

2016] BHARAT SALT REFINERIES LTD. v. NEW INDIA ASSURANCE (MAD) 545

weeks, the directions as stated above will not come into effect. In the event the parties are unable to arrive at an amicable settlement for discharge of the dues of the petitioner, counsel for the petitioner shall inform the official liquidator, who shall on receipt of such communication proceed to take the necessary steps in accordance with law and in conformity with the directions as issued herein.

List on August 12, 2014.

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In view of the above, C. A. No. 1209 of 2012 stands disposed of.

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[2016] 194.Comp Cas 545 (Mad)

[IN THE MADRAS HIGH COURT]

BHARAT SALT REFINERIES LTD.

v.

NEW INDIA ASSURANCE CO. LTD.

T. S. SIVAGNAM J.

August 21, 2015.

ARBITRATION—APPOINTMENT OF ARBITRATOR—INSURANCE—SIGNING OF SETTLEMENT VOUCHER NOT SOLE GROUND TO DISMISS CLAIMANT'S PETITION FOR APPOINTMENT OF ARBITRATOR—FACTS OF EACH CASE TO BE LOOKED INTO—CLAIMANT RAISING DISPUTE REGARDING SURVEYOR AND ALSO SEEKING TO SIGN VOUCHER AS PARTIAL SETTLEMENT—CANNOT BE NON-SUITED DESPITE SIGNING VOUCHER—COMPANY NOT REPLYING TO CORRESPONDENCE OF CLAIMANT—FORTY DAY LAG BETWEEN RECEIVING OF CHEQUE AND REQUEST FOR RE-OPENING CLAIM NOT FATAL—ARBITRATOR TO BE APPOINTED TO LOOK INTO ISSUES—ARBITRATION AND CONCILIATION ACT, 1996, s. 11(6).

Whether an insurance claim can be dismissed on the ground that the claimant has signed the settlement voucher, cannot be decided sans facts. The facts of the case need to be looked into to examine whether the discharge was conditional, or unconditional, and whether there was any precarious circumstance, which compelled the claimant to execute such discharge voucher.

NATIONAL INSURANCE CO. LTD. v. BOGHARA POLYFAB P. LTD. [2009] 1 SCC 267 relied on.

The petitioner availed of three insurance policies from the respondent-insurance company which were valid till May 27, 2006. During the last week of October 2006, on account of cyclone, the petitioner's salt fields were damaged, and the petitioner submitted a claim petition to the respondent on

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November 29, 2006, estimating the loss at Rs. 2.66 crores. After various letters on behalf of the petitioner, a printed receipt was forwarded to the petitioner, mentioning the amount of Rs. 73,24,996 as full satisfaction and discharge of the claim and other options in the receipt were struck off. On receipt of this pre-prepared receipt, the petitioner sent a fax message to the senior divisional manager of the company stating the amount claimed by it was Rs. 2,96,56,803.50 whereas, the amount proposed for settlement was Rs. 73,24,996 and requested to confirm whether it could discharge the voucher as partial settlement. Thereafter, the petitioner signed the receipt and the cheque for a sum of Rs. 73,24,996 was issued to the petitioner. The petitioner, by a letter, dated December 31, 2008, while thanking the company for payment of Rs. 73,24,999 made on November 20, 2008, stated that, it was not satisfied with the quantum of settlement, as the surveyor of the company had not assessed the claim in a prudent manner, for, he did not wait to accept the supportive documents given by them, which would substantiate the actual loss claimed by it, and also stated that there was biased attitude on the part of the surveyor, which had deprived it of its legitimate entitlement. Therefore, a request was made to reopen the claim for a fair and final settlement. This was followed by two letters, which were not replied to. The petitioner addressed a letter to the chairman-cum-managing director of the company, reiterating its earlier stand, and requested for fair and reasonable assessment, by reassessing its claim. A reply was received from the senior divisional manager, stating that the petitioner, having executed the voucher, confirming the amount to be in full and final discharge of the claim without any reservation, the question of reopening the claim did not arise. On receipt of the reply, by a representation, the petitioner requested the matter to be referred for arbitration, in terms of clause 13 of the insurance policy. The company reiterated its earlier stand, stating that the petitioner had accepted the amount as full and final discharge of the claim, and it was not agreeable for arbitration proceedings. The petitioner filed a suit for recovery of the differential amount but the plaint was returned on the ground that there was an arbitration clause in the agreement. On a petition for appointment of an arbitrator :

Held, allowing the petition, (i) that a claim for appointment of an arbitrator could not be rejected solely on the ground that the settlement agreement or discharge voucher had been executed by the claimant. The facts had to be looked into. A series of letters were sent by the petitioner from November 7, 2006 and there appeared to be no response to any of such communications from the company. The surveyor submitted his report March 2, 2007 and thereafter, the petitioner had been corresponding with the respondent for

nearly one and half years, and only when it was addressed to the higher official, viz., chairman-cum-manager, on July 7, 2009, did the petitioner receive a reply from the company, which itself was cryptic and did not take the matter anywhere. It was thereafter, that a settlement intimation voucher was sent. There was a communication sent by the petitioner seeking a confirmation whether it could discharge the voucher as partial settlement. The company had not denied or disputed this communication. It was not a case where the petitioner as an afterthought, had addressed the authority after receiving the payment. Series of communications had been made and in each and every letter, the petitioner had pointed out the discrepancies in the surveyor report and its dissatisfaction with it. The plea raised by the petitioner was a bald plea, but the petitioner had been able to prima facie establish by placing materials that there were differences and discrepancies in the surveyor's report and the amount estimated by him. The 40 days' time lag between the receipt of the cheque and request for reopening the claim could not be held to be fatal. The issue appeared to be whether full and final settlement was a conscious action, or whether there was any unfortunate circumstance, which compelled the petitioner to accept the payment. The communication and correspondence between the parties and the plea of acceptance of the cheque in the year 2008 were all material documents, which had to be gone into and these factual matters had to be adjudicated, for which purpose, the matter was required to be dealt with by an arbitral tribunal. The arbitral tribunal could also examine whether the settlement intimation voucher was a pre-prepared one, and whether it was one such document, which was deprecated by the Supreme Court. A sole arbitrator was to be appointed.

Cases referred to :

Deepak Bhandari v. Himachal Pradesh State Industrial Development Corporation Ltd. [2015] 5 SCC 518 (para 6)

Gimpex Ltd. v. Aanchal Cement Ltd. [2015] 2 LW 916 (para 4)

National Insurance Co. Ltd. v. Boghara Polyfab P. Ltd. [2009] 1 SCC 267 (paras 4, 5, 13, 14, 21)

New India Assurance Co. Ltd. v. Genus Power Infrastructure Ltd. [2015] 2 SCC 424 (paras 6, 8, 9, 14)

Union of India v. Master Construction Co. [2011] 12 SCC 349 (para 14)

O. P. No. 496 of 2013.

V. Ramakrishnan Viraraghavan for the petitioner.

Mrs. S. Radhadevi for the respondent.

