IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 88 OF 2017

Aarti Industries Ltd. ...Applicant

Versus

National Insurance Co. Ltd. ...Respondent

Ms.Sharon Patole for the Applicant.
Ms. S.S.Dwivedi for the Respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 1 OCTOBER 2018

P.C.:

1 This is an application under Section 11 of the Arbitration and Conciliation Act, 1996. Applicant is the assured and respondent is the insurer. Applicant has taken various standard fire and special peril policy from respondent. All these policies were to cover material damage and incurred loss of profit (consequential loss policy). Applicant lodged a claim for loss of profit, which according to applicant has not been paid by respondent. Hence, applicant has approached this Court. Clause 13 of the Standard Fire and Special Peril Policy 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.*

> *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".*

2. The arbitration clause is very clear to say that only dispute or difference regarding quantum to be paid under the policy shall be referred to arbitrator. It also expressly excludes any difference or dispute where respondent has disputed or not accepted liability under or in respect of the policy.

3. Counsel for applicant is unable to show any communication whereby respondent has admitted liability, but disputed only the quantum.

4. Ms.Patole, counsel for applicant, submitted that applicant addressed many communications to respondent to which there has been no response. Therefore, this Court should assume that respondent has acknowledged the liability.

5. If I have to accept what Ms. Patole states, this would also mean that respondent has even admitted the quantum. I am unable to agree with Ms. Patole. I have to conclude that Ms. Patole, counsel for applicant, has not been able to show any communication from respondent to indicate that

respondent has acknowledged its liability, but only disputed the quantum.

6. Application dismissed.

(K.R. SHRIRAM, J.)