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Arb.O.P (Com.Div.) No.134 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.134 of 2023

M/s.The Madras Silks India Pvt. Ltd.,
Having Office at
New No.55, Usman Road, T.Nagar,
Tamil Nadu, Chennai 600 017,
Mr.Pa.Ravindhiran

... Petitioner

Vs.

M/s.Bajaj Allianz General Insurance Company Ltd,
Policy Issuing Office and Correspondence address
For policy holder for claim, service request,
Notice, summons etc., is at
497/498, 5th Floor, Isana Kattima Building,
Poonamallee High Road,
Arumbakkam, Chennai 600 106,
Represented through its Authorised Signatory.

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint petitioner's nominee Mr.N.Veeraraghavan, Surveyor as the Sole Arbitrator as per Fidelity Guarantee Insurance Policy No.OG-21-1501-3310-00000002, OG-21-



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1501-3310-00000003, OG-21-1501-3310-00000004, OG-21-1501-3310-00000005 in accordance with Section 11(6)(a) of the Arbitration and Conciliation Act, 1996 and to direct the respondent to pay the petitioners the cost of the petition.

For Petitioner : Mr.M.Navaneethakrishnan
For Respondent : No Appearance

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”) to appoint a Sole Arbitrator to adjudicate upon the disputes arisen between the petitioner and the respondent.

2. After filing of this petition, notice was ordered and served to the respondent and the name of the respondent was also printed in the cause list. However, none appeared on behalf of the respondent. Therefore, this Court proceeds to hear the learned counsel for the petitioner and pass orders.



3. The learned counsel for the petitioner would submit that the petitioner had obtained Fidelity Guarantee Insurance Policies from the respondent *inter alia* to insure its direct pecuniary loss of any employee/employees and also paid the premiums for the policies on time. He would further submit that at this juncture, the petitioner suffered loss on account of misappropriation of funds by few employees with fraudulent intentions and consequently, the petitioner was entitled to claim for direct pecuniary loss due to the said misappropriation of funds. Hence the petitioner filed the claims for a sum of Rs.1,11,53,424/-. However, though the respondent admitted the liability and also willing to settle the dispute as against the pending claim to the petitioner, the claim amount was not accepted by the respondent. Therefore, the petitioner intend to invoke arbitration proceedings, since the said dispute is arbitrable in terms of the Dispute Resolution Clause of the said Policies, which is reproduce hereunder:

“Dispute Resolution: Any and all disputes or differences, which may arise under or in relation to this policy, including its interpretation or the quantum of any claim shall be referred to arbitration and to a sole Arbitrator



to be appointed in accordance with Arbitration and Conciliation Act, 1996, within a period of 30 days of either the Company or the Insured party giving notice in this regard.

The applicable law in and of the arbitration shall be Indian Law.

The expenses of the arbitrator shall be shared between the parties equally and such expenses along with all reasonable costs in the conduct of the arbitration shall be awarded by the arbitrator to the successful party, or where no party can be said to have been wholly successful, to such party, as substantially succeeded.

It is agreed condition precedent to any right of action or suit upon this Policy that an award by such arbitrator or arbitrators shall be first obtained.

In the event that these arbitration provisions shall be held to be invalid then all such disputes shall be referred to the exclusive jurisdiction of the Indian Courts.”

4. By referring the above clause, the learned counsel for the petitioner would submit that the present dispute is arbitrable since it arose in terms of the said Policies and requested to appoint an Arbitrator.



WEB COURT

5. Heard the learned counsel for the petitioner and perused the insurance policy available on record.

6. In view of the above, since the present dispute is arising out of the Policies issued by the respondent in favour of the petitioner and the said dispute is arbitrable by way of aforesaid Dispute Resolution clause of the said policies, this Court is inclined to appoint an Arbitrator.

7. Accordingly, this Court feels it appropriate to pass the following order:

i) The Hon'ble Mr.Justice V.Bharathidasan, (Retired), Madras High Court, residing at No.22(L-45), 2nd Main Road, Kamaraj Nagar, Thiruvanmiyur, Chennai – 600 041. (Mobile No.9444383139), is appointed as sole arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) 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.



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iii) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally. In the event of non-appearance of the respondent, the petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent.

8. This Arbitration Original Petition is allowed 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.

27.04.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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Note: Issue order copy on 03.05.2023.



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KRISHNAN RAMASAMY.J.,
nsa

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