IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(113)

ARB-603-2021 (O&M)
Date of decision:- 24.04.2024

M/s Unistar Distributors Pvt. Ltd. **... Petitioner**

Versus

United Insurance Company Limited and another **... Respondents**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vivek Gupta, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate
for the respondents.

****

SUVIR SEHGAL, J. (*ORAL*)

CM-14218-CII-2021

1. Exemption, as prayed for, is granted.

2. Application is allowed.

Main case

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 two insurance polices from the respondents for the period from 12.07.2018 to 11.07.2019. The Standard Life and Special Policies were for insurance of his building, plant, machinery, goods and stocks etc. He

submits that a fire broke out in the premises on 20.06.2019 and a DDR was registered. He submits that the petitioner claimed a consolidated loss of Rs. 14,45,92,649/- against which on the basis of the surveyors' report, the respondents assessed a loss of Rs.9,49,99,991/-. He submits that as the assessed amount was not being paid, the respondent forced the petitioner to enter into a settlement agreement dated 06.04.2021, Annexure P-10 (pages 160 to 164 of the paper-book) before making the payment. He submits that as the balance amount was disputed, petitioner invoked the Arbitration Clause by serving a legal notices dated 01.10.2021 and 10.11.2021, Annexure P-9 and P-11, respectively.

3. Upon notice, petition has been contested by the respondents by filing a written statement, wherein they have submitted that the dispute is not arbitrable. Reliance has been placed by them on Clause 13 of the Arbitration Clause. It has also been submitted that as the dispute had been settled and petitioner is debarred from invoking the Arbitration Clause.

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

5. Clause 13, which is similar in both the insurance policies, Annexure P-1 (collectively), 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.*** Supreme Court has held that the arbitration clause gets activated if the insurer admits or accepts his liability and the dispute between the parties is limited to the quantum to be paid under the policy. From the material placed on the record, it is evident that the dispute between the parties is regarding the amount to be paid under the policies. Although, the respondent has taken a stand that there is a full and final settlement, but as to whether the settlement was signed by the petitioner voluntarily or under duress is a matter, which would be considered by the Arbitrator.

7. Accordingly, petition is allowed. Ms. Justice Sabina, a former Judge of the High Court of Himachal Pradesh, resident of House No.1842, Sector 34-D, Chandigarh, Mobile No. 9780008138 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.

8. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by her at her convenience.

9. A request letter alongwith a copy of the order be sent to Ms. Justice Sabina (Retd.).

10. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

24.04.2024
Kamal

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