

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Original Petition No.157 of 2020

Livia Polymer Bottles Private Limited,
Having the Office at Mandaiyur Salai,
Mandaiyur,
Pudukottai District,
Tamil Nadu – 622515
Represented by its Managing Director
Mr.B.V. Ramanan

...

Petitioner

versus

The Oriental Insurance Company Limited,
Having its regional office at 4th Floor
Cheran Towers,
78, Government Arts College Road,
Coimbatore-641018
Represented by its Deputy General Manager

...

Respondent

Prayer: Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator in terms of Condition No.13 Standard Fire and Special Perils Policy with costs.

For Petitioner : M/s. N.P. Vijay Kumar

For Respondent : Mr. G.Guruswaminathan
for M/s. Nageswaran &
Narchania

ORDER

This Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to to appoint an Arbitrator in terms of Condition No.13 of the Standard Fire and Special Perils Policy.

2. It is the case of the Petitioner that the Petitioner has obtained Standard Fire and Special Perils Policy bearing No.453309/11/2018/205 dated 09.03.2018 being a policy of Insurance from the Respondent insurer. The policy provides indemnity protection to the subject matter of insurance from fire, floods, and other perils for Wind Electric Generator situate in Survey No.435/2, Kulumankuzhi Village, Dharapuram Taluk, Tiruppur District. The Wind Electric Generator in respect of which the policy has obtained was affected by fire accident on 09.06.2018 and the respondent appointed surveyor to assess and determine the loss suffered by the Petitioner. The surveyor assessed the damage on the basis of the market

value instead of reinvestment value basis at Rs.3,95,81,192/-. Hence the respondent has received the amount Rs.2,53,45,465/- under protect. According to him when there is a dispute with regard to the quantum, the contract provides to refer to the Arbitration and despite notice to the respondent he has not come forward for appointment of Arbitrator. Hence this petition.

3. The respondent has filed counter admitting the fire policy insurance obtained by the Petitioner and the fire accident. It is the contention of the respondent that an amount of Rs.2,53,33,245/- has been paid towards the fire accident after the assessment of the surveyor. It is the further contention that as on the date of execution of the discharge voucher till the date of payment of claim there was no protest by the Petitioner. Hence, the Arbitration cannot be invoked as there was no dispute as per the terms and conditions of the policy. It is further contended that claiming an additional amount on the basis of reinstatement value is nothing but interpretation of contract. Hence, opposed for appointment of Arbitrator.

4. Heard both sides. There is no dispute with regard to the Standard Fire and Special Perils Policy dated 09.03.2018 by both parties. Condition (B)13 of the Standard Fire and Special Perils Policy is as follows:

“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 provisions of the Arbitration and Conciliation Act, 1996. It is clearly agreed and understood that no dispute or difference 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.”

5. On reading of the above condition makes it very clear that if any

dispute arise as to the quantum to be paid under the policy such difference shall independently of all other questions be referred to the decision of a sole arbitrator. Admittedly, there is no dispute with regard to the fire policy and fire accident in respect of Wind Generator. The surveyor has been appointed and he has assessed the damage on the basis of the market value. Whereas the contention of the Petitioner is that the damage ought to have been assessed on the basis of the reinstatement value. The amount has been collected towards the fire and special perils policy indicate that it was collected only on the reinstatement value. Letter in this regard also sent to the Respondent on 7.3.2018 which has been acknowledged by the Insurance Company. Once the premium has been collected to assess the damage under the reinstatement value, now it cannot be contended that the damage on the basis of such a value amounts to interpretation of contract. The contract stipulates reference to the sole arbitrator in the event of any dispute over the quantum. Admittedly in this matter the only dispute is with regard to quantum. Whereas the insurance company taken a stand that the damage could be assessed only on the basis of market value. Whereas the contention of the Petitioner it should be on the basis of reinvestment value.

The documents filed in the typed set *prima facie* indicate that premium has been collected for reinvestment value. This is only a *prima facie* finding. Such view of the fact and the parties are governed by specific clauses in the agreement, this Court is of the view that if there is a dispute it has to be referred to the sole arbitrator as per the contract.

6. Accordingly, this Court nominate Mr.R.Sankaranarayanan, Senior Advocate, Address: 34, Lakshmanan Street, Mahalingapuram, Chennai – 600 034 Phone 28474701 Mobile No.9003299952 to enter the reference in the matter and decide the matter as per law. Both sides have no objection for nominating Mr.R.Sankaranarayanan, Senior Advocate, to enter reference in the matter. The fees of the Arbitrator shall be fixed by him as per the Schedule.

7. The learned Arbitrator 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 receipt of copy of the order.

8. It is also made clear that whatsoever the Court has recorded in a prima facie view, learned Arbitrator shall decide the reference on his own merit without being influenced by the observation of this court while disposing this application.

9. In view of the above, the Original Petition is allowed.

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Speaking Order / Non-speaking Order

Index : Yes / No

Internet : Yes

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N. SATHISH KUMAR, J.

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