

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/PETN. UNDER ARBITRATION ACT NO. 66 of 2020

=====

BALKRISHNA SPINTEX PRIVATE LIMITED
Versus

THE NEW INDIA ASSURANCE COMPANY LIMITED
=====

Appearance:

MR AKSHAY A VAKIL(5473) for the Petitioner(s) No. 1

MR RITURAJ M MEENA(3224) for the Respondent(s) No. 1,2,3
=====

**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR**

Date : 10/06/2022

ORAL ORDER

1. Petitioner is seeking appointment of an Arbitrator by invoking section 11 of the Arbitration and Conciliation Act, 1996 contending *inter alia* that there is a contract between the parties to settle the disputes, if any, arising out of the policy No. 2123001117/0100000292 valid for the period from 29.05.2017 to 28.05.2018 and claim arising out of the said policy was not fully settled even on demand being made.

2. On notice being issued, respondents have appeared and filed their reply contending *inter alia* that there is no arbitrable dispute and petitioner after having received the money, has in discharge of full and final settlement, executed a

discharge voucher and was also given a consent letter on 13.03.2019 stating thereunder that consent of payment of Rs. 06,06,16,122/- is being given and as such it is stated that there is no amount due and payable and there are no arbitrable dispute existing between the parties. It is also stated that a communication has also been furnished on 20.03.2019 stating that respondents have given their consent for full and final settlement of the claim for net amount of Rs.6,06,16,122/-. Hence, they have sought for dismissal of the petition.

3. I have heard the arguments of learned advocates appearing for the parties, who have reiterated the contentions raised in their respective pleadings. Perused the case papers and after bestowing my careful and anxious consideration to the rival contentions raised at the bar as well as perusal of the pleadings, it would emerge from the records that in respect of the insurance policy obtained by the petitioner was for insuring the building, machinery, furniture, fixtures, stock and stock in process of the factory run by the petitioner who is carrying on the business of spinning, weaving and finishing of textiles at its factory premises situated at Rajkot Jamnagar Highway was valid

for the period 29.05.2017 to 28.05.2018. A claim was raised against said policy on account of a fire accident which broke out on 13.04.2018 at the go-down of petitioner factory premises which was insured with respondent, resulting in stock of cotton and the building being gutted in fire and same got destroyed. Hence, petitioner lodged a claim of Rs.8,41,02,065/-. On 06.06.2019, a sum of Rs. 6,02,74,557/- was paid to petitioner by respondent. It is the contention of the learned counsel appearing for petitioner that said amount was paid after inordinate delay and after having received said amount, it was made known to respondent by petitioner that it had received under protest or in other words it is contended that on account of the financial circumstances in which the petitioner was placed, he was perforced to receive the said amount with no other option. It is contended that respondent ought to have paid entire amount claimed and on account of non-payment, dispute has arisen and as such, petitioner has sought for appointment of an Arbitrator.

4. Though this argument looks attractive at first blush, it is not so on a deeper examination and I say so for the simple

reason that petitioner had not only executed a discharge voucher at the time of receiving the amount of Rs.6,02,79,395/- on 03.06.2019 but also gave a consent letter even much earlier to that i.e. on 13.03.2019 to settle the claim for said amount without any demur. This was followed by the consent given for full and final settlement of claim of Rs.6,06,16,122/-. It is in this factual background, the said amount was paid by the respondent insurer to the petitioner insured on 03.06.2019.

5. Hence, this Court is of the considered view that respondent is correct in contending that petitioner is not entitled to invoke the arbitration clause or in other words no dispute subsisted after the discharge voucher being signed by the respondents that too without any protest or demur. Merely because after receipt of amount, petitioner has contended within 15 days thereafter that said amount was received under duress, would not be a tenable ground to entertain the plea for referring the dispute to be arbitrated by a Sole Arbitrator. This view also gets fortified by the law laid down by the Hon'ble Apex Court in the case of ***United India Insurance Company versus Antique Art Exports Private Limited*** reported in **(2019) 5**

SCC 362, whereunder it has been held to the following effect:

“Where the dispute raised by the claimant with regard to validity of the discharge voucher or no claim certificate or settlement agreement, prima facie, appears to be lacking in credibility, there may not be a necessity to refer the dispute for arbitration at all.”

6. The Hon'ble Apex Court in the very same judgment has also held that there cannot be a rule of thumb and each case has to be looked on its own facts and circumstances. In the said case of **United India Insurance Company versus Antique Art Exports Private Limited** (supra) there was a similar situation namely, the insured having accepted the amount, executed discharge certificate without any demur after 11 weeks of the settlement of claim and execution of discharge voucher had raised a plea of having signed the papers on dotted lines and it is in this background the Hon'ble Apex Court held that mere plea of fraud, coercion or undue influence by itself is not enough and the party who alleges is under obligation to prima facie establish the same by placing satisfactory material on record before the Chief justice or his designate to exercise the power under Section 11(6) of the Act. In the instant case,

the respondent does not plead either undue influence, coercion, threat or discharge voucher having been signed under any compulsion. On the other hand, the respondent with eyes wide open has affixed the signature to the discharge voucher. Before the discharge voucher could be executed, the report of the Surveyor was very much available even with the respondent which indicated as to what facts were taken into consideration by the Surveyor to arrive at a conclusion for quantification of the amount of Rs.6,06,16,122/- vis-avis the loss that has occasioned to the petitioner. It is on the basis of the said Surveyor's report, the insurer has quantified the amount payable to petitioner at Rs.6,06,16,122/- and after such quantification which was made known to the petitioner, amount was paid by the respondent to the petitioner and received by the petitioner on 3.6.2009. In fact, a consent letter much earlier to that i.e. 13.3.2019 has been submitted by the petitioner to the respondent agreeing and consenting for receiving the said amount. Hence, it would be too late in the day for the petitioner to turn around to contend that under the circumstances prevailing, he was perforced to receive said amount with no other option, can only be said as an after-thought and as such,

the judgment of the Hon'ble Apex Court relied upon by the respondent in the matter of ***M/s Mayavti Trading Pvt. Ltd. Vs. Pradyut Deb Burman in Civil Appeal No.7023 of 2019*** disposed of on 5.9.2019 could not come to the rescue of the petitioner.

7. Hence, the following

ORDER

- (i) Arbitration Petition stands dismissed.
- (ii) No order as to costs.

सत्यमेव जयते

THE HIGH COURT
OF GUJARAT

(ARAVIND KUMAR,CJ)

RADHAKRISHNAN K.V.

WEB COPY