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Arb.O.P (Com.Div.) No.174 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.174 of 2025

M/s.LS Automotive India Private Limited,
rep. by its Authorised Representative Premkumar R.K. ... Petitioner

Versus

Oriental Insurance Company Limited ... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of Clause 13 of Part B (General Conditions) of the policy dated 30.09.2015 and to direct the respondent to pay costs.

For Petitioner : Mr.Sricharan Rangarajan,
Senior Counsel for
Mr.Karthik Sundaram

For Respondent : Mr.N.Venkatraman
for M/s.Nageswaran & Narichania

ORDER



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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 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 Standard Fire and Special Perils Policy bearing No.411200/11/2016/504 dated 30.09.2015. The petitioner under the aforementioned Insurance Policy has got insurance coverage for flood claims from the respondent/Insurance Company. On account of the floods, which caused damage, the petitioner lodged an insurance claim with the respondent under the Insurance Policy. The respondent/Insurance Company settled a part of the claim made by the petitioner by paying a sum of Rs.20,24,12,191/- to the petitioner under the Standard Fire and Special Perils Policy bearing No.411200/11/2016/504 dated 30.09.2015, which is the subject matter of the dispute between the parties. The petitioner claims that the raw materials, which were also damaged/ lost due to the floods, are also covered under the Standard Fire and Special Perils Policy bearing No.411200/11/2016/504 dated 30.09.2015. However, the same is disputed by the respondent.

3. According to the respondent, since they are questioning their

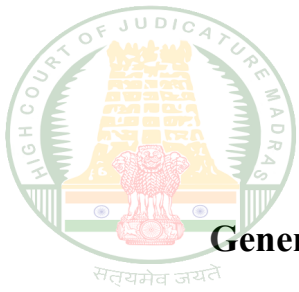


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liability to pay the insurance claim made by the petitioner with regard to the raw materials, which were destroyed/lost, the arbitration clause contained in the Standard Fire and Special Perils Policy bearing No.411200/11/2016/504 dated 30.09.2015 is not binding on them. The respondent also claims that the claim of the petitioner towards damage/loss of raw materials on account of the floods, which is the subject matter of this petition, is also hopelessly barred by the law of limitation. According to them, the payment of Rs.20,24,12,191/- made by the respondent to the petitioner was made as early as on 19.07.2019. According to the respondent, since the petitioner invoked arbitration only on 22.07.2024 beyond the period of three years, this petition is hopelessly barred by the law of limitation.

4.Heard Mr.Sricharan Rangarajan, learned Senior Counsel, representing Mr.Karthik Sundaram, learned counsel for the petitioner and Mr.N.Venkatraman, representing M/s.Nageswaran & Narichania, learned counsel for the respondent.

5.Learned Senior Counsel for the petitioner drew the attention of this Court to the recent decision of the Hon'ble Supreme Court in the case of **SBI**



General Insurance Co. Ltd. vs. Krish Spinning reported in 2024 SCC

Online SC 1754 and in particular, he would rely upon paragraphs 36 and 37

of the said judgment. By relying upon the said paragraphs, he would submit that in identical circumstances, while interpreting an identical arbitration clause in a case where the Insurance Company had disbursed a part of the claim amount to the insured, the non payment of the balance claim amount to the insured was held to be a dispute on quantum and not of liability by the Hon'ble Supreme Court.

6.However, the said contention has been disputed by the learned counsel for the respondent. He drew the attention of this Court to the arbitration agreement found in the Insurance Policy and in particular, to the second part of the arbitration agreement and would submit that since the respondent/Insurance Company has disputed its liability with regard to the raw materials claim made by the petitioner, the claim made by the petitioner is not an arbitrable dispute as it has been categorically stated in the arbitration clause that in case the respondent has disputed its liability under the policy, the parties are not bound by the arbitration agreement. Hence, he would submit that the arbitration agreement is only applicable for a dispute



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arising out of quantum under the Insurance Policy and it does not cover disputes pertaining to liability and coverage. He would also submit that only based on the Surveyor's report, payments were made to the petitioner by the respondent. He also drew the attention of this Court to the Surveyor's report and would submit that the Surveyor himself has admitted that the Insurance Policy does not give coverage for raw materials.

