

AP No. 214 of 2018
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

BHANU FARMS LIMITED
VERSUS
SBI GENERAL INSURANCE COMPANY LIMITED

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

(Via Video Conference)

Appearance:
Mr. Meghajit Mukherjee, Adv.
Ms. Priyanka Sharma, Adv.

Mr. M. Dutta, Adv.

The Court :- The petitioner seeks appointment of an arbitrator under Section 11[6] of the Arbitration and Conciliation Act, 1996.

The petitioner entered into a contract of insurance with the respondent.
The contract of insurance contains an arbitration clause which is as follows:-

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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.

It is clearly agreed and understood that no dispute or difference shall be preferable to arbitration as hereinbefore 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.

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The petitioner lodged a claim under the contract for insurance. The claim was for Rs. 3,66,51,426/-. The petitioner received a sum of Rs. 1,37,57,547/-.

The petitioner issued a notice for arbitration. No arbitrator being appointed. The petitioner is before Court.

Learned Advocate appearing for the respondent submits that, there is no live claim to make the petition under Section 11 of the Act of 1996 maintainable. He submits that, the petitioner was paid in full and final settlement of the claim that being so, the present petition is not maintainable. In support of his contention he relies upon the discharge letter issued by the petitioner.

It is the contention of the petitioner that, the payment was received under protest. The petitioner did not discharge the respondent finally by receipt of the payment.

The arbitration agreement is otherwise not disputed by the parties. The claim of the petitioner falls within the arbitration agreement. The issue as to whether the petitioner accepted the payment of the respondent on full and final

basis cannot be finally pronounced. At this stage, therefore, it would be appropriate to refer the disputes to the arbitration.

Mr. Partha Sarathi Bhattacharjee, Senior Advocate, Phone No. 9831218250 is appointed as the Arbitrator in terms of the arbitration agreement existing between the parties. 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 in equal share.

The parties are at liberty to inform the Arbitrator of this order.

AP No. 214 of 2018 is disposed of accordingly.

(DEBANGSU BASAK, J.)