

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

ARBITRATION APPEAL NO. 35 OF 2014

Karveer Indane	... Appellant
V/s.	
Indian Oil Corporation Ltd.	... Respondent

Mr. Ajeet Manwani, i/b Faisal Vora, for the Appellant.

Mr. Sunil Gangan, a/w Jayesh Mestry and Aarti Prajapati, i/b RMG Law Associates, for the respondent.

CORAM : K. K. TATED, J.

DATED : 03/12/2015.

PC.:

. Heard learned Counsel for the parties.

2 By this Arbitration Appeal under Section 37 of the Arbitration and Conciliation Act, 1996, (hereinafter will be referred as '**the said Act**') the Appellant claimant challenges the order dated 22.09.2014 passed by the learned Ad-hoc District Judge-5, Pune in Misc. Civil Appeal No. 636 of 2011 dismissing the Appellant's appeal and confirming the Award dated 08.04.2011 passed by the sole Arbitrator.

3 The present Appeal, after hearing both the sides was admitted by this Court on 13.03.2015 only with regard to the relief of compensation if any. Hence, a short issue involved in the present proceeding is "whether the Appellant claimant is entitled to any compensation?"

4 The few facts of the matter are as under:

a) The Respondent Indian Oil Corporation Ltd. appointed appellant as a distributor by their “Indane” (Liquefied Petroleum Gas) Distributorship (Domestic & Commercial) Agreement dated 18.06.2002 for Kolhapur. As there was some breach of terms and conditions of the said agreement as well as their Rules and Regulations, the respondent issued show cause notice dated 13.04.2009 calling upon the Appellant why his distributorship should not be terminated. After considering the reply filed by the Appellant, the respondent terminated the said agreement by order/letter dated 29.06.2009. Hence, the appellant invoked the arbitration clause of the said agreement. Pursuant to the said invocation, the sole Arbitrator was appointed. The Arbitrator after considering claim petition and evidence on record held that appellant is not entitled to any relief, except refund of penalty of Rs.76,912/- with 10% interest per annum.

b) Being aggrieved by the said Award dated 08.04.2011, the appellant preferred Misc. Civil Appeal No. 636 of 2011 before the District Court, Pune under Section 34 of the said Act. That was also dismissed by the District Court. Hence, the present Appeal.

5 The learned Counsel Mr. Ajeet Manwani appearing on behalf of the appellant filed their written submissions dated 13.01.2015. He submits that sole Arbitrator as well as the District Court erred in coming to the conclusion that Appellant is not entitled to any compensation from the respondent for illegal termination of their Distributorship agreement as well as loss of business and reputation in

the society. He submits that as soon as respondent issued show cause notice dated 13.04.2009 for various violation of terms and conditions, the appellant immediately replied the same by his letters dated 28.04.2009 and 25.03.2009 explaining the way in which the show cause notice does not stand in law. He submits that the appellant filed affidavit in lieu of examination-in-chief dated 12.10.2010 before the Sole Arbitrator Shri. Samson Chacko. He submits that in the said affidavit in paragraphs 19 to 22 appellant specifically placed on record the way in which the appellant suffered loss of business and the reputation in society. The paragraphs 19 to 22, reads thus.

“19. I say that acts as mentioned in the Show Cause Notice dated 13.04.2009 have not adversely affected image of the Respondent nor of their product; nor will the continuance of the Claimant will be detrimental to the interest and good name of the Respondent, as alleged by the Respondents in the letter of termination dated 28.06.2009.

20. I say that the amounts of claims claimed by the claimants are worked out by me personally and they are based on actual previous experience and are true and correct. I say that had the distributorship not been terminated by the Respondents, the Claimant would have earned the amounts shown in the claim, which the Claimant is deprived of. I say that the Claimant has been put to the loss for the reasons of wrongful illegal termination of his distributorship by the Respondents, which reason is attributable to the Respondents alone and such as the losses is the direct result of termination of the distributorship and therefore the Claimant is legally entitled to the amounts of losses.

21. I say that due to illegal termination of distributorship and publishing the news thereof by the Respondents the image and reputation of the Claimant gained by him over 22 years of his dedicated military service and in business has been lowered and tarnished in the eyes of business community and society in general, and is irretrievable.

