IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2026

DELIVERED ON : .09.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

Arb.O.P.(Com.Div.) No.531 of 2026

M/s.V.V.Marine Products,
Rep. by its Partner J.Muthu Rajan,
1/69, Agaram Village,
Palayakayal, Srivaikundam,
Tuticorin-628 152.

Petitioner

Vs

The New India Assurance Company Ltd.,
Rep. by its Chief Business Manager,
41 B, 1st Floor, Victoria Street,
Tuticorin, Tamil Nadu-628 001.

Respondent

PRAYER: Petition filed under Section 11(4)(b) of the Arbitration and Conciliation Act, 1996 to appoint the third /Presiding Arbitrator for constituting the Arbitral Tribunal in accordance with Clause 4 of the New India Bharat Laghu Udyam Suraksha Policy bearing No.73070011224300000050 to adjudicate the disputes and differences that have arisen between the petitioner and the respondent.

For Petitioner: Mr.S.R.Raghunathan
for Mr.N.V.Prakash

For Respondent: Mr.SP Chockalingam

ORDER

This arbitration original petition has been filed by the petitioner to appoint the Presiding Arbitrator for constituting the Arbitral Tribunal in accordance with Clause 4 of the New India Bharat Laghu Udyam Suraksha Policy, bearing No.73070011224300000050, to adjudicate the disputes and differences that have arisen between the petitioner and the respondent.

2. Brief facts are as follows:

(i) The petitioner is an export-oriented sea food processing company and is engaged in the business of processes and exports quality-assured frozen shrimp catering to markets across the USA, European Union, Japan, East Asia, China, Hong Kong, Malaysia, UAE, Kuwait and Saudi Arabia. The petitioner has insured its assets, being the building, plant and machinery, furniture, fixtures and fittings, stock-in-process and finished stock at its premises, with the respondent under the New India Bharat Laghu Udyam Suraksha Policy for the period from 23.02.2023 to 22.02.2024 for a total sum insured of Rs.30.00 Crores, as enhanced vide endorsement dated 1.8.2023. The risk covered was described as "Sea Food/Meat Processing".

(ii) Due to heavy and incessant rains on 17.12.2023 and 18.12.2023 in and around Thoothukudi District, the petitioner's premises got flooded and inundated and, as a consequence, the petitioner's building, electrical installations, plant and machinery, generators, stock-in-process and finished stock (prawns) suffered extensive physical loss and damage. In this regard, the petitioner has lodged a claim with the respondent for the loss of building, plant and machinery, stock and stock-in-process for a sum of Rs.27.50 Crores. The respondent has appointed M/s.Associated Surveyor Private Limited as Surveyor to assess the loss, before whom, the petitioner has submitted all the documents. On 04.08.2024, the Surveyor has submitted its final report and, pursuant thereto, the petitioner has submitted its final claim bill on 27.7.2025 for Rs.9,39,08,817/-. With a view to expedite disbursement of the admitted portion of the claim and without prejudice to its right to dispute the balance, the petitioner furnished a consent for the assessment dated 27.7.2025 restricted to Rs.4,17,94,903/- by making it clear that it did not agree with the quantum offered and reserved its right to claim the balance amount.

(iii) The respondent processed and paid a sum of Rs.4,17,94,903/- towards the claim. Out of the assessed loss, a sum of Rs.4,76,51,575/- under the head 'finished goods', together with other minor disallowances was disallowed by the respondent. As regards, the disallowance under 'finished goods'. 60% of the loss thereunder is attributable to an alleged excluded peril, namely 'change in temperature', said to fall under Exclusion No.4 of the policy and the petitioner disputes the said finding. The respondent rejected the contention of the petitioner and persisted with the said disallowance, thereby giving rise to the present dispute qua the quantum payable under the policy.

