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

\+ ARB.P. 300/2023

MARATHAN MOTOR INDIA PVT LTD ..... Petitioner

Through: Mr. Shishit Mathur, Advocate.

versus

UNITED INDIA INSURANCE COMPANY LTD ..... Respondent

Through: Mr. Sonal Anand, Ms. Surbhi Singh, Mr. Aayush S. And Mr. Karan Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **07.05.2024**

1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (***"the Act"***) seeking appointment of the Sole Arbitrator to adjudicate the dispute between the parties.

2. The factual background is that the petitioner availed a Standard Fire and Special Perils Policy No.2221001118P111278508 *w.e.f* 30.11.2018 to 29.11.2019 from the respondent on building, plant and machinery, FFF, Stock of their factory at Plot No. 813, IMT, Sector 69, Faridabad, Haryana-121004. The arbitration clause (Clause 13) of the Policy reads as under:

> *"13. If any dispute or difference shall arise as to quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other question be referred to the decision of 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 arbitration to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of arbitration and conciliation act 1996"

3. A fire took place in the premises of the petitioner due to which building, machinery and all material stored in the factory got destroyed and sustained damages. The petitioner filed a fire insurance claim and estimated an amount of loss of Rs. 2,41,66,887/- under the policy w.e.f 30.11.2018 to 29.11.2019. The surveyors appointed by the respondent assessed the lost to the petitioner Rs.1,64,17,505/-. In between there were some communication where the respondent and petitioner exchanged letters.

4. After repudiation of claims of the petitioner, the petitioner wrote a detailed letter referring to all earlier letters from 12th September, 2020 to 10 February, 2021 citing the genuineness of the claim, to the General Manager of the respondent and stated its grievance that the actual claim bill of the petitioner was approx. Rs. 2.41 Crores whereas the surveyor has assessed the loss for Rs.1.64 Crores and further the policy is on the reinstatement value basis but the surveyor has applied the depreciation and assessed the loss on market value basis and the petitioner is suffering both financially and mentally since March, 2019 and approximately 2 years had been passed and his business is suffering a huge loss.

5. On 20.12.2021, the respondent called the petitioner at its office and offered to settle the claims on 75% of the total amount assessed by the surveyors. Since it was Covid-19 period, the petitioner was going under financial hardship, the petitioner accepted the settlement offer of 75% of the amount assessed by the surveyors. The petitioner on 29.12.2021 gave another undertaking as per the direction of the respondent to the effect that the petitioner is accepting unconditionally amount offered by the respondent.

6. On 28.01.2022, the petitioner prepared the settlement agreement and submitted at the branch office of the respondent. On 29.03.2022, petitioner was informed that the competent authority has approved the claims but the payment is not released. On 05.04.2022, petitioner was further informed that they would pay the claim after getting the agreement registered at the Mediation Cell of the Delhi Court and called the petitioner on 06 April, 2022.

7. On 06.04.2022, the parties appeared before the Delhi High Court Mediation and Conciliation Centre and a Mediation Settlement dated 06.04.2022 was entered into between the parties. It is stated that only there upon the amount of Rs. 1,23,13,129 crore was paid to the petitioner.

8. Thereafter, the petitioner raised the protest by stating that the original claim amount was Rs. 2.41 crores and the surveyor has assessed for Rs.1.64 crore and now the payment of Rs.1,23,13,128/- is received under protest and the petitioner had been forced to accept the said payment. The payment was received under protest and petitioner reserved legal right for rest of the balance payment. Therefore, the petitioner made a request to the respondent to make the balance payment of Rs.1,18,54,760/- vide its e-mail dated 30.06.2022.

9. As the respondent failed to make the payment, petitioner was constrained to invoke the arbitration clause *vide* legal notice dated 19.10.2022. Respondent has not acted upon the said notice, hence the present petition.

10. It is stated by Mr Mathur, learned counsel for the petitioner that the petitioner was undergoing acute financial hardship due to Covid-19 and therefore, the petitioner agreed to illegal and malafide demand of the respondent. He further states that the settlement agreement was entered into without his free will and consent.

11. Immediately after signing of the settlement agreement, the petitioner wrote an email dated 30.06.2022 to the respondent stating that the amount was accepted by the petitioner under undue pressure and coercion and petitioner was not ready and willing to accept the same and demanded the outstanding amount. Since the outstanding amounts were not paid, the petitioner invoked the arbitration.

12. Mr Mathur further states that this is the standard policy of the respondent wherein insurance company pressurize the insured with less amount and force them to sign the settlement and thereafter asked them to give NOC. The petitioner also wrote letter dated 09.12.2022 to the Chief Vigilance Officer of the respondent and letter dated 19.01.2023 to the Delhi High Court Mediation and Conciliation Centre.

