

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.356 OF 2019

Triveni Adhesives and Tapes ... Applicant
vs.
The New India Assurance Co. Ltd. ... Respondent

Mr. Amrut Joshi a/w. Ms. Deepa Mani and Ms. Karishma Ahuja i/b, M/s. D. M. Legal Ventures for the Applicant.
Mr. Milind More a/w. Mr. Himanshu B. Takke for the Respondent.

CORAM : A. K. MENON, J.
DATED : 2nd SEPTEMBER, 2021.

P.C. :

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator under a Contract of Insurance. Appointment of Arbitrator(s) in terms of arbitration clause embodied in policy of insurance is reproduced below :

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.

2. It is the case of the applicant that the respondent has disputed applicants entitlement to invoke arbitration clause. A few facts must be set out in brief. The applicant is a registered partnership firm engaged in the business of manufacturing of tapes and packaging materials at Noida, Uttar Pradesh. It had obtained insurance cover for its business premises under a Standard Fire and Special Perils Policy from the respondent's divisional office at Khakra, District- Baghpat, Uttar Pradesh since the applicants business was also located at Noida, Uttar Pradesh.

3. On 2nd August, 2018 an incident of fire was reported. It resulted in the claim being made by the applicant. The claim was settled by the insurance company by paying a sum of Rs. 2,00,51,502/- in full and final settlement. The amount was accepted in full and final settlement by the applicant. However thereafter the applicant contended that the claim had not been finalised. The Surveyors had not considered the claim properly. Consent of

the petitioner was obtained recording satisfaction of the claim as a pre-condition for release of the amount. Mr. Joshi submits that the applicants were coerced and subjected to undue influence as a result of which consent letter came to be signed.

4. There is no dispute that the sum of Rs. 2,00,51,502/- was received on or about December, 2018. The applicant however sought to rescind the consent by issuing notice dated 5th March, 2019 contending inter alia that Surveyor had made an arbitrary assessment of Rs.78,35,927/-. That subsequently under pressure one of the partners of the firm succumbed and accepted Rs. 2,00,51,502/- in full and final settlement. They called upon the respondent to pay a further sum of Rs. 1,80,00,000/-. This was duly countered by the respondent by denying the claim. Thereafter the applicant invoked arbitration vide Advocates letter dated 28th May, 2019 and nominated an arbitrator in New Delhi and called upon respondent to nominate an arbitrator. The respondent refuted the proposed invocation of arbitration leading to the filing of the present application around September, 2019.

5. The respondent has contested this on the basis of their affidavit in reply dated 18th October, 2019 in which they have set out that the cause of action if any arose entirely within the jurisdiction of Courts in Uttar Pradesh. The contract of insurance was in respect of the applicants business at Noida,

Uttar Pradesh, the incident of fire took place in Noida, Uttar Pradesh, Policy was issued from the respondent's office at Khekra, Uttar Pradesh and payments were made by the respondent and accepted by the applicant in Uttar Pradesh beyond the outside of this Court and therefore this Court has no jurisdiction to entertain the present application. Indeed perusal of the policy does indicate that it is issued locally from Khekra office of the respondent and the cause of action does appear to have occasioned in Uttar Pradesh. When this was pointed out to Mr. Joshi he admitted that the policy had indeed been issued in Uttar Pradesh, the applicants business is conducted in Uttar Pradesh and the fire also took place in factory in Noida, Uttar Pradesh.

5. According to Mr. Joshi a part of the cause of action arises within the jurisdiction of this Court. He relies upon Clause XII of the Letters Patent and states that if a suit were to be filed in this Court, leave can be granted under Clause XII of the Letters Patent by this Court. Thus he submits this application is properly filed in this Court. To a query as to which part of the cause of action had arisen within the jurisdiction of this Court Mr. Joshi submitted that the registered office of the respondent is located in Mumbai and hence the cause of action arose in Mumbai.

6. Mr. Joshi learned counsel for the applicant also relied upon decision of *Mayavati Trading Private Ltd vs. Pradyut Deb Burman (2019) 8 SCC 714* and *Uttarakhand Purv Sainik Kalyan Nigam Ltd. vs. Northern Coal Field*

Limited (2020) 2 SCC 455 to buttress the argument on the basis that under Section 11 (6-A) the Court was only concerned with examining whether an arbitration agreement existed between the parties and nothing more. He relied upon observation of the Supreme Court in paragraph 10 in *Mayavati Trading (supra)* which in turn refers to paragraph 48 and 59 of *Duro Felguera, SA (2017) 9 SCC 729*. This aspect was also reiterated in *Northern Coal Field Limited* in paragraph 7.3.

7. Relying upon notification dated 30th August, 2019 he submitted that deletion of Section 11(6-A) has not been brought into effect and therefore the law as it stands requires this Court to only ascertain whether or not an arbitration agreement exists and nothing beyond. According to Mr. Joshi if there is the arbitration agreement, which indeed there is, the Court must refer disputes to arbitration and in Mumbai. Mr. Joshi has thus identified source of the applicants entitlement to move this court as Clause XII of the Letters Patent.

8. I am afraid that I am unable to agree since no part of the cause of action in the instant case has arisen within the jurisdiction of this court. Even assuming that the applicants were entitled to rely upon Clause XII, merely having registered office within the jurisdiction of this court would not give rise to a cause of action, because as revealed in the application the entire bundle of facts including issuance of the Policy, the unfortunate fire,

settlement of the claim took place in Uttar Pradesh. The contract of insurance was issued in Khekra, Uttar Pradesh beyond the jurisdiction of this court. Assuming that the respondent has breached this contract such cause of action, would not arise within the jurisdiction of this Court.

9. Prima facie I am inclined to accept the objection raised by the respondent. Mr. Joshi has premised his argument only on the basis that if the suit was to be filed it was required to be filed after obtaining leave. In the present case there is not even an averment of that nature in this application. Even otherwise if a suit was to be filed explanation to Section 20 of the Code of Civil Procedure provides as under :

[Explanation] – A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Thus if a suit were to be filed by the applicant for recovery of any amount from the respondent it would have to be filed at the place where the respondent had its subordinate office and hence not before this court. Moreover the application does not even contemplate filing of the petition before this Court on the basis that if leave is granted under Clause XII this Court would have jurisdiction. Thus in my view there is no merit in the application and accordingly I pass the following order :

- (i) Commercial Arbitration Application is dismissed.
- (ii) No cost.
- (iii) This order will not in any manner prejudice the applicants entitlement to prosecute any claim they may have in accordance with law.

(A. K. MENON, J.)