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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 24th May, 2021

\+ **ARB. P. 479/2020**

GEO CHEM LABORATORIES PVT. LTD. .....Petitioner

Through: Mr. Sachin Datta, Senior Advocate with Ms. Ritika Jhurani, Ms. Jipsa Rawat and Mr. Akshay Chitkara, Advocates.

versus

UNITED INDIA INSURANCE CO. LTD. ..... Respondent

Through: Mr. Amit Kumar Singh, Advocate with Mr. Apratim Animesh Thakur and Ms. Prachi Hasija, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 [*hereinafter referred to as* '***the Act***'] seeks appointment of an Arbitrator for adjudication of disputes which have arisen between the parties in relation to the '*Professional Indemnity Engineers Architects Interior Decorators Inspection and Testing Policy*' bearing No. 0401002717P104915422 issued by the Respondent [*hereinafter referred to*

as 'UII'] in favour of the Petitioner [*hereinafter referred to as* '***GCL***'] for the period of 11th June, 2017 to midnight of 10th June, 2018, applicable retroactively from 12th June, 2015, with an indemnity amount of Rs. 25 crores [*hereinafter referred to as the* '***Insurance Policy***'].

FACTS

2. GCL has been availing insurance coverage for professional indemnity since 2007, which includes indemnity against acts of dishonesty, negligence, fraud, omissions and errors, as well as loss of documents and breach of confidentiality of clients committed by its employees towards its clients' businesses, which include banking organizations.

3. GCL received notices from its clients - RBL Bank, HDFC Bank and DCB Bank, dated 2ndAugust, 2017, 8th August, 2017 and 18th January, 2018 respectively, regarding offences committed by its employees. Later, more such notices were received from other banks such as IDBI Bank, DCB Bank and HDFC Bank. The total claims made by the banks was approximately Rs. 25 crores. UII was duly intimated of such claims from time to time. FIRs and police complaints were also registered against the suspected persons by GCL between 23rd and 25thJanuary, 2018.

4. On 17th February, 2018, GCL sent a letter to UII informing them of the occurrence of loss and followed it up with an email on 26th March, 2018. UII replied through email on 27thMarch, 2018, acknowledging its delay in acting on the claims of GCL and sought further clarifications, which were provided *vide* email dated 27th April, 2018.

5. Thereafter, UII sent a letter dated 18th May, 2018, whereby it sought to cancel the insurance policy [*hereinafter referred to as the '**Impugned Letter**'*]. The relevant extract of the letter reads as follows:

> *"Re: Cancellation of Professional Indemnity Engineers, Architects, Interior Decorators Inspection and Testing Policy Insurance Policy No. 0401002717P104915422 valid from 11.06.2017 to 10.06.2018 issued in the name of M/S. Geo Chem Laboratories Pvt. Ltd.*
>
> *This is with reference to the above policy issued by us. On receipt of your emails regarding losses to the tune of Rs. 22.50 crs due to fraud/ embezelment as referred by emails dated 12.02.2018/26.03.2018.*
>
> *On scrutiny of your proposal form & emails and documents including copy of FIRs exchanged with us it is found that the details of claims which you have not revealed in your proposal form thereby misrepresentation and non-disclosure of material facts in proposal form.*
>
> *Hence in view of policy Condition No. 10, which states as under:*
>
> > *"The Company may at any time cancel the Policy on grounds of misrepresentation, fraud, non-disclosure of material fact or non-cooperation by the insured by sending fifteen days notice in writing by Registered A/D to the insured at his last known address in which case the Company shall return to the insured a proportion of the last premium corresponding to the unexpired period of insurance if no claim has been paid under the policy. The insured may at any time cancel this policy and in such event the Company shall allow refund of premium at Companys short period rates provided no claim has occurred upto the date of cancellation."*
>
> *Hence we hereby give you policy cancellation notice and the policy will stand cancelled after 15 days from date of issue of the letter."*

6. GCL approached this Court in W.P.(C.) No. 6218/2018 seeking the setting aside of the impugned letter. *Vide* order dated 27th March, 2019, the decision of UII to cancel the policy was set aside by this Court *inter alia* for the reason that prior to cancellation of the policy, UII had not afforded GCL

an opportunity to be heard. The impugned letter was directed to be treated as a show-cause notice, and GCL was permitted to file a response to the same.

