



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO. 211 OF 2021

Siyaram Silk Mills Ltd.

...Applicant

Versus

Cholamandalam Ms General Insurance

...Respondent

* * *

- Mr. S. L. Shah i/b Shah Legal, for Applicant.
- Mr. Tushar Bendale, for Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 23rd AUGUST, 2023

P. C. :

1. By this application filed under Section 11 of the Arbitration and Conciliation Act, 1996, the Applicant is seeking appointment of Arbitrator in the light of an Arbitration Clause contained in an Insurance Policy issued by the Respondent in favour of the Applicant.

2. It is submitted that the claim of the Applicant arose out of an incident of fire which caused damage to goods. According to the Applicant, quantum of compensation payable to the Applicant was as per the claim raised by the Applicant.

3. The learned Counsel appearing for the Applicant has invited attention of this Court to the documents annexed to the application to show that the Respondent has partly paid the amount of compensation, but refused to pay the entire amount, on the basis

that it is liable to pay only the amount which stood admitted on the part of the Respondent i.e. 50% of the total claim.

4. The learned Counsel for the Applicant invited attention of this Court to the arbitration clause in the Insurance Policy and he submitted that the nature of dispute arising between the parties is clearly arbitrable under the said clause. It is submitted that, by notice dated 01st July, 2019, the Applicant specifically invoked the arbitration clause, to which the Respondent did send a reply, but denied its liability beyond 50% of the total claim of the Applicant.

5. The Respondent has appeared through Counsel and the learned Counsel for the Respondent submits that in view of the specific stand taken on behalf of the Respondent it would be evident that liability has not been admitted by the Respondent and therefore, the dispute is not covered under the arbitration clause as it stands. On this basis, it is submitted that this Court may not allow the present application.

6. This Court has considered the arbitration clause, which reads as follows :

“ARBITRATION CLAUSE IN POLICY

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 ddays of any party invoking arbitration, the same shall be referred to a panel of three arbitrator, 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.”

7. The invocation notice is also perused, wherein the arbitration clause is invoked. The response thereto on behalf of the Respondent demonstrates that according to the Respondent, it has already paid the quantum of compensation for which it is liable i.e. 50% of the total claim. The aforesaid stand of the Respondent is based on its interpretation of the Insurance Policy to the effect that since the goods at the time of the incident were with a third party, the

remaining claim of the Applicant should be made good on the basis of Insurance Policy that may have been taken by the third party to whom the goods had been entrusted. This contention of the Respondent is stoutly denied by the Applicant and it is submitted that the very nature of dispute being relatable to the quantum of claim of the Applicant payable by the Respondent, the dispute needs to be referred to arbitration under the said Arbitration clause.

8. This Court has considered the rival submissions. The stand taken on behalf of the Respondent ultimately impinges upon quantum of compensation to which the Applicant would be entitled.

9. On a perusal of the Arbitration Clause and the documents filed with the present application, this Court is convinced that an arbitrable dispute does arise between the parties and that therefore, particularly when the Applicant invoked the arbitration clause, the parties need to be sent to arbitration.

10. Considering the quantum of the dispute between the parties, it would be appropriate that an advocate practicing in this Court is appointed as a sole Arbitrator for resolution of disputes between the parties.

11. At this stage, the learned Counsel for the parties, on instructions, jointly agree to appoint Mr. Sachin Kadam, advocate

practicing in this Court as the sole Arbitrator.

12. Accordingly, Mr. Sachin Kadam, Advocate, is appointed as the sole Arbitrator. The details of the learned Arbitrator are as follows :

Mr. Sachin Kadam,
C/o. Sawant Associates,
6/106, 2nd Floor, Jain Hind Building,
Nagindas Master Road,
Next to Dwarka Hotel, Fort, Mumbai.
Mob. No. 8104516673
email : advkadam@gmail.com

13. The parties are directed to immediately inform the learned Arbitrator about the order passed today.

14. The learned Arbitrator is requested to communicate his consent and Disclosure Statement as per Section 11(8) r/w Section 12(1) of the said Act, within four weeks.

15. The fees of the Arbitrator shall be as per Schedule IV to the Aforesaid Act.

16. All questions are kept open.

17. The application stands disposed of.

(MANISH PITALE, J.)