(iv) The policy contains arbitration clause, being Clause 4. In terms of the said Clause, where the parties are unable to agree upon a Sole Arbitrator, the dispute stands referred to a Three-Member Arbitral Tribunal with each party appointing one Arbitrator and the Presiding Arbitrator to be appointed by the two party-nominated Arbitrators. Since the parties could not agree on a Sole Arbitrator, the petitioner, by notice dated 17.10.2025, invoked the arbitration clause and proposed the name of Shri A.Jeganathan, an insurance professional, as the Sole Arbitrator to adjudicate the dispute. The respondent, by its reply dated 14.11.2025, agreed to refer the matter for arbitration, however, did not concur with the appointment of Shri A.Jeganathan, as Sole Arbitrator and the respondent appointed Shri Vijay Srinivas, a retired General Manager, United India Insurance Company Limited, as its Arbitrator and called upon the petitioner to confirm acceptance of the respondent's nominee and communicate the name of its own Arbitrator, so that the two appointed Arbitrators could jointly appoint the Presiding Arbitrator to constitute the Arbitral Tribunal. However, despite lapse of more than 6 months from the date on which both the Arbitrators stood appointed, the two Arbitrators have failed to arrive at a consensus and appoint the Presiding Arbitrator. Hence, the petition.

3. The respondent has filed counter, *inter alia*, stating that the dispute between the petitioner and the respondent is not the one related to quantum of the claim and it is outside the scope and purview of the arbitral jurisdiction referred to under Section 16 of the Arbitration and Conciliation Act, 1996. Therefore, the petitioner cannot seek for an appointment of an Arbitrator by this Court under Section 11(4) of the Act. It is further stated that the respondent's counter-nomination of Arbitrator is only a procedural act and it is an act of compliance with arbitration clause procedure and not an admission of arbitrability. Therefore, the counter-nomination made by

the respondent cannot be characterized as an admission or concession. Thus, prayed for dismissal of the petition.

4.1. Learned counsel for the petitioner submitted that the two Arbitrators appointed by the parties are unable to arrive at a consensus in respect of appointment of the Presiding Arbitrator, which necessitated the intervention of this Court for appointment of the third Arbitrator/Presiding Arbitrator.

4.2. Learned counsel for the petitioner further submitted that where the respondent had disbursed part of the claim amount to the petitioner, the non-payment of the balance claim to the petitioner was held to be a dispute on quantum and not of liability. To fortify his submission, learned counsel placed reliance upon the decision of the Supreme Court in *SBI General Insurance Company Limited v. Krish Spinning*[1].

5.1. Per contra, learned counsel for the respondent submitted that once the liability is in dispute, the petitioner cannot invoke the arbitration clause. Since the dispute falls outside the scope of

1 (2024) 12 SCC 1

arbitration, he prayed for dismissal of the petition. In support, he relied upon the following decisions:

(i) Oriental Insurance Company Limited v. Narbheram Power and Steel Pvt. Ltd[2]*.*

(ii) United India Insurance Co. Ltd., and others v. Hyundai Engineering and Construction Co. Ltd. and others[3]*.*

5.2. It is also the submission of learned counsel for the respondent that the petitioner did not choose to cover the peril – deterioration of stocks in cold storage and Clause 4 of the Exclusions in the policy document specifically states that the respondent does not cover losses or expenses, or any loss, damage to, or destruction to, or destruction of the insured property, directly or indirectly as a result of or if caused by or arising from events – loss destruction or damage to the stock in cold storage premises caused by change of temperature. He would submit that the eligible loss under the insured perils has been fully paid as per the policy terms and conditions and that the disallowed amount is due to inadmissibility of the claim as per the policy terms and conditions, which is an excluded peril. In fact, the

2 (2018) 6 SCC 534
3 (2018) 17 SCC 607

petitioner has not opted for the coverage of the disallowed peril by paying additional premium and denied the liability.

6. In reply, learned counsel for the petitioner submitted that the rise in temperature inside the cold storage facility was not an independent or separate cause of damage, but was itself the direct and inevitable consequence of the ingress of flood waters into the cold storage coupled with the resultant power outage caused by the flood. Learned counsel further submitted that before the Surveyor the petitioner contended that but for the entry of flood waters into the cold storage, the temperature inside the cold room would not have risen from (-) 21° C to (-) 6° C merely on account of the power interruption and that the finished goods would not have suffered any damage. According to learned counsel for the petitioner, the increase in temperature was only a consequence of the insured peril of flood and not a distinct excluded peril under the policy. While so, the respondent rejected the plea of the petitioner and persisted with the disallowance. Since dispute has arisen between the parties and no consensus arrived at to elect the Presiding Arbitrator, the petitioner has invoked the jurisdiction of this Court and filed the present petition.