7. Per the above direction, GCL sent a reply to the show-cause notice on 10th April, 2019, with a follow-up/reminder letter on 24th May, 2019. UII responded on 29th May, 2019 conveying that GCL's reply had been sent to its corporate office for further consideration.

8. On 13th November, 2019, M/s Third Eye Insurance Surveyors was appointed as the surveyor by UII to assess the claims of GCL under the insurance policy. Files pertaining to the claim were sent by UII to the surveyor for assessment on 20th November, 2019.

9. The surveyor has been conducting the survey from November, 2019, but has not been able to complete the same till date. The surveyor, in its preliminary survey report dated 19th August, 2020, had recommended a loss reserve of Rs. 13.50 crores. During this period, the clients of GCL have initiated arbitration proceedings against it. Aggrieved by the inordinate delay in completion of the survey, GCL was constrained to send a notice invoking arbitration on 31stAugust, 2020, which was replied to by UII on 6th October, 2020, refuting the contentions raised by GCL and denying the existence of a situation wherein the arbitration clause could have been invoked. UII instead contended that the arbitration can commence once UII admits its liability to pay, which was not the case here, as the assessment was still underway. In this background, GCL has approached this Court by

way of the instant petition seeking appointment of an independent sole arbitrator.

CONTENTIONS

10. Mr. Sachin Datta, learned Senior Counsel for GCL, at the outset submits that this is a fit case for the invocation of the arbitration clause against UII, and makes the following submissions:

A. *The scope of enquiry by this Court at this stage is very limited.*

(i) There is no doubt about the "*existence of the Arbitration Clause*" and "*existence of a dispute*" for the purpose of exercising jurisdiction under Section 11 of the Act. UII is at liberty to raise all other jurisdictional issues, such as the applicability of the arbitration agreement to the dispute, or the arbitrability of the dispute, before the arbitral tribunal under Section 16 of the Act. In this regard, the decision of a coordinate bench of this Court in ***Premium Compostos India Pvt. Ltd. v. New India Assurance Co***.[1] is relied upon. In the said case, in identical facts, an arbitrator was appointed considering the fact that a long time had lapsed since the incident had taken place, and the insurance company had not specifically denied their liability or disputed the same. It is contended that since at this stage the Court is only to see the existence of the arbitration agreement, which is not denied, the objection of UII should be left for the adjudication of the arbitral tribunal. In this regard, reliance was also placed on the judgments of the Supreme Court in ***National Insurance Co. Ltd. v.***

[1]ARB. P. 525/2017 decided on 20th September, 2017.

Boghara Polyfab Pvt. Ltd.,[2] and ***Vidya Drolia and Ors. v. Durga Trading Corporation***,[3] to argue that the scope of jurisdiction of this Court under Section 11 of the Act is extremely narrow and questions regarding arbitrability are to be exclusively decided by the arbitral tribunal and not the Court.

B. *Arbitration is not ousted*

(ii) Arbitration is precluded only if the insurance company has "*disputed or not accepted liability*" under the policy. This precondition is not satisfied in the present case. In this regard, the judgment of the Supreme Court in ***United India Insurance Company Ltd. & Anr. v. Hyundai Engineering and Construction Company Ltd***.,[4] was sought to be distinguished. In the said case, it was held that Section 11 petition would not lie only in cases where the insurance company has completely denied their liability and repudiated the claim of the policyholder and denied their liability *in toto.* However, in the present case, it is not the stand of the insurance company that it has denied the liability. On the contrary, its stand is that UII is yet to take a decision.

(iii) UII's attempt to cancel the insurance policy *vide* the impugned letter dated 18th May 2018, as per Mr. Datta, amounts to a denial of liability by UII. However, the same was successfully challenged before this Court and *vide* order dated 27th March, 2019, the Court directed the impugned letter to be treated as a show-cause notice. Thus, although

[2](2009) 1 SCC 267.
[3](2021)2SCC1.
[4](2018) 17 SCC 607.

UII attempted to deny the liability, the said stance has been effectively set aside by this Court.

(iv) Arguendo, in terms of the arbitration clause, liability is not required to be admitted expressly or in writing, and, therefore, the same can be inferred from the conduct of UII.

(v) Lastly, it is no longer even open for UII to repudiate the claim, since the statutorily prescribed mandatory timeline for claim assessment is over.

