IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb.O.P(Com.Div).No.669 of 2022

M/s.Triple Helix Industries,
Rep by its Partner, Mr.Rajakumar,
Plot No.5 & 6,
SIDCO Industrial Estate,
SIDCOT, Ranipet – 632 403. ... Petitioner

Vs.

SBI General Insurance Company Ltd.,
Good Shepherd Square Building,
Block, 3rd Floor,
No.82, Kodambakkam High Road,
Nungambakkam,
Chennai -600 034. ... Respondent

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the disputes arisen between the petitioner and the respondent and to direct the respondent to pay the cost.

For Petitioner	:	Mr.Ashokapathy
For Respondent	:	Ms.Vandana for M/s.Surana & Surana

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, (hereinafter referred as "the Act"), seeking to appoint a Sole Arbitrator to adjudicate the disputes arisen between the petitioner and the respondent and to direct the respondent to pay the cost.

2.Learned counsel appearing for the petitioner would submit that the petitioner is a leather finishing industry and due to Nivar cyclone, the petitioner's machineries, raw materials, Chemicals and goods were got damaged. Therefore, the petitioner informed the same to the respondent through email on 26.11.2022. Thereafter, the surveyor visited the petitioner's factory on several dates and after obtaining all possible documents, the claim form was provided to the petitioner and the petitioner submitted the claim form to the respondent on 07.01.2021 claiming a sum of Rs.5,42,29,727/-. Out of the amount claimed, a sum of Rs.1,25,00,000/- was settled by the respondent on 10.03.2021 as part payment. The petitioner, after loss of his plant, machinery and stock was in dire need of funds. Taking advantage of the petitioner's situation the respondent threatened the petitioner to accept a sum of Rs.1,75,35,317/- as final settlement and directed to provide a consent.

3.He would further submit that the petitioner had not accepted the respondent's proposal under the free will, but under the coercion and the pressure on the part of the respondent, the petitioner sent a letter dated 02.09.2021 accepting a sum of Rs.3,00,48,859/- as full and final settlement. Thereafter, on 09.10.2021, the petitioner sent a letter for revoking consent, Wherein in Paragraph No.3, the petitioner has stated as follows:

> "For final settlement, again, you dragged the matter unnecessarily and took us to the end of frustration and made us to accept the figure as final amount of loss. However, we accepted the same with no other choice. We received Rs.1,75,35,317/- on 26.09.2021. We have been requesting the insurer to provide us with a computation of loss to check whether interest for delayed period is paid to us or not. You intentionally not giving the same. Therefore, we request the insurer to provide the computation immediately and also pay the interest for the delayed period."

4.Learned counsel appearing for the respondent would submit that for the letter dated 09.10.2021 sent by the petitioner, the respondent has provided a detailed response by way of email on 13.10.2022 and denied all the false and baseless allegations made by the petitioner. she would further submit that the petitioner had discharged the respondent from the liability by signing the Discharge Voucher and accepting a sum of Rs.3,00,48,859/- as full and final settlement of claim under the policy. Therefore, the respondent is not liable to pay amount to the petitioner.

5.In reply, learned counsel appearing for the petitioner would submit that in a circular dated 07.06.2016, issued by the Insurance Regulatory and Development Authority of India in Ref-IRDA/NL/CIR/MISC/113/06/2016, the authority has been directed that under no circumstances, the discharge vouchers shall be collected under duress, by coercion, by force or compulsion. Therefore, he would submit that since the respondent obtained a consent from the petitioner for full and final settlement by force and coercion, the petitioner is entitled to make a claim and the present dispute is arbitrable in terms of Clause 13 of the Fire & Special Perils Policy dated 15.05.2020, entered between the petitioner and the respondent, which reads as follows:

> “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 a 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 ans in accordance with the provisions of the arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no dispute or difference shall be preferable to arbitration as hereinbefore provided, if the company has disputed or not accepted liability under or in respect or this Policy

It is hereby expressly stipulated and declared that is 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."

By referring the above Clause, the learned counsel appearing for the petitioner requested to appoint a Sole Arbitrator.

6.The learned counsel appearing for the respondent filed the following citations.

(i).NTPC Ltd vs. M/sSPML Infra Ltd (2023) SCC OnLine SC 389

(ii).Cosboard Industries vs. New India Assurance Co Ltd ARBP

No.35/2023.

(iii).NR Industries vs. New India Assurance Co Ltd S B Arbitration Application No.3/2019.

(iv).Sri Venkteshwara Syndicate vs. Oriental Insurance Co Ltd & Anr reported in (2009) 8 SCC 507.

(v).New India Assurance Co Ltd vs. Sri Buchiyyamma Rice Mill reported in (2020) 12 SCC 105

(vi).United India Insurance Company Limited vs. Antique Art Exports Private Limited.

(vii).Balkrishna Spintex Private Limited vs. The New India Assurance Company Limited.

7.Learned counsel appearing for the respondent by citing the above judgments, would submit that the allegation of discharge voucher or no claim certificate being obtained by fraud and coercion has to be proved by the petitioner. Unless and otherwise it is proved, the petitioner is not entitled for any claim.

8.Heard the learned counsel appearing for the petitioner as well as the respondent and I have given due consideration for the submissions made by either side counsel and perused the materials available on record.

9.The admitted fact is that due to Nivar cyclone the machineries, materials, Chemicals and stocks were got damaged. The petitioner made a claim for a sum of Rs.5,42,29,727/-Crores, out of which Rs.3,00,35,317/-Crores have been settled by the respondent on 26.09.2021. Upon perusal, it appears that the petitioner provided a consent letter to the Surveyor for the full and final settlement of Rs.3,00,48,859/- Crores. The main contention of the petitioner herein is that the consent letter for the full and final settlement was obtained under coercion and the present issue with regard to the quantum of claim, which is arbitrable in terms of Clause 13 of the Fire & Special Perils Policy dated 15.05.2020.

10.Upon perusal, this Court is of the considered view that the present dispute is arising out of the Fire & Special Perils Policy dated 15.05.2020 and the same can be arbitrated in terms of Clause 13 of the said policy. However, this Court is not in an agreement with the contention that the petitioner is not entitle to claim the insurance policy and this issue has to be decided by the Arbitrator. In the present case, the insurance policy is genuine one. When the petitioner has taken insurance policy, then certainly they are entitled to claim.

11.Further, it is important to note that as per the Circular dated 07.06.2016, issued by the Insurance Regulatory and Development Authority of India in Ref-IRDA/NL/CIR/MISC/113/06/2016, the authorities were directed that no circumstances, the discharge vouchers shall be collected under duress, by coercion, by force or compulsion and it was the contention of the petitioner that this aspect has to be raised before the Arbitrator. With regard to the coercion, duress and other aspect, it is left open to the parties to raise these issues before Arbitrator, who shall decided the issue on merits.

12.Though the learned counsel appearing for the respondent made a strong objection for appointing a sole arbitrator stating that as per Clause 13 of the Fire & Special Perils Policy dated 15.05.2020, a panel of three Arbitrator has to be appointed, considering the nature of claim, learned counsel appearing for both parties agreed for appointment of sole arbitrator in the event if this Court decides to refer the dispute for arbitration. Under these circumstances, this court feels that a sole arbitrator can be appointed in the present case. Hence, this Court pass the following orders:

i) Accordingly, **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 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 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 petitioner/s herein, the respondents herein shall bear the entire remuneration and other expenses and thereafter, the respondents can recover the same directly from the petitioner/s herein.

13.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.

28.06.2023

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KRISHNAN RAMASAMY. J.,

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