OD 4

ORDER SHEET

AP/8/2019

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

V.N. MARKETING
VERSUS
THE NEW INDIA ASSURANCE COMPANY LIMITED

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 18th March, 2021.

(Via Video Conference)

Appearance:
Ms. Sarbari Datta, Adv.
…for the petitioner

The Court: By this application, under Section 11(6) of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of an Arbitrator.

It appears from the records made available to Court that, the petitioner obtained a Standard Fire and Special Perils Policy from the respondent on October 28, 2016 as amended on December 5, 2016 in relation to a godown of the petitioner. The sum insured under the insurance policy was Rs.7.5 crores and that the same was valid from October 28, 2016 to October 27, 2017.

The petitioner suffered a fire at the place insured on December 25, 2016. The petitioner lodged its claim of insurance with the respondent. The petitioner claimed a sum of Rs.5,59,59,789/-. The respondent assessed the claim and released a sum of Rs.2,09,87,437/- towards the claim of the petitioner. According to the respondent, the claim of the petitioner was paid in full and final settlement. The petitioner disputes receipt of such sum in full and final settlement.

The petitioner issued a notice dated August 2, 2018 invoking the arbitration clause in the insurance policy. The respondent replied thereto by the writing dated September 7, 2018. Essentially, the respondent contends that the claim of the petitioner was settled in full and final settlement basis.

The policy of insurance contains an arbitration clause which is as follows:

"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 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."

There is a dispute with regard to the quantum to be paid under the policy of insurance. The petitioner claims a sum in excess of Rs.5 crores. The insurance company paid a sum of Rs.2 crores and odd allegedly on full and final settlement basis.

There are at least two disputes, which are still live and governed by the arbitration agreement between the parties. One of the disputes is with regard to the quantum and the other dispute is as to whether the petitioner discharged the insurance company on full and final settlement basis on receipt of the sum of Rs.2,09,87,437/-.

Despite the invocation of the arbitration agreement, the parties failed to appoint any Arbitrator.

In such circumstances, it would be appropriate to appoint Mr. B. S. Sinha Roy, Bar Library Club as the Arbitrator. The learned Arbitrator is at liberty to fix his own remuneration to be shared equally by the parties. The parties will bear the costs and expenses of the arbitration.

The parties will inform the learned Arbitrator of this order.

AP/8/2019 is, therefore, disposed of.

(DEBANGSU BASAK, J.)

B.Pal