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

\+ ARB. A. (COMM.) 62/2025

Date of Decision: 19.11.2025

IN THE MATTER OF:

M/S INOX WORLD INDUSTRIES PVT LTD .....Petitioner

Through: Mr. Shashank Garg, Sr. Adv with Ms. Ritika Jhurani, Mr. Dinesh Sharma, Mr. Varad Nath, Mr. Nistha Jain, Mr. Abhishek Kandwal, Mr. Ujwal Sharma and Ms. Gauri Bansal, Advs.

versus

IFFCO TOKIO GENERAL INSURANCE COMPANY LIMITED .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard Mr. Shashank Garg, learned senior counsel appearing on behalf of the appellant.

2. The instant appeal under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 (hereinafter "**the Act**") assails the order dated 01.08.2025 passed by the Sole Arbitrator (hereinafter "**Impugned Order**"),

whereby the respondent's application under Section 16 of the Act has been allowed and the arbitral proceedings have been terminated.

3. The facts indicate that on 13.01.2022 the respondent issued a Standard Fire and Perils Policy bearing no. 12411458 to the appellants, whereunder, a sum of Rs. 1,61,60,00,000/- was insured (hereinafter "**said Policy**"). On the intervening night of 23.02.2023 and 24.02.2023 a fire broke out at the appellant's premises leading to a purported loss of 139,32,73,109/-. The appointed assessor, thereafter, submitted its report to the appellant on 22.09.2023; and on 20.05.2024 the respondent repudiated the claim of the appellant.

4. A dispute, thereafter, arose between the parties, for the adjudication of which, the appellant sought the appointment of an arbitrator. This Court *vide* order dated 02.05.2025 in Arb. P. 1549 of 2025, appointed a sole arbitrator for the adjudication of the disputes (hereinafter "**referral order**"). Upon the learned sole arbitrator terminating the proceedings *vide* order 01.08.2025, the present appeal has been filed.

5. Mr. Garg strongly contends that though there does not seem to be a fundamental error in the order passed by the sole Arbitrator, however, Clause 13 of the said Policy is itself arbitrary and illegal. According to him, if the decision passed by the Supreme Court in the case of ***Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd***.[1] ("***Lombardi***"**)**, is considered in the right perspective, it would indicate that such a Clause which confers a unilateral power to a party to the arbitration agreement is arbitrary and illegal. He has taken the Court through paragraph nos. 70, 71, 75, 77, 78,

80, 81 and 83 of the said decision, which are reproduced as under:

> "*70. The vociferous submission on the part of the learned counsel appearing for the respondent, that this Court while considering an application under Section 11(6) of the 1996 Act for the appointment of arbitrator should not test the validity or reasonableness of the conditions stipulated in the arbitration clause on the touchstone or anvil of Article 14 of the Constitution, is without any merit or substance.*
> *71. It would be too much for the respondent to say that it is only the writ court in a petition under Article 226 of the Constitution that can consider whether a particular condition in the arbitration clause is arbitrary.*
> *XXXXX*
> *75. What is relevant to note in all the abovereferred decisions of this Court is the phrase "operation of law". This phrase is of wider connotation and covers the 1996 Act as well as the Constitution of India and any other Central or State law.*
> *XXXXX*
> *77. Kelsen's Pure Theory of Law has its pyramidical structure of hierarchy based on the basic norm of Grundnorm. The word "Grundnorm" is a German word meaning fundamental norm. He has defined it as "the postulated ultimate rule according to which the norms of this order are established and annulled, receive or lose their validity". It is the Grundnorm which determines the content and validates the other norms derived from it. But from where it derives its validity, was a question which Kelson did not answer, stating it to be a metaphysical question. Grundnorm is a fiction, rather than a hypothesis as proposed by the jurist. The Grundnorm is the starting point in a legal system and from this base; a legal system broadens down in gradation becoming more and more detailed and specific as it progresses. This is a dynamic process. At the top of the pyramid is the Grundnorm, which is independent. The subordinate norms are controlled by norms superior to them in hierarchical order. The system of norms proceeds from downwards to upwards and finally closes at Grundnorm. (Reference:"Application of Grundnorm in India", Zainab Arif Khan, Aligarh Muslim University)*
> *78. Our Constitution is the paramount source of law in our country. All other laws assume validity because they are in conformity with the Constitution. The Constitution itself contains provisions that clearly provide that any law which is in violation of its provisions is unlawful and is liable to be struck down. As contained in Article 13, which provides that all laws which were made either before the commencement of the Constitution, or are made after it, by any competent authority, which are inconsistent with the fundamental rights enshrined in the Constitution, are, to the extent of inconsistency, void. This again unveils the principle of*

[1] (2024) 4 SCC 341.