7. This Court considered the rival submissions and perused the materials available on record.

8. It is not in dispute that the petitioner had insured its assets, namely the building, plant and machinery, furniture, fixtures and fittings, stock-in-progress and finished stock with the respondent under the New India Bharat Laghu Udyam Suraksha Policy. The petitioner lodged a claim with the respondent for the loss of building, plant, machinery, stock and stock-in-process as the petitioner's premises got flooded and inundated during the incessant rains on 17.12.2023 and 18.12.2023. Based on the claim made by the petitioner, the respondent appointed M/s.Associated Surveyors Private Limited, IRDAI-licensed Surveyors and Loss Assessors, to assess the loss and the Surveyor, upon survey, has submitted its report on 4.8.2025. Pursuant to the report, the petitioner has submitted final claim bill dated 27.7.2024 for Rs.9,39,08,817/- and the respondent processed the bill and paid a sum of Rs.4,17,94,903/- towards the claim. The dispute amongst the parties is to the tune of Rs.4,76,51,575/- under the head 'finished goods', which was disallowed by the respondent on the ground that 60% of the loss

thereunder is attributable to an alleged excluded peril, namely 'change in temperature' said to fall under Exclusion No.4 of the Policy.

9. Admittedly, the policy contained the dispute resolution clause envisages a reference for arbitration in case of disputes to a Sole Arbitrator mutually agreed between the parties. However, if the parties fail to arrive at a consensus with regard to the Sole Arbitrator, arbitration shall be conducted by an Arbitral Tribunal comprising three Arbitrators, one appointed by each and the third appointed by the Arbitrators so appointed.

10. Clause 4 of the New India Bharat Laghu Udyam Suraksha Policy reads thus:

> *"If any dispute or difference arises between You and Us regarding the amount of claim to be paid under this policy (liability having been admitted by Us), such difference shall independently of all other questions, be referred to the decision of a sole arbitrator to be appointed in writing by You and Us or if You and We cannot agree upon a single arbitrator within 30 days of either of Us opting for arbitration, the same shall be referred to a panel of three arbitrators comprising of two arbitrators, one to be appointed by each of Us, 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 provisions of the Arbitration and Conciliation Act, 1996."

11. By placing on record the decisions of the Supreme Court in *Hyundai Engineering and Construction Company Limited* (supra) and *Narbheram Power and Steel Private Limited* (supra), learned counsel for the respondent urged that there can be no arbitration in cases where the insurance company disputes or does not accept the liability under or in respect of the policy and, therefore, the appointment of Arbitrator has to be put to rest.

12. In *Hyundai Engineering and Construction Company Limited* (supra), the Supreme Court held thus:

"12. From the line of authorities, it is clear that the arbitration clause has to be interpreted strictly. The subject clause 7 which is in pari materia to Clause 13 of the policy considered by a three-Judge Bench in Oriental Insurance Company Limited (supra), is a conditional expression of intent. Such an arbitration clause will get activated or kindled only if the dispute between the parties is limited to the quantum to be

paid under the policy. The liability should be unequivocally admitted by the insurer. That is the pre-condition and sine qua non for triggering the arbitration clause. To put it differently, an arbitration clause would enliven or invigorate only if the insurer admits or accepts its liability under or in respect of the concerned policy. That has been expressly predicated in the opening part of clause 7 as well as the second paragraph of the same clause. In the opening part, it is stated that the "(liability being otherwise admitted)". This is reinforced and re-stated in the second paragraph in the following words:

> *'It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the Company has disputed or not accepted liability under or in respect of this Policy.'*

Thus understood, there can be no arbitration in cases where the insurance company disputes or does not accept the liability under or in respect of the policy."

13. In *Narbheram Power and Steel Private Limited* (supra), the Supreme Court held as under:

"24. It does not need special emphasis that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally

express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. If a clause stipulates that under certain circumstances there can be no arbitration, and they are demonstrably clear then the controversy pertaining to the appointment of arbitrator has to be put to rest."

14. As could be seen from the record and it is admitted case of both sides that in view of the disputes, the petitioner, by way of notice of invocation dated 17.10.2025, nominated Shri A.Jegannathan on their side and, by way of reply notice dated 14.11.2025, the respondent nominated Shri Vijay Srinivas as their side Arbitrator. However, they have been unable to agree on the Presiding Arbitrator.

