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

\+ **<u>ARB.P. 105/2017</u>**

ANTIQUE ART EXPORTS PVT. LTD. THROUGH ITS AUTHORIZED REPRESENTATIVE MR. ASHOK JAIN (CHAIRMAN) ..... Petitioner

Through Mr. Vivek Sibal and Mr. Rahul Sharma, Advocates.

versus

UNITED INDIA INSURANCE COMPANY LTD. ..... Respondent

Through Mr. Amit Mahajan and Mr. Vishal Gohri, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 30.05.2017

1. The petitioner has filed the present petition under Section 11(6) of Arbitration and Conciliation Act, 1996 *inter alia* praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the Standard Fire and Special Perils Policy dated 29.06.2013.

2. The petitioner asserts that on 25.09.2013, a fire had broken out in the factory of the petitioner situated at 78 Kilo Mile Stone, Karhans village, Main G.T. Road, Samalakha, Panipat on account of a short-circuit. The same was reported to the respondent company (United India Insurance Company Ltd.). The petitioner further asserts that surveyors were appointed and despite the petitioner pursuing with respondent company, its claim

under the policy was not settled. Finally, the petitioner received an email dated 24.06.2016 calling upon the petitioner to provide the details of its bank account and furnish a discharge voucher so that the claim as settled by the respondent company, could be disbursed. In response, the petitioner forwarded the discharge voucher dated 24.06.2016 as desired.

3. Thereafter, the petitioner sent a letter dated 27.07.2016 protesting against the alleged unfair treatment by the respondent company as well as the surveyors in denying its legitimate payments due under the policy. The petitioner also alleged that respondent had withheld payment for a considerable period of time and thus exerted undue influence on the petitioner for obtaining the discharge voucher.

4. Learned counsel for the respondent states that in view of the discharge voucher submitted by the petitioner, its claims would not survive and the policy as well as the arbitration agreement (clause) contained therein stands discharged. He has relied upon the decision of the Supreme Court in the case of ***New India Assurance Company Limited v. Genus Power Infrastructure Limited: (2015) 2 SCC 424*** in support of his contentions.

5. In ***Genus Power Infrastructure Limited*** *(supra)*, the Supreme Court had examined the question whether, in the facts of that case, the acceptance of compensation on signing of subrogation letter was voluntary and had concluded that a bald plea of fraud or coercion would not be enough. The court held that the party who sets up such a case must *prima facie* establish said allegation by placing material before Chief Justice/his designate.

6. In view of Sub-section (6A) as introduced in Section 11 of the Act by

virtue of the Arbitration and Conciliation (Amendment) Act, 2015, the examination is now confined to the existence of an arbitration agreement. In this case, there is no dispute as to the existence of the insurance policy or the arbitration clause included therein. The question whether the petitioner had accepted the payment disbursed by the respondent company under coercion or undue influence, is a matter which necessarily has to be examined by the arbitral tribunal.

7. In the aforesaid circumstances, it is necessary that an arbitrator be appointed to adjudicate the disputes between the parties. Accordingly, Justice V.K. Shali (Retired) (Mobile No. 9717495000), former Judge of this court is appointed as the sole arbitrator to adjudicate the disputes between the parties. This is subject to the arbitrator making the necessary disclosure under section 12 of the Act and not being ineligible under section 12(5) of the Act. The arbitrator shall fix his fee in consultation with the parties. The parties are at liberty to approach the arbitrator for eliciting the necessary disclosure and for further proceedings.

8. The petition along with pending applications stands disposed of.

VIBHU BAKHRU, J

MAY 30, 2017
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