



Arb.O.P.(Comm.Div.) No.159 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
19.09.2024

PRONOUNCED ON
23.10.2024

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU
Arb.O.P.(Comm.Div.) No.159 of 2024

M/s.A/C Aarkay Packaging Industries,
represented by its authorized signatory,
Managing Partner, A.Muthukumar,
having its Registered Office at
Survey No.14/3A1 & 20/6B,
Mambakkam – Kayar Road, Kayar Village,
Chengalpattu – 603 110 ... Petitioner
-vs-

M/s.United India Insurance Co. Ltd.,
Regional Office, Silingi Building,
134, Greaves Road,
Chennai – 600 006. ... Respondent

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking to appoint an Arbitrator with direction to enter into reference, complete the proceedings and give the award within such time as this Court deem fit and proper and pass such other or further order.

For Petitioner : Mr. T.N.C.Kaushik

For Respondent : Mr.B.Raghavan
for M/s.Gopalan Associates



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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 an Arbitrator to adjudicate upon disputes/differences between the Petitioner and the Respondent.

2. Heard Mr. T.N.C.Kaushik, learned Senior Counsel for the petitioner and Mr.B.Raghavan, learned counsel for M/s.Gopalan Associates, appearing on behalf of the respondent.

3. Mr. T.N.C.Kaushik, learned counsel for the petitioner would submit that the petitioner is a partnership firm engaged in the business of manufacturing cardboard cartons, Kraft Roll, Corrugated Board, etc., The petitioner had insured their building/stock plant and machineries with the respondents with an insurance premium of Rs.5,31,106/- under four insurance policies. The petitioners submits that during November 2021, in view of the heavy rainfall, adjacent Kayar Lake over flowed and the over flowed rainwater inundated the factory premises causing severe damage to the raw materials and the manufactured items. The petitioner had notified the respondent about the damages. Pursuant to the policy, a surveyor had also conducted an inspection on 04.12.2021 and had submitted a report of damages. However, without proper analysis and conducting investigation,



the respondent had repudiated the claim of the petitioner. Hence, a dispute had arisen between the parties. He would refer to the Clauses in the said policy agreement and pleaded this Court to appoint an Arbitrator to resolve the dispute between the parties to the agreement.

4. Per contra, Mr.B.Raghavan, the learned counsel for the respondent would contend that the dispute that had been raised by the applicant cannot be referred to an Arbitration. He would submit that what dispute or difference can be referred to Arbitration, is a dispute with regard to the quantity of the damages or compensation that the insured is entitled to. When the insurance company had repudiated its liability to service the policy then such disputes cannot be referred for arbitration. He had drawn attention of this court to the clause of the arbitration available under the said insurance policy. He had also relied upon the judgement of the Hon'ble Apex court reported in **2018 (17) SCC 607** and submitted that the clause of arbitration have to be interpreted strictly and when the arbitration clause does not refer to a repudiated claim the same is not arbitral and cannot be referred to arbitration. He had also relied upon a judgement of this court where a similar claim had been rejected for appointment of an arbitrator and therefore, he would be pray this Court to dismiss this OP.



5. In reply, the learned counsel for the applicant had relied upon a judgement of the Hon'ble Apex court in **Arb.P.No.38 of 2020** dated 09.09.2024 to contend that when an objection that had been raised by the applicant including the preliminary objections can be raised before the Arbitral Tribunal and decided by the Arbitral Tribunal and this Court need not go into a preliminary objection and also relied upon a judgement of the Hon'ble Apex Court reported in **2024 SCC online 1754** and contended that such issues are arbitrable and can be referred to arbitration. The Arbitrator also can decide on the objection that had been raised by the respondent.

6. I have considered the rival submissions made by the respective counsels appeared on either side and perused the materials available on record.

7. It had been repeatedly held by the Hon'ble Apex Court that while dealing with an application under Section 11, the court will have to only look into the existence of the arbitration clause under the agreement in respect of the parties to refer the parties to arbitration. This had been reiterated by the Hon'ble Apex Court in a various similar judgements relied upon by the learner counsel for the petitioner in Arbitration Petition No.38 of 2020. For better appreciation, it would be useful to refer to paragraph 32 of the



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aforesaid judgement which is extracted here under:-

“32. As discussed above, the respondents have raised a number of objections against the present petition, however, none of the objections raised question or deny the existence of the arbitration agreement under which the arbitration has been invoked by the petitioner in the present case. Thus, the requirement of prima facie existence of an arbitration agreement, as stipulated under Section 11 of the Act, 1996 is satisfied.”

8. Reading of the said judgement would indicate that there was no objection with regard to denial or existence of an arbitration agreement. What the Hon'ble Apex Court left open to the Arbitrator to decide is with regard to their preliminary objection and not the existence of the arbitration agreement itself. In the present case, the respondent had raised a preliminary objection of the existence of the arbitral agreement for reference of a dispute to the arbitrator. In such view of the matter, it could be useful to look into the clause of arbitration as available in the agreement.

“ 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



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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 herein before provided, if the company has disputed or not accepted liability under or in respect of this Policy.

(emphasis supplied by respondent)

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.”

9. The aforesaid clause stipulates that if a dispute or difference that arise out of the quantum to be paid under the policy, then the dispute can be referred independently to the arbitration. The very same clause incorporates that the parties have clearly agreed and understood that no difference or dispute shall be referred to arbitration, if the company namely the respondent herein had disputed or not accepted the liability under the policy. In the



present case, the respondent had not accepted its liability under the policy.

When that being so, there could not be a reference of the dispute to arbitration. The judgment relied upon by the petitioner in the cases of SBI General Insurance, would not be of any help to him as in the aforesaid case, the dispute was with regard to the quantum that is to be payable under the policy which would mean that the Insurance company had not disputed the liability there. In such event, clause 13 of the Arbitration Agreement contained a Insurance policy cannot be invoked by the petitioner for referring the dispute for arbitration. However, the petitioner will be at liberty to initiate the appropriate proceedings in the manner known to law, as available to him.

10. In view of the same, I am unable to sustain the O.P. and accordingly, the Original Petition is dismissed.

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Index :Yes/No

Speaking Order/Non Speaking Order

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