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

+ CS(OS) 499/2013

M/S NATIONAL INSURANCE CO.LTD. AND ANR. Plaintiffs
Through: Mr. Yogesh Malhtora,
Advocate

versus

M/S CHINAR ROADLINES Defendant
Through: Mr. Ravinder Zadoo, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

% **ORDER**
17.04.2015

IA No.17657/2013(by the defendant u/S 8 of the Arbitration & Conciliation Act, 1996)

1. The present application has been filed by the defendant under Section 8 of the Arbitration & Conciliation Act, 1996 praying *inter alia* that the suit instituted by the plaintiff for recovery of ₹86,47,828/-, is liable to be dismissed in view of the fact that there is an arbitration clause governing the parties, as contained in the Transport Agreement dated 17.4.2008, executed between the plaintiff No.2 and the defendant.

2. Clause 1.17 of the Transport Agreement is reproduced hereinbelow:

"All disputes, differences and questions whatsoever, which shall arise between the parties hereto during the

continuance of this agreement or afterwards touching this agreement or the rights/liabilities of either party in connection therewith, shall be referred to a sole arbitrator to be appointed either mutually or by Indian Council of Arbitration on reference. The decision of the said arbitrator shall be final and binding on both the parties. The cost of the arbitration shall be borne by party who loses the case."

3. It is stated in the application that as per clause 1.17 of the Transport Agreement dated 17.4.2008, executed between the defendant and the plaintiff No.2, all the disputes, differences and questions arising between the parties, touching the Agreement or the rights/liabilities of the parties in connection therewith, are liable to be referred to arbitration.

4. A reply in opposition to this application has been filed by the plaintiffs. However, counsel for the plaintiffs had stated on 9.4.2015 that although the arbitration clause contained in the Transport Agreement governs the defendant and the plaintiff No.2, plaintiff No.1 is also agreeable to submitting its disputes to arbitration. On the said date, as none was present on behalf of the defendant, the matter was adjourned for today.

5. Today, counsel for the defendant states that he may be permitted to withdraw the present application on the ground that the arbitration clause contained in the Transport Agreement governs his client and the plaintiff No.2 but it does not extend to the plaintiff No.1.

6. Such a plea, if at all, is available to the plaintiff No.1, who is not a party to the Transport Agreement. However, counsel for the plaintiffs has already stated that the plaintiff No.1 is also willing to submit all its disputes for adjudication to the arbitral tribunal. In such circumstances, the defendant cannot be permitted to renege from its stand or be heard to state that the plaintiff No.1 cannot be made a party to the arbitration proceedings, particularly when it is its own stand, as taken in the present application, that all the disputes between the parties are liable to be referred to arbitration. The request of the counsel for the defendant for seeking withdrawal of the present application is therefore declined.

7. At this stage, counsel for the defendant states that some talks of settlement have been initiated between the plaintiff No.1 and his client and a Marine Recovery Consultant has been appointed by the plaintiff No.1 to settle their *interse* disputes.

8. Nothing precludes the parties from negotiating a settlement with each other and if a comprehensive settlement is arrived at between the plaintiffs and the defendant, then that would be the end of the matter. However, this cannot be a ground for the defendant to resist appointment of an arbitrator, particularly when such a request has emanated from it and has been acceded to by the plaintiffs.

9. Accordingly, the present application is allowed. Justice S.N.Aggarwal (Retd.) residing at Flat No.302, Block-4, Second Floor, 19, Rajpur Road, Delhi-110054(Mobile No.8860091011) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties, including their claims and counter claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (DAC). The fees of the learned Arbitrator will be in terms of the Delhi International Arbitration Centre Arbitration Proceedings (Arbitrators' Fees) Rules.

10. The application is disposed of.

A copy of this order shall be communicated forthwith to the learned Arbitrator as well as Additional Co-ordinator, DAC.

HIMA KOHLI, J

APRIL 17, 2015
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