C. *Delay not attributable to GCL*

(vi) Mr. Datta submits that Regulation 15 of the *IRDA (Protection of Policyholders' Interests) Regulations, 2017* [*hereinafter referred to as the* '***IRDA Regulations***'] mandates that once a claim is lodged by the insured, a surveyor has to be appointed within 72 hours. Further, the surveyor has an outer limit of 90 days to complete the survey and submit a report to the insurance company, which then has 30 days to process the claim and release the amount. GCL lodged its claim on 17th February, 2018, however the surveyor was appointed only on 13th November, 2019, which was brought to GCL's notice *vide* email dated 2ndMarch, 2020.Pursuant to the appointment, all the documents and records were provided to the surveyor, yet, the survey was delayed on one pretext or another. Even if it is assumed for the sake of argument that GCL was the party responsible for the delay in the assessment in some manner, it was always open to UII to deny the claims of GCL, but it has not done so till date.

11. *Per contra*, Mr. Amit Kumar Singh, learned counsel for UII, makes the following submissions:

(i) The admission of liability on the part of UII is a necessary prerequisite for the initiation of arbitration proceedings. The same is evident from a bare reading of the arbitration clause in the insurance policy. Reliance is placed on the judgment in ***United India Insurance*** (*supra*) to highlight the fact that arbitration clauses are to be interpreted strictly and that the arbitration clause, as worded here, would 'enliven' or 'invigorate' only when the insurer admits or accepts its liability. The said judgment was cited with approval in ***Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd***.[5]

(ii) GCL's argument that the setting aside of the impugned letter in the earlier proceedings, amounts to an implied admission of liability on the part of UII, is a completely misconceived and erroneous stance.

(iii) There can be no dispute regarding the timelines provided for completion of assessment by the surveyor under the IRDA Regulations. However, Clause 4 of the said IRDA Regulations also empowers the surveyor to extend the submission of the survey report in the event of non-cooperation by the insured. Furthermore, Clause 15(5)(ii) provides special circumstances that permit a surveyor to seek extension for the submission of the final survey report. However, as can be seen from the status report of the surveyor dated 6th May, 2021, the reason for non-conclusion of the assessment is on account of non-submission of the relevant documents/information by GCL.

[5](2019) 9 SCC 209

(iv) The non-submission of the survey report within the stipulated period cannot be considered as a 'dispute' falling within the sweep of the arbitration clause in question. The non-arbitrability of a dispute should be respected and the present petition is liable to be dismissed.

(v) The contention that the arbitrability of the dispute can be looked into by the arbitrator under Section 16 of the Act is untenable. If the arbitrator assumes jurisdiction, UII would have to wait and undergo the entire arbitration proceedings and then challenge it under Section 34 of the Act. The said course of action would be against public policy, inasmuch as UII will be made to undergo arbitration proceedings for a non-arbitrable dispute.

(vi) The delay which has occurred is unintentional and attributable to reasons which are beyond the control of UII, also on account of the prevailing circumstances owing to the COVID-19 pandemic. The delay has further occurred on account of non-cooperative attitude of GCL. The same is evident from the comments made by the surveyor in the report dated 6th May, 2021 and supported by a communication relied upon in the report, which clearly indicates that it is GCL who has sought time to furnish the documents and have contended that the same are at the Delhi address of the company. In these circumstances, UII has not been able to take a final view of the matter and, therefore, they cannot be held liable for the consequences.

12. In rejoinder thereto, Mr. Datta urges that the situation in the present case is different in as much as UII is ambivalent about its liability and is yet to take a decision. Mr. Datta, further re-iterated that in ***Vidya Drolia*** (*supra*),

the decisions of ***United India Insurance*** (*supra*) and ***Oriental Insurance Company Ltd. v. Narbheram Power and Steel Private Ltd.***,[6] which are being relied upon by UII, were held to be restricted to the facts and circumstances of the cases, which were vastly different from the facts of the instant case and hence, not applicable. Moreover, in the said decision, the Supreme Court, while elucidating the jurisprudence on Section 11 of the Act, observed that at this stage, the Court's intervention should be minimal, and the rule is "*when in doubt, do refer*". The decision in ***Vidya Drolia*** *(supra)* was followed by a co-ordinate bench of this Court in ***Hero Electric Vehicles v. Lectro E-mobility Pvt. Ltd. and Anr.***[7] wherein it was held that only when an absolutely clear "chalk and cheese" case of non-arbitrability is found to exist, the Court would refrain from permitting invocation of the arbitration clause. He relied on ***Enercon (India) Ltd. v. Enercon GmbH***,[8] to urge that even if there is a lacuna in the arbitration clause, the Court will interpret the same so as to fill in the necessary gap. Further reliance was also placed upon the judgment of the Supreme Court in ***Chloro Controls v. Severn Trent Water Purification Inc & Ors.***,[9] to reiterate that a strict and narrow interpretation of the arbitration agreement is to be avoided. Lastly, Mr. Datta has submitted that no prejudice would be caused to UII, in case the Court were to appoint the arbitral tribunal at this stage. During the pendency of the arbitration proceedings, in case UII repudiates the claim, it would then be free to approach the arbitral tribunal to seek termination of the arbitration proceedings. In such a situation, the consequences in law, as

