IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div). No.532 of 2022

M/s.K.Flex India Pvt Ltd.,
Represented by its Authorised Signatory
Ms.Poonam Dhamecha,

Having its registered office at
707/708, Sohrab Hall, G-Wing,
7th Floor, 21 Sasoon Road,
Pune 411 001. ... Petitioner

Vs.

United India Insurance Company Limited,
Represented by its Divisional Manager,

Having its office at
012000 – D.O.Ambattur,
No.73, CMTH Road,
Ambattur District, Chennai,
Tamil Nadu – 600 053. ... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint the sole arbitrator to constitute the Arbitral Tribunal to resolve the dispute that have arisen between the petitioner and the respondent.

For Petitioner	:	Mrs.Preeti Mohan
For Respondent	:	Mr.H.Rajaram for Mr.R.Narayanan Chandrasekar

<u>O R D E R</u>

This Original Petition has been filed seeking for appointment of Sole Arbitrator to constitute the Arbitral Tribunal to resolve the dispute that has arisen between the petitioner and the respondent.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.The case of the petitioner is that, the petitioner entered into an arrangement with the respondent with an intent to purchase Standard Fire and Special Perils policies for various locations of the petitioner. In furtherance of the same, the petitioner had deposited the requisite premium with the respondent for issuance of Standard Fire & Special Perils Policies to cover buildings (plant and machinery, FFF, miscellaneous equipment) of their various locations and stocks (On Floater Basis) in respect of various risks covered under the policy including any damage caused due to any fire accident for the period between 10.05.2018 to midnight of 09.05.2019. The locations covered under the policies are as follows:

> "(i). Plot No.-F-19/22/23/24, MIDC, Ranjan Gaon, Taluka: Shirur, Pune Maharashtra.
>
> (ii). Plot no. -F-27, MIDC, Ranjan Gaon, Taluka: Shirur, Pune Maharashtra.

4.The petitioner deposited the premium of Rs.9,00,883/- on 09.05.2018 for purchase of Standard Fire and Perils Policy to cover buildings (plant and machinery, FFF, miscellaneous equipment) for locations in Plot No.- F-19/22/23/24, & Plot No. F-27 MIDC, Ranjan Gaon, Taluka: Shirur, Pune Maharashtra for a period between 10.05.2018 to midnight of 09.05.2019 for a sum of Rs. 124.5 Crores and Rs. 25.60 Crores respectively. In addition, the petitioner had also paid premium for covering stocks on floater basis for a sum of Rs. 40 Crores covering both the locations. In furtherance of which, the respondent had issued money receipt for Rs.9,00,883/-, and assured the petitioner that the policy covers for the two locations would be issued subsequently within 2-3 days' time. However, contrary to the same, the respondent failed to process the issuance of the policy covers along with floater premium, despite repeat request through various calls and email communications.

5.Meanwhile, while the petitioner was awaiting for the policy cover in furtherance of the payment made by them as early as on 09.05.2018 and 01.06.2018, one of the petitioner's Units at Plot No. F-27, MIDC, Ranjan Gaon, Tal, Shirur, Pune, Maharashtra witnessed a major fire accident resulting in total destruction of the entire unit including all the plant, machinery and stocks., Owing to the undue delay in issuance of the policy cover by the respondent, at the time of the accident, the petitioner was only in possession of money receipt issued by the respondent to cover various locations, which also includes the accident location. Therefore, the petitioner filed a claim statement with the claim of Rs.40 Crores. The respondent sent an e-mail dated 21.10.2020 to the petitioner, stating that the competent authority has accorded approval for an amount of Rs.31,55,06,541/- as full and final settlement and therefore, the respondent requested consent from the petitioner for settlement of claim. The petitioner by letter dated 22.10.2020 has conveyed their consent for full and final settlement of the captioned claim as approved by the competent authority and a sum of Rs.31,55,06,541/- was settled by the respondent.

6.Now, according to the petitioner, the said consent letter was sent under the compulsion of the respondent to make the petitioner to accept the amount approved by the competent authority for full and final settlement, so that the claim would be disposed off. Since the petitioner suffered financial crisis due to COVID-19 pandemic and was in dire need of the money, they were constrained to send consent letter dated 22.10.2022 accepting the amount of Rs.31,55,06,541/- as full and final settlement.

7.The learned counsel appearing for the petitioner would submit that the petitioner had not virtually accepted the respondent's proposal under the free will, but under the coercion and the pressure on the part of the respondent. Hence, he would submit that there is no dispute with regard to the entitlement of the whole claim by the petitioner and the present dispute is very well can be arbitrable in terms of Arbitration Clause 13 of the contract, which is extracted herein 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 an 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."

8.The learned counsel appearing for the petitioner would further submit that on 31.03.2022, the petitioner sent a letter to the respondent stating that the respondent has not released the entire claim as the petitioner is entitled for. For the said letter, on 02.05.2022, the respondent sent a reply stating that the claim of the petitioner was settled as full and final settlement to a sum of Rs.31,55,06,541/- and therefore, the petitioner is not entitled to any further claim than what was already settled.

