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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ ARB.P. 142/2016

MAHESHWARI ENTERPRISES ..... Petitioner
Through: Mr. Devinder Pal with Mr. Madan Lal, Advocates.

versus

THE ORIENTAL INSURANCE CO. LTD. ..... Respondent
Through: Mr. Bhaskar Tiwari with Mr. Kishore Rawat and Mr. L.K. Tyagi, Advocates.

CORAM: JUSTICE S.MURALIDHAR

O R D E R
% **25.10.2016**

1. This is a petition filed by the Petitioner, Maheshwari Enterprises, under Section 11 of the Arbitration and Conciliation Act, 1996 (Act) against the Respondent, The Oriental Insurance Company Limited, seeking reference of the disputes between them arising out of an insurance policy dated 28th February 2014 covering stock of all kinds of finished and semi-finished goods and raw material as well as covering buildings including furniture fixtures and machinery.

2. It is stated that a fire incident that took place in the premises of the Petitioner on 12th September 2014. When this was reported by the Petitioner to the Respondent, a Surveyor was appointed by the Respondent. The Surveyor gave his report on 13th September 2014 and on the basis of the report, the Petitioner filed a Fire Insurance claim in the sum of Rs. 3,97,97,544. It is stated that after the Respondent declined to appoint an Arbitrator in terms of the policy, the Petitioner filed the present petition.

3. At the outset learned counsel for the Respondent pointed out that a plain reading of the arbitration clause indicates that only the dispute as to the quantum to be paid under the policy, after admission of liability by the Respondent, can be referred to the arbitration. It is submitted that similar clauses were interpreted in the same manner by the Supreme Court in ***The Vulcan Insurance Co. Limited v. Maharaj Singh (1976) 1 SCC 943.***

4. Learned counsel for the Petitioner sought to place reliance on the report of the Surveyor indicating the damages suffered by the Petitioner as a result of the fire and also the reply filed by the Respondent not denying the existence of the said survey report.

5. However, what is stated in the survey report is not necessarily to be construed as an admission by the Respondent of its liability. On the other hand, the Respondent has categorically stated that it has not admitted but in fact repudiated its liability under the policy. As explained by the Supreme Court in ***The Vulcan Insurance Co. Limited v. Maharaj Singh*** (*supra*) where the insurance company repudiates its liability under the policy, then the question of referring the dispute to arbitration pursuant to the arbitration clause in the insurance policy does not arise.

6. Consequently, the Petitioner may seek other appropriate remedy to recover the claimed amount in accordance with law as it is not possible to refer that dispute to arbitration. The petition is accordingly dismissed with no orders as to costs.

S.MURALIDHAR, J

OCTOBER 25, 2016/*Rm*