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IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

(244)

ARB-128-2022 (O&M)  
Date of decision:- 09.04.2024

M/s A Star Exports ... Petitioner

Versus

Oriental Insurance Company Limited ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Rohan Mittal, Advocate  
for the petitioner.

Mr. Akashdeep Singh, Advocate  
for the respondent.

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SUVIR SEHGAL, J. (ORAL)

CM-3588-CII-2022

1. Exemption, as prayed for, is granted.
2. Application is allowed.

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1. By way of instant petition filed under Section 11 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 a Standard Fire and Special Perils Policy, Annexure P-1, from the respondent and Clause 13 of the Policy provides for the resolution of dispute by an Arbitrator. He submits that insured premises caught fire on

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20.06.2019 and a DDR was lodged. Petitioner raised a claim of Rs.3.36 crores and partial payment was made in October, 2020 after the petitioner was coerced into signing and submitting an affidavit as well as a discharge voucher. He submits that the petitioner lodged a protest with the respondent and served notice dated 22.12.2021, Annexure P-2, invoking the Arbitration Clause. He submits that by its reply dated 17.01.2022, Annexure P-3, respondent refused to appoint an Arbitrator. It is his argument that the discharge voucher and affidavit was submitted by him under extreme financial duress and coercion as the petitioner, who was not being released the payment of the claim, was suffering heavily due to the loss by fire as well as outbreak of Covid.

3. Upon notice, petition has been contested by the respondent by filing a response, wherein it has been *inter-alia* submitted that as the petitioner has given a full and final discharge certificate, he is barred from filing the petition. Reference has been made to the affidavit, Annexure R-1, as well as discharge receipt, Annexure R-2. Counsel for the respondent submits that there is nothing on the record to show that the petitioner was under any duress.

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

5. As to whether the discharge certificate and affidavit has been given by the petitioner are voluntary or under coercion are matters, which are required to be gone into by the Arbitrator, as has been held by the Supreme Court in ***Union of India Versus Parmar Construction Company, (2019) 15 SCC 682***. From the material placed on the record, it is evident

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that there is a dispute between the parties and the petitioner has invoked the Arbitration Clause by serving a notice. In view of the above, this Court is of the opinion that the prayer made in the petition deserves to be acceded to.

6. Accordingly, petition is allowed.
7. Mr. Justice R. P. Nagrath, a former Judge of this Court, resident of House no.162, Sector 123 New Sunny Enclave, Kharar, Mohali, Mobile No. 85588-09901 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions of the Act.
8. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.
9. A request letter alongwith a copy of the order be sent to Mr. Justice R. P. Nagrath (Retd.).

(SUVIR SEHGAL)  
JUDGE

09.04.2024  
Kamal

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |