

AP/20/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

HIMANGSHU BISWAS
VERSUS
NEW INDIA ASSURANCE CO. LTD.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 15TH MARCH, 2022

APPEARANCE:

Mr. Mainak Basu, Advocate
Ms. Sweta Mukherjee, Advocate
Ms. Mou Saha, Advocate
.....for the petitioner.

Mr. Soumalya Ganguli, Advocate
.....for the respondent

The Court:- Affidavit of service filed in Court be taken on record.

This application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the arbitrator.

The case of the applicant is that the Standard Fire and Special Perils Policy dated 21st May, 2019 was obtained by the applicant against the building super-structure, building plinth and foundation, plant and accessories etc. and that during the Amphan and lockdown the applicant had suffered huge losses, therefore, the claim was submitted and after obtaining the surveyor's report, part of the claim has been paid.

Dissatisfied with the same, the notice invoking arbitration clause was sent by the applicant on 2nd November, 2021, which was replied by the respondent on 23rd November, 2021 refusing the prayer for appointment of arbitrator.

It has been pointed out that the arbitration clause is contained in Clause 13 of the Policy, which reads as under:

“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 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 3 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.”

The Arbitration Agreement and the aforesaid arbitration clause have not been disputed by the learned counsel for the respondent but his only submission is that in terms of the surveyor’s report, payment has been made. Since the applicant is disputing the calculation of amount by the surveyor and is also disputing the amount, which has been received, therefore, I am of the opinion that a case for appointment of arbitrator is made out. Accordingly, Mr. Debasis Halder, retired District Judge is appointed as arbitrator to resolve the dispute between the parties.

The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)