

INTERPRETATION OF ARBITRATION CLAUSES UNDER INSURANCE POLICIES

Ruchika Darira

INTRODUCTION

Recently, the Hon'ble Supreme Court of India, in the case titled **Oriental Insurance Company Vs M/S Narbheram Power & Steel Ltd.** bearing Civil appeal no.2268 of 2018(arising out of S.L.P.(c) No.33621 of 2017), adjudicated upon the interpretation of arbitration clauses under Insurance agreements/contracts.

RELEVANT FACTS

In the present case the Respondent - M/S Narbheram Power & Steel Pvt. Ltd (herein after referred as "**NPSL**") entered into an Insurance Policy pertaining to "Fire Industrial All Risk Policy" (herein after referred as the "**said policy**") with the Appellant - Oriental Insurance Company ("Appellant") in respect of the factory situated in Odisha.

In October 2013, a cyclone affected large parts of the state including NPSL's factory. NPSL suffered damages estimated at INR 39,336,224. Accordingly, the appellant being the Insurer was informed and a surveyor was appointed. Based on the report of the surveyor, NPSL requested the Insurer to settle its claim.

A series of correspondences were exchanged between NSPL & the Insurer (i.e. the appellant) but the claim of NSPL was not settled & consequently NSPL invoked the arbitration agreement and requested the Appellant to concur with the name of the arbitrator whom it wished to appoint. The Appellant on the other hand, objected to arbitration proceedings and declined to refer the dispute to arbitration between the parties in view of clause 13 of the said policy which stated that once the claim was repudiated & the insurer had disputed or not accepted the liability under or in respect of the policy, no difference or dispute could have been referred to arbitration.

INTERPRETATION OF CLAUSE 13 OF THE POLICY

Clause 13 of the said policy provides that:

"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 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 arbitrator, 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 (hereinafter referred to as Part I for ease of reference).

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 (hereinafter referred to as Part II).

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 (hereinafter referred to as Part III)"

The perusal of the arbitration clause would reveal an incongruity and conflict. It states that the insured (i.e. NSPL) has the right to initiate arbitration proceedings only pertaining to a dispute on quantum and not on denial of liability. On the other hand, the insured cannot initiate any action or suit on denial of liability without obtaining an award on quantum. Hence, the interpretation of the above clause stipulates that an insured is remediless if the claim is completely denied by the Insurer.

HON'BLE HIGH COURT OF CALCUTTA

The insured - NPSL, filed an application under Section 11 of the Arbitration and Conciliation Act 1996, before

the Kolkata High Court requesting the Court to appoint an arbitrator to adjudicate the dispute between the parties. The High Court held that the dispute could be referred to arbitration by holding that the said arbitration clause was ambiguous in nature.

to their insurance policies in case they would like to pursue arbitration both for questions of liability and quantum.

HON'BLE SUPREME COURT'S INTERPRETATION OF THE ARBITRATION CLAUSE

The Hon'ble Supreme Court dismissed the Hon'ble Calcutta High Court's order by relying on the case of *Vulcan Insurance Co. Ltd. vs. Maharaj Singh & Anr*¹ and held that insurance contracts are to be interpreted exactly in the words in which the contract is expressed. It held that High Court had proceeded under the assumption that Part II and Part III of the arbitration clause do not have harmony, and in fact, sound a discordant note. The Hon'ble Supreme Court held that its judgment in *Vulcan Industries Case* (Supra) was clear on this point and dispels any ambiguity in construing Part II and Part III of the arbitration clause.

Relying upon various cases and reasons cited by the Appellant while repudiating liability, the Hon'ble Supreme Court opined that the present case was a case of denial of liability by the Appellant and not a dispute pertaining to quantum. While doing so, the Hon'ble Supreme Court made no comment on the distinction made by the Hon'ble High Court with respect to coverage or otherwise of a liability under the policy. It ruled that the arbitration clause clearly provided that no difference or dispute could be referred to arbitration if the Appellant had disputed or not accepted liability under the policy. The remedy available to NSPL was to institute a civil suit for its grievances.

CONCLUSION

The present judgement passed by the Hon'ble Supreme Court provides that an arbitration clause inserted in an insurance policy must be strictly construed & must unequivocally express the intent of arbitration. It further recognized the fact that strict interpretation of such clauses could deprive the insured the benefits of arbitration. Such clauses, also open the doors for the insurers to avoid arbitration proceedings by repudiating the claims in entirety. Parties will therefore, have to be aware of such arbitration clauses and ensure that the arbitration clause encompasses all disputes in relation

¹ (1976) 1 SCC 943