



ARBITRATION AND CONCILIATION

Delhi High Court On Scope Of Arbitrability Of Disputes Arising Out Of An Insurance Claim, When The Claim Is Partially Rejected

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Introduction

The Hon'ble Delhi High Court ("**HC**") in a recent judgment of *Shivalaya Construction Co. Pvt. Ltd. vs. National Insurance Company Ltd.*^[1], deliberated on the arbitrability and maintainability of a policyholder's right to invoke arbitration in cases wherein the claim is partially allowed. On the said point, the HC held that the same shall be determined by the arbitral tribunal upon commencement of the arbitration proceedings, therefore, leaving it out of the ambit of the judiciary to decide it at the pre-reference stage that is at the stage of an entertaining application under S.11 of the Arbitration and Conciliation Act, 1996 ("the Act").

The said judgment further distinguishes between the rejection of the claim in toto and the denial of a partial claim of the policyholder by the insurer for the purpose of determining the scope of reference to arbitration.

Brief Facts

The Petitioner availed the "Contract All Risk" policy ("**the Policy**") of the Respondent. Thereafter, the Petitioner made a claim to the Respondent under the Policy which was partially accepted by the Respondent. The Petitioner, in accordance with the terms of the Policy, issued a notice invoking the arbitration clause to claim the rejected balance amount from the Respondent. The Respondent vide its reply to the said notice refused to refer the dispute to arbitration on the reasoning that the same has been settled. In view of the aforesaid facts, a petition under [section 11](#) of the Act came to be filed before the HC seeking the appointment of an arbitrator to adjudicate the disputes between the parties.

Submissions Made By The Parties

The Respondent's counsel, opposing the Petition, relied on the arbitration clause Policy which stated that any dispute or difference between the parties that may arise with respect to the quantum of claim to be paid, presuming that liability is admitted, shall be referred to arbitration to be governed in accordance with the Act. Therefore, the Respondent's counsel contended that as per the terms of the Policy, any dispute regarding the liability is outside the scope of the arbitration clause.

In support of his contention, the Respondent's Counsel further relies on judgments passed by the Hon'ble High Court of Calcutta in *Kohinoor Steel Pvt. Ltd. Vs. Bajaj Allianz Insurance Company*^[2], the Hon'ble Supreme Court in *Vidya Drolia and Others Vs. Durga Trading Corporation*^[3] and *Indian Oil Corpn. Ltd. Vs. NCC Ltd*^[4]. Further, the Respondent's counsel submitted that the Petitioner made a claim under various heads of the Policy including "muck removal", however as per the Suveryor's Report appointed by the Respondent, "muck removal" was not covered under the Policy. Taking into consideration the aforesaid, the liability for the claim is disputed and not the quantum of the claim. The Petitioner's counsel, in light of the contents of the aforesaid report, disputed its interpretation.

Decision

The HC limited the scope of judicial intervention at the stage of an entertaining application under section 11 of the Act by holding that the question of whether a particular head is or is not included in the Policy for the purpose of making a claim can be adjudicated by the arbitral tribunal once the proceedings commence.

Having stated this, for the purpose of removing the deadwood, the court quoted relevant excerpts of the judgment in *Vidya Drolia* carving out an exception to the rule above wherein a claim is ex-facie barred or is demonstrably non-arbitrable. Further, the HC opined and held that in such a scenario, reference to arbitration could not be made impermissible as the interpretation of the arbitration clause is ambiguous.

In consideration of the aforesaid, the HC allowed the petition appointing a former judge of the HC as a sole arbitrator and that the arbitration proceedings be administered by the Delhi International Arbitration Center, Delhi High Court.

^[1]2023:DHC:3753

^[2]2011 SCC OnLine Cal 3252

^[3](2021) 2 SCC 1

^[4](2023) 2 SCC 539