

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.190 OF 2015

M/S SAHA GAS TRADERS,

A partnership firm, having its office at
Haradhan Sangha, Krishnanagar,
P.O. Agartala HPO, P.S. West Agartala,
Sub-Division-Sadar, District-West Tripura,
represented by its partner Smt. Sadhana Saha,
W/O Late Amarendra Saha of
Haradhan Sangha, Krishnanagar,
P.O. Agartala HPO, P.S. West Agartala,
Sub-Division-Sadar, District-West Tripura,
Pin-799001.

..... *Petitioner*

- *Vs* -

1. THE INDIAN OIL CORPORATION LIMITED,

Represented by its Chairman, having his
Corporate Office at 3079/3, J.B. Tito Marg,
Sadiq Nagar, New Delhi-110049.

2. THE EXECUTIVE DIRECTOR,

Indian Oil Corporation Limited
(Assam Oil Division),
P.O. & P.S. Digboi, Assam, Pin-786171.

3. THE DEPUTY GENERAL MANAGER, LPG, NEISO,

having his office at Indian Oil Bhavan, near
Narengi Bridge, Sector-III, Noonmati,
P.O. & P.S. Noonmati,
District-Kamrup, Guwahati, Pin-781020.

..... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. A. Pal, Advocate

For the respondents : Mr. A. Lodh, Advocate

Date of hearing and
delivery of
Judgment & order : **16.07.2015**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

Learned counsel, Mr. A. Pal for the petitioner and learned counsel, Mr. A. Lodh for the respondents are present. As consented by learned counsel of both side the case is taken up for final disposal at the order stage itself. Heard learned counsel of both side.

2. The petitioner is a partnership firm and is engaged in the business of bottling of gas and owns a LPG Bottling Plant at Kalagachia, Sidhai Mohanpur, West Tripura. Respondent No.1, the Indian Oil Corporation Limited (for short, *IOCL*) is engaged in the marketing of LPG cylinders under its brand name, '*INDANE*'. The petitioner and respondent No.1 entered into an agreement in writing on 30.11.2011 agreeing *inter alia* that the IOCL shall supply bulk LPG to the bottling plant of the petitioner firm through tank trucks and the petitioners shall execute the work of bottling of Indane LPG gas cylinders and also shall repair the valve leak cylinders at its bottling plant. As per agreement, the IOCL supplied bulk LPG to the bottling plant of the petitioner firm and the petitioner firm done the bottling of the LPG gas in cylinders.

3. In the year 2013 some difference cropped up in respect of quantity of bulk LPG supplied by IOCL and the bottling done by the petitioner firm. The IOCL constituted Committee for reconciliation of bulk LPG supplied to the petitioner's firm and that

Committee submitted a report on 24.08.2013 and again another report on 28.09.2013. In the report of 28.09.2013 the Committee constituted by IOCL recommended that there was a shortage of 138.4654 MT of domestic subsidized bulk LPG in the bottling plant of the petitioner firm and the Committee suggested recovery of the same. There were lot of correspondence between the petitioner's firm and the IOCL thereafter and ultimately invoking arbitration clause of the agreement, the matter was referred to the sole arbitrator and the Executive Director appointed one N. Bhattacharyya, Chief Manager as sole arbitrator by impugned letter dated 16.10.2014(*Annexure-12* to the writ petition) and that appointment of arbitrator is challenged in this writ petition.

4. It is the case of the petitioner firm that as per the arbitration clause of the agreement any dispute should be resolved amicably by mutual consultation or through good office of empowered agencies of the Government and if anything remains unresolved then only sole arbitrator will be engaged for resolution of the dispute. The petitioner challenged the impugned letter dated 16.10.2014(*Annexure-12*) on the ground that no attempt was taken for amicable settlement by mutual consultation or through the office of the empowered agencies of the Government.

5. The respondents contended that reconciliation Committees were constituted by the IOCL twice and Mr. Ankur Saha, one of the partners of the petitioner firm was present in the

reconciliation process and when reconciliation failed, the authorized officer referred the dispute to the arbitrator. Whatever may be the grievance of the petitioner, what is agitated in the writ petition may be placed before the arbitrator and the arbitrator may take appropriate decision in respect of the dispute.