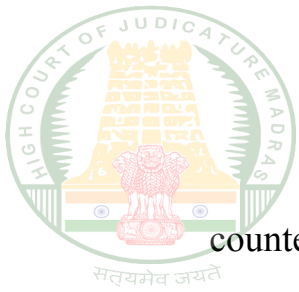
7.On the other hand, the learned Senior Counsel appearing for the petitioner would submit that the Surveyor is not an independent Surveyor and the Surveyor was appointed only at the instance of the respondent. Therefore, the Surveyor's report is not an independent report. He would submit that the contention raised by the learned counsel for the respondent can be adjudicated only by the Arbitrator and not by this Court, while deciding an application under Section 11 of the Arbitration and Conciliation Act, 1996. He would submit that once there exists an arbitration clause in the contract, which has also not been disputed by the respondent, the contentions of the respondent as raised in the counter filed before this Court can be adjudicated only by the Arbitrator.

8.Learned Senior Counsel for the petitioner also drew the attention of



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this Court to the legal notice sent by the petitioner to the respondent dated 16.05.2017, pertaining to the subject claim regarding raw materials and would submit that despite the said notice, no reply was received from the respondent. He also drew the attention of this Court to the email sent by the respondent while making the part payment of Rs.20,24,12,191/- to the petitioner and even in the said email, they have not disputed the non-arbitrability of the raw materials claim made by the petitioner under the Insurance Policy. He would submit that only for the first time through the reply, sent by the respondent to the arbitration invocation notice issued under Section 21 of the Arbitration and Conciliation Act, the respondent had disputed the liability with regard to the raw materials claim made under the Insurance Policy dated 30.09.2015 on the ground that it is not an arbitrable dispute. He would submit that once there exists an arbitration clause in the contract, which is the subject matter of the dispute, which has also not been disputed by the respondent, this Court, while deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996, has to necessarily appoint an Arbitrator as this Court, which is having a limited scrutiny, cannot make a roving enquiry with regard to the merits of the learned counsel for the respondent's contention, which have been reiterated in the



counter filed before this Court.

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9.Learned counsel for the respondent drew the attention of this Court to the following authorities:

a)A decision of the Hon'ble Supreme Court in the case of Oriental Insurance Company Limited vs. Narbheram Power and Steel Private Limited reported in 2018 (6) SCC 534;

b)A decision of the learned Single Judge of this Court in the case of Jumbo Bags Ltd. vs. New India Assurance Co. Ltd. reported in 2016 (3) CTC 769;

c)A decision of the Hon'ble Supreme Court in the case of Khatema Fibres Limited vs. New India Assurance Company Limited and another reported in 2023 (15) SCC 327.

10.The above referred judgments were relied upon by the learned counsel for the respondent in support of the following propositions:

a)An arbitration clause is required to be strictly construed and if a clause stipulates that under certain circumstances, there can be no arbitration and the circumstances can be demonstrable clearly then the controversy pertaining to the appointment of Arbitrator has to be put to rest;



b)Nothing contained in the Arbitration and Conciliation Act, 1996

would force the parties to go for arbitration unless the parties had agreed to go for arbitration;

c)Surveyor's report cannot be departed from and only based on the Surveyor's report as per the IRDA regulations, the Insurance Company has to settle the claim of the injured.

Discussion:

11.The aforesaid propositions are not disputed. In the instant case, the petitioner claims that the Insurance Policy gives coverage for raw materials as well. It is also an un-disputed fact that based on the insurance claim made by the petitioner, part payment has been made by the respondent amounting to Rs.20,24,12,191/-, though the claim made by the petitioner was for a sum of Rs.53 crores, which includes raw materials claim. It is also an undisputed fact that the respondent, while making the payment of Rs.20,24,12,191/- to the petitioner, did not inform the petitioner that they are not liable to pay the raw material claim since the Insurance Policy does not give coverage for the same.



