IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.77 of 2020

M/s.Kamachi Industries Ltd.,
No.39, Old No.50, 3rd floor, ABC Trade Centre
(Inside Devi Theatre Complex), Anna Salai
Chennai 600 002. ... Petitioner

Vs.

M/s.ICICI Lombard General Insurance Company Ltd.,
ICICI Lombard House, 414, Veer Savarkar Marg
Near Siddhivinayak Temple, Prabhadevi
Mumbai 400 025. ... Respondent

PRAYER: Petition filed under Section 11(6) of Arbitration and Conciliation Act, 1996 praying to appoint a sole arbitrator on behalf of the parties to resolve the dispute in terms of the claim arising under the insurance police No.1003/147474241/00/000 dated 01.04.2018.

For Petitioner : Mr.Animesh Sinha

For Respondent : M/s.Elveera Raveendran

O R D E R

This petition has been filed to appoint a sole arbitrator on behalf of the parties to resolve the dispute in terms of the claim arising under the insurance policy No.1003/147474241/00/000 dated 01.04.2018.

2. The learned counsel for the petitioner submitted that the petitioner Company took the Insurance Policy from the respondent for the period 01.04.2018 to 31.03.2019 by paying premium of Rs.89,68,000/- to cover its location Survey No.86,115-119, 123 Pathapalayam Village, Gummidipoondi 601 201, Tamil Nadu. During the subsistence of the Insurance Policy, on 09.04.2018 there was an explosion in the petitioner's boiler, due to the fire accident the company was totally damaged, therefore the petitioner immediately lodged a claim. However the claim has not been settled by the respondent. Despite 25 communications immediately after the fire accident, the respondent has not come forward to settle the matter. Due to the fire accident the petitioner has suffered serious distress therefore the petitioner was classified as NPA by the bank. At this situation the bank has forced to enter into an agreement said to be the final settlement towards insurance claim. He further submitted that as the petitioner was in financial duress he has no other go except to succumb to the pressure exerted by the Insurance Company at the time of agreement. Despite the petitioner's requests to incorporate the specific clause as to the nature of the circumstances leading to accept such amount, it has been purposely omitted by the Insurance Company in the final draft. Hence it is his contention that the petitioner has signed the agreement which is said to be the final settlement agreement and it cannot be said that there is no dispute regarding the quantum.

The survey report itself reached to the insurance company on 31.01.2019, however prior to such report an offer was sent by the Insurance Company for a settlement of Rs.9 crores hence it is the contention that there is a malafide on the part of the Insurance Company which has taken advantage of the economic duress of the petitioner. The petitioner has lodged a claim for more than Rs.20 crores therefore the matter has to be referred to arbitration.

3. The learned counsel appearing for the respondent submitted that as the petitioner has received the amount and executed the agreement as a final settlement there is no dispute as per the contract. Therefore clause 12 of the agreement cannot be pressed into service and there is no dispute as on the date of the settlement. Therefore the matter cannot be referred to arbitration. She further submitted that this Court has no jurisdiction since the cause of action arose at Mumbai and hence prayed for dismissal and perused the inconvenience.

4. As indicated, the fire accident policy has been availed by the petitioner is not in dispute, similarly the fire accident took place on 09.04.2018. Despite several communications and request made by the petitioner the claim has not been settled immediately, only when the petitioner was classified as NPA by the bank further development has taken place that is in the nature of some exchange of draft settlement. This clearly indicates that when the petitioner was totally in economic duress the same has been taken advantage by the respondent in finalising the issue by exchanging draft. Further perusal of the exchange of drafts between the parties makes it clear that the petitioner in fact has requested the Insurance Company to include clause 6 b in the agreement leading to the

circumstances under which the petitioner was made to agreeable, however the particular clause has been omitted in the final draft sent by the Insurance Company. From the correspondence this Court is able to see that all the draft settlement agreement drafted by the Insurance Company and the request of the petitioner to include the circumstances which lead him to accept such settlement is also removed from the draft and final draft has been sent as if there is no dispute with regard to the quantum. Accordingly the settlement agreement has been signed by the petitioner. It is also relevant to be noted that when the amount is sent to the bank the petitioner has also recorded its protest by email communication to the respondent. Therefore taking into totality of circumstances the manner in which the final settlement agreement came into existence particularly only when the petitioner account was classified as NPA by the bank due to the default committed by them that too during the period from the date of accident till the date of settlement, this Court is of the view that when the person was forced to agree for certain matter when he was particularly in economic duress the same cannot be taken as advantage by the insurance company, to contend that the matter has reached its finality and there is no dispute at all. Quantifying the amount of Rs.9 crores even before the final survey report received by the Insurance Company makes it clear that the petitioner has been forced to enter into such compromise. Accordingly this Court is of the view that the very contract itself shows that if there is a dispute with regard to the quantum the matter has to be referred only to arbitration. Accordingly Justice Mr.Paul Vasanthakumar

(Former Chief Justice of Jammu & Kashmir) is appointed as the Sole Arbitrator to enter upon the reference and 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 the order. Fees of the learned Arbitrator shall be as per the schedule of the Act, which shall be borne by the parties equally. Considering the prevailling situation (Covid-19) arbitration can also be had through video conference.

5.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

18.08.2020

Index: Yes/No
Internet : Yes/No
Speaking order/Non speaking order
dpq

N.SATHISH KUMAR, J.

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OP.No.77 of 2020

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