

AP-COM/455/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S. PAMPAR OVENFRESH FOODS PVT. LTD.

VS

UNITED INDIA INSURANCE COMPANY LIMITED & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

For the petitioners ...

Mr. Pranit Bag, Adv.
Ms. Pooja Jewrajka, Adv.
Mr. Rahul Poddar, Adv.

For the respondents ...

Mr. Shiv Shankar Banerjee, Adv.
Ms. Soumita Das, Adv.
Mr. Nilarnab Paul, Adv.
Ms. Sutapa Das, Adv.

Hearing concluded on: 13.01.2025

Judgment on: 26.02.2025

Shampa Sarkar, J.:-

1. This is an application for appointment of a learned Arbitrator in terms of Clause 13 of the Standard Fire and Special Perils Policy. The petitioner is a private limited company having its office at Vardaan 25A, Camac Street, Suite No.403, 4th floor, Kolkata - 700016, and a factory at Sudharas Food Park, Plot No. F-12, Phase - II, Dhulagarh, District Howrah.

2. The case run by the petitioner is that, the petitioner is engaged in the production of snacks, etc. The petitioner purchased an insurance policy under the Standard Fire and Special Perils Policy, covering all risks for the period between March 19, 2018 to March 18, 2020. The policy covered risks

to stocks, plant, machinery, buildings, furniture, fixture, etc. and the insured value was Rs.39,07,95,000/-. The premium payable was Rs.1,82,216/-. On September 29th/30th, 2019, a fire broke out in the premises. The factory premises including furniture, fixtures, plant, and machinery were destroyed. The petitioner suffered huge loss. Information was accordingly given to the insurance company by an e-mail dated September 30, 2019. The insurance company was informed by the petitioner that the damage sustained by the petitioner was to the tune of Rs.30 to 35 crores. The petitioner also submitted a claim form and required documents to the responding/insurance company, claiming loss and damage to the tune of Rs.43,28,87,710/-. The insurance company appointed a surveyor-cum-loss assessor. The surveyor inspected the premises on October 1, 2019. The surveyor prepared a draft report of assessment. The quantum assessed was lesser than the amount claimed by the petitioner. The total claim of the petitioner was not accepted. The petitioner sent a protest letter dated June 29, 2022. The surveyor submitted the survey report on July 11, 2022 after more than 2 years and 7 months from the loss/damages. The surveyor assessed the total loss at Rs.17,16,83,362/-. Out of the said amount, Rs.85,00,000/- was deducted towards salvage and Rs.81,59,168/- towards policy excess. The final assessment came to Rs.15,50,24,194/-.

3. The petitioner's case was that the surveyor M/s Kothari Insurance Surveyors and Loss Assessors Pvt. Ltd. sent the tentative assessment to the petitioner by their mail dated July 22, 2022 and advised the petitioner to consent to the said report. The petitioner made some observations in the form of notes, thereby, protesting to the amount suggested in the

assessment of loss/damage. The surveyor did not consider the protests and proceeded to submit a final report without sharing the same with the petitioner. In addition to the final survey report another addendum report dated August 10, 2022 was submitted by the assessor and the quantum of loss assessed was further reduced to Rs.15,40,26,710/-.

4. The petitioner contended that the insurance surveyors continued to delay in processing the claim at various stages and the petitioner was forced to ask for an interim financial relief by an on-account payment. Thereafter, the petitioner received a pre-printed consent-cum-discharge voucher through mail, dated September 29, 2022 from the respondent. Owing to financial stress and loss of business, the petitioner signed the consent-cum-discharge voucher. The petitioner claimed that in order to revive the business and to meet out the creditors' demand, the voucher was signed out of compulsion.

