

**HIGH COURT OF TRIPURA
AGARTALA**

IA No.01/2024 in Arb.A. No.08 of 2022 (D/O)

Indian Oil Corporation Limited

.....Applicant/Appellant(s);

Versus

M/S Saha Gas Traders

.....Respondent(s).

For Applicant/Appellant(s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. Rajib Saha, Advocate.

For Respondent(s) : None.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

19/11/2024

This interlocutory application on behalf of the appellant in Arb.A. No.08/2022 disposed of on 16.07.2024 seeks a clarification in the judgment to the extent whether the learned Arbitrator is required to determine and quantify the exact amount due to be paid to the respondent or to start the arbitration proceeding afresh from the stage of pleadings. Though no such doubt has been expressed by the learned Arbitrator, but learned counsel for the applicant/appellant submits that upon their appearance before the learned Arbitrator, an impression was created about the import of the judgment of this Court on that aspect.

The operative portion of the judgment is extracted hereunder:

“[9] Upon consideration of rival submissions of the parties, the pleadings placed from record, the impugned award and the findings rendered by the District Commercial Court, we find ourselves in agreement with the conclusion derived by the learned commercial Court, primarily for the reason that the proceedings for adjudication of the dispute inter parties through arbitration did not lead to any executable award in favour of either of the parties. The learned arbitrator left the exercise for calculation of the value of short/ lost LPG on issue Nos. 5, 7 and 8 in respect of the transaction during the contractual period from 1.11.2011 to 31.10.2013 to the claimant. Claim No. (C) relating to the award of interest @ 9% per annum was made contingent upon the amount payable after completion of the exercise as indicated in issue Nos.5, 7 and 8 and only on the failure of the respondent/contractor to pay the amount within four months and fifteen days from the date of award. The learned arbitrator, therefore,

failed to exercise jurisdiction vested in him to determine the dispute between the parties. The learned Commercial Court could not have taken upon itself to modify the Award by rendering findings on the issue left open by the learned Arbitrator. Therefore, the learned Court had no option other than to set aside the award and remand it for fresh arbitration.

[10] As such, we do not find any reason to interfere in the impugned judgment. Learned counsel for the parties, on instructions, have submitted that the learned arbitrator is in a position to undertake the exercise for determination of the outstanding issues. As such, there is no need to refer the matter to another arbitrator.

[11] In view of the reasons recorded hereinabove, the impugned judgment does not require any interference. The present appeal is accordingly dismissed. It is expected that the learned arbitrator would conclude the arbitration proceedings preferably within three months from the date of receipt of copy of this order. Pending application(s), if any, also stands disposed of.”

A perusal of the operative part of the judgment makes it obvious that the learned Arbitrator had left the exercise for calculation of the value of short/lost LPG on issues No.5, 7 & 8 in respect of the transactions during the contractual period from 01.11.2011 to 31.10.2013 to the claimant and Claim No.(C) relating to award of interest @ 9% per annum was made contingent upon the amount payable after completion of the exercise as indicated in issue No.5, 7 & 8. The observations of this Court do not leave any room of doubt that the learned Arbitrator has been requested to determine on this issues.

Accordingly, the IA is disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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