

AP/646/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

GLEN INDUSTRIES PRIVATE LIMITED
VERSUS
ORIENTAL INSURANCE COMPANY LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 23RD SEPTEMBER, 2022

APPEARANCE:

Mr. Suvasish Sengupta, Advocate
Mr. Biswajeeb Ghosh, Advocate
Ms. Sushmita Ghosh, Advocate
.....for the petitioner

The Court:- The affidavit of service filed by the applicant is taken on record.

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

The case of the applicant is that it has taken the Standard Fire & Special Perils policy and had paid the requisite premium. The applicant had suffered damages during the Amphan Cyclone, therefore, the it had approached the respondent insurance company claiming the compensation, which was partly allowed on 25th May 2022. Therefore, for the remaining amount, the arbitration clause was invoked.

Learned counsel for the applicant has pointed out that the policy contained the following arbitration clause:-

“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 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. ”

He has also pointed out that invoking the arbitration clause, the notice dated 8th July 2022 was served upon the respondent with a prayer to appoint the arbitrator within 30 days, but by the response dated 10th August 2022, the respondent had declined the prayer taking the plea that the claim was already settled.

Though a notice of this AP has been served upon the respondent, but no one is present on behalf of the respondent to contest the aforesaid plea.

Hence, in view of the uncontested position, the case for allowing the prayer made in the AP for appointment of sole arbitrator is made out.

Accordingly, AP is allowed.

Mr. Sabyasachi Chaudhury, Advocate of this Court, is appointed as Arbitrator to resolve the dispute between the parties, 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.

(PRAKASH SHRIVASTAVA, C.J.)