5. The specific contention of the petitioner was that M/s Kothari Insurance Surveyors and Loss Assessors Pvt. Ltd. was not competent to assess the losses suffered by the company and had handed over the entire document to one Mr. B.K. Basu, Chartered Accountant, who was not licensed by the Insurance Regulatory and Development Authority of India (IRDA) to assess the loss/damage. The surveyor considered part of the report prepared by Mr. B.K. Basu dated March 23, 2022. Moreover, the amount was not paid simultaneously with the signing of the voucher on September 29, 2022. The amount was transferred on September 30, 2022. Despite repeated demands made by the petitioner, neither the surveyor nor the insurer provided the final and addendum report dated July 11, 2022

and August 10, 2022 respectively. It is admitted by the petitioner that the insurance company paid Rs.15,40,26,710/- through RTGS transfer to the bank account of the petitioner. The respondent company failed and neglected to consider the objections/representations raised by the petitioner with regard to the assessment of the loss. After several requests to provide the final report and the addendum report, the respondent finally provided the same on May 11, 2023. Upon obtaining such report, the petitioner came to know the defects in the said report and the mistake committed by the surveyor while calculating/assessing the loss. Upon receiving the final report, the petitioner made a comprehensive protest by a letter dated August 4, 2023 to the respondent/insurance company and requested them to reconsider the assessment. The insurance company did not respond and by a notice dated September 26, 2023, the petitioner invoked the arbitration clause. After receipt of the notice dated September 26, 2023, the insurance company replied by a letter dated October 25, 2023, *inter alia*, stating that the invocation of the arbitration clause, despite realization of the full and final claim, was illegal and unacceptable. The petitioner laid special emphasis on the circulars of the IRDA which provided that signing of a discharge voucher would not foreclose the right of the policyholder to seek higher compensation before the appropriate forum. The petitioner, accordingly, approached this court upon receiving the letter of the respondent by which the claim of the petitioner was denied.

6. The petitioner contended that the insurance policy had been issued from Kolkata and the cause of action partly arose within the jurisdiction of this Court.

7. Mr. Bag, learned Advocate for the petitioner submits that, accord and satisfaction of the claim was a mixed question of law and fact. Such issue must be decided by the learned Arbitrator, upon considering the evidence of the parties. Signing of the discharge voucher would not by itself, amount to full and final settlement of the claim. The circulars of the IRDA clearly specified so. Mr. Bagh also relied on the documents which have been mentioned hereinabove in order to show that all along, the petitioner had protested against the quantum assessed by the insurance surveyor. E-mails dated May 5, 2023 and September 5, 2023 were placed in great detail to indicate that the payment was made to the petitioner on the basis of discharge vouchers, prior to the petitioner receiving the final report and the addendum report. Upon perusal of the reports, the petitioner found discrepancies and mistakes, and approached the respondent to pay the remaining amount at the earliest. The payments were made on September 30, 2022, whereas, the final report was received in May 2023. The petitioner accepted the payment as an interim relief and contended to have raised protests by writing e-mails and by making elaborate notes in the preliminary report. The specific averments with regard to the protests lodged by the petitioner from the stage of preparation of the interim/preliminary report were available on record. Reliance was placed on the decision of the Hon'ble Apex Court in the matter of **SBI General Insurance Co. Ltd. vs Krish Spinning** reported in **2024 SCC Online SC 1754**. Mr. Bag submitted that the facts in the present case were similar to those before the Hon'ble Apex Court in the matter of **Krish Spinning (supra)**.

8. Emphasis was laid on the findings in paragraphs 92 to 96 and 114 of the said decision, in support of the contention that accord and satisfaction being mixed question of law and fact, would come within the exclusive jurisdiction of the arbitral tribunal.

9. Mr. Shiv Shankar Banerjee, learned Advocate for the respondent submitted that the claimant had accepted the amount in discharge of the total claim. The acceptance of payment by the petitioner had discharged the respondent from any liability under the insurance policy. The discharge voucher was issued after the directors of the company adopted a resolution in a board meeting that, the amount offered by the insurance company would be in full and final settlement of their claim. The resolution of the company had been annexed to the affidavit-in-opposition.

10. According to Mr. Banerjee, the allegations of duress and coercion were afterthoughts and were raised almost after a year from receiving the payment. The request for payment of the balance amount was made only for unjust enrichment. There was no evidence on record to establish that the money was accepted under any compelling circumstances, viz., financial crunch, loss of business etc. A general and omnibus statement that, the acceptance was under duress would not be sufficient for this court to hold that accord and satisfaction was a triable issue, in the facts of this case. The Board's resolution was neither amended nor altered. A draft survey report was provided to the petitioner by the surveyor, meetings were held, disagreements were noted and thereafter, a revised claim was prepared, keeping in mind the objections of the petitioner. The same was duly served upon the petitioner. On July 22, 2022, the petitioner had expressed its

unequivocal consent to accept the revised claim, which was duly reflected in the Board's resolution. After a delay of two years and seven months from the date of the incident, the petitioner approached this court.

