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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 248/2021&I.A. 9053/2021**

PANCHANAN INTERNATIONAL PRIVATE LIMITED

..... Petitioner

Through: Ms. Mumtaz Bhalla & Mr.
Harshul Chaudhary, Advs.
along with Mr. Navin Goel,
Authorised Representative of
the Petitioner

versus

THE ORIENTAL INSURANCE COMPANY LIMITED

..... Respondent

Through: Mr. Vishnu Mehra & Mr. Anant
Mehrotra, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

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28.07.2021

(Video-Conferencing)

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("the 1996 Act", in short), for reference of the disputes between the parties to arbitration. The substratum of the disputes stands set out in sub-paras (b) to (z) of Para 1 of the petition, which, for ready reference, are reproduced thus:

"b) The Petitioner, Panchanan International (Private) Limited, is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at CB-374, Main Ring Road, Narayana, opp. Maruti Service Station, New Delhi - 110028. The Petitioner *inter alia* is a wholesale

trader and distributor of readymade garments, undergarments of various brands since 1998 in New Delhi and has ventured in online sales of branded products.

c) The Petitioner was incorporated in the year 1998 and is one of the leading distributors/suppliers of wholesale garments and undergarments in Delhi and Uttar Pradesh.

d) The present Petition is being filed for, and on behalf of the Petitioner by Mr. Naveen Goel who is duly authorized to file, institute, sign and verify the same on behalf of the Petitioner by virtue of Board Resolution dated 18/01/2013.

e) The Respondent, The Oriental Insurance Company Limited, is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Oriental House, A-25/27, Asaf Ali Road, New Delhi - 110002. The Respondent is an Insurance Company that provides various types of general insurance covers to cater to the needs of both the urban and rural population of India.

f) As per its business model, the Petitioner purchased garments from reputed brands and sold them to showrooms in its territory as well as to online sale platforms. As per the agreements between the Petitioner and the brands regarding the stock, the Petitioner was the owner of the stocks and had full discretion to dispose off the stock purchased by it from such brands. Under the said agreements, the Petitioner was entirely responsible for the safety and security of the stocks and was required to insure the stocks in its possession. With a view to protect its stocks, the Petitioner purchased a Standard Fire and Special Perils Floater Insurance Policy numbered 215502/11/2017/53 ("**The Policy**") on 10.05.2016, from the Respondent, upon payment of a premium of INR 2,50,326/- (Indian Rupees Two Lacs Fifty Thousand Three Hundred and Twenty Six Only).

g) As per the Policy, the Respondent had insured the Godowns and Silos of the Petitioner for risks and losses up to an amount of INR 30,00,00,000/- (Indian Rupees Thirty Crores) in case of any damage and/or destruction caused by Fire. Since the nature of the Policy was floater, Godowns and Silos of the Petitioner situated at four different locations were insured against risks. In addition to the Basic Fire Cover, the

Petitioner had also purchased an additional cover of INR 30,00,00,000/- (Indian Rupees Thirty Crores), for risks from Fire and Shock damage caused as a result of Earthquakes. The policy was brought out for a period of one year and was valid up till 09.05.2017. As per the terms of the Policy, the four locations that were insured were:

- i. CB-374, Ring Road, Basement, GF, FF, SF, Narayana, Indra Market, New Delhi-110028,
- ii. Godown, CB-380, Ground Floor, Ring Road, Narayana, Indra Market, New Delhi-110028,
- iii. Godown, B 98-99, Sector-6, 1st Floor, Noida, Uttar Pradesh-201301, and
- iv. Shed at 53/73, Nangli Poona, Opp-DIRD College, GTKarnal Road, Delhi-110036.

