

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.305 OF 2021

Wellknown Polysters Ltd.] .. Applicant

vs.

The Oriental Insurance Co. Ltd.] .. Respondent

Mr.Dhiraj Mhetre, Sonali Mehta and Nayan Mahar i/b Khaitan Legal Associates for the Applicant.

Mr.Vipul Shukla i/b S. Shenoy & Associates for Respondent.

CORAM : BHARATI DANGRE, J

DATE : 11th JANUARY, 2023.

P.C.

1] The present Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 seek appointment of a Sole Arbitrator in the wake of Clause 12 contained in 'Industrial All Risks Insurance Policy' bearing No.112500/11/2014/721.

The dispute arose between the parties when the Respondent-Insurance Company failed to live upto its promise for compensating the insured, when fire broke in the Plant of Applicant on 10.07.2014. After appointment of Surveyor by the Respondent to assess the liability, claim of Rs.56,08,15,705/- was staked as claim amount, but the Respondent has paid only, sum of Rs.45,38,61,322/- towards full and final settlement.

2] The Applicant contend that there is deficit payment of Rs.10,69,54,383/-, based on the surveyors report arising out of damages and loss caused and hence he invoked arbitration on 31.08.2017. There is no response from the Respondent and therefore the prayer is made for referring the dispute to an Arbitrator.

The learned counsel for Insurance Company specifically submit that the Applicant has accepted the amount towards full and final settlement and therefore it is not now open for him to agitate the claim, and seek appointment of arbitrator.

It is specific submission of the Insurance Company that the Applicant has signed the Discharge Voucher which reflect full and final settlement.

3] I do not think that this argument is available to the Insurance Company in the wake of settled position of law that discharge vouchers do not in any way create any impediment in the insurer, to claim further amount and in fact Insurance Regulatory and Development Authority of India (IRDA) itself has issued a Circular bearing Reference No.IRDA/NL/ CIR/Misc/173/09/2015, directing the Insured/ Insurance Company that execution of Discharge Voucher does not mean foreclosure of the rights of the policy holder to seek higher compensation before any judicial forum or any forum established by law, despite the fact that the policy holder has signed the discharge voucher. The position as regards discharge voucher is now well settled that the policy holder is not estopped from claiming higher amount before appropriate forum and shall not be bound by the discharge voucher.

In the wake of above, aforesaid argument of the learned counsel has to be turned down.

4] The learned counsel for the Respondent do not dispute the existence of arbitration clause in the Policy which make imperative for a reference being made to the Sole Arbitrator or Panel of Arbitrators to decide the disputes and differences that have arisen between the parties. Since invocation of arbitration is also not in dispute, I deem it appropriate to pass the following order :

ORDER

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Mr.Sandeep Parikh Advocate, is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 30/01/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The learned Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All the rights and contentions of the parties are kept open.

Arbitration Application is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]