IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.274 OF 2025

Time Technoplast Ltd. ....Applicant
V/S
Oriental Insurance Company Ltd. ....Respondent

Mr. Dinesh P. Guchiya *for the Applicant.*
Mr. Nishant Rana *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
DATE : 12 JANUARY 2026.

P.C.:

1. This is an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act)** for appointment of a sole Arbitrator or a Panel of Arbitrators to adjudicate disputes and differences between the Applicant and the Respondent arising out of Insurance Policy No.131101/11/2019/80 having Cover Note No.1311011603999 which was titled as Industrial All Risks Insurance Policy.

2. Petitioner is a Public Limited Company engaged in the business *inter alia* of manufacturing of polymer and composite products and has a manufacturing unit located at Velgum, Silvassa, Dadra and Nagar Haveli. In the year 2018, Applicant had purchased Insurance Policy No.131101/11/2019/80 having Cover Note No.1311011603999 for the period of 17 April 2018 to 16 April 2019. The policy was titled 'Industrial All Risks Insurance Policy' by which the plant and machinery, building, furniture and fixtures, stocks etc. of the Applicant

at the manufacturing unit was covered for sum assured of Rs.239 crores. On 20 December 2018, a fire broke out in the workplace/factory at the above manufacturing unit of the Applicant. The Applicant filed a claim and accordingly, a Surveyor and Loss Assessor **(Surveyor)** was nominated by the Respondent-Insurance Company. It appears that the Surveyor gave final report concluding that there has been breach and violation of various terms and conditions of the policy on account of non-submission of requisite documents by the Applicant to substantiate the subject insurance claim. Accordingly, the Respondent-Insurance Company proceeded to repudiate the claim vide letter dated 24 November 2022.

3. In the Policy, there is following arbitration clause:

> "12. If any 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 an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator, to the decision of two dis-interested persons as arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provision of the Arbitration Act, 1940, as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings."

4. The Applicant has accordingly prayed for appointment of Arbitrator in terms of above quoted clause 12.

5. I have heard Mr. Guchiya, the learned counsel appearing for the Applicant and Mr. Rana, the learned counsel appearing for the Respondent.

6. Respondent-Insurance Company has opposed the present Application by contending that arbitration clause does not cover the eventually of repudiation of the claim. It is contended that arbitration agreement is only in respect of differences relating to quantum to be paid under the policy.

7. The issue involved in the present Application is no more *res integra* and is covered by judgments of the Apex Court in ***Oriental Insurance Company Limited vs. Narbheram Power and Steel Pvt. Ltd.***[1] and ***United India Insurance Company Limited and another vs. Hyundai Engineering and Construction Company Limited***[2]. In both the judgments, identically worded clause in the Insurance Policy has been interpreted by the Apex Court and it is held that where the insurance company has disputed and rejected the liability under the policy, the dispute is not arbitrable. The above judgments of the Apex Court have been considered by the Single Judge of this Court (Bharati Dangre, J.) in ***M/s. Mallak Specialities Private Limited vs. The New India Assurance Company Limited***[3]. The fact circumstances in ***M/s. Mallak Specialities Private Limited*** (supra) appear to be similar to the one involved in the present case. In ***M/s. Mallak Specialities Private***

1 (2018) 6 SCC 534
2 (2018) 17 SCC 607
3 Commercial Arbitration Application No.65 of 2022 decided on 30 November 2022

Limited also, it appears that the claim was repudiated on account of non-co-operation by the Applicant therein. There was similarly worded arbitration clause in the Insurance policy. This Court, after considering the above quoted two judgments of the Apex Court has held in paragraphs 13 to 23 as under:

> 13 In order to determine the pivotal issue that has arisen between the parties, as to whether the dispute that has arisen between the parties can be referred for Arbitration and whether clause 13 in the insurance policy would cover the dispute, it is necessary to reproduce clause 13, contained in the standard policy:-
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> > "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 provision of the Arbitration and 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 this policy that the award by such arbitrator/ arbitrators of the amount of the loss or damage shall be first obtained."
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> 14 A careful reading of the aforesaid clause would make it apparent that if any dispute or difference would arise as to the quantum to the paid under the policy, the question shall be referred to a Sole Arbitrator or panel of three Arbitrators as the case may be, however if the Company has disputed or not accepted the liability under or in respect of the policy, there shall be no reference to Arbitration.
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> The issue therefore arises, whether the dispute which has arisen between the parties could be referred for Arbitration, which ultimately would depend upon an assertion whether the insurer has disputed/not accepted the liability in respect of the policy
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> 15 The sequence of events in the background would clearly reveal that on the claim being staked by the applicant under the Policy of Insurance, a

surveyor was appointed to carry out the inspection and for ascertainment of the claim of Rs. 8 Crores, which was raised under the Insurance Policy. The applicant was directed to submit certain documents to the surveyor and the surveyor carried out an inspection and assessed the loss, which was made subject to adjustment of Salvage value. The applicant was directed to submit the Salvage value of the rawmaterial and packing material. The assessment of loss carried out by the surveyor and communicated to the applicant by communication dated 7/11/2020 is less of the Salvage value and a clear cut remark on the said report is given to that effect.

16 The final survey report was submitted by the surveyor on 8/12/2020 to the Insurance Company and this report came to be submitted after receipt of the papers and documents by the insured i.e. the applicant.

I have extensively quoted the report and I need not repeat its contents but suffice it to note that in paragraph 13, the objection is raised by the surveyor on two points, namely, insured has not allowed and cooperated in Salvage disposal which amounted to breach of general condition no.7 of the policy and secondly the insured has exaggerated the claim amount, by claiming many items which do not fall within the purview of the policy.

17 At the end of the report, the conclusion portion is set out in clause 16 and it is evident that the surveyor clearly recorded that, the incident of Water Logging and Inundation occurred on 6/8/2019, in the insured factory but it is clearly stated, that the liability would not exist under the Policy, in view of the noncooperation of the applicant in Salvage disposal and exaggeration of the claim by including many items which do not fall within the purview of the policy. The Surveyor hence recommended repudiation of the claim on the basis of the observations.

Based on the final report of the Surveyor, the Insurance Company communicated to the applicant its view and closed the file as "No Claim" by underlining that there is no liability under the Policy.

18 The Surveyor's report which in any case is not binding upon the Insurance Company clearly recommended repudiation of the claim, on the basis of the observations made in the report and as a consequence of this, the Insurance Company repudiated the claim by categorizing it as "No Claim".

From the perusal of the above, it is evidently clear that the Insurance Company never disputed the quantum but disputed its liability in respect of the policy drawn by the applicant, thus making the dispute non-arbitrable in the wake of the policy.

The reliance placed by the learned counsel for the applicant upon the decision of National Insurance Company Ltd (Supra) do not take the case of the applicant any further, in the wake of the specific wording in the clause, which is sought to be invoked as 'Arbitration Clause'.

19 True it is that, the form of Arbitration Agreement is not specified in the Act and whether there exist an Arbitration Agreement has to be discerned from the intention of the parties. The test to determine so would

be the intention of the parties for making a reference for Arbitration. Deficiency of words in the agreement, which otherwise fortify intention of the parties to arbitrate their disputes cannot legitimize annulment of Arbitration Clause and therefore what is important for appointment of an Arbitrator, by construing a clause in an agreement to be an Arbitration Clause is the intention of the parties which is to be gathered from the clause itself as well as the surrounding circumstances.

20 An identical clause in an Insurance Policy came up for consideration before the Hon'ble Apex Court in case of Oriental Insurance Company Ltd vs. Narbheram Power and Steel Pvt. Ltd., (2018) 6 SCC, 534. While construing clause no. 13 contained in the policy, their Lordships of the Hon'ble Apex Court by referring to the catena of decisions, has observed 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:
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> "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."
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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 reason 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 the 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. Therefore, the only remedy which the respondent can take recourse to is to institute a civil suit for mitigation of the grievance. 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."