h) That the warehouse of the Petitioner situated at Shed No. 53/73, Nangli Poona, GT Karnal Road, Delhi-110036 ("**the Godown**") caught Fire on 25.04.2017 at around 21:10 hours, as a result of an electrical shock. Upon being made aware of the Fire, the Petitioner immediately called the local Fire Department seeking urgent assistance in dousing the Fire. The Fire Brigade arrived at the scene immediately thereafter, and the Fire was brought under control by 08:00 am next morning with the help of over 50 fire tenders. The intensity of the fire was so high that it took almost 12 hours to douse the fire completely.

i) As soon as the fire was doused on the morning of 26.04.2017, the Petitioner immediately sent an intimation of the incident to the Respondent, pursuant to which M/s Aditi Insurance Surveyors and Loss Assessors Pvt. Ltd ("**the Surveyor**") were appointed by the Respondents to carry out a Survey of the Godown, to ascertain the nature of fire and the quantum of damage. Accordingly, a detailed survey was carried out by the Surveyor to prepare its report.

j) On 10.07.2017, the Petitioner submitted its Claim for an amount of INR 37,27,22,010/- (Indian Rupee Thirty Seven Crore Twenty Seven Lacs Twenty Two Thousand and Ten Rupees only) ("**the Claim**") towards the damage caused by

Fire, to the Respondent, contemporaneously forwarding a copy of the same to the Surveyors along with supporting evidence.

k) The Petitioner from time to time supplied voluminous and exhaustive information/ documents/ clarifications/evidence in support of its Claim to the Respondent, as well as the Surveyor in terms of the Respondent's directions. In fact, the representatives of the Petitioner also attended several meetings with the Surveyor and the Respondent, for providing clarifications, as and when sought, for facilitating smooth processing of the Claim.

l) Upon the conclusion of the Survey, it was established that the fire was caused due to an electrical short-circuit, thereby rendering the Respondent liable to pay towards the loss of the Petitioner, in terms of the Policy. However, while the Surveyor was valuing the losses, the Petitioner received an e-mail dated 08.03.2018, from the Surveyors, *inter alia* informing the Petitioner that since the majority of the goods purchased from United Colors of Benetton were not yet paid for, they seemed to be goods held in trust, therefore, as per exclusion number 5 of the Policy, they would not be paid for by the insurer and the quantum of Claim would be reduced.

m) The Petitioner vehemently objected to this incorrect understanding of the Surveyor, *inter alia* clarifying that the Petitioner was the absolute owner of the goods, further having an insurable interest in the goods in terms of the Agreements under which the goods were purchased. The Petitioner also informed the Surveyor that there was just one insurance policy pertaining to the goods, which was brought out by the Petitioner, as it had an insurable interest in the goods and the Petitioner was the owner of the goods.

n) Accordingly, while there existed no obligation on the Petitioner to be the owner of the goods, it submitted several documents establishing its ownership for quick processing of the Claim. The Petitioner also issued a response to the Surveyor's email on 10.03.2018 *inter alia* clarifying its stand further objecting to the applicability of the alleged exclusion clause on the ground that exclusion no. 5 of the Policy did not mention "*goods held in trust*" and any exclusion not mentioned in the Policy, could not be used as a ground to

under value the Claim of the Petitioner.

o) The Petitioner explained that it had an insurable interest in the goods, while it was also the owner, as title in goods passed on with the delivery of goods and that it was within its rights to utilize the goods in any manner whatsoever, without any hindrance and/or objection from UCB.

p) To resolve the issues pertaining to the quantum of Claim, a tripartite meeting was held between the Surveyor, the Respondent and the Petitioner, subsequent to which, the Petitioner and UCB submitted several pieces of evidence to the Surveyor for establishing the Petitioner's ownership of the goods. An affidavit in this regard was also submitted by the Mr. Sandeep Chugh, Managing Director and CEO of UCB, India, *inter alia* stating good were not sold to the Petitioner on consignment basis and the Petitioner was at full liberty to store and sell the goods as it was the absolute owner.