Grundnorm which says there has to be a basic rule. The Constitution is the basic and the ultimate source of law.

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80. Thus, in the context of the arbitration agreement, the layers of the Grundnorm as per Kelsen's theory would be in the following hierarchy:
(i) Constitution of India, 1950;
(ii) Arbitration and Conciliation Act, 1996 & any other Central/State law;
(iii) Arbitration agreement entered into by the parties in light of Section 7 of the Arbitration and Conciliation Act, 1996.

81. Thus, the arbitration agreement, has to comply with the requirements of the following and cannot fall foul of:
(i) Section 7 of the Arbitration and Conciliation Act;
(ii) any other provisions of the Arbitration and Conciliation Act, 1996 & Central/State Law;
(iii) Constitution of India, 1950.

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83. The concept of "party autonomy" as pressed into service by the respondent cannot be stretched to an extent where it violates the fundamental rights under the Constitution. For an arbitration clause to be legally binding it has to be in consonance with the "operation of law" which includes the Grundnorm i.e., the Constitution. It is the rule of law which is supreme and forms parts of the basic structure. The argument canvassed on behalf of the respondent that the petitioner having consented to the pre-deposit clause at the time of execution of the agreement, cannot turn around and tell the Court in a Section 11(6) petition that the same is arbitrary and falling foul of Article 14 of the Constitution is without any merit."

6. Mr. Garg has also taken this Court through the order, whereby, the sole Arbitrator was appointed and almost similar objections were raised by the respondent therein, which the Court while passing order under Section 11 of the Act, has not accepted. He, therefore, contends that under these circumstances, the Court will have to look into the controversy from a broader perspective and render justice.

7. I have considered the aforesaid submissions and perused the record.

8. For ease of analysis, Clause 13 of the General Clause of the Policy is extracted as under:

> "*13. If any dispute or 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 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 of invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator 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*"

9. The argument of Mr. Garg, learned counsel for the appellant is essentially two-fold—*first*, that owing to the referral order passed by the High Court, the learned arbitrator was bound to adjudicate upon the said dispute; and *second*, that the finding of the learned arbitrator pertaining to the validity of the arbitration clause is erroneous.

10. The scope of judicial scrutiny at the stage of Section 11 of the Act is no longer *res integra*. The Hon'ble Supreme Court in ***In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1966 and Stamp Act, 1899***[2] and this Court in ***Axis Finance Limited v. Mr. Agam Ishwar Trimbak***[3] has held that under Section 11(6) of the Act, the scope of judicial scrutiny is confined to being *prima facie* satisfied of the existence of an arbitration agreement. Naturally, an order of a Court allowing a petition under Section 11 of the Act is not a finding on merits.

11. The referral order further clarifies that any observation made by the Court is not to be construed as an opinion on the merits of the matter. The material part of the referral order reads as under:

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[2] (2024) 6 SCC 1.
[3] 2025:DHC:7477.

> *"29. It is made clear that the respondent's objections as regards arbitrability and jurisdiction are left open for consideration by the learned Sole Arbitrator; it shall be open for the respondent to move an appropriate application under Section 16 of A&C Act, which shall be duly considered and decided by the learned Sole Arbitrator in accordance with law."*

12. The submission of Mr. Garg that the findings contained in the referral order, on the merits of Clause 13 of the said Policy, have not been taken into account by the learned arbitrator is without any merit.

13. Furthermore, the Court also does not find any merit in the argument of the learned senior counsel that Clause 13 of the said Policy is illegal. Clauses worded in a manner similar to that of Clause 13 of the said Policy have been upheld in various decisions of the High Courts and the Supreme Court (**See** for instance: ***Geo Chem Laboratories Pvt Ltd. v. United India Insurance Co. Ltd.***[4], ***C.S. Construction v. New India Assurance Co. Ltd***.[5]). The learned arbitrator at paragraph nos. 45-49 of the Impugned Order has also arrived at the same finding.

14. The judgement in ***Lombardi*** was cited before the learned arbitrator, however, the said judgement did not make any difference to the conclusions reached by the learned arbitrator. This Court also, does not find the said pronouncement to be applicable to the facts of the instant case.

15. A bare perusal of Clause 13 of the said Policy reveals that arbitration can only be triggered when liability is admitted by the insurer. It is upon the quantum of liability and not the existence thereof, that an arbitrator can adjudicate.

16. In light of the above, no fault can be found with the Impugned Order.

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[4] OMP. (Comm) 88/2022, High Court of Delhi.
[5] Comm. Arb. P. (L.) No. 32981 of 2023, High Court of Bombay.

In the considered opinion of the Court, there does exist any reason to interfere with the Impugned Order. Accordingly, the instant appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 19, 2025
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