21 The aforesaid enunciation of law in the above manner revolving around the identically worded clause in an Insurance Policy leave no scope for me to reach any other conclusion and I find myself fortify in recording a conclusion that in the present case since the Insurance Company has not accepted the liability under the Policy and having been repudiated the claim by denying to accept the liability.

22 In United India Insurance Company Ltd and another Vs. Hyundai Engineering and Construction Company Ltd (2018), 17 SCC, 607, clause no.7 contained in the policy similarly worded as clause no. 13 in the case before me came up for consideration before the Hon'ble Apex Court and while deliberating upon the said clause, the Hon'ble Apex Court has held as under:

> "12. From the line of authorities, it is clear that the arbitration clause has to be interpreted strictly. The subject clause 7 which is in pari materia to clause 13 of the policy considered by a three-Judge Bench in Oriental Insurance Company Limited (supra), is a conditional expression of intent. Such an arbitration clause will get activated or kindled only if the dispute between the parties is limited to the quantum to be paid under the policy. The liability should be unequivocally admitted by the insurer. That is the pre-condition and sine qua non for triggering the arbitration clause. To put it differently, an arbitration clause would enliven or invigorate only if the insurer admits or accepts its liability under or in respect of the concerned policy. That has been expressly predicated in the opening part of clause 7 as well as the second paragraph of the same clause. In the opening part, it is stated that the "(liability being otherwise admitted)". This is reinforced and re-stated in the second paragraph

in the following words:

"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."

Thus understood, there can be no arbitration in cases where the insurance company disputes or does not accept the liability under or in respect of the policy.

13. The core issue is whether the communication sent on 21st April, 2011 falls in the excepted category of repudiation and denial of liability in toto or has the effect of acceptance of liability by the insurer under or in respect of the policy and limited to disputation of quantum. The High Court has made no effort to examine this aspect at all. It only reproduced clause 7 of the policy and in reference to the dictum in Duro Felguera (supra) held that no other enquiry can be made by the Court in that regard. This is misreading of the said decision and the amended provision and, in particular, mis-application of the three-Judge Bench decisions of this Court in Vulcan Insurance Co. Ltd. (supra) and in Oriental Insurance Company Ltd. (supra).

14. Reverting to the communication dated 21st April, 2011, we have no hesitation in taking the view that the appellants completely denied their liability and repudiated the claim of the JV (respondent Nos.1 & 2) for the reasons mentioned in the communication. The reasons are specific. No plea was raised by the respondents that the policy or the said clause 7 was void. The appellants repudiated the claim of the JV and denied their liability in toto under or in respect of the subject policy. It was not a plea to dispute the quantum to be paid under the policy, which alone could be referred to arbitration in terms of clause 7. Thus, the plea taken by the appellants is of denial of its liability to indemnify the loss as claimed by the JV, which falls in the excepted category, thereby making the arbitration clause ineffective and incapable of being enforced, if not non-existent. It is not actuated so as to make a reference to arbitration. In other words, the plea of the appellants is about falling in an excepted category and non-arbitrable matter within the meaning of the opening part of clause 7 and as re-stated in the second paragraph of the same clause."

23 In the wake of the aforesaid authoritative pronouncement and applying the principle of law following the same and applying to the facts in hand, where it can be clearly seen that the Insurance Company has disputed and not accepted the liability under the policy, the dispute is not arbitrable, as it do not revolve around the quantum to be paid under the Policy.

8. In my view, the issue involved in the present case is squarely covered by the two judgments of the Apex Court and the judgment of this Court referred to above. In the present case, the claim of the Applicant has been repudiated by letter dated 24 November 2022. This dispute relating to repudiation of claim is not covered by clause 12 of the Insurance Policy where the dispute resolution mechanism is restricted only in respect of differences relating to quantum of claim sanctioned under the policy. In my view therefore, there is no valid arbitration agreement before the parties to resolve the disputes relating repudiation of claim. In that view of the matter, appointment of Arbitrator cannot be made in exercise of power under Section 11 of the Arbitration Act. The Application is accordingly **rejected.** However, the Applicant would be at liberty to exercise the remedy available in law and all contentions of parties on merits of the dispute are expressly kept open.

(SANDEEP V. MARNE, J.)