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Arb.O.P.(Com.Div.)No.117 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-04-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div.)No.117 of 2025

M/s.Sical Multimodal and Rail Transport Ltd.(SMART)
having its registered office at 73, Armenian Street,
Chennai - 600 001

And having Head Office at No.32,
Rajaji Salai, Chennai - 600 001

And having Public Bonded Warehouse
at Survey no.1306, Warehouse-A,
Madurai bypass Road, Opp. SIPCOT Office,
Tuticorin - 628 101.

..Petitioner

vs.

The Nw india Assurance Co.Ltd.,
Having head office at
New India Assurance Building,
87, MG Road Fort Mumbai - 400 001

Also having office at
B Wing II Floor, Sundaram finance Building,
21, Patullos Road, Chennai - 600 002

And at
Mangalam Building, 2nd Floor,
F-46, 1st Main Road,
Anna Nagar (East), Chennai - 600 102.

..Respondent

For Petitioner : Mr.P.Giridharan

For Respondent : Mr.S.P.Chockalingam



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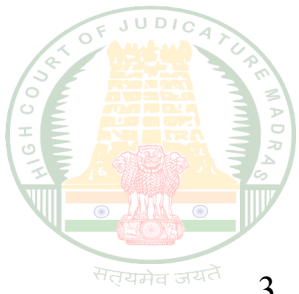
ORDER

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This petition has been filed under Section 11 of the Arbitration and Conciliation, 1996, seeking for appointment of an Arbitrator by this Court.

2. There seems to be a dispute between the petitioner and the respondent arising out of the Fire Insurance Policy dated 29.01.2021 entered into between the petitioner and the respondent. According to the petitioner, as per the insurance policy, the petitioner is entitled to certain sums of money from the respondent on account of the fire accident. There exists an arbitration clause in the Fire Insurance Policy dated 29.01.2021 and the same is extracted hereunder.

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.



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3. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent on 20.12.2024 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996. A reply has also been received to the said arbitration invocation notice from the respondent on 22.01.2025. In the said reply, they have contended that they are not liable to pay any amount to the petitioner and they have also stated that there is no arbitrable dispute for adjudication by an Arbitrator. In view of the said reply, the petitioner has been constrained to file this petition under section 11 of the Arbitration and Conciliation Act, 1996. A counter has been filed by the respondent denying the contentions of the petition and raising the following grounds for opposing the appointment of an Arbitrator by this Court.

(a) There is no arbitrable dispute between the petitioner and the respondent arising out of the Fire Insurance Policy dated 29.01.2021.

(b) No money is due and payable by the respondent to the petitioner under the Fire Insurance Policy dated 29.01.2021.

4. The law is now well settled, even in cases where a defence of accord and satisfaction is taken by the respondent in a Section 11 application, the said defence cannot be adjudicated in an application under Section 11 of the Arbitration and Conciliation Act, but can be adjudicated only by the Arbitral



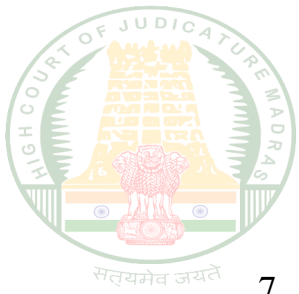
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Tribunal either under Section 16 of the Arbitration and Conciliation Act or in the main Arbitral proceedings.

5. This Court, while deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996 has only got a limited scrutiny. Admittedly, there exists an arbitration clause in the Fire Insurance Policy dated 29.01.2021 which is the subject matter of dispute between the petitioner and the respondent. The arbitration clause has also been extracted supra. The said clause is also not disputed by the respondent as seen from the counter filed before this Court.

6. In view of the existence of the arbitration clause in the contract which is the subject matter of dispute as raised by the petitioner which arises out of the Fire Insurance Policy dated 29.02.2021 and since the petitioner has complied with the requirements of section 21 of the Arbitration and Conciliation Act by issuing notice to the respondent on 20.12.2024 and since the question of accord and satisfaction or arbitrability of dispute as raised by the respondent cannot be adjudicated by this Court in a Section 11 petition, necessarily, this Court will have to appoint an Arbitrator as prayed for by the petitioner in this petition.



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7. The petitioner had already nominated their Arbitrator through their arbitration invocation notice dated 20.12.2024. The arbitration clause provides for three member arbitral panel. Since the respondent has not nominated the name of the arbitrator, the petitioner has been constrained to file this petition under section 11 of the Arbitration and Conciliation Act, seeking for appointment of the respondent's arbitrator. Since the respondent has not come forward to appoint an Arbitrator on their behalf despite the existence of an arbitration clause in the contract which is the subject matter of dispute between the parties, this Court will have to necessarily appoint an Arbitrator on behalf of the respondent.

8. Accordingly, this Court appoints, Hon'ble Mr.Justice.V.Bharathidasan, Former Judge, Madras High Court at No.22(L-45) 2nd Main Road, Kamaraj Nagar, Thiruvanmiyur, Chennai-600 041 (Cell Nos. 9444383139/ 9445500224) of this Court as the Arbitrator on behalf of the respondent. The Arbitrator appointed by the petitioner as well as the Arbitrator appointed by this Court shall jointly appoint the Presiding Arbitrator as per the Arbitration clause and the said Arbitral Tribunal shall conduct the arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.



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9. The Arbitrator appointed by this Court shall be paid his remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act, 1996. Both the parties shall equally share the arbitrators fees.

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

vsi

ABDUL QUDDHOSE,J.

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