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

Date of Decision: 24.11.2025

+ **ARB.P. 1003/2025**

M/S VIVEK TRAVELS PVT. LTDPetitioner

Through: Mr. Amit Kumar Maihan, Adv.
versus

NATIONAL INSURANCE CO. LTD.Respondent

Through: Mr. Abhishek Kumar Gola, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The brief facts are that the petitioner i.e., M/s Vivek Travels Pvt. Ltd., a private limited company, is engaged in travel related works. It runs taxi services and also runs luxury buses for transportation.
3. The respondent is a Public Sector general insurance company and it insures *inter alia* motor vehicles against risks like accident, fire, burglary, housebreaking and other allied perils.
4. The petitioner gets its vehicles insured with the respondent and the present petition pertains to Policy No. 360700312310001016 ("**Insurance Policy**") pertaining to one of petitioner's vehicle.
5. The Commercial Vehicle Package Policy to the said Insurance Policy contains an arbitration clause being Condition No. 7, which reads as under:-



“7. If any dispute or difference shall arise as to the quantum to be paid under the policy (liability being otherwise admitted), such difference shall independent of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to the dispute 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 two arbitrators one to be appointed by each of the parties to the dispute/difference, and a third arbitrator to be appointed by such two arbitrators who shall act as the presiding arbitrator and the arbitration shall be conducted in accordance with the provisions of the Arbitration & 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 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.

“As per IRDAI Circular Ref: IRDAI/NL/CIR/MISC/188/10/2023, Dated: 27/10/2023, Arbitration Clause shall be deemed deleted from the policy.””

6. On 16.05.2024 at around 12:15 AM, the engine of the said passenger carrying vehicle of the petitioner caught fire. The same was reported to the respondent.



7. The spot survey was got conducted by the surveyor deputed by the respondent on 16.05.2024. Later, the vehicle again caught fire and the said incident was also immediately reported to the respondent who got the Spot Survey, Final Survey as well as the Fire Forensic Investigation and Examination conducted. Thereafter, the Investigator and Surveyor submitted their reports to the respondent.

8. Consequently, the respondent sent a Pre-repudiation Letter dated 21.01.2025 to the petitioner classifying the loss suffered by the petitioner as 1st Loss and 2nd Loss and informing that 2nd Loss is hit by violation of Condition No. 5 of the Commercial Vehicle Package Policy, sought petitioner's reply as to why their claim should not be repudiated. The respondent offered an amount of Rs. 4,40,000/- for the 1st Loss and refused to pay the other claim amount. Thereafter, the respondent sent the Final Repudiation Letter dated 27.03.2025 to the petitioner, reiterating its stand.

9. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notice dated 28.04.2025 and thereafter, filed the present petition.

10. Mr. Gola, learned counsel for the respondent has taken primarily 2 objections.

11. Firstly, he states that in view of the IRDAI Circular Ref: IRDAI/NL/CIR/MISC/188/10/2023 issued on 27.10.2023, the arbitration clause in the Commercial Vehicle Package Policy is deemed to have been deleted from the Insurance Policy. The said IRDAI circular is extracted below:-



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY OF INDIA

Ref: IRDAI/NL/CIR/MISC/188/10/2023

Date: 27th October, 2023

To

All CEOs/ CMDs of General Insurance Companies

Re: Amendment of Arbitration Clause in General Insurance policies

On reference made by the Hon'ble Supreme Court of India, IRDAI undertook a comprehensive review of the extant Arbitration Clause prevalent across various lines of business in the General Insurance Industry. After due consultation with stakeholders, IRDAI is of the view that the extant Arbitration Clause is limited in scope and need to be amended. It was also viewed that the retail/ individual policy holders may be kept out from the provisions of Arbitration Clause as they have alternative forums of Insurer's Grievances System, Insurance Ombudsman and the Consumer Courts besides the Civil Courts available for redressal of their grievances/ disputes.

Accordingly, the Authority in exercise of its powers under Clause (i) sub Section (2) of Section 14 of the IRDA Act, 1999, hereby directs that

- I. All policies issued under the Retail Lines of Business shall not have any Arbitration Clause.
- II. All policies issued under the Commercial Lines of Business shall have an Arbitration Clause as under:

**The parties to the contract may mutually agree and enter into a separate Arbitration Agreement to settle any and all disputes in relation to this policy.*

*Arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.**

III. Transitory provisions

a. For all the new policies issued on or after the date of this circular:

- Arbitration Clause shall be deemed deleted from all the retail policies.
- Clause at 'II' above shall be deemed to be the Arbitration Clause in General Conditions of all the commercial insurance policies.