15. It is the case of the petitioner that on 27.07.2025, the petitioner submitted its final claim bill for Rs.9,39,08,817/- and the respondent paid a sum of Rs.4,17,94,903/- towards the claim and, out of the assessed loss, a sum of Rs.4,76,51,575/- is still due. However, it is the case of the respondent that it had disallowed an amount of Rs.4,75,61,575/- on the ground that such portion of the claim falls under policy exclusion.

16. In *SBI General Insurance Company Limited* (supra), the Supreme Court held thus:

> *"38. A preliminary objection was raised on behalf of the appellant that the arbitration clause as contained in the insurance policy referred to above is not attracted in the present case as there is no admission of liability on the part of the appellant, whereas the said arbitration clause envisages reference to arbitration only in cases where liability is admitted and there is a dispute as regards the quantum of liability.*
>
> *39. However, we find no merit in the aforesaid submission of the appellant. It is evident from the record that the appellant had admitted its liability with respect to the first claim and had even disbursed an amount of Rs 84,19,579/- in pursuance of the signing of the advance discharge voucher by the respondent. Thus, it is clearly a case of admission of liability by the appellant. However, the quantum of liability is in dispute as the amount claimed by the respondent is at variance with the amount admitted by the appellant. Thus, the dispute being one of quantum and not of liability, it falls within the ambit of the conditional arbitration clause as contained in the insurance policy."*

17. The Supreme Court, time and again, held that at the stage of appointment of an arbitrator in terms of Section 11 of the Act, the Courts are required only to see whether a *prima facie* case for determination as regards the validity or existence of the arbitration agreement is made out or not. In the instant case, as stated supra, there exists an arbitration clause in the policy and the parties have also exchanged notice and reply notice thereby nominating their Arbitrators.

18. This Court is of the view that while deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996, the Court has got limited role. Once there exists an arbitration clause in the policy, which is the subject matter of dispute between the parties, and the respondent also does not dispute the existence of the arbitration clause and the parties have appointed their respective Arbitrators and thereafter not arrived at a consensus to appoint the Presiding Arbitrator, this Court is left with no other option but to appoint the Presiding Arbitrator for constituting the Arbitral Tribunal. This Court make it clear that it does not want to go into the merits and demerits

of the claim and/or issue raised in this petition and it is for the Arbitral Tribunal to deal with the same on its own merits and in accordance with law.

19. Considering the facts and circumstances of the case and finding a valid arbitration clause and also subsisting dispute between the parties, this Court, appoints *Mr.Srinath Sridevan, Senior Advocate [Mobile No.9841049950] [E-mail:srinath@sridevan.com], having residence at Access House, 2nd Floor, No.24, Judge Jambulingam Street, Mylapore, Chennai-600 004,* as the Presiding Arbitrator to enter upon the reference along with the two other nominated Arbitrators and adjudicate the disputes arising between the parties. The arbitration shall be seated and conducted at the Madras High Court Arbitration Centre in accordance with the Madras High Court Arbitration Proceedings Rules, 2017. The arbitral fee and administrative expenses shall be governed by the Madras High Court Arbitration Centre (Administrative Cost and Arbitrators’ Fees) Rules, 2017.

20. The Registry is directed to communicate a copy of this order along with the memo of parties and the petition to the learned Presiding Arbitrator forthwith, who shall in turn communicate the same to the nominated Arbitrators.

The arbitration original petition stands allowed in the above terms, sans costs.

(SUSHRUT ARVIND DHARMADHIKARI,CJ)
.09.2026

Index : Yes/No
Neutral Citation : Yes/No
bbr/sasi

To

1.Mr.Srinath Srideven,
Senior Advocate,
Access House, 2nd Floor,
No.24, Judge Jambulingam Street,
Mylapore, Chennai-600 004.

2.The Assistant Registrar,
Madras High Court Arbitration Centre,
Chennai-600 104.

THE HON'BLE CHIEF JUSTICE

(bbr/sasi)

Pre-delivery Order in
Arb.O.P.(Com.Div.) No.531 of 2026

.09.2026