

IN THE HIGH COURT OF BOMBAY AT GOA

APPLN. FOR APPOINTMENT OF ARBITRATOR NO. 17 OF
2016

M/S. LAXMI AUTOCARE CENTRE, THR.
ITS PARTNER SHRI. SARVOTTAM
NARAYAN KAMAT.,

... Applicant

Versus

M/S. INDIAN OIL CORPORATION LTD.,
THR. ITS SENIOR DIVISIONAL RETAIL
SALES MANAGER.,

... Respondent

Mr. S. G. Desai, Senior Advocate with Ms. P. Desai, Advocate
for the Applicant.

Mr. Nigel Da Costa Frias, Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 30th June, 2017

ORAL ORDER

Heard Shri S. G. Desai, learned Senior Advocate appearing
for the Applicant and Mr. Nigel Da Costa Frias, learned Counsel
appearing for the Respondent.

2. This is an application filed by the Applicant under Section
11(6) of the Arbitration and Conciliation Act for appointment of
an Arbitrator in terms of a Lease Agreement executed between
the Applicant and the Respondent dated 19.03.2002.

3. Mr. S. G. Desai, learned Senior Advocate appearing for the
Applicant has taken me through the Arbitration Agreement
clause 5 (v)(c) of the Lease Agreement to point out that there is

an Arbitration clause therein to adjudicate any dispute between the parties arising from such Agreement. Learned Counsel further submits that the Applicant invoked the Arbitration clause by serving a notice dated 20.02.2016 to the Respondent as, according to the Applicant, a dispute has arisen as to whether the Lease Agreement stands terminated and whether there is any link between the Lease Agreement and a Dealership Agreement also executed between the parties. Learned Senior Advocate further pointed out that though the notice came to be issued, the Respondent refused to appoint an Arbitrator with regards to such dispute which forced the Applicant to file the above application for appointment of an Arbitrator. Learned Senior Advocate further pointed out that the Respondents are opposing such application essentially on the ground that there is no arbitral dispute between the parties which, according to him, has no substance in view of the amendment introduced to the said Arbitration Act by introducing sub-section 6(a) to Section 11 of the said Act. Learned Senior Advocate further submits that even whether an arbitral dispute exists is a matter which can be decided by the Arbitrator in terms of the said provisions and, as such, there is no reason to refuse the appointment of the Arbitrator to adjudicate the dispute raised by the Applicant. Learned Senior Advocate has thereafter taken me through the relevant clauses in the Agreement as well as the notice issued to the Respondents to appoint such Arbitrator to point out that a

dispute has been raised by the Applicant which requires to be adjudicated by appointing an Arbitrator.

4. On the other hand, Shri Nigel da Costa Frias, learned Counsel appearing for the Respondent, has pointed out that there is no arbitral dispute which requires an appointment of an Arbitrator in the present case. Learned Counsel further submits that the Lease Agreement and the Dealership Agreement are independent contracts and, as such, there is nothing produced on record to substantiate the Application of the applicant that there is a nexus between the Dealership Agreement and the Lease Agreement. Learned Counsel further pointed out the Judgment of the Apex Court reported in (2015) 9 SCC 447 in the case of *Rahul Yadav & anr. vs. Indian Oil Corporation Ltd. & Ors.*, wherein it has been held that the Lease Agreement and the Dealership Agreement are independent contracts and, as such, there is no arbitral dispute to be referred to the Applicant. Learned Counsel further submits that as such the Respondents were justified to refuse the appointment of an Arbitrator as called upon by the Applicant.

5. I have duly considered the submissions of the learned Counsel. I have also gone through the records. The fact that there exists an Arbitration clause in terms of the Lease Agreement executed between the parties is not in dispute. The

only contention which requires to be examined is whether the contention of Mr. Nigel Da Costa Frias, learned Counsel appearing for the Respondents, that there is no arbitral dispute raised by the Applicant requires consideration at this stage:

6. Section 11(6)(a) of the said Act, reads thus :

"Where, under an appointment procedure agreed upon by the parties :

(a) a party fails to act as required under that procedure;

Taking note of the said provision, I find that the ambit of examining such aspect in an application under Section 11(6) of the Arbitration Act, 1996, stands restricted.

7. In the present case, rightly or wrongly, the Applicant is raising a dispute based on the Lease Agreement and such dispute whether it arises from such agreement or not is a matter which has to be considered by the Arbitrator after hearing the parties in accordance with law.

8. In the facts and circumstances of the present case, considering the rival contentions raised by the parties, I find that the contention of Mr. Nigel Da Costa Frias, learned Counsel appearing for the Respondent, to the effect that there is no

arbitral dispute to be examined by the Arbitrator, is a matter which the Arbitrator can adjudicate after hearing the parties in accordance with law.

9. Keeping all the contentions of both the parties on merits open, including the preliminary objection raised by the Respondents to the effect that there is no arbitral dispute between the parties, I find that the Applicant is entitled for an appointment of an Arbitrator in terms of the said Act. In case any preliminary objections are raised by the Respondents under Section 16 of the said Act, the learned Arbitrator shall examine such objections on its own merits after hearing the parties in accordance with law.

10. In view of the above, I pass the following :

O R D E R

- (i) Shri N. A. Britto, Former Judge of this Court
is appointed as the sole Arbitrator to adjudicate
the dispute between the parties.
- (ii) Application stands disposed of.

F. M. REIS, J.

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