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Arb. O.P(Com.Div). No.16 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.16 of 2023

M/s.S.P.Spinning Mills Private Limited,
Represented by its Managing Director,
P.Kanakarajan,
New No.3/233 (Old No.1/147/104),
Cuddalore Main Road,
Karipatti,
Salem – 636 106.

... Petitioner

Vs.

The Oriental Insurance Company Limited,
Rastrapathi Road,
Tanuku,
Andhra Pradesh – 534 211

... Respondent

PRAYER : Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a Sole Arbitrator in pursuance of the dispute arising out of the insurance policy in respect of the fire accident of WEG covered under the Policy No.462600/11/2019/42, entered into between the petitioner and respondent.

For Petitioner : Mr.R.Sivakumar

For Respondent : Mr.G.Guruswaminathan
for M/s.Nageswaran & Narichania



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ORDER

This petition has been filed under Section 11(5) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to appoint a Sole Arbitrator in pursuance of the dispute arising out of the insurance policy in respect of the fire accident of WEG covered under the Policy No.462600/11/2019/42, entered into between the petitioner and respondent.

2.Learned counsel appearing for the petitioner would submit that the petitioner is carrying on the business of spinning cotton yarn and other textile products. The petitioner company has installed Wind Electric Generators to meet out the power requirements of their mill and for the said Wind Electric Generator, they have taken five insurance policies with the respondent. Further, he would submit that there was an outbreak of fire on the Wind Electric Generator at Pazhavor Village, Radhapuram Taluk, Tirunelveli on 05.10.2019 at about 9.30 AM and at about 12.30 PM and the respondent was intimated about the fire on 05.10.2018 through email and the insurance company has appointed one Mr.A.S.Antony Raj, Surveyor to assess the loss and report to the respondent. The Surveyor had assessed the material damage as Rs.92,85,715/- and the fire loss of profits as Rs.15,56,380/-, which totally amounts to



Rs.1,08,42,094/-. Out of which only a sum of Rs.70,68,789/- was paid by the respondent.

3.He would also submit that as the issue could not be amicably resolved, the petitioner issued a legal notice dated 11.07.2022 by invoking the arbitration for a period from 15.05.2018 till 14.05.2019. The respondent issued a reply notice dated 04.08.2022, disputing the claim of the petitioner and refusing the matter to be referred to arbitration. Hence, the petition is filed seeking to appoint a Sole Arbitrator under Section 11(5) of the Act.

4.Learned counsel appearing for the respondent filed counter and submitted that the petitioner is entitled only a sum Rs.70,68,789/-, which was approved and settled towards full and final settlement to the petitioner and the remaining amount claimed by the petitioner falls within the scope of exclusion clause. However, he would fairly submit that the present dispute is arbitrable as per Clause 11 of the Insurance Policy bearing No.462600/11/2019/42 dated 15.05.2018 and a neutral and sole Arbitrator may be appointed.

5.For better appreciation, Clause 11 of the insurance policy bearing No.462600/11/2019/42 dated 15.05.2018, is reproduced hereunder:



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“If any difference shall arise as to the quantum to be paid under the Policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of an arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two disinterested persons as arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provisions of the Arbitrations Act 1940, as amended from time to time and for the time being in force. In case either party shall refuse or failed to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator, and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings.

It is clearly agreed & understood that no difference or dispute shall be referable to arbitration as herein before 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 arbitrators or umpire of the



amount of the loss or damage shall be first obtained." It is also hereby expressly agreed and declared that if the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not, within twelve calendar months from the date of such disclaimer have been made the subject matter of a suit in a Court of Law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder..”

6.Considering the submissions made by the learned counsel appearing for the petitioner and in view of the fact that the present dispute is arising out of the terms and conditions of the policy bearing No.462600/11/2019/42, and the same is arbitrable under Clause 11 of the said Insurance Policy dated 15.05.2018, this Court is inclined to appoint a sole Arbitrator and pass the following orders:

i) Accordingly, **Mr.T.Sai Krishnan, Advocate, Office at No.48/148, Second Floor, Vanguard House, Moore Street, Chennai – 600 001, (Contact No.9840229542)** is appointed as the 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



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of six months from the date of receipt of the Order without influencing any of the observations made by this Court in this order.

iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the respondent herein, the petitioner herein shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondent herein.

7.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 respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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KRISHNAN RAMASAMY. J.,



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