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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 386/2018

TODAY FOOTWEAR PVT LTD

..... Petitioner

Through: Mr.Bhaskar Tiwari, Adv.

versus

NEW INDIA ASSURANCE CO. LTD

..... Respondent

Through: Mr.Abhishek Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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13.07.2018

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Standard Fire & Special Perils Insurance Policy, being Policy No. 31170111150100000416 obtained by the petitioner from the respondent. The said policy contains an Arbitration Agreement between the parties in form of Clause 13, which is reproduced herein below:-

“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 provision 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 condition precedent to any right of action or suit this policy that the award by such arbitrator / arbitrators of the amount of the loss or damage shall be first obtained.”

The disputes between the parties are in relation to the loss suffered by the petitioner in the fire that took place at its factory premises on 28.05.2016 at around 12:20 a.m.

The respondent refutes the appointment of the Arbitrator on the ground that there has been a full and final settlement of all the claims of the petitioner whereunder the petitioner has received a sum of Rs. 4,13,67,575/- from the respondent on 02.08.2017. It is submitted by the counsel for the respondent that it was only after receipt of the said amount that the petitioner vide letter dated 08.08.2017 raised further claims which are not only an afterthought but also not maintainable due to full and final settlement of their claim.

I have considered the submissions made by the counsel for the respondent. As the existence of the Arbitration Agreement and due invocation thereof is not denied by the respondent, I see no impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above mentioned Policy. The plea of full and final settlement and / or raising of claims as an afterthought, cannot be considered by this Court while exercising its power under Section 11 of the Act, especially in light of Section 11(6A) of the Act which is reproduced herein below:-

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”

A reading of the above provision would clearly show that at this stage the Court is to confine its examination only to the existence of the Arbitration Agreement. The same being not denied, all other pleas of the respondent are to be considered by the Arbitrator, may be as a preliminary issue.

In view of the above, I appoint **Justice S.P. Garg**, Former Judge of this Court (7, Teen Murti Lane, New Delhi-110001, Mobile: 9910384627) as an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned insurance policy. The Arbitrator shall give his disclosure statement in terms of Section 12 of the Act before proceeding with the reference.

The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

JULY 13, 2018/rv