

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

ARBITRATION APPLICATION No.125 of 2018

ORDER:

The applicant is a wholly owned Government of India undertaking, engaged in the business of Telecom Services and Operations. The applicant as part of its activities, had been offering WLL Mobile handsets to his customers. With a view to insuring itself against any losses that may arise out of loss of these mobile handsets, the applicant had obtained an Insurance Policy bearing no.25, dated 20.08.2004, from the 1st respondent-company, which is a general insurance company, insuring the petitioner against any loss that may occur due to non returning of the handsets by the subscribers/customers of the applicant.

2. The applicant had subsequently raised a claim of Rs.77,22,372/- towards compensation for losses, incurred by the applicant, due to non return of 1234 mobile handsets by its subscribers/customers. As the 1st respondent and respondents 2 and 3, who are officials of the 1st respondent were refusing to pay out the claim amount, the applicant filed W.P.No.16577 of 2006 before the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh. This writ petition was dismissed on 16.03.2018 with an observation that the applicant is at liberty to avail all the civil remedies available under law including the

invocation of the arbitration clause contained in the insurance policy.

3. The applicant had thereupon issued notice dated 16.08.2018, invoking the arbitration clause in the insurance policy, calling upon the respondents to agree to the appointment of a former Judge of the Hon'ble High Court of Andhra Pradesh as a sole arbitrator, to resolve the disputes that had arisen between the applicant and the respondents. The respondents vide replies dated 14.09.2018 and 21.09.2018, refused to appoint an arbitrator. On account of the said refusal, the applicant had approached this Court, by way of the present application under Section 11 of the Arbitration and Conciliation Act, 1996.

4. Upon receipt of the notice of this application, the respondents have filed their counter affidavits.

5. Heard Sri K. Narsi Reddy learned counsel, appearing for the applicant and Sri K. Subba Rao learned counsel, appearing for the respondents.

6. The agreement for arbitration is contained in clause 8 of the insurance policy which is set out below:

“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 the difference 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/arbitrator of the amount of the loss or damage shall be first obtained”.

7. The contention of the respondents is that the respondents had rejected the entire claim of the applicant and the stipulation in clause 8 clearly stated that no dispute shall be referable to arbitration where the insurance company disputes or does not accept the liability under the policy. It is contended that in the present case, the respondents have rejected the entire claim of the applicant and as such, there is no arbitration agreement under which the dispute relating to the claim of the applicant can be adjudicated.

8. Sri K.Narsi Reddy, learned counsel for the petitioner disputes the said contention. He would submit that firstly, it was the respondents themselves who had raised the availability of the arbitration clause during the pendency of the W.P.No.16577 of 2006 filed by the applicant before the

erstwhile High Court of Andhra Pradesh and as such, the respondents cannot resile from that stand. He would further submit that, in any event, the question relating to the arbitrability of the dispute is a matter which should be referred to the arbitrator and the said question cannot be looked into by this Court at this stage.

9. The learned counsel for the respondents relies upon a Judgment of the Hon'ble Supreme Court of India in the case of **United India Insurance Company Limited and Another vs. Hyundai Engineering and Construction Company Limited and Others**¹. In this case, the Hon'ble Supreme Court considered a situation where an application for appointment of an arbitrator was filed after an insurance company had repudiated the entire claim. After a review of the case law on this issue, the Hon'ble Supreme Court had held, after considering the arbitration agreement which is *impair materia* similar to the clause set out above, that an application for appointment of an arbitrator would be maintainable where the dispute is in relation to the quantum of compensation and such an application would not be maintainable if the dispute relates to the very liability of the insurance company.

10. In another case, the Hon'ble Supreme Court in its Judgment in **Pravin Electricals Private Limited vs. Galaxy Infra and Engineering Private Limited.**² following the judgment of the Hon'ble Supreme Court in **Vidya Drolia and**

¹ 2019 ACJ 734

² (2021) 5 SCC page 671

Others vs. Durga Trading Corporation.³ had held that where there is no arbitration clause, on the face of the agreement, the Court can reject an application for arbitration while the same would have to be left to the arbitrator to examine and decide, if it is a situation where some deeper consideration is required, to ascertain the existence of an arbitration agreement.

11. In the present case, the facts are clear that the respondents have rejected the claim in toto and the prohibition set out in the arbitration clause would apply to the present facts of the case. In the circumstances, there would be no necessity to refer the matter to an arbitrator to decide on the arbitrability of the dispute.

12. Accordingly, this Arbitration Application is dismissed. However, in view of the pendency of the earlier writ petition before the erstwhile High Court of Andhra Pradesh and the pendency of this application before this Court, it would be open to the applicant to invoke Section 14 of the Limitation Act, in the event of the applicant being desirous of filing a suit before a competent Court of civil jurisdiction. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

JUSTICE R.RAGHUNANDAN RAO

Date :13.07.2022

RJS

³ (2021) 2 SCC page 1

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

ARBITRATION APPLICATION No.125 of 2018

Date : 13.07.2022

RJS

