



Arb.O.P (Com.Div.) No.86 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.86 of 2024

AIKI Eco Power Ltd., Liability Partnership Firm,
Rep. by its Authorised representative and Manager,
New No.9, First Cross Street, C.I.T. Colony,
Mylapore, Chennai – 600 004.

... Petitioner

Vs.

1. The New India Assurance Company Ltd.,
Rep. by its General Manager
Head Office.87 M.G.Road Fort,
Mumbai-400 001.
- 2 The New India Assurance Company Ltd.
Rep. by its General Manager
City Divisional Office II, No.863,
Big Bazaar Street Coimbatore-641 001.
- 3 M/s.Proclaim Insurance Surveyors and
Loss Assessors Private Limited
Rep. by its Director 21D (Old No.14)
II Floor ARK Colony Eldams Road,
Chennai-600 018.

... Respondents



Arb.O.P (Com.Div.) No.86 of 2024

Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Insurance Policy in terms of Clause 12 relating to Arbitration under the Insurance Policy dated 15.05.2020.

For Petitioner : Mr.Raja Kallifulla, Senior Counsel
for Mr. J.Jayendra Krishnan

For Respondents : Mr.S.Dhakshnamoorthy

ORDER

This Arbitration Original Petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of Clause 12 of the Insurance Policy dated 15.05.2020.

2. Mr.Raja Kallifulla, learned Senior Counsel for the petitioner would submit that the petitioner owns and operates energy generating plants and solar energy plants in Tamil Nadu and taken Insurance Policy in respect of nine generating Units with the first respondent from 15.05.2020 to



Arb.O.P (Com.Div.) No.86 of 2024

14.05.2021; that on 15.08.2020, there was a fire accident, due to which, the wind generating unit was completely burnt; that in respect of the said damage, the petitioner made a claim before respondents 1 and 2 claiming a sum of Rs.71,13,816; but the first respondent without any enquiry unilaterally fixed the compensation at Rs.20,80,450/- ; hence, the petitioner issued a legal notice on 12.06.2023 disputing the unilateral decision in fixing the compensation as against the claim of Rs.71,13,816/- and thereby, called upon the respondents to refer the dispute to an Arbitrator in terms of Clause 12 of the Policy; that the respondent issued a reply notice dated 12.08.2023, stating that the petitioner has received the payment of compensation without protest, hence, the claim is closed and there is no necessity for arbitration; that disputing the same, the petitioner sent a rejoinder inter alia stating that the petitioner's claim itself is a tell-tale evidence to prove that the petitioner has not admitted such unilateral compensation fixed by the respondents and subsequently, issued a notice to the respondents to refer the dispute regarding quantum of compensation, but the same was refused by the respondents, hence, the petitioner is constrained to approach this Court by way of the present petition seeking to appoint a



Arb.O.P (Com.Div.) No.86 of 2024

Sole Arbitrator under Section 11(5) of the Act to resolve the dispute.

Therefore, the learned counsel prayed for allowing this Petition.

3. Mr.S.Dhakshnamoorthy, learned counsel for the respondents fairly admitted that the present dispute is arbitral in terms of Clause 12 of the Insurance Policy dated 15.05.2020.

4. Thus, this Court, upon hearing the learned counsel for the petitioner and the fair submission made by the learned counsel for the respondents and on perusal of the materials available on record, is of the view that the dispute arisen between the petitioner and the respondents is arbitral in terms of Clause 12 of the Insurance Policy dated 15.05.2020. For better appreciation, clause 12 of the said Policy is extracted hereinbelow:

“12 If any 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 an arbitrator to be appointed in writing by the parties in difference, or if he cannot agree upon a single arbitrator to the decision of two dis-interested 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 provision of the Arbitration Act, 1940 as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint 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 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.

It is hereby expressly stipulated and declared 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 or umpire of the amount of the loss or damage shall be first obtained.”

4.1 Hence, this Court is inclined to appoint a sole Arbitrator to adjudicate the disputes between the parties.



5. Accordingly, this Court feels it appropriate to issue the following direction:

i) **Mr.M.Ilangovan, Former District Judge, possessing Mobile Nos. 8111022221 & 7010319425, No.10, W-Block, 5th Main Road, Anna Nagar, Chennai 600 040,** is appointed as sole Arbitrator to enter upon reference and to adjudicate the *inter se* dispute between 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. The learned Arbitrator is also directed to decide the matter without influenced by the observations made by this Court in the present order.

iii) The learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017.

iv) The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, as per Schedule IV of the Act and the same shall be borne by the parties equally. In the event of non-appearance of the respondents, the



Arb.O.P (Com.Div.) No.86 of 2024

petitioner shall bear the entire remuneration and other expenses and thereafter, the petitioner can recover the same directly from the respondents and vice versa.

v) Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondents herein to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the learned Arbitrator.

6. In the result, the Arbitration Original Petition is allowed on the aforesaid terms.

25.04.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes / No
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Arb.O.P (Com.Div.) No.86 of 2024

KRISHNAN RAMASAMY.J.,

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Arb.O.P (Com.Div.) No.86 of 2024

25.04.2024