22. *I say that the amount claimed for loss of reputation is irretrievable and the claim of Rs.25,00,000/- on that account is true and correct and the Claimant is legally entitled thereto.”*

6 The learned Counsel for the appellant submits that the appellant in his claim application specifically stated that in view of termination order dated 29.06.2009 issued by the respondent the plaintiff has suffered loss of business to the extent of Rs.12,28,064/- in following manner.

a)	Monthly refill sale 5400 customers X Rs. 22.22 margin per cyl. Rs. 1,19,988 x 8 months.	Rs. 9,59,904
b)	Average monthly 50 new Connections X margin of Rs. 217.72 X 8 months	Rs. 87,088
c)	Monthly commercial cyl. Sale of 400 cyls. X Rs. 49.30 Margin X 8 months	Rs. 1,57,760
d)	Hotplate sale average 20 p.m. X margin Rs. 690/- X 8 months.	Rs. 1,10,400
	Total =	12,28,064

7 The learned Counsel for the appellant submits that the appellant also claimed additional Rs.25,00,000/- for loss of reputation. He submits that on the basis of pleadings the Arbitrator framed the following issues:

“: ISSUES :

- 1) *Whether the respondent proves that the claimant has committed breaches of Distributorship Agreement dated 18.06.2002 and Marketing Discipline Guidelines (MDG) 2001?*
- 2) *Whether the respondent proves that the claimant is terminated as per terms of the Distributorship Agreement*

dated 18.06.2002 and Marketing Discipline Guidelines (MDG) 2001?

- 3) *Whether the respondent proves that the claimant has committed breaches of Distributorship Agreement dated 18.06.2002 and Marketing Discipline Guidelines (MDG) 2001 on the following grounds and whether the respondent is entitled to terminate the Distributorship on those grounds?*
 - a. *Cash and Carry Rebate was not passed on to the customers, which is not reflected in the Vigilance Report.*
 - b. *Diversion of Domestic Cylinders for Non domestic customers*
 - c. *Recovery of unauthorized charges from the customers against Hot Plates*
 - d. *Charging of Rs. 150/- from ITV customers.*
 - e. *Signing of Blank SVs.*
 - f. *Giving Power of Attorney.*
 - g. *Absence of Distributor – whether physical presence of the Distributor is a must as per the Distributorship Agreement*
 - h. *Storing of Cylinders at unauthorized places*
 - i. *Violation of Clauses of Agreement especially Clause nos. 7, 23(a), (b), (c)(i) and 27(a),(h),(i),(k)*
- 4) *Whether the claimant proves that the claimant is illegally terminated by the Respondent and whether the claimant is entitled for restoration of Distributorship?*
- 5) *Whether the claimant proves that the respondent is liable to pay a sum of Rs. 12,28,064/- towards monetary losses to the claimant?*
- 6) *Whether the claimant proves that the claimant is entitled for loss of reputation and name to the tune of Rs. 25,00,000/- from the respondent?*
- 7) *Whether the claimant is entitled for interest @ 15% per annum on his claim?*
- 8) *Whether the claimant is entitled for cost of the Arbitration proceedings?*
- 9) *What award?”*

8 The learned Counsel for the appellant submits that though the Arbitrator framed issue nos. 5 and 6 about the loss of business income

and reputation to the tune of Rs.25,00,000/-, the Arbitrator without assigning any reason rejected the Appellant's claim. He further submits that even the learned District Court without considering the evidence on record in paragraphs 20 and 21 of the impugned judgment held that appellant failed to produce any cogent evidence in support of loss of business and reputation and hence, appellant is not entitled to any compensation. He submits that neither the sole Arbitrator nor learned District Court gave any chance to the appellant to place on record the evidence for loss of business and reputation.