[6](2018) 6 SCC 534
[7] CS(COMM) 98/2020 (decided on 02nd March 2021).
[8](2014)5 SCC 1.
[9] (2013) 1 SCC 641.

per the judgment in ***United India Insurance*** (*supra*) and other judgments, would follow, and therefore the prejudice, if any, is only to GCL and not to UII.

FINDINGS AND ANALYSIS

13. First and foremost, lets examine the arbitration agreement between the parties as contained in Clause 15 of the Insurance Policy, which is extracted below:

> *"15. If any dispute or difference shall arise as to the quantum to be paid under 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 part invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrator, one to be appointed by each of the parties to the dispute/difference and the third party 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 hereby agreed and understood that no difference or dispute shall be referred to arbitration as hereinbefore provided, if 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 award by such arbitrator/ arbitrators of the amount of the loss or damage shall be first obtained.*
>
> *It is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the Insured for any claim hereunder and if such claim shall not, within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a court of law then the claim for all purposes shall for all purposes be deemed to have been abandoned and shall not be referred to hereunder."*

14. The simple question that arises for the consideration of this Court lies in a narrow compass: Whether there is an arbitrable dispute between the

parties, as disclosed in the petition, that can be referred to arbitration in light of the afore-noted clause? In order to decide this question, certain germane facts of the case are first required to be noted. The dispute originated with GCL intimating UII about the occurrence of loss *vide* letter dated 17th February, 2018. UII, instead of processing the claim, cancelled the policy by sending the impugned letter. This prompted GCL to petition this Court, wherein they succeeded, and the impugned letter was directed to be treated as a show-cause notice instead of a cancellation notice. At that stage, UII took a different path and proceeded to appoint a surveyor for the assessment of loss, on 13th November, 2019. Since then, the surveyor has not been able to submit its report. On the issue of fixing the responsibility for the delay in assessment of loss, the counsel for the parties have taken the Court through several documents on record. UII avers that the reasons for the delay on part of the surveyor to assess the loss are attributable to GCL. This is obviously repelled by Mr. Datta, who submits that all the requisite documents have already been furnished to the surveyor but they are needlessly delaying the matter and making GCL go in circles. The consequence of the above is that UII has not taken a view on the claim one way or the other. It continues to be non-committal and indecisive. Faced with this deadlock, GCL now wants to embark upon an arbitration.

15. When the matter was taken up on 20th November, 2020, UII resisted the appointment of an arbitrator by contending that the petition was premature, as the surveyor appointed under the relevant scheme is yet to furnish its report. After considering the submissions of the parties, the Court observed that in view of UII's own stand that its liability towards GCL

under the policy had neither been admitted nor denied, it would be in the interest of justice to grant them some time to decide this issue by ensuring that the surveyor completes its investigation in a time bound manner. UII was accordingly directed to complete the entire process involving the surveyor's investigation and complete the same and submit the report thereon within a period of three weeks from the date of said order. Despite that direction, the surveyor did not furnish its report. Subsequently, on 28th January, 2021, an affidavit of the Manager of UII was perused by the Court and it was noted that UII sought another four months' time to complete the survey. In these circumstances, the Court proceeded to hear the submissions of the counsel for the parties and the matter was then adjourned to 11th May, 2021. In the interregnum, the Petitioner approached the Supreme Court (by way of SLP(C) No. 3794/2021) against the order dated 28th January, 2021. The said SLP was disposed of on 5th March, 2021, with the following observations:

> *"After perusing the material available on record, we find that the High Court on 28-1-2021 has directed the Surveyor to complete the survey without fail by 15-4-2021 and listed the matter for remaining arguments on 11-5-2021.*
>
> *In view of the above, we do not want to interfere with the impugned interim order passed by the High Court or entertain this Special Leave Petition.*
>
> *The Special Leave Petition is, accordingly, dismissed.*
>
> *However, taking into consideration the submissions made by the learned Senior counsel appearing for the petitioner, we request the High Court to dispose of the matter preferably within four weeks, after the matter is listed on 11-5-2021 for arguments, in accordance with law.*
>
> *Consequent upon the dismissal of the Special Leave Petition, pending application filed in the matter also stands disposed of."*

16. Concededly, UII had ample opportunity to a take a final view on the claim of GCL, but despite opportunities granted by the court, it has just dragged its feet. Thus, the regrettable fact of the case is that the insured party - GCL, is struggling till date to know the fate of its claim, and now, it is being denied a forum for the adjudication of its claims/disputes. In these circumstances, the Court has proceeded to decide the present petition, without waiting for the report of the surveyor any longer.

17. In the absence of the surveyor's report, the first pertinent question as discussed above, is whether there exists an arbitrable dispute, for which the Court can appoint an arbitrator? UII fervently places reliance upon the wordings of the arbitration clause and contends that the it cannot be triggered without any 'admission of liability' – a condition precedent for invocation of arbitration. This stance gives rise to the quandary before this Court regarding the maintainability of the petition. On this issue, there are several judgments that have been relied upon by UII which contain identically-worded arbitration clauses, as noted above. All these judgments in question are dealing with a situation where the insurance company has taken a categorical and clear stand on the matter and repudiated (or unambiguously disputed/not accepted) their liability. The ratio of these judgments is that, if there is an unequivocal repudiation of the policy on the part of the insurance company, such disputes could not be the subject matter of arbitration, in view of the tightly-worded arbitration clause contained in the insurance policy. The first case relied upon by the Respondent was the decision in ***United India Insurance*** (*supra*) wherein the Supreme Court held that Section 11 of the Act would not come to the rescue of the insured in a

case where there was a clear and explicit denial and repudiation of the claim by the insurance company. In this judgment, the Supreme Court re-affirmed and re-iterated its earlier stance in ***Oriental Insurance*** *(supra)* and ***The Vulcan Insurance Co. Ltd. v. Maharaj Singh***.[10] The present case before this Court, however, is distinguishable on facts, since there has been no repudiation of the policy by the insurance company.

18. In the circumstances noted above, the next question is whether the arbitration clause would allow disputes to be referred to an arbitral tribunal. The clause, as already mentioned, is very tightly-worded and only allows reference of those claims which are accepted or not disputed by the insurance company. On this aspect, Mr. Dutta contends that there is a deemed admission by UII and hence the dispute falls within the ambit of the arbitration clause. His hypothesis is that the absence of denial has to be interpreted in light of other facts. He has strongly urged that UII, being satisfied with the response of GCL in its representation filed on 10th April, 2019, chose to appoint the surveyor for assessment of loss, as admitted in para 7 of the reply filed by UII - that the surveyor has been appointed for the "assessment of loss of GCL". Moreover, the surveyor, in its preliminary survey report dated 19th August, 2020, has recommended a loss reserve of Rs. 13.50 crores. In light of the aforementioned facts, Mr. Datta argues that the liability is deemed to have been admitted and UII it is estopped from taking a contrary stand. Mr. Dutta also seeks to rely upon the failure on the part of UII to follow the mandate of the IRDA Regulations, which require appointment of a surveyor to be made within 72 hours from making of a

[10]1976 1 SCC 943.

claim by the insured; completion of the survey within a period of 30 days therefrom; and settlement of the claim within a further period of 30 days from receipt of survey report. Obviously, this is disputed by UII, which contends that the arbitration clause can be resorted to only in the event UII makes a categorical admission, and only disputes as to the quantum of claim are arbitrable as per agreement.

19. In the opinion of the court, at this stage of the matter, the bar in the second part of the arbitration clause, being "*no difference or dispute shall be referred to arbitration ... if company has disputed or not accepted liability under or in respect of this policy.*" is not applicable, as UII has neither denied nor disputed the liability till date. In the absence of any express admission or denial of GCL's claim, as also evidenced from its counter-affidavit, one cannot say that UII has disputed or not accepted liability under or in respect of this policy.