q) Upon being satisfied with the documents and information provided to it, the Surveyor recalculated the loss and after multiple verifications spanning over a period of 15 months, the Surveyor valued the Loss caused to the Petitioner at INR 20,65,27,032/-(Indian Rupees Twenty Crores Sixty Five Lacs Twenty Seven Thousand Thirty Two only), vide its Report dated 09.07.2018.

r) The Petitioner disagreeing with the findings in the Survey Report to the extent of the differential claim of INR 10 crores approximately, approached the Respondent for recalculation. Pursuant thereto, the Petitioner held several meetings with the officials of Oriental Insurance at the Branch/ District/Regional Offices and Head office. In all these meetings, the Petitioner repeatedly shared all the documents/ information/ evidence, as required by the Respondent, however, despite the elapse of an elongated period of more than 15 months (in blatant violation of IRDA Guidelines), the Petitioner neither received any payment from the Respondent nor did it receive any clarification. Such failure on the Respondent's part to timely process the Petitioner's Claim, despite admitting the liability under the Policy, has resulted in a material breach on the Respondent's part.

s) It may be relevant to state here that every time the Petitioner approached the Respondent to process the payment of its Claim, the Respondent, informed the Petitioner that the Respondent were ready and willing to pay an undervalued Claim of INR 65,86,125/- (Indian Rupees Sixty Five Lakhs Eighty Six Thousand One Hundred and Twenty Five Only), instead of the actual entitlement of INR 30,00,00,000/- towards the loss of INR 37,27,22,010/- without any justifiable reasons. Upon being asked for reasons for reducing the quantum of the Claim, the Respondent, did not clarify/specify any reason but merely called upon the Petitioner to accept the same. It may not be out of place to mention herein that the basis for undervaluation of the claim has not been specified by the Respondent till date.

t) Since the Petitioner's loss was much more than the reduced quantum the Respondent was ready and willing to pay, the Petitioner did not show any inclination in accepting the under-valued Claim and called upon the Respondent to process the full value of the Claim up to the coverage of INR 30,00,00,000/-. Since the Respondent had admitted its liability to pay in terms of the Policy, the Petitioner was at a loss to understand why would the Respondent not pay the whole claim and reduce the quantum of the claim unreasonably, even when the Respondent's own Surveyors had valued the loss at least at INR 20,65,27,032/- . In these circumstances, upon not receiving the Claim amount, the Petitioner was constrained to issue several reminders on 14.07.2018, 30.07.2018, 06.08.2018, 25.09.2018, 23.10.2018, 13.11.2018, 10.12.2018, 24.01.2019, 15.03.2019, 01.04.2019, 17.05.2019, 11.06.2019, 19.10.2019, and 24.01.2020 requesting the Respondent to process the correct Claim amount or inform its decision to the Claimant.

u) However, to the utter shock and dismay of the Petitioner instead of receiving the amount of INR 30,00,00,000/- towards the Claim request of INR 37,27,22,010/-, it received an e-mail dated 12.03.2020 from Mr. Rajeev Chopra, Senior Assistant at the Mayapuri Branch of the Respondent that a meagre sum of INR 65,86,125/- (Indian Rupees Sixty Five Lakhs Eighty Six Thousand One Hundred and Twenty Five Only) was approved towards full and final settlement of the Claim and the Petitioner should accord its consent. Importantly, even this communication was

bereft of any reason whatsoever for undervaluing the Claim. The said unilateral reduction/incorrect calculation of the Claim amount was without any legal basis/justification and evinced malafide on the Respondent's part.

v) Thereafter, the Respondent vide its emails dated 29.05.2020 and 23.06.2020 called upon the Petitioner to accord consent to the reduced quantum offered and to complete post- approval formalities. The Respondent while approving the Claim, simultaneously threatened the Petitioner stating that in case the Petitioner did not consent to the proposed amount as a full and final quantum, the Respondent would close the Petitioner's Claim as "No Claim".

