

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.755 of 2019

M/s.Springfeel Polyurethane Foams Private Limited
rep. by its Director Mr.Dilip Kumar,
51/2A, Kelambakkam-Vandalur Road,
Pudupakkam,
Kanchipuram District-603 103. .. Petitioner

Vs.

National Insurance Co. Ltd.,
rep. by Manager,
Regional Office,
No.190, Anna Salai,
Chennai-600 006. .. Respondent

* * *

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator on behalf of the respondent to enable constitution of the Arbitral Tribunal to adjudicate the dispute on the quantum of loss payable on the claim of the petitioner under the Policy No.500103111510000003.

* * *

For Petitioner : Mr.R.Ashwanth

For Respondent : Mr.N.P.Vijayakumar

ORDER

The petitioner has filed this Original Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking for appointment

of an Arbitrator on behalf of the respondent to adjudicate the dispute on the quantum of loss payable on the claim of the petitioner under the Policy No.500103111510000003.

2. The petitioner, which is a Polyurethane Foam manufacturing unit, insured its assets under Standard Fire and Special Perils Policy bearing No. 500103111510000003 for a value of Rs.33,30,00,000/-, for the period spanned from 01.04.2015 to 31.03.2016. Subsequently, one more crore was added in the value of the policy. In fact, the petitioner availed the policy initially during the year 2003-04, which was periodically renewed.

3. An untoward fire accident took place on 08.03.2016 at the unit of the petitioner resulting in severe damages to building, plant and machinery and stocks. The petitioner immediately informed the same to the respondent and the inspection was conducted by the Surveyor nominated by the respondent. Thereafter, the petitioner repaired and reinstated the unit. Subsequently, the petitioner made a claim of Rs.5,08,25,942/-, in addition to seeking additional claim of Architect Fee for Rs.2,58,750/- and fire door erection expenses for Rs.5,14,663/-.

4. Though from 2016 onwards, the petitioner was repeatedly approaching the respondent for settlement of the claim, more particularly, sought for interim payment to tide over the financial crisis, the respondent remained silent and did not respond to their letters. On 28.02.2019, as against the claim of the petitioner, the respondent offered a sum of Rs.3,19,37,503/-, that too after three years and printed a discharge voucher asking the petitioner to sign the same for payment. The petitioner returned the signed voucher "without prejudice" and received the amount offered under protest. The petitioner sent a letter dated 13.03.2019 to the respondent in this regard.

5. In this backdrop, the petitioner invoked the arbitration clause as per condition No.13 of the Policy vide letter dated 13.03.2019 by nominating one Senior Insurance Surveyor as its arbitrator. However, the respondent sent a reply dated 02.04.2019 claiming that the amount offered by them was proper and based on Surveyor's assessment and they had settled the claim. Thus, the petitioner is before this Court with the aforesaid prayer.

6. The learned Standing Counsel for the respondent produced the letter dated 25.10.2019 addressed to the petitioner marking a

copy to its counsel, wherein and whereby, the respondent nominated one Mr.V.Ramasami as their arbitrator.

7. Though the learned counsel for the petitioner in the first instance contended that the nomination now made by the respondent is after the expiry of the mandatory period stipulated in the Act, he is agreeable for the said nomination enabling the nominated arbitrators to appoint a Presiding Arbitrator to constitute the Arbitral Tribunal as agreed in the condition No.13 of the Policy document.

