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

Date of decision: 26.05.2025

\+ **ARB.P. 1428/2024**

M/S BONNY POLYPLAST PVT. LTD.

.....Petitioner

Through:

Versus

THE NEW INDIA ASSURANCE COMPANY LTD.

...Respondent

Through: Mr. JPN Shahi, Mr. Divyanshu Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

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

1. This is a petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties arising out of the Standard Fire and Special Perils Policy dated 25.01.2022. The arbitration clause is Clause 13 of the said policy and the same 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."

2. The facts are that the petitioner and the respondent entered into a Standard Fire and Special Perils Policy No. 31130011214300000047 (Insurance Policy) valid upto 24.01.2023. On 08.08.2022, the fire broke out in the factory of the petitioner and a claim was filed before the respondent insurance company for Rs. 18 crores.

3. The respondent company appointed a surveyor and the surveyor quantified the claim of the petitioner for Rs. 2,42,96,943/-. The petitioner accepted the said amount and also issued a discharge voucher on 18.03.2024.

4. Thereafter, the petitioner vide legal notice dated 10.07.2024 invoked arbitration, stating that the discharge voucher was under coercion and not acceptable to the petitioner. Hence, the present petition.

5. Mr. Shahi, learned counsel for the respondent, submits that there exists no dispute requiring adjudication by the arbitrator, as the petitioner has accepted the amount in full and final settlement. In this regard, he draws my attention to the discharge voucher and the same reads as under:

2025:DHC:4806

<u>DISCHARGE VOUCHER</u>

Received from The New India Assurance Company Limited, the sum of <u>Rs. 2,42,96,943/- (In words -- (Two Crores Forty-Two Lakhs Ninety-Six Thousand Nine Hundred and Forty-Three Only)</u> which We agree to accept in full and final settlement and discharge of all claims present or future under Policy No-<u>31130011214300000047</u> in respect of loss which occurred on the Date 08/08/2022. We give the discharge receipt to the Company in full and final settlement of all our claims present or future arising directly/indirectly in respect of the said loss.

For Bonny Polyplast Pvt. Ltd.

Director

Witness

Signature ~~of the insured~~

Name SANJEEV SACHDEVA

PALLAV ANEJA (DIRECTOR)

Occupation......

Signature

Address HOUSE NO. 6, ROAD NO. 75, WEST PUNJABI BAGH, NEW DELHI-110026

Address E-6 NAV BHARAT APARTMENTS PASCHIM VIHAR, NEW DELHI-63

Date: 18/03/2024

Date: 18/3/2024

6. I am unable to accept the contention raised by the respondent.

7. In this regard, the circular issued by the Insurance Regulatory and Development Authority of India (IRDA) dated 24.09.2015 is clear and is reproduced below:-

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

Ref No: IRDA/NL/CIR/Misc/173/09/2015 Date: 24th September, 2015

To
CEOs of all General Insurance Co.,

Circular

Reg: Discharge Voucher in settlement of claim

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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.

TRUE COPY

(Suresh Mathur)
Senior Joint Director

8. I am of the view that the petitioner, having suffered a fire loss, is bound to mitigate the loss and to accept whatever payment is offered by the insurance company, and would naturally be ready and willing to sign any document presented as a condition precedent to receiving the payment.

9. In the present case, this discharge voucher, in no way, can be considered to be made voluntarily and out of the free will of the petitioner. The same has duly been appreciated by the regulatory authority as detailed above.

10. In this regard, the judgment passed by the Hon'ble Supreme Court in ***Arabian Exports Pvt. Ltd. vs. National Insurance Company Ltd.*** 2025 INSC 630 and more particularly paragraphs 40 and 41 is relevant and the same reads as under:-

> *"40. Thus, the doctrine of Kompetenz-Kompetenz is now firmly embedded in the arbitration jurisprudence in India. This doctrine is based on the principle that an arbitral tribunal is competent to rule on its own jurisdiction including on the issue of existence or validity of an arbitration agreement. The object is to minimize judicial intervention which is an acknowledgment of the concept of party autonomy.*
>
> *41. In view of the clear legal proposition, we have no hesitation in holding that the High Court was wrong in rejecting the Section 11(6) applications of the appellant. The question as to whether the appellant was compelled to sign the standardized voucher/advance receipt forwarded to it by the respondent out of economic duress and whether*

notwithstanding receipt of Rs. 1,88,14,146.00 as against the claim of Rs. 5,71,69,554.00 the claim to arbitration is sustainable or not are clearly within the domain of the arbitral tribunal.”

11. For the said reasons, I am of the view that disputes are subsisting between the petitioner and the respondent. The discharge voucher is not a valid discharge in the eyes of law.

12. For the said reasons, the petition is allowed and the following directions are issued:-

i) Mr. Justice Rajiv Sahai Endlaw (Retd.) (Mob. No. 9717495002) 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 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.

13. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MAY 26, 2025 / (MS)
(Corrected and released on 31.05.2025)

Click here to check corrigendum, if any