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12.It is also an admitted fact that the petitioner did not issue discharge voucher to the respondent on receipt of the sum of Rs.20,24,12,191/- even though a request was made by the respondent to the petitioner for the same. Even without a discharge voucher, the respondent has paid a sum of Rs.20,24,12,191/- to the petitioner, which according to the petitioner is not towards full and final settlement. Only for the first time through their reply sent to the arbitration invocation notice dated 20.08.2024, the respondent has taken a plea that they are not liable to pay the raw materials claim made by the petitioner. In all the previous communications prior to the aforesaid reply, the respondent has not disputed that the Insurance Policy does not give coverage for raw materials claim. Even to the legal notice dated 16.05.2017 sent by the lawyers of the petitioner, reiterating the petitioner's claim towards loss of raw materials, the respondent did not send any reply.

13.While deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996, this Court has got limited scrutiny. Once there exists an arbitration clause in the contract, which is the subject matter of the dispute between the parties and the respondent also does not dispute the existence of the same, though they have disputed their liability, this Court



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has to necessarily appoint an Arbitrator. If at all the respondent has got any objection with regard to the arbitrability of the dispute, they can very well raise the same either under Section 16 of the Arbitration and Conciliation Act, 1996 before the Arbitrator or by filing a counter in the arbitral claim. The Surveyor's Report, relied upon by the respondent to substantiate their contention that the Insurance Policy does not give coverage for raw materials claim is not an independent report. In fact the said Surveyor was appointed only by the respondent. The petitioner also did not give its consent for the appointment of the said Surveyor. Whether the Surveyor's report, relied upon by the respondent is a correct report or not can be decided only by the Arbitrator and not by this Court in a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 where this Court is having limited scrutiny.

14.The Hon'ble Supreme Court in SBI General Insurance Co. Ltd. vs. Krish Spinning reported in 2024 SCC Online SC 1754, has also, while deciding an almost identical issue, held in paragraph No.37 of the said judgment as follows:

'37. However, we find no merit in the aforesaid submission of



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Arb.O.P (Com.Div.) No.174 of 2025

the appellant. It is evident from the record that the appellant had admitted its liability with respect to the first claim and had even disbursed an amount of Rs 84,19,579/- in pursuance of the signing of the advance discharge voucher by the respondent. Thus, it is clearly a case of admission of liability by the appellant. However, the quantum of liability is in dispute as the amount claimed by the respondent is at variance with the amount admitted by the appellant. Thus, the dispute being one of quantum and not of liability, it falls within the ambit of the conditional arbitration clause as contained in the insurance policy.'

15.As seen from the aforementioned paragraph of the Hon'ble Supreme Court's decision, in that case as well, the Insurance Company had admitted the liability with respect to the first claim and had even disbursed amounts to the insured. However, the remaining part of the claim made by the insured was not settled. The Hon'ble Supreme Court, also dealing with an identical arbitration clause, which is the subject matter of this petition, has held that the disputes raised by the claimant is one of quantum and not of liability.

16.For the foregoing reasons, this Court is of the considered view that

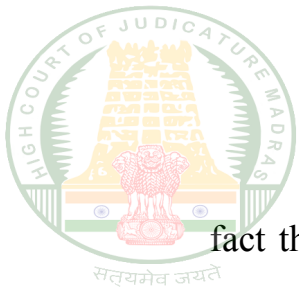


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the dispute has to be necessarily referred to an Arbitrator appointed by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 and the objections of the respondent with regard to the arbitrability of the dispute in this petition has to be rejected and if at all the same can be raised only before the Arbitrator by the respondent either under Section 16 of the Arbitration and Conciliation Act, 1996 or by filing a counter to the claim filed by the respondent.

17.Insofar as the limitation issue raised by the respondent is concerned, it is an admitted fact that the arbitration invocation notice was sent by the petitioner on 22.07.2024. It is also an admitted fact that the Hon'ble Supreme Court had extended the period of limitation for the period from 15.03.2020 to 28.02.2022 on account of Covid-19. The said period has been excluded for the purpose of saving limitation and the same was also not disputed by the learned counsel for the respondent during the course of his submissions.

18.It is also an admitted fact that the last part payment made under the Insurance Policy to the petitioner was on 09.08.2019. It is also an admitted



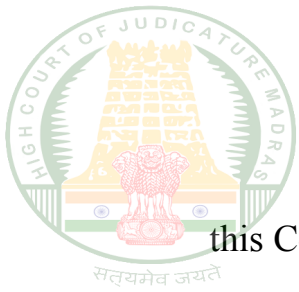
fact that the the period from 15.03.2020 to 28.02.2022 stands excluded for

the purpose of saving limitation as held by the Hon'ble Supreme Court.

