

# M/S Shree Ram Polymer vs The New India Assurance Co. Ltd on 9 January, 2023

**Author: Sachin Datta**

**Bench: Sachin Datta**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 841/2022

M/S SHREE RAM POLYMER

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Through: Mr. Navneet Goyal, Advocate.

versus

THE NEW INDIA ASSURANCE CO. LTD.

..... Responde

Through: Mr. C.K. Gola, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% 09.01.2023

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as „the Act ) has been filed by the petitioner seeking constitution of an Arbitral Tribunal to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of a Standard Fire and Special Perils Policy issued by the respondent in favour of the petitioner/insured. The policy period in respect of the said policy was from 06.03.2020 to 05.03.2021. The said policy contains an arbitration clause in the following terms:-

"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.

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. It is hereby expressly stipulated and declared that it shall be a 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."

2. Admittedly, the respondent has not repudiated the claim made by the petitioner under the policy and has accepted its liability, to an extent of Rs.1,53,04,403/-.

3. Learned counsel for the petitioner submits that the claim raised by the petitioner under the policy was to the tune of Rs.4,96,40,000/-, and the aforesaid amount of Rs.1,53,04,403/- paid by the respondent to the petitioner is highly deficient. It is further submitted out that even the assessed loss as per the surveyor appointed by the respondent is to the tune of Rs.2,89,00,000/-.

4. On the other hand, learned counsel for the respondent submits that the claims sought to be raised by the petitioner are not arbitrable in view of the "Discharge Voucher", stated to have been issued by the petitioner to the respondent at the time of payment of the aforesaid amount of Rs.1,53,04,403/- to the petitioner in full and final settlement of the claim.

5. In view of the fact that the existence of the arbitration agreement is admitted, an Arbitral Tribunal is required to be constituted to adjudicate the disputes between the parties. Concededly, the Arbitral Tribunal will also be required to pronounce upon the aforesaid preliminary objection sought to be raised by the respondent with regard to maintainability/arbitrability of the claim in question.

6. Learned counsel for the parties jointly submit that a Sole Arbitrator be appointed to adjudicate the disputes between the parties.

7. Accordingly, on the suggestion of respective counsel for the parties, Mr. Justice S.P. Garg (Retired) (Mobile No. 9910384627) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

8. The respondent will be at liberty to file an application under Section 16 of the Arbitration and Conciliation Act, to raise any objection as to the arbitrability/lack of jurisdiction to entertain the claim/s sought to be raised by the petitioner. The said objections shall be decided by the Arbitrator as a preliminary issue before proceeding to adjudicate the claim/s on merits.

9. The learned Sole Arbitrator may proceed with the arbitral proceedings subject to furnishing requisite disclosures to the parties as required under Section 12 of the Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this Court.

10. The learned Arbitrator shall be entitled to fee in accordance with the Fourth Schedule to the Act or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

11. The parties shall equally share the arbitrator's fee and arbitral costs.

12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law, and no opinion with

regard thereto has been expressed by this Court.

13. The petition stands disposed of in the above terms.

14. A copy of this order be sent to the learned Arbitrator.

SACHIN DATTA, J JANUARY 9, 2023/AK