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

+ **ARB.P. 525/2017**

PREMIUM COMPOSTOS INDIA PVT. LTD. Petitioner

Through: **Mr. P.C. Sen, Sr. Advocate with Mr.
T.K. Tiwari, Advocate.**

versus

THE NEW INDIA ASSURANCE CO. LTD. Respondent

Through: **Mr. D.D. Singh, Advocate with Mr.
Navdeep Singh & Mr. Seerat Deep
Singh Advs.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 20.09.2017

1. This petition is filed under Section 11(6) of Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'The Act'*) seeking appointment of sole arbitrator to adjudicate the dispute between the parties.
2. Some of the brief facts as stated in the petition are that the petitioner on 22.11.2014, availed of a Standard Fire and Special Perils insurance policy from the respondent to insure building, raw material, finished products, stores and spares.
3. On 11.11.2015, a fire incident took place inside the building situated at the insured premises of the petitioner causing heavy loss and damages. The petitioner lodged a claim on account of which disputes have arisen between the parties.
4. The learned counsel for the respondent states that a reply has been

filed and points out that the claim of the petitioner is not maintainable. However, he does not deny the existence of the arbitration agreement between the parties but states that certain documents are not being submitted by the Petitioner to finalise the details.

5. Under Section 11(6), this court is only to see the existence of an arbitration agreement which is not denied by the respondents. Hence this is an appropriate case to appoint a sole arbitrator leaving all issues open to be raised before the learned Arbitrator as per law.

6. At this stage, learned counsel for the respondent submits that the arbitration clause is not applicable as the respondent does not accept its liability as required by the arbitration clause.

7. The relevant arbitration clause being clause No.13 reads as follows:

“13.1f 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.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained.”

8. Hence, as per plea of the respondent, the contention is that unless the liability is admitted by the respondent, the arbitration clause would not apply.

9. The facts show that the fire incident took place on 11.11.2015. On 22.11.2015, the petitioner lodged the claim with the respondent for the loss suffered. On 18.01.2017, the Surveyor has assessed the damages at Rs.5,62,69,168/-. The petitioner has sent reminders to the respondent on 28.03.2017 and 18.05.2017 and thereafter invoked the arbitration clause on 22.05.2017.

10. It is quite clear that a long time has lapsed since the incident has taken place. The facts show that the respondent has not specifically denied their liability or disputed the same.

11. Reference may also be had to the judgment of the Supreme Court in ***National Insurance Company Limited Vs. M/s Bhoghara Polyfab Pvt. Ltd*** ***AIR 2009 SC 170***. The Supreme Court held as follows:

“17. The decision in Kishorilal Gupta [AIR 1959 SC 1362 : (1960) 1 SCR 493] was followed and reiterated in several decisions including Naihati Jute Mills Ltd. v. Khyaliram Jagannath [AIR 1968 SC 522] , Damodar Valley Corpn. v. K.K. Kar [(1974) 1 SCC 141] and Indian Drugs & Pharmaceuticals Ltd. v. Indo Swiss Synthetics Gem Mfg. Co. Ltd. [(1996) 1 SCC 54] In Damodar Valley Corpn. [(1974) 1 SCC 141] this Court observed: (SCC p. 145, para 7)

“7. ... A contract is the creature of an agreement between the parties and where the parties under the terms of the contract agree to incorporate an arbitration clause, that clause stands apart from the rights and obligations under that contract, as it has been incorporated with the object of providing a machinery for the settlement of disputes arising in relation to or in connection with that contract. The questions of unilateral

repudiation of the rights and obligations under the contract or of a full and final settlement of the contract relate to the performance or discharge of the contract. Far from putting an end to the arbitration clause, they fall within the purview of it. A repudiation by one party alone does not terminate the contract. It takes two to end it, and hence it follows that as the contract subsists for the determination of the rights and obligations of the parties, the arbitration clause also survives. This is not a case where the plea is that the contract is void, illegal or fraudulent, etc. in which case, the entire contract along with the arbitration clause is non est, or voidable. As the contract is an outcome of the agreement between the parties it is equally open to the parties thereto to agree to bring it to an end or to treat it as if it never existed. It may also be open to the parties to terminate the previous contract and substitute in its place a new contract or alter the original contract in such a way that it cannot subsist. In all these cases, since the entire contract is put an end to, the arbitration clause, which is a part of it, also perishes along with it.”

12. Hence, there is no merit in the plea of the respondent.
13. Accordingly I appoint Justice Sudershan Kumar Mishra (Retd.) (Mobile No. 9810039724) as the Sole Arbitrator to adjudicate the disputes between the parties. The learned Arbitrator is requested to fix his fees as per Fourth Schedule of the Act. Respondent is free to raise all issues before the learned arbitrator.
14. In view of the above, the petition stands disposed of.

JAYANT NATH, J

SEPTEMBER 20, 2017/rk