

ITEM NO.47

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 224-226/2023

(Arising out of impugned final judgment and order dated 12-10-2022 in AP No. 128/2021 12-10-2022 in AP No. 129/2021 12-10-2022 in AP No. 130/2021 passed by the High Court of Judicature at Bombay)

M/S NATIONAL INSURANCE COMPANY

Petitioner(s)

VERSUS

M/S NIPPON PAPER FOODPAC PVT. LTD

Respondent(s)

(FOR ADMISSION and I.R. and IA No.3496/2023-PERMISSION TO FILE  
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES )

Date : 09-01-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA  
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s)

Mr. Nalin Kohli, Adv.  
Mr. Vinay Kumar Misra, AOR  
Ms. Mansa Shukla, Adv.  
Mr. Nabeel Malik, Adv.  
Ms. Nimisha Menon, Adv.

For Respondent(s)

Mr. C.U. Singh, Sr. Adv.  
Mr. Abhay Dhadiwal, Adv.  
Mr. Ashwin Shete, Adv.  
Mr. Sandeep Sudhakar Deshmukh, AOR

UPON hearing the counsel, the Court made the following  
O R D E R

We are not inclined to interfere with the impugned order dated 12.10.2022 passed in Arbitration Petition No. 128/2021, which relates to the disputes under the Plant and Machinery Policy. We must record that under this Policy, the petitioner has made *ad-hoc* payment of about Rs. 5 crores to the respondent in 2014. Subsequently, the petitioner has filed a suit for recovery for the

said amount. In our opinion, the issues and disputes should be decided by the arbitrator, *albeit* we clarify that the parties would be entitled to raise all pleas and contentions before the arbitrator including the question of arbitrability.

Recording the aforesaid, the SLP (C) No. 224/2023 is dismissed.

Pending application(s), if any, in the SLP(C)No. 224/2023 shall stand disposed of.

Issue notice in the SLP (C) Nos. 225 and 226 of 2023 arising out of Arbitration Petition Nos. 129/2021 and 130/2021, returnable in the month of April, 2023. Notice is accepted by the Advocate-on-Record on behalf of the contesting respondent.

Four weeks' time is granted to file counter affidavit/reply.

Rejoinder affidavit, if any, may be filed within three weeks after service of the counter affidavit/reply.

Notice would also be issued to the Insurance Regulatory and Development Authority of India (IRDAI). The IRDAI would file an affidavit in this Court within a period of four weeks of service of this order indicating the reason why only the quantum of dispute has been made arbitrable, whereas repudiation of the Policy or denial of the claim *per-se* is made non-arbitrable.

The direction for appointment of arbitrator in the Arbitration Petition Nos. 129/2021 and 130/2021 would remain stayed till the next date of hearing.

(BABITA PANDEY)  
COURT MASTER (SH)

(R.S. NARAYANAN)  
COURT MASTER (NSH)