

\$~11.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 2307/2015**

ASHOK KUMAR BAJORIA

..... Plaintiff

Through: Mr. Abhishek Singh, Advocate

versus

INDIAN OIL CORPORATION LTD

..... Defendant

Through: M/s Amit Mehoria, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

06.05.2016

%

I.A. No. 3394/2016

This application has been moved by the defendant under Section 8 of the Arbitration and Conciliation Act. The defendant/applicant claims that the disputes and claims raised in the present suit are covered by the Arbitration agreement contained in the contract between the parties. Counsel for the plaintiff, on instructions, states that the plaintiff is agreeable to proceed to arbitration, however, the defendant should not later on turn around and claim that the claims of the plaintiff fall within the excepted matters.

In my view, this stand of the plaintiff is completely justified. The defendant cannot blow hot and cold at the same time. Having moved this

application to seek reference of the claims raised in the suits to arbitration- thereby contending that the said claims are arbitrable, the defendants cannot later on turn around and claim that the claims made in the suit do not fall within the jurisdiction of the arbitral tribunal as they are excepted matters. Counsel for the defendant has also conceded that the defendant shall not raise any objection to the jurisdiction of the arbitral tribunal to adjudicate the claims of the plaintiff as raised in the suit, on the ground that they are excepted matters. Accordingly, the application is allowed.

The claims of the plaintiff are referred to the arbitration in terms of the arbitration agreement contained in Section 9 of the Agreement between the parties. The defendant shall act in terms of the said clause and forward to the plaintiff the panel of three persons for the purpose of selection of one of them by the plaintiff, who shall act as the Arbitrator. The said panel shall be forwarded within 30 days from today.

CS(OS) No.2307/2015

The suit stands disposed of in terms aforesaid.

The plaintiff shall be entitled to refund of the entire court fees in terms of Section 16 of the Court Fees Act.

I.A No. 3659/2016

This application has become infructuous since the application under Section 8 of the Arbitration and Conciliation Act filed by the defendant has been allowed.

VIPIN SANGHI, J

MAY 06, 2016

sl