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

+ ARB.P. 808/2018

VALLEY IRON & STEEL COMPANY LIMITED..... Petitioner

Through: Mr. Jitender Singh and Mr. Kartik
Arora, Advs.

versus

M/S. UNITED INDIA INSURANCE CO. LTD. Respondent

Through: Mr. Pankaj Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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18.12.2018

1. The petitioner has approached this Court on account of the fact that even though both the parties have appointed their respective nominee Arbitrators, the nominee Arbitrators have not been able to reach a consensus with regard to the Presiding Arbitrator.

1.1 This aspect emerges upon perusal of procedural order dated 4.10.2018, concerning the meeting convened by the two nominee Arbitrators.

2. To be noted, the petitioner's nominee Arbitrator is Justice Mansoor Ahmad Mir, (Retired) while the respondent has appointed Professor P.C.James.

3. Mr. Seth, who, appears for the respondent says that there is no dispute subsisting between the parties and, therefore, the matter is not required to be adjudicated upon by an Arbitral Tribunal.

4. In other words, the respondent takes the position that a Presiding Arbitrator need not be appointed.

5. As noted above, the respondent has already appointed its nominee

Arbitrator and the matter is not proceeding further only on account of the fact that the nominee Arbitrators have not reached a consensus *vis-a-vis* the Presiding Arbitrator.

5.1 As far as the submission made before me by the counsel for the respondent, which is, that there is no outstanding dispute as the amounts under the Insurance policy have been paid to the petitioner is an aspect qua which only a duly constituted Arbitral Tribunal can return a finding.

6. Briefly, in this context, of the aforesaid, I may note that the petitioner, it appears, had secured from the respondent a Fire and Special Perils Policy on 15.9.2010.

7. On account of heavy rain and flood, the factory of the petitioner which was insured under aforementioned policy was damaged.

7.1 This incident occurred on 26.8.2011.

7.2 The petitioner made a claim for Rs.70 crores.

7.3 The respondent appointed a surveyor and, according to the petitioner, it was agreed thereafter that a sum of Rs.10.45 crores be paid towards its claim.

7.4 The petitioner claims that despite this stand of the respondent, ultimately on 13/18.8.2014 only a sum of Rs.1,03,92,758/- was released to the petitioner.

7.5 Being aggrieved, the petitioner, *inter alia*, served two notices on the respondent.

7.6 These being notices dated 21.6.2017 and 11.8.2017.

7.7 The respondent in response vide communication dated 8.9.2017 informed the petitioner that it had appointed its nominee Arbitrator; a fact which I have referred to hereinabove.

8. In sum, the situation which obtains today is that while the nominee Arbitrators of the parties are in place, the Arbitral Tribunal is unable to proceed further on account of lack of consensus between the nominee Arbitrators as to who should be the Presiding Arbitrator.

9. In my view, the objection taken by the respondent can be considered by the Arbitral Tribunal while hearing the matter on merits.

9.1 Resultantly, I am inclined to allow the prayer made in the petition.

10. Accordingly, Mr. A.P. Shah, former Chief Justice, Delhi High Court (Mobile no.: 9910160007) is appointed as the Presiding Arbitrator.

11. Learned counsel for the parties state that the members of the Arbitral Tribunal can be paid their fee as per the terms of the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996.

11.1 It is ordered accordingly.

12. The petition is disposed of in the aforesaid terms. The Registry will dispatch a copy of the order passed today to the learned Arbitrator.

13. *Dasti.*

RAJIV SHAKDHER, J

DECEMBER 18, 2018
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