OD-4

AP/432/2020

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SAGAR VYAPAAR PVT. LTD.
Versus
UNITED INDIA INSURANCE COMPANY LTD.
…………

BEFORE:
The Hon'ble JUSTICE ASHIS KUMAR CHAKRABORTY
Date : 19th January, 2021.

Mr. S. Bhattacharyya, Ms. Trini Joarder, Advs… for the petitioner.

Mr. Soumendranath Gangopadhyay, Adv…for the respondent.

The Court : In this application under section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, 'the Act of 1996') the petitioner Company pray for appointment of an Arbitrator to adjudicate its claim against the respondent insurance company relating to the Standard Fire and Special Perils Policy No.0306001117P117855363 dated March 21, 2018 (hereinafter referred to as 'the said policy document'). The said policy document was valid between midnight of March 21, 2018 and midnight of March 20, 2019.

Clause 13 of the policy document contemplates 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 & Conciliation Act, 1996. It is clearly agreed and understood that no difference or dispute shall be referable 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."

According to the petitioner, on January 7, 2019 a fire broke out at the insured premises and they lodged a claim with the respondent under the policy document assessing its damages to an amount of Rs.79,74,640/-. Out of the said total claim of Rs.79,74,640/- the respondent insurance company allowed the petitioner's claim for Rs.37,97,84/- and the petitioner received the said amount. Thereafter, the petitioner issued a notice dated July 2, 2020 to the respondent insurance company, under Section 21 of the Act of 1996 requesting them to refer the balance claim of Rs.41,76,816/- to an arbitrator named by them. The respondent insurance company, however, refused to accede to the request of the petitioner Company to refer their claim for

Rs.41,76,816/- to arbitration. Thus, the petitioner company has been constrained to file the present application seeking the relief mentioned hereinabove.

An objection has been raised on behalf of the respondent insurance company to the maintainability of the present application. It is contended that the petitioner company received the said amount of Rs.37,97,824/- by recording a clear and unambiguous remark that they received the said sum as full and final settlement of the claim against the insurance company. Thus, according to the respondent insurance company the present petitioner's further claim is barred by the principle of 'accord and satisfaction'. It is to be noted that the respondent company, however, did not dispute the existence of the aforementioned arbitration clause contained in the said insurance policy.

In reply, it is, however, submitted by the petitioner that subsequent to the receipt of the said sum of Rs. 37,97,824/- by letter dated January 30, 2020 the petitioner company informed the respondent insurance company that they received the said sum under protest and without prejudice to their rights and contentions. It is further submitted that in any event whether the petitioner's claim in the present case is barred by the principle of 'accord and satisfaction' falls within the jurisdiction of the arbitration to decide such issue, under Section 16 of the Act of 1996.

Considering the facts of the case as discussed above, I find that in view of the provisions contained in Sub-section(6A) of Section 11 of the Act of 1996 when the existence of the arbitration agreement is not in dispute, it falls within the jurisdiction of the arbitrator under Section 16 of the Act of

1996, to decide the defence of the respondent insurance company based on the principle of 'accord and satisfaction'.

For the reasons aforesaid, the application, AP No.432 of 2020 is disposed of with the following directions.

Mr. Amitabha Ghosh, Advocate, Bar Library Club(First Floor) is appointed as the sole Arbitrator to decide the disputes arising between the petitioner and the respondent insurance company with regard to the petitioner's claim of Rs.41,76,816/-.

The Arbitrator shall be paid a consolidated remuneration of Rs.7 lakh which shall be borne by the parties in equal shares. The Arbitrator shall also engage the secretarial staff whose remuneration shall also be borne by the parties in equal shares.

Needless to mention that if the respondent insurance company files an application under Section 16 of the Act of 1996 on the ground that the petitioner's claim is barred by the principle of 'accord and satisfaction', the same shall be decided by the Arbitrator at the earliest.

There shall, however, be no order as to costs.

All Parties, including the Arbitrator shall act on a certified website copy of this order.

(ASHIS KUMAR CHAKRABORTY, J.)

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