THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.22 OF 2017

ORDER

Sitaram Spinners Pvt. Ltd., Hyderabad, the applicant company, seeks appointment of a sole Arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to resolve its dispute with the New India Assurance Company Ltd., Secunderabad, in relation to its Insurance Policy bearing No.61220011150100000143.

Sri Kota Subba Rao, learned counsel, entered appearance for the respondent insurance company and filed a counter.

The applicant company raised a claim for Rs.9,42,02,610/- under the subject insurance policy. The respondent insurance company settled the claim for Rs.5,28,61,915/- and paid the said amount under a discharge voucher. The claim of the applicant company is for the balance amount of Rs.Rs.4,13,83,675/-. Invoking the arbitration clause in Condition No.13 of the said insurance policy, the applicant company addressed legal notice dated 19.10.2016 to the respondent insurance company seeking resolution of its claim for the aforestated sum through arbitration. The respondent insurance company, in turn, addressed reply notice dated 03.12.2016 pointing out that the applicant company had received the sum of Rs.5,28,18,915/- in full and final settlement of its claim and had signed a discharge voucher to that effect and therefore, its claim for the balance amount was untenable. Asserting that Condition No.13 would apply if only there was a dispute as to the quantum and there was no such dispute in the case on hand, the respondent insurance company stated that there was no issue to be resolved by way of arbitration and requested the applicant company to withdraw its arbitration notice.

The same stand was reiterated by the respondent insurance company in its counter filed before this Court.

Though Sri Kota Subba Rao, learned counsel, relied upon earlier case law in support of his contention that execution of the discharge voucher by the applicant company, upon receipt of the reduced claim amount, would be fatal to its claim for the balance amount, Sri G.Sudheer, learned counsel for the applicant company, would rely upon the later Circular dated 24.09.2015 issued by the Insurance Regulatory and Development Authority directing all the insurance companies not to withhold claim amounts where the liability is established and not to use discharge vouchers as a means of estoppel against the insured seeking higher compensation before a judicial forum. For proper appreciation, the Circular is extracted hereunder:

'INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
Ref. No: IRDA/NL/CIR/Misc/173/09/2015
Date:24th September, 2015
Circular

To
CEOs of all General Insurance Co.,
Reg: Discharge Voucher in settlement of claim

The Insurance Companies are using 'discharge voucher' or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books. However, of late, the Authority has been receiving complaints from aggrieved policyholders that the said instrument of discharge voucher is being used by the insurers in the judicial fora with the plea that the full and final discharge given by the policyholders extinguish their rights to contest the claim before the Court.

While the Authority notes that the insurers need to keep their books of accounts in order, it is also necessary to note that insurers shall not use the instrument of discharge voucher as a means of estoppels against the aggrieved policy holders when such policy holder approaches judicial fora.

Accordingly insurers are hereby advised as under:

<u>Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However, it should be clearly understood that execution of such vouchers does not foreclose the rights of policy holder to seek higher compensation before any judicial fora or any other fora established by law.</u>

All insurers are directed to comply with the above instructions.'

Dealing with this Circular in WORLDFA EXPORTS PVT. LTD. V/s. UNITED INDIA INSURANCE CO. LTD.[1], a learned Judge of the Delhi High Court held that insurance companies cannot deny payment of the admitted claim amount to the insured unless a complete discharge is given by the insured and insistence by the insurance company to sign a discharge voucher in full and final settlement before release of the admitted claim amounts to coercion and undue influence, as defined in Sections 15 and 16 of the Indian Contract Act, 1872, and such contracts would be voidable under Sections 19 and 19A thereof.

In the case on hand, Condition No.13 of the subject insurance policy embodies a clear arbitration agreement. This condition reads as under:

> '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 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 penal 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.'

Once it is admitted by the respondent insurance company that there exists such an arbitration agreement in its insurance policy and as it is no longer open to it, given the aforestated binding circular instructions, to rely upon the discharge voucher executed by the applicant company when it received part of the claimed amount, the respondent insurance company

[1] 2015 SCC OnLine Del 13951

cannot deny the request of the applicant company for appointment of an arbitrator under Condition No.13.

In terms of Section 11(5) & (6) of the Act of 1996, as amended by Act 3 of 2016 with effect from 23.10.2015, in an arbitration with a sole Arbitrator, if the parties fail to agree on the arbitrator within thirty days of receipt of a request by one party from the other party to so agree, the appointment shall be made, upon request of a party, by the High Court or any person or institution designated by such Court. As this Court is given the provision to deal with applications under Section 11 of the Act of 1996 by the Hon'ble The Chief Justice, High Court of Telangana, it would be within its power to undertake the exercise contemplated by Section 11(5) & (6) of the Act of 1996. As per Section 11(6A) of the Act of 1996, which was inserted therein by Act 3 of 2016 with effect from 23.10.2015, the High Court, while considering an application under Section 11(5) & (6) of the Act of 1996 shall confine itself to examination of the existence of an arbitration agreement and no more.

As an arbitration agreement clearly exists between the parties and considering the quantum of the claim, the arbitration application is ordered appointing Justice Vilas V.Afzulpurkar, Retired Judge, High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, residing at Flat Nos.401&402, Ruby, Lumbini Rockdale Apartments, Beside Eenadu Office, Somajiguda, Hyderabad-500082, as the sole Arbitrator for resolution of the dispute(s) between the applicant company and the respondent insurance company, arising out of the Insurance Policy bearing No.61220011150100000143, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of

2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

____
SANJAY KUMAR, J

13th FEBRUARY, 2019
Svv