11. Mr. Banerjee relied on the following decisions:-

(a) **M/s. Hindusthan Builders vs. Ircon International Limited.**

reported in **AIR 2022 Calcutta 74,**

(b) **NTPC Ltd. vs SPML Infra Ltd.** reported in **AIRONLINE 2023 SC 261**

12. Referring to the decision in **NTPC Ltd. vs. SPML Infra Ltd.**, Mr. Banerjee submitted that the Hon'ble Apex Court had laid down that, the referral court may reject claims which were manifestly and expressly non-arbitrable. Such principle was adopted by the Hon'ble Apex Court on the ratio laid down in **Vidya Drolia vs Durga Trading Corporation** reported in **AIR 2020 SC 929 and Bharat Sanchar Nigam Ltd. & Anr. Vs M/s. Nortel Networks India Pvt. Ltd.** reported in **AIR 2021 SC 2849**. Mr. Banerjee emphasised that this court should conduct a *prima facie* test, to screen and knock down this meritless, frivolous and dishonest litigation.

13. Even at the referral stage, the court could interfere when it was manifest that the claims were explicitly time-barred or dead or when there was no existing dispute. Although, the law had been clearly laid down that, the referral court must not undertake a full review of the contested facts and must be confined to a primary first review by letting the facts speak for themselves, the sequence of events in the case in hand and the documents annexed to the affidavit-in-opposition would indicate that there were no subsisting disputes between the parties.

14. Even a limited scrutiny through the eye of the needle, would indicate that the petitioner had invited this court to exercise powers under Section 11(6) of the Arbitration and Conciliation Act, 1996 and refer a totally non-existent and non-arbitrable dispute. The High Court should not act mechanically and refer such dispute.

15. The decision in ***M/s. Hindustan Builders (supra)*** was relied upon by Mr. Banerjee in support of his contention that under similar facts and circumstances, a referral court had rejected the prayer for appointment of an arbitrator, upon holding that the discharge voucher should be treated as full and final settlement of the claim as there was no evidence to show that the discharge voucher had been signed under undue influence and coercion.

16. I have considered the submissions of the learned Advocates for the respective parties. This court finds from the averments made in this application that, a specific case had been run by the petitioner that the quantum assessed by the surveyor amounting to Rs.15,40,26,710/- was accepted as an interim financial support and in order to make payments to its creditors etc.

17. The records reveal that the petitioner raised an objection before the surveyor at the time of preparation of the preliminary assessment report. The final survey report and the addendum survey report dated July 11, 2022 and August 10, 2022 respectively, had not been supplied to the petitioner until May 2023. Upon perusing the mode and method of calculation, the petitioner detected defects in the said reports and approached the respondent to pay the balance amount. The fact that the petitioner had received the final report later, is not in dispute.

18. The Board's resolution relied upon by the respondent/insurance company relates to the acceptance of the amount upon perusal of the preliminary report and without consulting the final survey report. Subsequent detection of mistakes in the calculation, gave rise to the dispute between the parties. Moreover, the IRDA's regulations clearly provide that the discharge voucher would not be treated as proof of full and final settlement of the claim and the insured would have the right to pray for higher compensation before the appropriate forum.

19. The contents of such circulars dated September 24, 2015, and June 7, 2016 are quoted below:-

“Ref No: IRDA/NL/CIR/Misc/173/09/2015

Date: 24 September, 2015

To

CEOs of all General Insurance Co.,

Circular

Reg: Discharge Voucher in settlement of claim

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 policyholders 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 policyholders 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.”

“ CIRCULAR ”

Ref-IRDA/NL/CIR/MISC/113/06/2016

Date: 07.06.2016

All CEOs of General Insurance Cos including Stand-alone Health Insurance Cos and Specialised insurance Cos

Re: Discharge Voucher issue

This refers to the circular no -IRDA/NL/cir/Misc/173/09/2015 dated 24th September, 2015 on the captioned subject. Since then insurers, on various occasions, have submitted that the above circular is not in the line with the IRDA (protection of policyholders interests) Regulations, 2002 (PPI Regulations) and the Indian Contract Act.

