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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 1st March, 2024

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ARB.P. 106/2024

M/S DALIP SINGH ADHIKARI

..... Petitioner

Through: Mr. Vineet Kumar, Adv. (M:
9718784365)

versus

THE NEW INDIA ASSURANCE CO. LTD

..... Respondent

Through: Mr. Aditya Kumar & Ms. Ila Nath,
Adv. (M- 9871921111)

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ARB.P. 131/2024

M/S DALIP SINGH ADHIKARI

..... Petitioner

Through: Mr. Vineet Kumar, Adv.

versus

THE NEW INDIA ASSURANCE CO. LTD

..... Respondent

Through: Mr. Aditya Kumar & Ms. Ila Nath,
Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

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ARB.P. 131/2024

2. These are two petitions filed by the Petitioner-M/s. Dalip Singh Adhikari under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter, '1996 Act'*) where the Petitioner prays for appointment of the Id. Sole Arbitrator for adjudication of disputes arising out of an Insurance Policy titled '*Contractor's All Risk Policy*' purchased by the Petitioner on



30th May, 2018 and subsequently renewed on 30th May, 2019 and 3rd January, 2020.

3. The Petitioner's case is that it was awarded a contract for the construction work of the Tawaghat Thanidhar Motor Road, Stage-1, covering a total length of 14 kms, for a sum of Rs. 15,08,10,700/- by the Uttarakhand Rural Roads Development Agency ('URRDA'). This contract and the corresponding works order included insurance against various risks, such as landslides and rainfall, with the policy being purchased from the Respondent-New India Assurance Co. Ltd.

4. According to the Petitioner, during the validity of the policy (including the extensions), due to two heavy landslides on 13th July, 2019 (**ARB.P. 131/2024**) and 28th July, 2020 (**ARB.P. 106/2024**), damage was caused to the project due to which the Petitioner raised various claims. According to the Petitioner, the Respondent-Insurance Company appointed a Surveyor, M/s Select Insurance Surveyor & Loss Assessors Pvt. Ltd. which submitted its Final Survey Report dated 18th May, 2022.

5. In the Final Survey Report, the Surveyor quantified the claims of the Petitioner. However, the Respondent-Insurance Company reduced these amounts and, according to the Petitioner, pressured them to accept sums of Rs.1,96,26,847/- and Rs.1,50,94,709/-, as opposed to the much higher claims initially made by the Petitioner. These amounts were paid on 17th April, 2023. Subsequently, the Petitioner issued a legal notice on 18th April, 2023, claiming additional amounts, which the Respondent-Insurance Company refuted, leading to the prayer for appointment of the Id. Sole Arbitrator. Thereafter, on 17th October, 2023, the Petitioner issued a notice under Section 21 of the Arbitration & Conciliation Act, 1996.



6. On behalf of the Respondent-the Insurance Company, the stance is that the amounts received by the Petitioner were accepted as a full and final settlement without any objections and the amount was paid in terms of a further Surveyor Report which was submitted. After receiving the amounts on 17th April, 2023, the Petitioner chose to issue a legal notice the very next day, as an afterthought.

7. The Respondent-Insurance Company relies on the emails dated 6th February, 2023, written on behalf of the Petitioner, which accepted the consent of the Petitioner's project director.

8. However, in response, the Id. Counsel for the Petitioner submits that the acceptance was made under pressure, as evident from the letter dated 29th December, 2022. In this letter, the Petitioner clearly stated that the consent was given subject to various conditions, indicating that the amount was being received under protest and the deductions were not acceptable. The said letter reads as follows:

"We refer to our various emails & letters and your subsequent emails dated 21.12.2022; 26.12.2022; 27.12.2022 & 28.12.2022 advising us to provide a letter of our consent to the revised assessment of Rs. 1,96,26,847/- vide addendum survey report dated 28.11.2022 as worked out by the surveyor M/s Select Insurance Surveyors & Loss Assessors (P) Ltd.

We have gone through the Final Survey Report dated 18.05.2020 & Addendum Survey Report dated 28.11.2022. We agree and give our consent to Rs. 1,96,26,847/- and it is made strictly on the following basis:

•This amount is received by us under protest

•The deduction of amount on account of section warranty clause are not agreed or admitted



•The deduction of amount more than Rs. 25,00,000/- as 5% Excess subject to minimum of Rs. 25,00,000/- are not agreed or admitted
•The said payment received should not be regarded as such on admission or agreement
• The right is reserved to challenge these deduction to a court or tribunal accordingly including as per IRDA (Protection of Policyholders' Interests) Regulation, 2002”

9. Heard. After reviewing the emails and correspondence between the parties, this Court is of the opinion that the question as to whether there was a full and final settlement with the payments made on 17th April, 2023, constitutes an arbitrable dispute. The correspondence and the conduct of the parties—prior to, contemporaneous with, and following the payment—would need to be considered by the Id. Sole Arbitrator.

10. As of now, considering the facts and circumstances, it cannot be concluded from the emails sent by the Petitioner that a full and final settlement has been reached, and that there are no arbitrable disputes. Therefore, this issue would need to be adjudicated by the Id. Sole Arbitrator. Accordingly, given the facts and circumstances of this case, **Justice S.P.Garg (Retd) (M-9910384627)** is appointed as the Id. Sole Arbitrator to adjudicate the disputes arising out of the Insurance Policy dated 30th May, 2018, and its extensions.

11. The fee of the Arbitrator shall be as per the Fourth Schedule of the 1996 Act and the DIAC Rules. The arbitration shall take place under the aegis of the DIAC.

12. Let a copy of this order be emailed to the Secretary, DIAC on email id. delhiarbitrationcentre@gmail.com.



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13. Ld. Counsel for the Respondent submits that the Petitioner cannot maintain this petition, as it is not a registered partnership firm. Ld. Counsel for the Petitioner submits that the partnership firm is registered, and the copy of the same has been furnished in Court.

14. List before the Id. Sole Arbitrator on 18th March, 2024.

15. The petitions are disposed of with all pending applications, if any.

PRATHIBA M. SINGH
JUDGE

MARCH 1, 2024

mr/dn