

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 20 OF 2024

Lalitha Chem Industries Pvt. Ltd.

...Petitioner

Vs.

United India Insurance Co. Ltd.

...Respondent

Ms. Sharon Patole for the Petitioner.

Mr. Aadil Parsurampuria a/w Rishikesh Mishra i/by Shrivatsa Legal LLP for the
Respondent. (Appeared at 5.15 p.m.)

CORAM : ARIF S. DOCTOR, J.

DATE : 25th JUNE, 2024

P.C.-

1. The present Arbitration Petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Sole Arbitrator in respect of disputes and differences arising between the parties from three insurance policies. Two are Standard Fire and Special Perils Policy dated 1st July, 2016 and one is Loss of Profit Policy dated 3rd August, 2016.

2. Learned Counsel for the Petitioner has invited my attention to the arbitration clause 13 as appearing in the Standard Fire and Special Perils Policy which is also applicable to the consequential loss policy which provide for arbitration. The clause reads thus:

"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 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."

3. She has further invited my attention to the notice invoking arbitration which is dated 5th June, 2023 and the Respondent's response thereto which is dated 5th February, 2024.

4. After having heard Learned Counsel and perusing the Petition and its annexures, I am satisfied that there exists arbitration agreement and also that the claim sought to be made is one which is arbitrable.

5. Learned Counsel has relied upon an affidavit of service which is dated 6th April, 2024, which proves service of the Petition upon the Respondent

despite which fact, today none appeared for the Respondent. Hence averments in the Petition have gone uncontroverted. In view thereof, I deem it fit to allow the Petition in terms of prayer clause (a) which reads as under:

“a) That this Hon'ble court be pleased to appoint an Arbitrator to adjudicate the disputes, differences and claims between the parties in terms of the Standard Fire And Special Perils Policy (SFSP) under the Policy NO.1212011116P104429894, SFSP Policy NO.1212011116P104576770 and Loss of Profit Policy NO.1212011116P106228868;”

6. I appoint Mr. Justice Naresh Patil (former Chief Justice of the Bombay High Court) as an Sole Arbitrator in respect of disputes and differences arising between the parties.

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator: Mr. Justice Naresh Patil (former Chief Justice of the Bombay High Court) is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(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 within one week from the date this order is uploaded.
- (ii) The Advocates for the Applicant will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

**Arbitrator/s Mr. Justice Naresh Patil
(former Chief Justice of the
Bombay High Court)**

Address 63, Rajgir Chambers, 7th Floor,
Opposite Old Custom House,
Fort, Mumbai.

Mobile 022-49729791

Email nareshhpatil7@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Applicant will arrange to file the original statement in the Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.
- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole

Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

- (ii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest.
- (g) **Fees:** The arbitral tribunal's fees shall be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (j) **Venue and seat of arbitration:** Parties agree that the venue and seat of the arbitration will be in Mumbai.

7. The application is disposed of in these terms. No costs.

AT 5.15 P.M.

8. Learned Counsel for the parties mentioned the matter. All rights and contentions of the Respondent are kept expressly open.

(ARIF S. DOCTOR, J.)