The Authority has reviewed the matter taking into consideration the provisions of the Contract Act, PPI Regulations and Apex Court Judgements. Taking equal cognisance of the legal rights of the policy holders and insurers, the Authority hereby further directs that-

- (i) Wherever there are no disputes by the insured/s or claimant/s to the amount offered by the insurer towards settlement of a claim, the present system of obtaining the discharge voucher may be continued. However, the insurers must ensure that the vouchers collected must be dated and complete in all respects while obtaining the signature/s of the insured/s or claimants.
- (ii) If the amount offered is disputed by the insured/s or claimant/s, insurers would take steps to pay the amount assessed without waiting for the voucher discharged by the insured/s or claimant/s.
- (iii) Under no circumstances the Discharge vouchers shall be collected under duress, by coercion, by force or compulsion

Since there is no uniformity in the format / wordings of the Discharge vouchers in use, Authority would suggest that the insurers may consider adopting a standardised format/wording/s of the Discharge voucher.

Insurers are directed to comply with the above with immediate effect."

20. Therefore, this court is of the view that, this application cannot be rejected even by applying the eye of the needle test. Accord and satisfaction of the claim as alleged by the respondent, is an arbitrable dispute, which fall strictly within the domain of the arbitrator.

21. Reference is made to the decision of **SBI General Insurance Co. Ltd. vs Krish Spinning (supra)**.

22. In the case before the Hon'ble Apex Court, the insured/claimant had accepted the calculation of the surveyor and issued a consent letter indicating that, it was ready to accept the calculation of the quantity of

cotton bales which were destroyed in the fire. The initial claim was considerably reduced by the surveyor. The claimant in the said case had also signed an advance discharge voucher, confirming receipt of the money from the insurance company as full and final settlement towards that claim. The voucher, *inter alia*, stated that the claimant was relieving the insurance company from all liabilities under the claim. 11 days after the receipt of the third and final instalment, the insured raised an objection on the ground that the final report had not been supplied.

23. Upon receipt of the said report, the claimant therein issued a legal notice for release of the balance payment. The arguments on the part of the insurance company was also similar to those of the respondent, in the instant case. It was stated that the signing of the discharge voucher was an unqualified acceptance of the assessment. The discharge voucher was executed on the own free will and volition of the insured and the arbitration agreement would not be attracted. There was no emerging dispute. As the parties failed to arrive at an amicable resolution, a notice invoking arbitration was sent by the claimant. Thereafter, the claimant filed an application before the High Court for appointment of a learned Arbitrator. The High Court was of the view that the dispute in question would fall within the realm of adjudication by the Arbitrator.

24. The relevant paragraphs of the above decision, are quoted below:-

“93. Thus, the position after the decisions in Mayavati Trading (supra) and Vidya Drolia (supra) is that ordinarily, the Court while acting in exercise of its powers under Section 11 of the Act, 1996, will only look into the existence of the arbitration agreement and would refuse arbitration only as a demurrer when the claims are ex-facie frivolous and non-arbitrable.

* * * * *

114. In view of the observations made by this Court in In Re : Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re : Interplay (supra).

115. The dispute pertaining to the “accord and satisfaction” of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by “accord and satisfaction”.

116. The question of “accord and satisfaction”, being a mixed question of law and fact, comes within the exclusive jurisdiction of the arbitral tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the arbitral tribunal, should not be looked into by the referral court, even for a prima facie determination, before the arbitral tribunal first has had the opportunity of looking into it.

117. By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the referral court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the arbitral tribunal doesn't in any way mean that the referral court is diluting the sanctity of “accord and satisfaction” or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principal of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the arbitral tribunal is constituted, it is always open for the defendant to raise the issue of “accord and satisfaction” before it, and only after such an objection is rejected by the arbitral tribunal, that the claims raised by the claimant can be adjudicated.

118. Tests like the “eye of the needle” and “ex-facie meritless”, although try to minimise the extent of judicial interference, yet they require the referral court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.

119. Appointment of an arbitral tribunal at the stage of Section 11 petition also does not mean that the referral courts forego any scope of judicial review of the adjudication done by the arbitral tribunal. The Act, 1996 clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration.

