(1993) 12 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Arbitration Application No. 206 of 1991

Himalaya Chemicals Industry (Regd.) APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 24-12-1993

Acts Referred:
Jammu and Kashmir Arbitration and Conciliation Act, 2002 — Section 20

Citation : AIR 1995 J&K 5

Hon'ble Judges : B.A. Khan, J

Bench : Single Bench

Advocate : K. Chopra, for the Appellant; H.L. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—The principal question involved in this petition is: whether the dispute raised by the petitioner-firm could be referred to

arbitration in the face of repudiation of the liability by the respondent insurance company? And answer to this will turn on the interpretation of

arbitration agreement itself which would be adverted to later.

2. The petitioner is a partnership concern and is manufacturer of activative carbons etc. It got its factory building and stock-in-trade insured with

the respondent-insurance company. Firstly, the cover note was issued by the respondent-company on 30-3-1988. It showed that risk against

flood was also covered but the policy issued subsequently ""Fire Risk Policy-C"" which specifically excluded any loss or damage caused or

occasioned by the floods and inundation. The petitioner claims that its factory premises was hit by floods on the intervening night of 24th/25th Sept.

1988 causing extensive damage in the process. A claim was consequently lodged with the respondent-company for a sum of Rupees 5,29,349.96

p. Pursuant thereto the respondent-company asked for a certificate of loss from the Deputy Commissioner, Udhampur. It is not known if this

certificate was furnished by the Deputy Commissioner. The company, however, repudiated the claim of the petitioner by communication dated 28-

3-1991 on the ground that the insured factory was not covered against ""Flood Group Perols"". Hence this petition raising dispute and seeking its

reference to the arbitrator.

3. The respondent-company has challenged the maintainability of this petition on twin grounds: viz"" (i) that the dispute raised does not arise out of

the contract of insurance inasmuch as the policy did not cover any risk against floods; and (ii) that alternatively the alleged dispute raised was not

covered by the arbitration clause.

4. Mr. Chopra, learned counsel for the petitioner tried to ward off the challenge to the maintainability of the petition by arguing that the dispute

raised was covered under Clause 13 of the insurance policy and that the repudiation by the respondent-company by itself gave rise to it. He

contended that a mere repudiation of claim was not enough to render the arbitration agreement redundant unless such repudiation proceeded on

valid reasons. He sought support from Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, .

5. Mr. Choudhary, learned counsel for the respondent-company, on the other hand, submitted that there was no question of dispute raised being

referred to arbitration as no contract of insurance existed between the parties. And even if it be assumed that any such contract existed, the dispute

raised is not covered by the arbitration clause which makes only those disputes referable to arbitration which related to the ""Quantum to be paid

under the policy. According to him, the arbitration agreement contained in Clause 13 of the insurance policy cannot be invoked in a case where the

insurance-company repudiates the liability altogether.

6. I have heard learned counsel for the parties at length.

7. It all converages on the terms of Clause 13 of the Policy and, therefore, it becomes necessary to extract the relevant clause which reads thus :

If any 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 an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a

single arbitrator to the decision of two disinterested persons as arbitrators of whom one shall be appointed in writing by each of the parties within

two calender months after having been required so to do in writing by the other party in accordance with the provision of the Arbitration Act,

1940, as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calender

months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator and in case of

disagreement, between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in

writing before entering on the reference and who shall sit within the arbitrators and preside at their meetings"".

A bare perusal of the clause would show that it comes into play only where the liability is admitted by the insurance company but the ""quantum to

be paid"" under the policy is disputed. Where the liability is totally repudiated and such repudiation is based on a valid reasoning, Clause 13 is not

attracted. In simple terms, the arbitration clause covers only those disputes/ differences which relate to the quantum to be paid under the policy of

insurance and it is only such dispute/differences that are referable to arbitration. As a matter of fact, the terms of the clause are so clear and

unambiguous that it does not take much effort to bring out its real intent and purpose.

8. It is elementary that the existence of an arbitration agreement is pre-requisite for seeking reference to arbitrator u/s 20 of the Arbitration Act. It

is equally necessary that a difference or dispute raised, must arise out of this agreement. Where the dispute raised is outside the scope of the

arbitration agreement, the question of making any reference to the arbitrator does not arise.

9. It is true that a bald repudiation should not be allowed to make the arbitration agreement contained in Clause 13 of the policy redundant. Such a

repudiation of liability must indeed proceed on valid reasons and must be effective to escape the net of Clause 13. Given regard to this it does not

appear to be flimsy repudiation of liability in the present case. As already noticed, the insurance policy specifically excludes the damage or loss caused or occasioned by floods or inundiation and it is the policy which shall prevail because the cover note is valid only till the policy comes into

being. Since the policy does not cover the risk against the floods, no contract of insurance can be said to be existing between the parties in this

regard. Considering this, the respondent-company was justified in repudiating the liability on the ground of non-existance of insurance contract with

the petitioner-firm. And such repudiation can, by no stretch of imagination be said to be a flimsy or bale repudiation. That being so it has to be held

that the respondent-company has disclaimed the liability and any such disclaimer does not give rise to a dispute coverable under arbitration Clause

113. The question of reference to the arbitrator consequently does not arise.

10. For the reasons stated above this petition must fail on the very threshold and is dismissed accordingly.

