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

+ ARB.P. 1219/2024, I.A. 35951/2024,

DMG POLYPACK PRIVATE LIMITEDPetitioner

Through: Mr. Bhaskar Tiwari, Mr. Ajitesh Shukla, Mr. Ramakant Shukla, Advocates.

versus

THE NEW INDIA ASSURANCE CO. LTD. & ANR.

.....Respondents

Through: Mr. Abhishek Gola, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

15.10.2024

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1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the Parties under the Insurance Policy bearing Policy No.32370011180100000173 dated 05.02.2019.

2. The Petitioner herein is engaged in manufacturing and export of high quality products in the field of plastic and packaging materials which includes coated films, coated foils, coated papers, metallised films, metallised paper, various types of pouches, high barrier films on paper, multilayer lamination for a wide variety of end use. The Petitioner took an Insurance Policy bearing Policy No.32370011180100000173 dated 05.02.2019 from the Respondent covering its Building, Plant and



Machinery, Stocks, Furniture, Fixture and Fittings etc, located at D-73 & D-88, EPIP SITE – 5, Kasma, Greater Noida, Uttar Pradesh (*hereinafter referred to as “Premises in question”*).

3. Material on record indicates that a fire broke out in the premises in question on 28.04.2019 at around 11 AM. It is stated that initially the Petitioner claimed a loss of Rs.15 crores, however, it is stated in the petition that after inspection and verification of the affected/unaffected property, the amount was reduced to Rs.11,36,35,686/-. The particulars of the claim reads as under:

S. No.	Particulars	Amount (RS)
1.	Building	1,41,88,100.00
2.	Fitting, Fixture and Furniture	11,26,012.00
3.	Plant & Machineries including electrical.	8,24,30,484.00
4.	Stock of Raw Material, Finished Goods, Packing Material.	1,58,70,707.00
5.	Newspaper advertising expenses.	20,383 .00
	Net amount Claimed	11, 36,35,686.00

4. Material on record further indicates that the Surveyor appointed by the Respondent submitted its Final Survey Report on 13.05.2020 assessing the net loss at Rs.6,67,00,803/- against the claim of Rs.11,36,35,686/-. The details of the claims raised by the Petitioner and the deductions made by the Surveyor are as under:



Sl. No.	Particulars	Claimed Amount (Rs)	Net Loss Assessed Amount (Rs.)
1	Building.	1,41,88,100.00	65,46,157.00
2	Fitting, Fixture and Furniture	11,26,012.00	2,42,384.00
3	Plant & Machineries including electrical.	8,24,30,484.00	4,66,38,422.00
4	Stock of Raw Material, Finished Goods, Packing Material.	1,58,70,707.00	1,32,73,839.00
5	News Paper	20,383.00	
Advertising Exp.			
Total		11,36,35,686.00	6,67,00,803.00
Add: News Paper Advertising Exp.			20,383.00
Add: Salvage Disposal Fee			33,482.00



Less: Salvage Value	57,73,721.00
Less: Under Insurance	29,42,928.00
Less: Cause Of Fire	1,00,000.00
Less: Policy Excess – 5% on claim amount	28,99,208.00
Net Adjusted Loss Amount	5,50,38,810.00

5. Material on record indicates that the Respondent vide email dated 23.09.2022 had approved the claim of Rs.1,11,17,721/- against the claim of the Petitioner for a sum of Rs.11,36,35,686/-. It is stated by the learned Counsel for the Petitioner that even the claim approved by the Respondent has not been given to the Petitioner.

6. Learned Counsel appearing for the Petitioner objects the report submitted by the Surveyor by stating that the surveyor has made unjustifiable deductions leading to the incorrect valuation of the stocks.

7. Clause 13 of the Insurance Policy, which is an arbitration clause, reads as under:

“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.”

8. The Parties are *ad idem* for Justice V. K. Jain (Retd.) to be appointed as a Sole Arbitrator to adjudicate upon the disputes between the Parties.
9. Accordingly, Justice V. K. Jain (Retd.), (Mob. No.9650116555) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.
10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.



11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.
12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.
14. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 15, 2024

S. Zakir