6. Since there is an agreement between the petitioner and the respondents, the issues involved should be decided in terms of the agreement and if it is not covered by the agreement then other recourse of law may be adopted. Admittedly, there is an arbitration clause in the agreement which reads as follows:

"17. ARBITRATION:

In the event of any dispute or difference between the parties hereto, such dispute or difference shall be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government. If such settlement is not possible, then the unresolved dispute or difference shall be referred to arbitration. The office of Executive Director, Indian Oil Corporation(Assam Oil Division) shall be the sole arbitration authority. The Arbitration and Conciliation Act, 1996 shall not be applicable to the arbitration under this clause and the award/decision of the arbitrator shall be final and binding upon parties to the dispute."

7. A bare reading of the above arbitration clause makes it clear that any dispute or difference between the parties shall be at first resolved amicably by mutual consultation or through the good

offices of empowered agencies of the Government. If such an attempt fails, then only the dispute as a whole or that part of the dispute which could not be decided amicably or through the empowered agencies should be referred to the arbitrator.

8. Let us now see whether there was any attempt to resolve the dispute/difference amicably by mutual consultation.

Learned counsel, Mr. Lodh for the IOCL has candidly submitted that *Annexure-P2* and *Annexure-P3* are the two instances of reconciliation of the dispute. On the contrary Mr. Pal, learned counsel for the petitioner submits that it was a Committee constituted by the IOCL for reconciliation of the bulk LPG but it was never a Committee constituted for amicable settlement by mutual consultation.

On going through *Annexure-P2* and *Annexure-P3* I find that it was a Committee constituted by IOCL with three members who were officials of IOCL and there was none in that Committee from the side of the petitioner firm to represent the petitioner's case. The Committee constituted by IOCL dated 24.08.2013 (*Annexure-P2*) submitted report with following recommendations:

"RECOMMENDATIONS::"

Based on the above observations, the Committee recommends the following:

- 1) To investigate the matter of non receipt of three consignments of bulk by M/s Saha Gas Traders as given in observation 4 above.*
- 2) To wipe out 21229.249 MT bulk from the SAP stock of location 9682 of Mohanpur BP."*

The subsequent committee also constituted by the same persons of IOCL and it was dated 28.09.2013 and that committee submitted report with following recommendations:

"RECOMMENDATIONS::

Based on the above observations, the Committee recommends the following:

- 1) Competent authority may recover product value for shortage 138.4654 MT of domestic subsidized bulk LPG from M/s Saha Gas Traders."*

The above recommendations of the Committee itself do not speak that those Committees were constituted for the purpose of resolution of the dispute amicably by mutual consultation. I therefore cannot agree with the submission of learned counsel, Mr. Lodh that those Committees were constituted by the IOCL for resolution of the dispute amicably but I am of firm opinion that those were Committees constituted by three officials of IOCL to look into the accounts of the bulk supplied alleged to have made by the IOCL to the petitioner's firm.

9. Therefore, I am of considered opinion that no attempt was taken for resolution of the dispute amicably by mutual

consultation or through the good offices of the empowered agencies of the Government. I think it appropriate to direct that IOCL shall depot two of its officers and the petitioner firm also shall depot one or two of its partners as member to have a dialogue for mutual settlement of the dispute cropped up between the petitioner's firm and the IOCL and they shall look into the dispute and collect all material in respect of the dispute/difference and thereafter make attempt to amicably settle the dispute. The parties may also opt for the settlement through the good offices of the empowered agencies of the Government. In case, they fail to arrive at an amicable settlement by mutual consultation or through the agencies of the State Government, then only the question of referring the dispute to the arbitrator will arise. Three month's time is allowed for resolution of the dispute as per the above direction. In view of the above direction the impugned order, appointing arbitrator, dated 16.10.2014(*Annexure-12*) is set aside and quashed.

10. Copy of this judgment/order be made available to the learned counsel for the parties.

JUDGE