w) Since the entire stock of garments was gutted during the Fire on 25.04.2017, denial of the Claim belatedly, that too without any reason and/or basis/justification resulted in material breach under the Policy. Being aggrieved by the Respondent's illegal acts, the Petitioner again wrote to the Respondent on 26.06.2020, protesting the offer of a meagre compensation and requested the Respondent to provide the reasoning for undervaluing the Petitioner's claim and to share the basis of calculation of the proposed settlement offer. The Petitioner in its email also highlighted the fact that the said offer did not even match the Respondent's own Surveyor's report which though incorrectly undervalued the Petitioner's entitlement yet approved a huge loss of almost INR 20 crores approximately.

x) On 21.07.2020, the Petitioner received another communication from Mr. Anurag Verma, Administrative Assistant at the Mayapuri Branch of the Respondent, providing it with the break-up of their calculation (albeit wrongly) of INR 65,86,125/-, upon the Petitioner's request. However, there was no communication regarding the reasoning behind the reduced quantum despite repeated requests on the Petitioner's part. Subsequently, the Petitioner received another letter from CSD division of the Respondent dated 29.07.2020, informing it that they had received its letter dated 26.06.2020 and action was being taken on the same.

y) However, to the chagrin of the Petitioner, despite being explained of the whole situation, it again received a response from the Respondent on 03.11.2020 reiterating that it had

approved the claim of the Petitioner to the extent specified in emails dated 12.03.2020, 29.05.2020, 23.06.2020 and 21.07.2020 without disclosing its reasons for undervaluing the Claim. Further, the Respondent again threatened the Petitioner, that in case the Petitioner did not consent to the meagre sum offered, then the Respondent would close the Petitioner's Claim as "No Claim".

z) The Petitioner, frustrated by the malafide and high-handed approach taken by the Respondent, wrote a letter dated 05.11.2020 to the Respondent which was sent to the Respondent via Speed Post on 10.11.2020, calling upon the Respondent to disburse the amount due towards the Petitioner's Claim if approved, or in the alternative called upon the Respondent to inform the Petitioner regarding the status of its claim within a period of 7 days."

2. Needless to say, the aforesaid reproduction of paragraphs from the petition shall not amount to an endorsement, by this Court, of the validity of the claims of the petitioner and all defenses of fact and law available to the respondents to contest the petitioners' claim shall be open for agitation before the arbitral tribunal.

3. Though, in its reply to the present petition, the respondent has taken certain objections regarding the arbitrability of the claim, chiefly on the ground that it is not a simpliciter claim relating to quantum of the amount payable to the petitioner and is not, therefore, within the scope of the arbitration clause between the parties.

4. Mr. Mehra, learned counsel for the respondent is, however, agreeable to the matter being referred to arbitration by a sole arbitrator, leaving this defense of the respondent, relating to arbitrability of the dispute, open to agitation before the learned sole

arbitrator.

5. Learned counsel for the petitioner, too, has no objection to this course of action.

6. I am informed that the amount involved in this dispute is in the region of ₹ 30 crores.

7. In view thereof, the Court refers the dispute between the parties to arbitration and appoints Hon'ble Mr. Justice Ajit Bharihoke, a respected retired Judge of this Court, as the learned arbitrator to arbitrate on the disputes between the parties. The contact details of the learned arbitrator are as under:

219, Church/ Mall Road,
Vasant Kunj,
New Delhi

Mobile No.9650110057
Email ID: ajitbharihoke@gmail.com

8. The learned sole arbitrator would be entitled to charge fees in accordance with the Fourth Schedule of the 1996 Act.

9. The learned arbitrator would also submit the requisite disclosure under Section 12(2) of the 1996 Act, within a week of entering on reference.

10. All issues of fact and law, including the arbitrability/ non-

arbitrability of the dispute between the parties, are left open to be agitated before the learned sole arbitrator, who shall proceed to take a decision thereon, after following due process of law in that regard.

11. This petition stands disposed of with the aforesaid terms.

C.HARI SHANKAR, J

JULY 28, 2021

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HIGH COURT OF DELHI



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