9 The learned Counsel for the Appellant submits that both the authorities below failed to consider the fact that termination of distribution agency, itself amounts to loss of reputation in the society and these facts are not considered by both the authorities below. He submits that this is the fit case to remand the matter to the Arbitrator for allowing the Appellant to lead cogent evidence in support of his case for loss of business and reputation in the society. In support of this contention, he relies on the Judgment of this Court in the matter of ***BTP Structural (I) Pvt. Ltd, Belgaum V/s. Bharat Petroleum Corporation Ltd, Mumbai*** reported in ***2014(4) Mh. L. J. 598***. He place reliance on paragraphs 15 and 20 of the said Judgment, which reads thus:

“15.In my view, in view of this court setting aside award under section [34](#) on the ground that the same suffered from violations of principles of natural justice, arbitration agreement does not come to an end and survives. The effect of setting aside the award by the learned Single Judge of this court in this situation would be that the dispute which was filed by the applicant in the earlier round of litigation is restored for consideration of

arbitrator. Question however that arises for consideration in this proceedings is whether any fresh notice for appointment of arbitrator was required to be issued in terms of the arbitration agreement and if no such notice was issued, whether there was any failure on the part of the Director (Marketing) for appointment of arbitrator.

20. In so far as the first submission of Mr. Sancheti, learned senior counsel that on this court setting aside the arbitral award on 27th April, 2012, appointment of the erstwhile arbitrator appointed by the Director (Marketing) is also restored is concerned, in my view there is no merit in this submission of the learned senior counsel. There is no provision for remand under the provisions of Arbitration and Conciliation Act, 1996. In my view though the arbitration agreement as well as the disputes raised by the applicant stood restored in view of this court having set aside the award on the ground of violation of principles of natural justice, the appointment of the same arbitrator cannot be restored. Be that as it may since the arbitration agreement is revived, the arbitrator has to be appointed in accordance with the terms of the arbitration agreement.”

10 The learned Counsel for the appellant also relied on the judgment of this Court in the matter of ***Prakash Kumar Sinha V/s. Konkan Mercantile Co-operative Bank Ltd & Ors.***, reported in ***2012(6) Mh. L. K. 274***. He submits that in this authority our High Court held though the Code of Civil Procedure, 1908 and Evidence Act are not applicable in view of Section 19 of the said Act, still the basic principle of natural justice, fair-play and principle of law just cannot be overlooked by the Arbitrator. He relies on paragraph 13 of the said Judgment.

11 On the basis of these submissions, the learned Counsel for the appellant submits that the impugned order passed by the sole

Arbitrator and Judgment and decree passed by the learned District Court is required to be set aside and/or matter to be remanded to the learned Arbitrator for fresh hearing on entitlement of compensation and loss of business by the appellant claimant.

12 On the other hand, the learned Counsel Mr. Sunil Gangan appearing on behalf of the respondent vehemently opposed the present Appeal. He submits that the appellant has not made out any case either before the Sole Arbitrator or before the learned District Judge for loss of business and compensation. Hence, there is no question of considering the same in Appeal under Section 37 of the said Act. He submits that the respondent after following due process of law issued termination order dated 29.06.2009. He submits that the appellant executed the distributorship agreement dated 18.06.2002 accepted terms and conditions as written therein. He submits that as per clause 27 (a,h,i,k) respondents have power to discontinue and/or terminate the distributorship of distributor, if, he violates the terms and conditions. He further submits that it is specifically stated in clause 27 of distributorship agreement that if the same is terminated, the distributor have no right to claim any loss or compensation. Those clauses read thus:

“27. Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time after the happening of any of the following events, namely:-

(a) If the Distributor shall commit a delay, breach or default of any of the terms, conditions, covenants and stipulations contained in the Agreement and fail to remedy such

breach within four days of the receipt of a written notice from the Corporation in that regard.

- (h) If the Distributor does not adhere to the instructions issued from time to time by the Corporation in connection with safe practices to be followed by him in the supply and storage of the Corporation's products or otherwise;*
- (i) If the Distributor shall give out unauthorised connections to any person without the Corporation's receipt/subscription voucher or otherwise howsoever;*
- (k) If the Distributor shall sell the Corporation's products at prices higher than those fixed by the Corporation.*

The Corporation's right to terminate this Agreement under the terms of this clause shall be without prejudice to and without affecting any of its other rights and remedies against the Distributor. In the event of the Corporation terminating this Agreement under the provisions of this clause, it shall not be liable to pay for any loss or compensation in respect of such termination PROVIDED THAT the supply of any LPG product by the Corporation to the Distributor, pending expiry of any notice of termination or after any act, contravention or omission by the Distributor entitling the Corporation to terminate this Agreement shall have become known to the Corporation shall not in any way prejudice or affect the right of the Corporation to revoke and or enforce the termination of this Agreement and the licence granted hereinunder.”

