

IN THE HIGH COURT OF JUDICATURE AT PATNA
Request Case No.173 of 2017

=====

M/s S S F Polymers Ltd. Represented By Sri Mrinal Agrawal Director of the Company, Factory at 4th KM Miles Stone, Bahadurgarh, Dist-Jhajjar, Haryana-124103, Presently Residing at Mohalla- New Area, neat Congress Maidan, P.O. & P.S.-Kadam Kuan, Patna-800003.

... .. Petitioner/s

Versus

1. The Oriental Insurance Company Ltd Through Its Chairman Cum Managing Director, Head Office, Oriental Head Office, Oriental House, A-25/27, Asaf Ali Road. New Delhi 110002
2. The Oriental Insurance Company Ltd Through Its Divisional Manager, Divisional Office no-1, Uma Complex, 1st Floor Mazaharul Haqpath (Fraser Road), Patna-800001.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mukesh Prasad Singh, Advocate
For the Respondent/s : Mr. Sanjay Singh, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 11-10-2017

Seeking constitution of an Arbitral Tribunal for resolution of a dispute that has arisen in the matter of settlement of claim as per policy and insurance taken by the petitioner with the respondent Oriental Insurance Company Ltd., this application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 and Clause 13 of the Contract of Insurance/Policy provides an arbitration Clause for resolution of dispute which reads as under:

“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.”

Applicant is a company registered under the Companies Act having its office in the district of Patna and was insured with respondent No.2 insurance company through its Divisional Office at Patna. It is said that on 6.10.2016 at 10:15 p.m., a fire broke in the factory of the petitioner as a result of which the petitioner suffered a loss of more than Rs.45,00,000/-. On a complaint made, the premises was surveyed and the surveyor assessed the loss at Rs.7,27,649/- and as the claim was not settled properly, a representation was made and when nothing was done, this application has been filed.

On notice being issued, respondents have filed a detailed objection and they rely upon a judgment of this Court in L.P.A. No.167/06 (M/s. Messina Beej Pvt. Ltd. Vs. The New India Assurance Co. Ltd.) to say that in view of the remedy of approaching an Ombudsman under the Public Grievance Rules, 1998 is available to the petitioner, so also the petitioner can



approach the Insurance Department authority, this application is not maintainable.

I have heard learned counsel appearing for the parties at length and find that in the insurance policy which is the contract of insurance, the arbitration clause is available. As far as the objection based on the judgment in M/s. Messina Beej Pvt. Ltd (supra) is concerned, that was a case where on a claim being repudiated by the Insurance Company, challenge to the same was made directly by filing an application under Article 226 of the Constitution and it was in the backdrop of this that finding a statutory alternative remedy available, the writ petition and the appeal were dismissed. The said judgment is totally different and will not apply in the present case. In the present case, petitioner may or may not have a remedy of approaching the Ombudsman or the Insurance Department Authority, but the fact remains that parties have entered into an arbitration agreement with regard to any dispute in execution of the contract and insurance and once there is a dispute between the parties, the applicant can very well invoke the arbitration clause and seek reference of the matter for arbitration. The question as to whether the Arbitrator can grant relief or decide other issues involved in the matter can be decided by the Arbitrator. Once existence of an arbitration agreement is



established and a dispute is found to be in existence, this Court on the objection raised does not find it appropriate to reject the application.

The objections are misconceived and unsustainable and, therefore, overruled. The application allowed and Hon'ble Justice Shri Sadanand Mukherjee is appointed as Arbitrator to adjudicate the dispute between the parties.

All legal questions canvassed with regard to jurisdiction of the Arbitrator are left open, to be considered by the Arbitrator.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	15.10.2017
Transmission Date	

