

Item No. 6

De-notification of Arbitration Clause in all tariff products under Fire, Motor and Engineering, Workmen's Compensation and other classes of insurance business

1. Background: Supreme Court directive on Arbitration clause in tariff products w.r.t SLP(C) Nos. 224-26 of 2023, M/s NIC Vs. M/s Nippon Paper Foodpac Pvt. Ltd.

- i. The Hon'ble Supreme Court, in the aforementioned matter, vide order dated 09.01.2023 directed IRDAI to file an affidavit *indicating the reasons why only the quantum of dispute is arbitrable, whereas repudiation of the policy or denial of the claim per-se is made non-arbitrable.*
- ii. Accordingly, IRDA filed an affidavit dated 31.03.2023 and submitted the following:
 - a) The decision on admissibility of a claim is taken based on host of documents such as policy terms and conditions including the exclusions and warranties, reports of surveyors and other forensic experts.
 - b) Arbitration process increases the cost of insurance compared to other dispute resolution mechanisms including insurance ombudsman, consumer forums, civil courts etc. An increase in cost of insurance will prejudice and be disadvantageous for persons with limited economic capacity.
 - c) A contract of insurance is ultimately a private contract between the insured and the insurer and parties can negotiate and decide to resolve their disputes through arbitration in the contract of insurance.
- iii. On the reply filed by the IRDAI, the Hon'ble Supreme Court on 06.04.2023 observed as under

"We have gone through the reply filed by the Insurance Regulatory and Development Authority of India (IRDAI). The issue raised in the present special leave petition relates to the bifurcation/ division of subject matters, which can be adjudicated before the arbitrators and other forums. This invariably leads to confusion, multiple litigation, piecemeal decision and chances of conflicting orders. The IRDAI will address these aspects in the additional affidavit, which will be filed by them within a period of four weeks from today."

2. Steps taken

- i. In light of the above, IRDAI undertook a comprehensive review of the extant Arbitration Clause prevalent across various lines of business in the General Insurance Industry. It was observed that the Arbitration clause in the policy wordings of all tariff products under Fire, Motor and Engineering, Workmen's Compensation and other classes of insurance business is used by the general insurance industry.
- ii. After due consultation with stakeholders, IRDAI is of the view that the extant Arbitration Clause is limited in scope and needs to be amended. The IRDAI is also of the view that the retail/ individual policy holders may be kept out from the provisions of Arbitration Clause as they have alternative forums of Insurer's Grievances System, Insurance Ombudsman and the Consumer Courts besides the Civil Courts available for redressal of their grievances/ disputes.
- iii. In exercise of powers under Clause (i) sub section (2) of Section 14 of the IRDA Act, 1999, a circular dated 27th October, 2023 was issued directing all general insurance companies the following:
 - I. All policies issued under the Retail Lines of Business shall not have any Arbitration Clause.
 - II. All Policies issued under the Commercial Lines of Business shall have an Arbitration Clause as under:

"The parties to the contract may mutually agree and enter into a separate Arbitration Agreement to settle any and all disputes in relation to this policy. Arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996."
 - III. Transitory provisions
 - a. For all the new policies issued on or after the date of this circular:
 - Arbitration Clause shall be deemed deleted from all the retail policies.
 - Clause at 'II' above shall be deemed to be the Arbitration Clause in General Conditions of all the commercial insurance policies.
 - b. For all the existing policies:

- The existing Arbitration Clause shall remain valid till the term of the policy unless a Policyholder specifically requests the insurer to replace it with the clause at “II” above.
- The clause at “II” shall be deemed replaced the existing arbitration clause in all the commercial policies from the date of renewal falling on or after the date of this circular

3. Proposal:

In terms of Section 64 ULA (1) of the Insurance Act, 1938, it is proposed to de-notify Arbitration clause in all tariff products under Fire, Motor and Engineering, Workmen’s Compensation and other classes of insurance business. In this regard, it is also proposed to seek post-facto approval of the Authority for Circular Ref No. IRDAI/NL/MISC/188/10/2023 dated 27th October, 2023, issued in terms of powers under clause (i) of sub section (2) of Section 14 of IRDA Act, 1999.

4. Rationale:

Since the de-notification of rates in 2006, the needs of customers are evolving over time and the aforementioned approach on arbitration may facilitate faster dispute resolution on mutually agreed basis and promote efficiency and compliance in the conduct of general insurance business

5. Decisions required:

Post-facto approval of the Authority is sought for the following:

- To de-notify Arbitration Clause in all tariff products under Fire, Motor and Engineering, Workmen’s Compensation and other classes of insurance business, in terms of Section 64 ULA (i) of the Insurance Act, 1938.
- To grant post-facto approval for the Circular Ref No. IRDAI/NL/MISC/188/10/2023 dated 27th October, 2023

Placed for approval of the Authority.