13 The learned counsel for the respondent submits that bare reading of terms and conditions of distributorship agreement shows that there was relationship between the appellant and respondent as distributor and owner. The appellant is entitled only commission on sale of product. If he sells any product, then only he is entitled to commission. He submits that they terminated the appellant's distributorship by termination letter dated 29.06.2009 and whereas the appellant is claiming loss of business for future period of 8 months. In any case, as

per terms and conditions of the distributorship agreement, the distributor is not entitled to loss of business. He further submits that though the appellant claimant compensation of Rs.25,00,000/- for loss of reputation, the appellant failed and neglected to place on record any evidence to that effect and hence, both the authorities below rightly have held that the appellant failed to justify this claim to that effect.

14 On the basis of these submissions, the learned counsel for the respondent submits that there is no substance in the present appeal and in any case, the appellant is not entitled to any compensation from the respondent. Hence, appeal to be dismissed with costs.

15 I heard both the sides at length. I have gone through the papers of proceeding filed by both the parties. The learned counsel for the appellant placed on record the compilation of documents including termination order and other correspondence relevant for the hearing and final disposal of present Appeal. The present appeal was admitted by this court by order dated 13.03.2015 only with regard to the relief of compensation. The said order reads thus:

- “1) The Appeal is admitted only with regard to the relief of compensation, if any.*
- 2) Learned Counsel for the Respondent waives service.*
- 3) List the Appeal on the final hearing Board in the week commencing on 27 April 2015.”*

16 Hence, this Court has to consider whether the appellant had made out any case for loss of business and compensation of Rs.25,00,000/- for loss of reputation. It is to be noted that in the

present proceeding, the respondent after following due process of law issued the termination order/letter dated 29.06.2009. Thereafter, the appellant invoked the arbitration clause and filed the claim petition. In claim petition though the appellant claimed loss of business and reputation, he failed to place on record any cogent evidence. The appellant filed his affidavit in lieu of evidence; in paragraphs 19 and 22 stated that he is entitled for the same. Apart from that, the appellant has not brought on record any evidence in the form of documents and or deposition of some witnesses. These facts are considered by the Arbitrator as well as the District Court. The District Court specifically stated in paragraphs 20 and 21 that the claimant has not led any documentary evidence to sustain the loss suffered by him to the tune of Rs.12,28,064/- and for compensation for loss of reputation to the tune of Rs.25,00,000/- from the respondent. Even, at the time of arguments before this court, the learned counsel for the appellant was unable to show, any evidence brought by them on record either before the Arbitrator and/or before the Appellate Court to justify the claim to this effect.

17 The authority relied by the Appellant in the matter of ***BPT Structural India Pvt. Ltd. Belgaon*** (supra) is not applicable in the facts and circumstances of the present case. In the case in hand, the appellant himself has not placed on record any evidence in support of his claim towards the compensation. Apart from that, the appellant has not made any application before the Arbitrator to allow him to lead any evidence to justify him to claim loss of business and compensation towards the loss of reputation. Hence, there is no question of violence

of any principle of natural justice either before the sole Arbitrator and/or the Appellate Court. Even, in this authority, in paragraph 20 it is specifically stated that there is no provision for remand the matter under the provision of the said Act.

18 In similar way, the authority cited by the Appellant in the matter of *Prakash Kumar Sinha* (Supra) is not applicable in the facts and circumstances of the present case in hand.

19 Therefore, considering the above mentioned submissions of the appellant, facts and taking overall view of the matter and considering the scope of the said Act and as Appellant failed to produce on record any cogent evidence to justify his claim towards the loss of business and reputation, I am of the opinion that appellant has not made out any case to interfere the well reasoned Award and impugned Judgment passed by the learned District Judge.

20 Hence, Appeal stands rejected.

(K.K.TATED, J.)