HON'BLE THE CHIEF JUSTICE
THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.1 OF 2011

ORDER (ORAL):

This is an Arbitration Application under Section 11(6) of the Arbitration and Conciliation Act, 1996; for short 'Act.'

2. The applicant is Andhra Pradesh Beverages Corporation Limited, Prohibition and Excise Buildings, Nampally Station Road, Nampally, Hyderabad, which has admittedly an insurance policy with the respondent, M/s. National Insurance Company Limited, Secunderabad. The fact of insurance is not disputed by the respondent.

3. The plea of the respondent boils down to the documents at page Nos.16 and 17 of this application. The communication dated 02.04.2009 issued by the Branch Manager of the respondent to the Managing Director of the applicant Corporation contains quantification of the net claim payable under the policy. The document at page No.16 is a printed for receipt which is filled up and signed on behalf of the applicant acknowledging receipt of funds from the insurer. On the basis of those two (2) documents, it is argued by the learned counsel for the respondent that no issue continues to survive to be adjudicated through arbitration since there is a full and final settlement of the applicant's claims and satisfaction by payment of amounts due.

4. The learned counsel for the applicant, relying on the judgment of the Hon'ble Apex Court in **National Insurance Company Limited v. M/s. Boghara Polyfab Pvt. Ltd.**[1]**,** argued for the position that a claim for arbitration cannot be rejected merely or solely on the ground of the settlement agreement or execution of the discharge voucher by the claimant for the amounts received.

5. Arbitrability or otherwise of the dispute raised by a party to the arbitration agreement is itself a matter for arbitration unless an issue which touches jurisdiction of the arbitrator to enter on reference. This is settled position of law. The modality of adjudicating an application for taking a measure under Sub-Section (6) of Section 11 of the Act itself excludes deeper consideration of the disputes when it is shown that there is an arbitration agreement between the parties and such agreement provides a procedure which is agreed to between the parties. Once that is shown to be available, the question whether there is discharge and satisfaction of the claim is a matter in the domain of arbitration. The plea of the applicant that further amounts are due to it and the plea of the insurer that it had quantified and paid off such amounts and that such payment has been accepted unconditionally by the applicant are matters that relate to the quantification of amounts payable by the insurer to the insured and payment of such amounts.

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[1] **AIR 2009 SC 170(1)**

6. Clause 13 of the contract between the parties reads as follows:

> "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 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 herein before 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."
>
> (*emphasis supplied*)

7. The first among the paragraphs of the afore-quoted clause shows that if any dispute or difference arises as to the quantum to be paid under the policy, that would be a matter for arbitration following the procedure stated in that paragraph. The exclusion through second paragraph of Clause 13 is that there shall be no arbitration where the company has disputed or has not accepted liability under or in respect of the policy. The respondent - insurance company has admitted the liability, otherwise, inasmuch as its plea is one of quantification of the

liability and discharge by payment, under acknowledgement. Therefore, the disputes being raised by the applicant - insured are issues relating to the quantum that has to be paid by the insurer to the insured. It is also worthwhile to notice in this context that the third paragraph of Clause 13 enjoins that any right of action or suit is controlled by the condition precedent as to recourse to arbitration in terms of Clause 13.

8. In the light of the aforesaid discussion and in view of the principles of law stated in **National Insurance Company Limited** (Supra 1), this arbitration request is eligible to be allowed.

9. The learned counsel for the applicant has filed a memo dated 03.08.2018 proposing the name of Sri P. Ramakrishnam Raju, former Jude of this Court, and the learned counsel for the respondent has filed a memo dated 03.08.2018 proposing the name of Sri N. Ravi Shankar, former Judge of this Court, as Arbitrators.

10. In the result, this Application is allowed appointing Sri Justice P. Ramakrishnam Raju, former Judge of this Court, and Sri Justice N. Ravi Shankar, former Judge of this Court, as Arbitrators. It is for those Arbitrators to appoint a third Arbitrator; and to arbitrate on the disputes between the applicant and the respondent and the said Arbitrators shall enter on reference and proceed with, as enjoined by the Act.

THOTTATHIL B. RADHAKRISHNAN, CJ

August 3, 2018.
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