause is relating to the aspect of quantum alone and the nature of dispute which is being raised by the applicant would not be covered therein. Such plea has been taken in para 7 and 8 of the counter affidavit.

On behalf of the applicant it is urged in reply that the dispute raised in the present matter is with regard to the quantum of amount payable to the applicant and, therefore, the plea of opposite party that the claim falls within the excepted category is not sustainable.

I have heard learned counsel for the parties and examined the materials brought on record.

Clause 13 of the agreement providing for resolution of dispute by way of Arbitrator has already been extracted above. In the facts of the present case, existence of arbitration clause as well as raising of claim for resolution of dispute by an Arbitrator remains undisputed. What exactly is the nature of claim to be allowed in terms of the agreement would be an aspect to be examined by the Arbitrator. It is otherwise undisputed that the claim raised by the applicant is in respect of various amounts and, therefore, prima facie quantum appears to be in issue. A definite opinion is otherwise not required to be given by this Court as all such issues are expected to be dealt with by the Arbitrator. Any decision in the present order with regard to merits is merely for ascertainment of essential facts i.e. existence of arbitration clause and accrual of dispute and is not intended to deal with claim of parties on merits.

In view of the above discussions, this Court finds that necessary ingredients to invoke jurisdiction of this Court under Section 11 of the Act exists. Consequently, this application succeeds and is allowed.

Accordingly, Sri R. S. Pandey, (Retired District Judge) resident of 128/426, Block-K, Kidwai Nagar, Kanpur- 208001 (U.P.), Mob. No.9415005656 is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11(6) of the Arbitration and Conciliation Act.

The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties.

Order Date :- 13.10.2023

Ashok Kr.