

ARB-78-2023

2024:PHHC:053139

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

262

ARB-78-2023

Date of decision:18.04.2024

M/S ADHUNIK PACKAGERS PVT. LTD.

...PETITIONER

VS.

UNITED INDIA INSURANCE COMPANY LTD. ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Seema Pasricha, Advocate
for the petitioner.

Mr. Munish Goel, Advocate
for the respondent.

SUVIR SEHGAL J.

1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short “the Act”), petitioner has approached this Court for appointment of an Arbitrator.

2. Counsel for the petitioner submits that the petitioner had purchased two Standard Fire and Special Perils policies from the respondent, which were valid from 05.05.2020 to 04.05.2021. A fire broke out in its premises on 05.01.2021 and its intimation was given to the respondent, who appointed a surveyor. Petitioner estimated the loss of stock etc. at Rs.1,59,06,000/-. However, the respondent settled the

claim for Rs.95,59,850/- and transferred the amount to the petitioner on 06.09.2021. As the Insurance Policies contained an arbitration clause, petitioner served a legal notice dated 16.06.2022, Annexure P-9, invoking it and proposed the appointment of an Arbitrator. Vide its response dated 18.07.2022, Annexure P-10, respondent rejected the appointment of the Arbitrator.

3. Upon notice, petition has been contested by the respondent by filing a reply, wherein it has been submitted that the claim of the petitioner stood settled and the petitioner is barred from invoking the arbitration clause. Reference has been made to the arbitration clause by counsel for the respondent to support his submission.

4. I have heard counsel for the parties and considered their respective submissions.

5. Clause 13 of the insurance policy, which provides for a mechanism for resolution of a dispute through the medium of arbitration, deserves to be noticed and is reproduced hereunder:-

“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.”

6. A similarly worded clause came up for interpretation before the Supreme Court in **Oriental Insurance Co. Ltd. Versus Narbheram Power and Steel Private Ltd. (2018) 6 SCC 534**, which has been followed in **United India Insurance Company Ltd. and another Versus Hyundai Engineering and Construction Company Limited and others (2018) 17 SCC 607**. Apex Court has held that an arbitration clause would enliven or invigorate only if the insurer admits or accepts its liability under or in respect of the policy concerned. The clause will get activated only if the dispute between the parties is limited to the quantum to be paid under the policy.

7. From the material on the record, it is evident that there is a dispute between the parties regarding the amount to be paid under the policy. Insurance Company has accepted its liability and made some payment. This dispute regarding the remaining amount, as to whether it is payable or not, deserves to be referred for adjudication to an Arbitrator to be appointed under the clause reproduced above.

8. Accordingly, petition is allowed. Mr. Justice Vivek Puri (Retd.), a former judge of this Court, House No.237, Sector 16-A, Chandigarh, Mobile No.8558800190, is requested to act as a sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

9. Parties are directed to appear before the learned Arbitrator on the day, time and place to be fixed by him.
10. Liberty is granted to the parties to raise all the claims, counter claims, defences, pleas etc. before the Arbitrator.
11. A request letter alongwith a copy of this order be communicated to Mr. Justice Vivek Puri (Retd.).

19.04.2024
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No