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

\+ ARB.P. 665/2018

WORLDFA EXPORTS PVT.LTD ..... Petitioner

Through: Mr.Sachin Datta, Sr. Adv. with Mr.Dinesh Sharma, Ms.Ritika Jhurani, Ms.Kritika Khanna, Ms.Jispsa Rawat, Advs.

versus

NEW INDIA ASSURANCE CO.LTD ..... Respondent

Through: Mr.Abhishek Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>O R D E R</u>

% **02.11.2018**

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') 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 and Special Perils Policy taken by the petitioner from the respondent.

2. The Arbitration Agreement between the parties is contained in Clause 13 of the Policy, which is reproduced hereinbelow:

> *"13. If any dispute or difference shall arise as to the quantum to be paid under this policy (<u>liability being otherwise admitted</u>) 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."

3. Due to the incident of fire taking place in the factory of the petitioner on 30.04.2017, the petitioner lodged a claim with the respondent under the Policy. The petitioner invoked the Arbitration Agreement vide its notice dated 30.07.2018 and therefore, filed the present petition.

4. Though the reply filed by the respondent is not on record, I have obtained a copy of the same from the learned senior counsel appearing for the petitioner. Along with the reply, the respondent has placed a copy of its letter dated 18.07.2018, wherein it has repudiated the claim of the petitioner.

5. In ***United India Insurance Co. Ltd. & Anr. vs. Hyundai Engineering and Construction Co. Ltd. & Ors***. 2018 SCC OnLine SC 1045, the Supreme Court considering a similar Arbitration Agreement, has held as under:

"12. From the line of authorities, it is clear that the arbitration clause has to be interpreted strictly. The subject clause 7 which is in pari materia to clause 13 of the policy considered by a three-Judge Bench in Oriental Insurance

Company Limited (supra), is a conditional expression of intent. Such an arbitration clause will get activated or kindled only if the dispute between the parties is limited to the quantum to be paid under the policy. The liability should be unequivocally admitted by the insurer. That is the pre-condition and sine qua non for triggering the arbitration clause. To put it differently, an arbitration clause would enliven or invigorate only if the insurer admits or accepts its liability under or in respect of the concerned policy. That has been expressly predicated in the opening part of clause 7 as well as the second paragraph of the same clause. In the opening part, it is stated that the "(liability being otherwise admitted)". This is reinforced and re-stated in the second paragraph in the following words:

> *"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."*

Thus understood, there can be no arbitration in cases where the insurance company disputes or does not accept the liability under or in respect of the policy."

6. Learned senior counsel appearing for the petitioner submits that the above judgment would not be applicable to the facts of the present case as the respondent had not repudiated the claim of the petitioner prior to the invocation of the Arbitration Agreement by the petitioner. In this regard, he places reliance on the judgment dated 20.09.2017 of this Court in Arb. P. No.525/2017 titled ***Premium Compostos India Pvt. Ltd. vs. The New India Assurance Co. Ltd.***

7. In my view, the judgment of the Supreme Court in ***United India Insurance Co. Ltd.*** (supra) would be fully applicable to the facts of the present case. As there is a repudiation of the claim of the

petitioner by the respondent and the dispute between the parties is confined only to the quantum of the monetary claim of the petitioner, the Arbitration Agreement between the parties would not be applicable to such disputes.

8. In ***Premium Compostos India Pvt. Ltd***. (supra), there was no specific dispute/denial of liability by the insurance company and in that light, this Court had held that the Arbitration Agreement would apply. In the present case, however, the respondent has expressly disputed its liability to pay any amount to the petitioner and therefore, such dispute would fall in the exception and cannot be referred to arbitration.

9. In absence of an Arbitration Agreement between the parties, the present petition is not maintainable and the same is accordingly dismissed, leaving it open to the petitioner to seek remedy in accordance with law.

10. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 02, 2018
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