9.Therefore, invoking arbitration clause, the petitioner on 03.05.2022 sent a letter to the respondent suggesting nominees for appointment of the sole arbitrator to adjudicate the present dispute. However, the respondent vide reply dated 06.05.2022, refused for the appointment of the arbitrator, which prompted the petitioner to come forward with the present application seeking for the appointment of the arbitrator.

10.On the other hand, the learned counsel appearing for the respondent would submit that there is no valid dispute which liable to be referred to the Arbitrator for adjudication as contended by the petitioner. The petitioner, in clear terms, has accepted the sum of Rs.31,55,06,541/- towards full and final settlement of the entire claim by virtue of letter dated 22.10.2022. Upon receipt of the said letter, the claim of the petitioner was settled by the respondent. Subsequent to the final settlement made by the respondent and after receipt of the settled amount and after lapse of two years period, the petitioner has sent a letter to the respondent, again raising the claim, seeking to settle the balance claim by virtue of the letter dated 31.03.2022, which is unsustainable and there is no valid claim on the side of the petitioner. When there is no valid claim, the dispute cannot be referred to the arbitration.

11.Further he would submit that the petitioner is not entitled for a sum of Rs.23,30,75,722/- in respect of the claim relating to stocks since the stocks was insured for a sum of Rs.15 Crores only and therefore, it is in violation of General Condition No.10 of the Policy. Therefore, he would contend that there is no merit in the claim of the petitioner and hence the same is liable to be rejected.

12.In reply, the learned counsel for the petitioner would contend that the petitioner paid a premium not for Rs.15 Crores towards stocks but for total amount of Rs.40 Crores on floater basis covering both locations 1 and 2. Therefore she would contend that the premium is not restricted for Rs.15 Crores. All these aspects can only be considered by the Arbitrator and not by the Court. Therefore, she would urge that the sole arbitrator may be appointed to adjudicate the present dispute.

13.Both the learned counsel referred to various judgments rendered by the Hon'ble Apex Court as well as this Court.

14.Upon perusal, it appears that there is no dispute with regard to the arbitration clause. The only dispute is that the respondent denying the claim of the petitioner for the entire sum of Rs.40 Crores, since the petitioner restricted their claim to an extent of Rs.31,55,06,541/- and accepted the same towards full and final settlement and after the settlement is over, now the petitioner again raised claim to pay the balance amount of Rs.8.45 Crores. There is also no dispute with regard to the loss of stocks and other machineries as claimed by the petitioner. Now, the issue is whether the petitioner accepted for a sum of Rs.31.55 Crores towards full and final settlement or not ?

15.When the claimant made a claim, the insurance company would adjudicate the claim and value the claim based on the valuation report, thereafter without any pre-condition whatever the amount approved in the valuation report, would be settled by the insurance company. While settling the claim, it would not be appropriate for the insurance company to ask for or suggest or compel the petitioner to give a consent for full and final settlement towards the lesser amount that what the petitioner is actually entitled to as per valuation report. The insurance company have to fairly adjudicate the claim without any prejudice to the claimant. But, in the present case, it is very clear that the petitioner accepted for a sum of Rs.31.55 Crores in the place of actual claim of Rs.40 Crores as full and final settlement at the instance of the insurance company, insisting to accept the settlement. The petitioner company, being receiver end, no doubt, they would have accepted for full and final settlement because they already suffered financial loss due to Covid-19 pandemic. Generally, the Insurance Company ought not to have sent such letter to the petitioner, on the other hand, it should have sent a letter with regard to the entitlement of the petitioner after adjudication, without insisting any consent from the petitioner for the full and final settlement. It is pertinent to note that full and final settlement was not mooted by the respondent prior to the adjudication. Even there is any adjudication, they should have intimated the actual entitlement of the petitioner as per the adjudication and that would be a proper course.

16.That apart, the petitioner made a claim stating that they have paid the premium for Rs.40 Crores, whereas, coverage is for Rs.15 Crores. These issues cannot be decided by this Court. It is not in dispute that there is arbitration clause in the policy, by virtue of which, the disputed between the parties can be adjudicated by the arbitrator. Even though the petitioner has sent letter, suggesting for appointment of the Arbitration, the respondent vide reply dated 06.05.2022, refused for the appointment of the arbitrator. In such circumstances, this Court is of the view that the petitioner has made out a case for appointment of the Arbitrator for adjudication of the dispute between the parties. Accordingly, this Court passes the following order:

i) Hon'ble Mrs.Justice R.Banumathi, Former Judge, The Hon'ble Supreme Court of India, residing at C-20, C-Block, Ground Floor, Defency Colony, New Delhi -110 024, contact No. 7042955477 is hereby appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) That the learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii) That the learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by her and the same shall be borne by the parties equally.

iv) In case the respondent does not turn up and participate in the adjudication, the petitioner shall pay the entire remuneration and other incidental charges at first, and recover the same from the respondent.

17. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator. The learned Arbitrator shall decide the matter on merit without being influenced by any of the observations made by this Court.

rst **13.12.2022**

Note: Issue Order Copy on 04.01.2023

KRISHNAN RAMASAMY, J.

rst

Arb. O.P.(Com. Div.)
No. 532 of 2022

13.12.2022