120. The principle of subsequent judicial review has been enshrined in the US doctrine of “Second Look”. In a leading U.S. Supreme Court judgment of *PacifiCare Health Systems, Inc. v. Book* reported in 538, U.S. 401 (U.S. S. Ct. 2003), it was held that the question of non-arbitrability should be considered in the first instance by the arbitral tribunal. The Court observed that, “since we do not know how the arbitrator will construe the remedial limitations, the question ... whether they render the parties' agreements unenforceable is better left for initial arbitral consideration”. This doctrine has also been affirmed by judgments of the U.S. lower courts in cases of *Dillon v. BMO Harris Bank, NA* reported in 856 F.3d 330, 333 (4th Cir. 2017) and *Escobar v. Celebration Cruise Operator, Inc.* reported in 805 F.3d 1279, 1288-89 (11th Cir. 2015) wherein it was reasoned that the issues of U.S. statutory law and arbitrability should be submitted first to arbitration, with the possibility of subsequent judicial review in recognition and enforcement proceedings.

121. In a case with similar facts but where an arbitration agreement is not in existence, the claimant would have the recourse to approach a civil court with its claims. Even in such proceedings before the civil court, it would be open to the defendant to put forward the defence of “accord and satisfaction” on the basis of the discharge voucher. Similarly, it would be open to the claimant to allege that the voucher had been obtained under fraud, coercion or undue influence. In such a scenario, the civil court would consider the evidence as to whether there was any fraud, undue influence or coercion. If the civil court finds that there was none, then it would reject the claims at the outset. However, if it finds that the allegations of fraud are true, then it would reject the discharge voucher and proceed to adjudicate the claims on merit.

122. Once an arbitration agreement exists between parties, then the option of approaching the civil court becomes unavailable to them. In such a scenario, if the parties seek to raise a dispute, they necessarily have to do so before the arbitral tribunal. The arbitral tribunal, in turn, can only be constituted as per the procedure agreed upon between the parties. However, if there is a failure of the agreed upon procedure, then the duty of appointing the arbitral tribunal falls upon the referral court under Section 11 of the Act, 1996. If the referral court, at this stage, goes beyond the scope of enquiry as provided under the section and examines the issue of “accord and satisfaction”, then it would amount to usurpation of the power which the parties had intended to be exercisable by the arbitral tribunal alone and not

by the national courts. Such a scenario would impeach arbitral autonomy and would not fit well with the scheme of the Act, 1996.

123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

124. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the arbitral tribunal is constituted by the referral court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the referral courts go into the details of issues pertaining to “accord and satisfaction” and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.

125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”

25. Paragraph 125 is specifically referred to in support of the contention that, if the referral court is able to see the frivolity and dishonesty in the claim of the petitioner, the same can also be detected by the arbitral tribunal, and the tribunal can arrive at an informed reasoned decision, upon appreciation of evidence adduced by the parties.

26. In the case in hand, evidence is required to be led to establish that the decision of the Board of the claimant company displayed accord and satisfaction and that the resolution was not taken as an interim measure, to tide over financial hardship, as contended by the petitioner. It is available from the records that, several meetings and communications took place. Thus, whether the petitioner lodged the objections at each and every stage, as pleaded in this application, are also to be ascertained from the evidence to be adduced by the parties.

27. This court finds that there is a dispute resolution clause providing settlement of disputes by arbitration. Clause 13 of the insurance policy is quoted below :-

“13.If any dispute or difference shall arise as to the quantum to be paid under the policy(liability being otherwise admitted) such difference shall independently of all other question 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 herein before 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.

28. The notice invoking arbitration has been served upon the respondent. The petitioner nominated a sole arbitrator. The respondent raised disputes with regard to the claim. Thus, this application is allowed without any observations on the merits and leaving the learned arbitrator to decide on all

issues, including the admissibility of the claim, arbitrability of the dispute and accord and satisfaction of the claim.

29. The arbitration clause provides for a single arbitrator and in case of disagreement over the nomination of the single arbitrator an arbitral tribunal shall be appointed. Here, the respondent denied the dispute, and not the number of arbitrators.

30. The court appoints Mr. Sourav Sen, learned Senior Advocate of this court, as the single Arbitrator. The appointment is subject to the provisions of Section 12 of the Arbitration Conciliation Act 1996.

31. The learned Arbitrator shall fix his own remuneration as per the schedule of the Act.

32. There will be no order as to cost.

33. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)