Hence, the arbitration invocation notice sent by the petitioner on 22.07.2024 will be within the period of limitation. Therefore, it cannot be construed that the claim of the petitioner is hopelessly barred by the law of limitation.

19.For the foregoing reasons, the contentions of the respondent as raised in their counter has to be rejected. However, liberty will have to be given to them to raise all objections including the pleas that they have taken before this Court before the Arbitrator appointed by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 either by filing an application under Section 16 of the Arbitration and Conciliation Act or by filing a counter in the arbitral claim made by the petitioner.

20.Since the respondent has questioned the arbitrability of the dispute and since in the reply sent to the arbitration invocation notice under Section 21 of the Arbitration and Conciliation Act, 1996 and since the respondent has refused to accept the name of the Arbitrator, suggested by the petitioner,



this Court has to appoint a Sole Arbitrator despite the fact that the arbitration clause in the Insurance Policy, which is the subject matter of the dispute between the parties, provides for a three member Arbitral Tribunal on the failure of any of the parties to accept for arbitration through a Sole Arbitrator for the following reasons:

'Section 11(4) to 11(6) of the Arbitration and Conciliation Act, 1996 reads as follows:

'(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court];

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a



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Arb.O.P (Com.Div.) No.174 of 2025

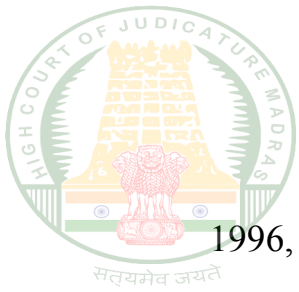
request by one party from the other party to so agree the appointment shall be made, upon request of a party, by [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court].

(6) Where, under an appointment procedure agreed upon by the parties,— (a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment."

21. In the case on hand, the Sole Arbitrator nominated by the petitioner has not been accepted by the respondent. The respondent has also disputed the arbitrability of the dispute. Since the respondent has questioned the arbitrability of the dispute, this Court is of the considered view that by applying Section 11(4) to 11(6) of the Arbitration and Conciliation Act,

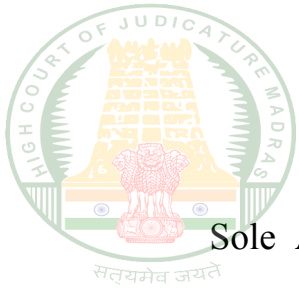


1996, this Court has to necessarily appoint a Sole Arbitrator. Only in cases where the respondent accepts the arbitrability of the dispute, the procedure contemplated under the arbitration clause in the contract, which is the subject matter of the dispute, needs to be followed. It is also in the interest of both the parties to the dispute to go for arbitration through a Sole Arbitrator instead of a three member Arbitral Tribunal.

22.After giving due consideration to the aforementioned factors and by applying Section 11(4) to 11(6) of the Arbitration and Conciliation Act, 1996, this Court is appointing a Sole Arbitrator to adjudicate the dispute between the parties arising out of the Standard Fire and Special Perils Policy bearing No.411200/11/2016/504 dated 30.09.2015.

23.For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:

(a)This Court appoints Hon'ble Mr.Justice Rajiv Shakdher, Former Chief Justice of Himachal Pradesh High Court, having office at C-2, Nizamuddin East (2nd Floor), New Delhi (Mobile No.97174 95004) as the



Arb.O.P (Com.Div.) No.174 of 2025

Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent, arising out of the Standard Fire and Special Perils Policy bearing No.411200/11/2016/504 dated 30.09.2015, on merits and in accordance with law.



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Arb.O.P (Com.Div.) No.174 of 2025

ABDUL QUDDHOSE, J.
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(b)The Arbitrator shall be paid his remuneration/fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996.

(c)Both the parties shall equally share the Arbitrator's fees.

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

No costs.

19.06.2025

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Arb.O.P (Com.Div.) No.174 of 2025