20. Now, in these circumstances, if the legal consequences of the delay by UII in assessing the claim, coupled with other factors noted above, give rise to the concept of deemed admission of liability, then GCL should be afforded an opportunity to establish its case. At this stage, the court cannot be deciding whether the facts noted above can be construed as a 'deemed acceptance of liability'. It is settled law that the Court is not to enter into a mini or roving trial and take an elaborate view so as to usurp the jurisdiction of the arbitral tribunal on this issue, since the parties have opted for an alternate dispute resolution mechanism. The same has to be looked into by an arbitrator. The objections of the Respondent on this issue can certainly be

examined under Section 16 of the Arbitration and Conciliation Act, 1996. This dispute is thus arbitrable.

21. On the issue of arbitrable disputes, it would also be apposite to refer to certain paragraphs of the judgment of the Supreme Court in ***Vidya Drolia*** (*supra*). Justice Sanjiv Khanna in the majority opinion summarises the discussion on determination of arbitrability. The said paragraph reads as under: -

> "*96. Discussion under the heading 'Who decides Arbitrability?' can be crystallized as under:*
>
> *(a) Ratio of the decision in Patel Engineering Ltd. on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23.10.2015) and even post the amendments vide Act 33 of 2019 (with effect from 09.08.2019), is no longer applicable.*
>
> *(b) Scope of judicial review and jurisdiction of the court under Section 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.*
>
> *(c) The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.*
>
> *(d) Rarely as a demurrer the court may interfere at the Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is nonexistent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably 'non-arbitrable' and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or*

> *impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the arbitral tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism*."

Further, in the concurring opinion of Justice N.V. Ramana, it was elaborated as under:

> *"66. From the aforesaid discussion, we can conclude that the Respondent/ Defendant has to establish a prima facie case of non-existence of valid arbitration agreement, wherein it is to be summarily portrayed that a party is entitled to such a finding. If apart cannot satisfy the Court of the same on the basis of documents produced, and rather requires extensive examination of oral and documentary production, then the matter has to be necessarily referred to the Tribunal for full trial. Such limited jurisdiction vested with the Court, is necessary at the pre-reference stage to appropriately balance the power of the Tribunal with judicial interference."*

22. Here, as noted above, UII has not denied its liability to indemnify GCL, nor has it repudiated the claim. The plea of non-arbitrability is founded on the basis of the opening words of the clause and the same is essentially an objection to maintainability, on the ground of the petition being pre-mature. Therefore, the Court finds merit in the submissions of GCL, that, in view of the judgment of the Supreme Court in ***Vidya Drolia*** (*supra*), and having regard to the facts of the instant case, the disputes which are urged by GCL ought to be referred to an arbitral tribunal, particularly those concerning the legal consequences for the non-submission of the survey report within the stipulated period and whether that constitutes as deemed admission of liability.

23. UII, as noted above, would obviously be at liberty to raise all objections in accordance with law, including but not limited to the objection

of non-arbitrability of the dispute. The question whether or not GCL cooperated with the surveyor and furnished all the relevant documents necessary for assessment of the claim in terms of the IRDA Regulations, and its effect thereof, would have to be agitated before the arbitral tribunal.

24. Referring parties to arbitration would not prejudice UII in any manner, in view of the fair stand taken by Mr. Sachin Datta that in the event UII ultimately repudiates the claim of GCL, the consequences in law, as per the judgment in ***United India Insurance*** (*supra*) and other judgments, would follow. Thus, the argument that UII would be made to suffer the arbitration proceedings for a non-arbitrable dispute and the same would be against public policy, does not carry weight.

25. In view of the above, the present petition is allowed. Accordingly, Justice Indu Malhotra, (Retd. Judge, Supreme Court of India) (Contact No. 9810026757), is appointed as the Sole Arbitrator to adjudicate the disputes arising between the parties, arising out of the policy No. 0401002717P104915422.

26. The parties are directed to appear before the learned Arbitrator as and when notified. This is subject to the Arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

27. The learned Arbitrator will be entitled to charge her fees in terms of the provisions of the Fourth Schedule appended to the Act.

28. In view of the above, the present petition is allowed and stands disposed of. It is clarified that the Court has not examined any of the contentions of the parties on merit, and both the parties shall be free to raise their claims/counter-claims before the learned Arbitrator in accordance with law.

29. All the rights and contentions of the parties are left open.

SANJEEV NARULA, J

MAY 24, 2021
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(corrected and released on 3rd June, 2021)