

**ARB-81-2021(O&M)****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****(104)****ARB-81-2021(O&M)****Date of decision:- 23.05.2024****New India Assurance Co. Ltd.****... Petitioner****Versus****Uttar Haryana Bijli Vitran Nigam Limited and another ...Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Vinod Gupta, Advocate and
Mr. Mayank Gupta, Advocate
for the petitioner.

Mr. B.R.Mahajan, Senior Advocate with
Ms. Baani Chhibber Mahajan, Advocate and
Mr. Vasu Gupta, Advocate
for the respondent No. 1.

***********SUVIR SEHGAL, J. (ORAL)**

1. By way of instant 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 respondent No.1 had purchased a Fire and Special Perils Policy, which was valid from 19.08.2016 to 18.08.2017, for a total sum of Rs.210,00,00,000/-. He submits that a fire accident took place on 21.05.2017 and the loss was assessed to be Rs.34,48,408/-. He submits that some premium was due from respondent

**ARB-81-2021(O&M)****-2-**

No.1 and after deducting it, the amount due to respondent No.1 was paid. Counsel submits that respondent No.1 was not satisfied with the payment and unilaterally proceeded to appoint respondent No.2 as an Arbitrator under work order dated 02.08.2016, Annexure R-3. Petitioner moved an application before this Court and by order dated 17.09.2021, this Court stayed the further proceedings before the Arbitrator-respondent No.2. Counsel submits that as a dispute arose, petitioner served a legal notice dated 12.11.2020, Annexure A-3, invoking Arbitration Clause 13 of policy, Annexure A-1. He submits that no response was received from respondent No.1.

3. Upon notice by this Court, reply has been filed by respondent No.1, wherein it has been submitted that the agreement between the parties is governed by work order dated 02.08.2016, Annexure R-3 and the Arbitrator has been appointed in terms of Clause 5 thereof. Counsel for respondent No.1 has argued that the terms and conditions of policy, Annexure A-1, being relied upon by the petitioner, were never communicated to it.

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

5. This Court is confronted with two differently worded Arbitration Clauses in two related agreements. In such a situation, Supreme Court in ***Olympus Superstructures Pvt. Ltd. Versus Meena Vijay Khetan and others, (1999) 5 SCC 651*** and in ***Balasore Alloys Limited Versus Medima LLC, 2020 (4) R.C.R. (Civil) 433*** has held that both the agreements have to

**ARB-81-2021(O&M)****-3-**

be harmoniously construed in order to determine the intention of the parties to find out as to which of the two clauses would apply.

6. By virtue of work order dated 02.08.2016, Annexure R-3, respondents have placed an order upon the petitioner to issue an insurance policy for one year from 19.08.2016 to 18.08.2017 covering its stock against fire, flood, storm, riots, strike etc. This work order was accepted by the petitioner with an endorsement, which reads as under:-

“Thankfully received work order.....(illegible) along with premium quote for issuance of policy as and when it is due for renewal.

Sd/-

02.08.2016

B.M.

Ambala City..... (illegible)”

7. Thereafter, the petitioner issued the insurance policy, Annexure A-1, on the basis of a proposal received by it on 19.08.2016. It is, therefore, evident from the above that the life of work order was till the time a policy is issued by the petitioner. Once, Insurance Policy, Annexure A-1, was issued, it will override the work order issued by the respondents. Therefore, the Arbitration Clause in the insurance policy, Annexure A-1, would prevail over the Arbitration Clause in the work order, Annexure R-3. Notice, Annexure A-3, invoking the Arbitration Clause in Insurance Policy, Annexure P-1, has not been disputed by the respondents. In view thereof, this Court is of the opinion that the prayer made in the petition deserves to be acceded to.

8. Accordingly, petition is allowed. The appointment of respondent No.2 as a Sole Arbitrator is declared non est.

9. Mr. Justice (Retd.) M.M. Kumar, former Chief Justice, resident of House No. 79, Sector 16-A, Chandigarh, Mobile No. 9888824752 is requested to act as an Arbitrator to adjudicate the dispute between the petitioner and respondent No.1, subject to compliance of statutory provisions.
10. Petitioner and respondent No.1 are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.
11. Liberty is granted to them to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.
12. Needless to mention that all the questions arising between them in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.
13. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) M.M. Kumar.
14. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)

JUDGE

23.05.2024

Kamal

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