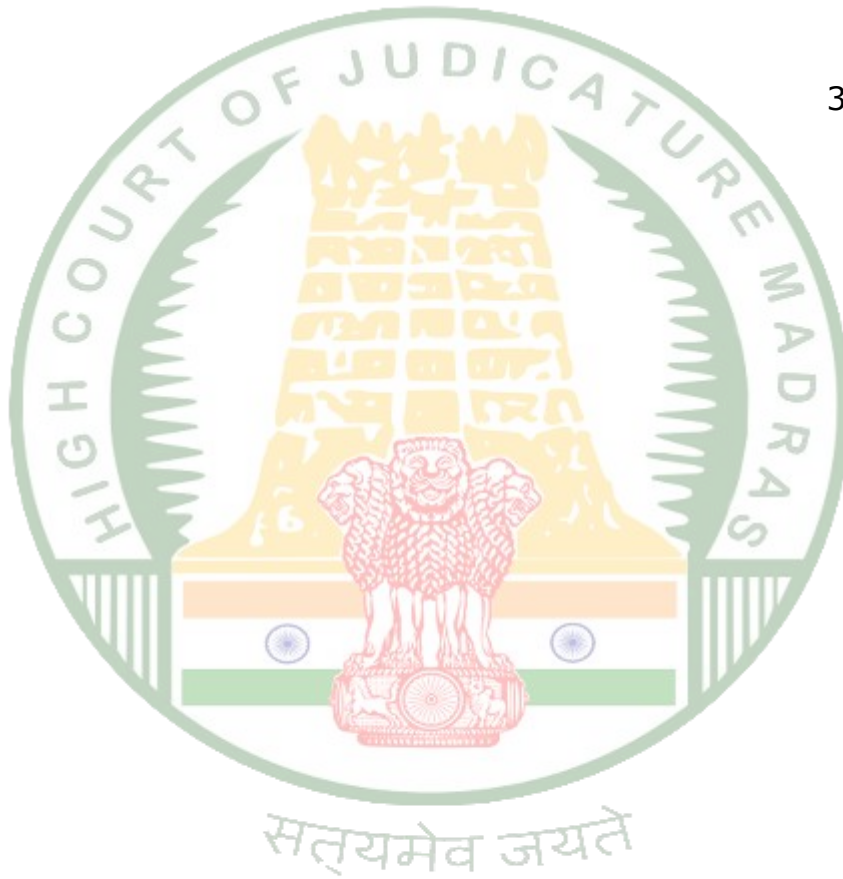
8. Considering the submissions of the learned counsels on either side, this Court approves the nomination of Mr.V.Ramasami, having office at "Mithila", No.21, Kalathu Mettu Street, Kottivakkam, Chennai-600 041, made by the respondent beyond the period mandated in the Act. The Arbitrators appointed by the parties are directed to appoint the Presiding Arbitrator within a period of 30 days from the date of receipt of a copy of this order. The Arbitral Tribunal may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of appointment of the Presiding Arbitrator. The appointment of the Arbitrators will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and

Conciliation Act, 1996 coupled with the amendments made therein.

9. The Original Petition is ordered accordingly. The parties shall bear their own costs.

30.10.2019

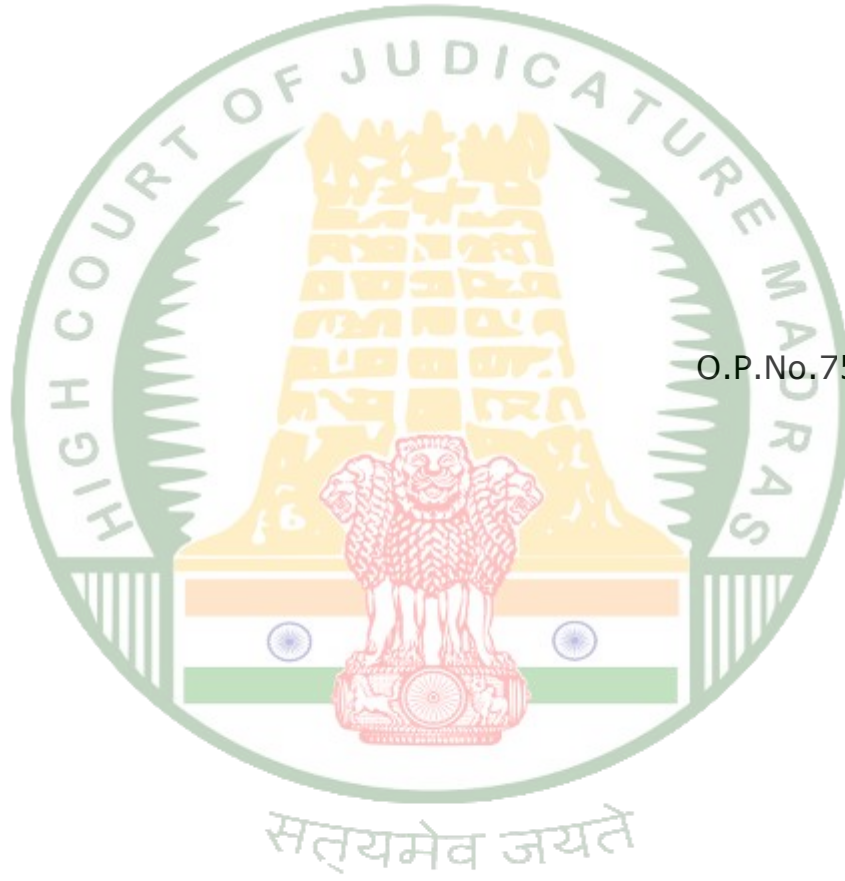
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PUSHPA SATHYANARAYANA, J.

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