13. He draws my attention to a Circular dated 24.09.2015 which is quoted below under:

> *"Ref No: IRDA/NL/CIR/Misc/173/09/2015*
>
> *Dated 24th September 2015*

To
CEOs of all General Insurance Co.,

Circular

Reg: Discharge Voucher in settlement of claim
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The Insurance Companies are using 'discharge voucher' or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books. However, of late, the Authority has been receiving complaints from aggrieved policy holders that the said instrument of discharge voucher is being used by the insurers in the judicial fora with the plea that the full and final discharge given by the policy holders extinguish their rights to contest the claim before the Courts.

While the Authority notes that the insurers need to keep their books of accounts in order, it is also necessary to note that insurers shall not use the instrument of discharge voucher as a means of estoppel against the aggrieved policy holders when such policy holder approaches judicial fora.

Accordingly insurers are hereby advised as under:

Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However, it should be clearly understood that execution of such vouchers does not foreclose the rights of policy holder to seek higher compensation before any judicial fora or any other fora established by law.

All insurers are directed to comply with the above instructions.

(Suresh Mathur)
Senior Joint Director"

14. He further relies upon the judgment of ***Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1*** to state that the referral Court at the stage of Section 11 of the Act is only required to see existence of arbitration clause.

15. *Per Contra*, Mr Anand, learned counsel for the respondent states that settlement agreement was entered into with full consent of the petitioner. The petitioner has admitted that pursuant to the settlement, the amount was received. He further states that the settlement is covered under Section 74 of the Act and only remedy to challenge the same is under Section 34 of the Act.

16. I have heard learned counsel for the parties.

17. It is necessary to reproduce Section 74 of the Act which reads as under:-

> *"74. Status and effect of settlement agreement.—The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30"*

18. The Hon'ble Supreme Court in ***Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324*** has observed as under:-

> *"3. ………Even otherwise we feel that once the parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke the Arbitration clause. If this is permitted the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In the circumstances, we think that in the instant case since the dispute or difference was finally settled and payments were made as per the settlement, it was not open to the respondent unilaterally to treat the settlement as non est*

> *and proceed to invoke the Arbitration clause. We are, therefore, of the opinion that the High Court was wrong in the view that it took."*

19. Further, The Hon'ble Supreme Court in ***NTPC Ltd. v. Reshmi Constructions, Builders & Contractors, (2004) 2 SCC 663*** has distinguished ***Nathani Steels Ltd (supra)*** and held as under:-

> *"25. Yet again in Nathani Steels Ltd. [1995 Supp (3) SCC 324] the disputes and differences were amicably settled by and between the parties and in that view of the matter it was held that unless and until the statement is set aside, the arbitration clause cannot be invoked. Such is not the position here."*

20. In the present case, as there were disputes between the parties and the petitioner was not getting the desired amount, both the parties entered into the mediation and arrived at a Settlement Agreement dated 06.04.2022 before the Delhi High Court Mediation and Conciliation Centre wherein Rs.1,23,13,128/- was to be paid by the respondent to the petitioner as full and final settlement. Admittedly, the said amount has been paid by the respondent and the petitioner has received the same.

21. Though what is stated by learned counsel for the petitioner may be correct and genuine but this Court has limitations specially once the matter has been settled before Delhi High Court Mediation and Conciliation Centre and the settlement agreement is duly signed by the parties thereto and their respective counsels and pursuant to settlement the petitioner has received amounts.

22. I am of the view that there has to be some sanctity attached to the settlement process before Delhi High Court Mediation and Conciliation. If the settlement arrived before the Delhi High Court Mediation and

Conciliation Centre are not given their due sanctity, the whole purpose of arriving at a settlement would be futile. The aggrieved party has to get the settlement set aside in accordance with law. Though financial hardship may have been a consideration but the petitioner himself has participated in the settlement exercise, thereafter received the amount, utilized the same and hence cannot now resile from the settlement.

23. I am also in agreement with the submissions of learned counsel for the respondent that once the conciliated settlement is signed by both the parties then it falls within the ambit and scope of Section 74 of the Act. In this view of the matter, in case the petitioner was aggrieved by the settlement, the only option to challenge the same was under Section 34 of the Act.

24. For the said reasons, the petition is dismissed.

25. The petitioner is at liberty to initiate legal proceedings as available in law and the observation made herein are only for the purpose of deciding the present petition.

JASMEET SINGH, J

MAY 07, 2024/ssc