फॉर्म नं.-115/1, फाइनेंशियल डिस्ट्रिक्ट, नानकुरामगुडा,
गच्छीबावली, हैदराबाद -500032, भारत
दूरभाष- 91-040-2020 4000

Sy No. 115/1, Financial District, Nanakramguda,
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Ph. : 91-040-2020 4000



भारतीय बीमा विनियामक और विकास प्राधिकरण
INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY OF INDIA

b. For all the existing policies:

- The existing Arbitration Clause shall remain valid till the term of the policy unless a policyholder specifically requests the insurer to replace it with the clause at "II" above.
- The clause at "II" shall be deemed replaced the existing Arbitration Clause in all the commercial policies from the date of renewal falling on or after the date of this circular

Insurers shall take necessary steps to bring it to the notice of the policyholders and to amend the relevant provisions of such policies.

This circular comes into force with immediate effect.

-Sd/-

Randip Singh Jaggpal
Executive Director (NL)

12. Admittedly, in the present case, the Insurance Policy was from 27.10.2023 to 26.10.2024 and was effective from 00 hours on 27.10.2023. Hence, the time when the IRDAI Circular was issued on 27.10.2023, the petitioner was already covered by the Insurance Policy and therefore, sub-clause (b) of Clause III of the IRDAI Circular would be applicable in the present case.

13. As per sub-clause (b) of Clause III of the IRDAI Circular, for all existing policies, the arbitration clause would remain valid unless the policyholder i.e., the petitioner herein, specifically requests the insurer i.e., the respondent herein, to replace it with Clause II of the IRDAI Circular.

14. In the present case, admittedly, no such request was made by the petitioner i.e., the policy holder.

15. Further, the second asterisk of sub-clause (b) of Clause III of the



IRDAI Circular also does not assist the respondent. As per the second asterisk sub-clause (b) of Clause III of the IRDAI Circular, Clause II of the IRDAI Circular will be deemed to be replaced in all existing Commercial Policies from the date of renewal falling “on or after the date” of the IRDAI circular.

16. Additionally, if the interpretation as sought by the respondent is to be given effect, then that would mean that the arbitration clause in all insurance policies which were in existence on the date of the IRDAI Circular i.e., 27.10.2023 would be automatically deleted.

17. The same cannot be accepted as the fulcrum of the arbitration mechanism is party autonomy. The parties at the time of making a contract are supposed to be *ad idem* on having their disputes settled through Alternate Disputes Redressal Mechanism of arbitration.

18. If the interpretation that the respondent midway during subsistence of an arbitration clause could unilaterally delete the arbitration mechanism from the Alternate Disputes Redressal Mechanism between the parties, the same would be an antithesis to the arbitral process and cannot be sustained.

19. The second objection taken by the respondent is that since it is a case of repudiation and not regarding quantification of a loss, the same is covered under Condition No. 7 of the Commercial Vehicle Package Policy, as reproduced above. Further, the reliance is placed on the judgment of ***Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd., (2018) 6 SCC 534***, particularly paragraphs No. 23 and 25 which read as under:-

“23. It does not need special emphasis that an arbitration clause is required to be strictly construed. Any expression in the



clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. If a clause stipulates that under certain circumstances there can be no arbitration, and they are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest.

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25. The aforesaid communication, submits the learned Senior Counsel for the respondent, does not amount to denial of liability under or in respect of the policy. On a reading of the communication, we think, the disputation squarely comes within Part II of Clause 13. The said part of the clause clearly spells out that the parties have agreed and understood that no differences and disputes shall be referable to arbitration if the company has disputed or not accepted the liability. The communication ascribes reasons for not accepting the claim at all. It is nothing else but denial of liability by the insurer in toto. It is not a disputation pertaining to quantum. In the present case, we are not concerned with regard to whether the policy was void or not as the same was not raised by the insurer. The insurance company has, on facts, repudiated the claim by denying to accept the liability on the basis of the aforesaid reasons. No inference can be drawn that there is some kind of dispute with regard to quantification. It is a denial to indemnify the loss as claimed by the respondent. Such a situation, according to us, falls on all fours within the concept of denial of



disputes and non-acceptance of liability. It is not one of the arbitration clauses which can be interpreted in a way that denial of a claim would itself amount to dispute and, therefore, it has to be referred to arbitration. The parties are bound by the terms and conditions agreed under the policy and the arbitration clause contained in it. It is not a case where mere allegation of fraud is leaned upon to avoid the arbitration. It is not a situation where a stand is taken that certain claims pertain to excepted matters and are, hence, not arbitrable. The language used in the second part is absolutely categorical and unequivocal inasmuch as it stipulates that it is clearly agreed and understood that no difference or disputes shall be referable to arbitration if the company has disputed or not accepted the liability. The High Court has fallen into grave error by expressing the opinion that there is incongruity between Part II and Part III. The said analysis runs counter to the principles laid down in the three-Judge Bench decision in Vulcan Insurance Co. Ltd. [Vulcan Insurance Co. Ltd. v. Maharaj Singh, (1976) 1 SCC 943] Therefore, the only remedy which the respondent can take recourse to is to institute a civil suit for mitigation of the grievances. If a civil suit is filed within two months hence, the benefit of Section 14 of the Limitation Act, 1963 will enure to its benefit.”

20. The learned counsel for the respondent states that even assuming without admitting, that the disputes were arbitrable, Condition No. 7 of the Commercial Vehicle Package Policy, as reproduced above, shows that only



the disputes regarding quantification of loss were arbitrable. The stand of the respondent in the present case is that of “repudiation” of the claims, and not of quantification.

21. I am unable agree. In the present case, as per the Motor Final Survey Report dated 01.10.2024, the assessment of the 1st loss is Rs. 4,40,000/- and that of 2nd loss at Rs. 30,50,000/-, totalling to Rs. 34,90,000/-.

22. The respondent *vide* Pre-repudiation letter dated 21.01.2025 accepted the 1st loss of Rs. 4,40,000/- but made it subject to submission of repair bills and re-inspection of the vehicle and repudiated the 2nd loss in terms of Condition No. 5 of Commercial Vehicle Package Policy, which reads as under:-

“5. The Insured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and the Company shall have at all times free and full access to examine the vehicle insured or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown, the vehicle insured shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle insured be driven before the necessary repairs are effected, any extension of the damage or any further damage to the vehicle shall be entirely at the insured's own risk.”

23. *Vide* final repudiation letter dated 27.03.2025, the respondent repudiated the entire loss relying on Condition No. 5 of Commercial Vehicle Package Policy.

24. To my mind, the judgment of ***Oriental Insurance (supra)*** relied upon



by the respondent does not assist the respondent. In the said judgment the findings of the Hon'ble Supreme Court was based on the fact that the insurance company in that matter came to a finding that there was no actual loss suffered by the insured. The same is found in paragraph No. 24 of the said judgment which reads as under:-

“24. In the instant case, Clause 13 categorically lays the postulate that if the insurer has disputed or not accepted the liability, no difference or dispute shall be referred to arbitration. The thrust of the matter is whether the insurer has disputed or not accepted the liability under or in respect of the policy. The rejection of the claim of the respondent made vide letter dated 26-12-2014 ascribes the following reasons:

“1. Alleged loss of imported coal is clearly an inventory shortage.

2. There was no actual loss of stock in process.

3. The damage to the sponge iron is due to inherent vice.

4. The loss towards building/sheds, etc. are exaggerated to cover insured maintenance.

5. As there is no material damage thus business interruption loss does not get triggered.””

25. A perusal of the paragraph reproduced above shows that the rejection was on a factual matrix of the loss, whereas, in the present case, the claim of the petitioner has been repudiated only on applicability of a particular clause of the policy (i.e., Condition No. 5 of Commercial Vehicle Package Policy) and not on the factual matrix of the loss suffered by the petitioner. In fact, as per the Motor Final Survey Report it is found that petitioner had suffered



loss.

26. For the said reasons, the petition is allowed, with the following directions:

- i) Mr. Vipul Ganda (Advocate) (Mob. No. 9910804949) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.
- vi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

NOVEMBER 24, 2025/DM

(Corrected and released on 05.12.2025)