

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION (L) NO.923 OF 2017

M/s. Shree Siddhivinayak Service Station

....Petitioner

Vs.

The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.

....Respondent

Mr. P.K. Dhakephalkar, senior advocate a/w. Mr. Onam Hingorani i/b. Themis Legal for petitioner.

Dr. Birendra Saraf a/w. Mr. Chirag Mody and Mr. Sunil C. Gangan i/b. RMG Law Associates for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 15th NOVEMBER, 2017

PC.:

1 Dr. Saraf, counsel for respondent states that the Agreement with petitioner has already been terminated. There is an appeal filed by petitioner under the Marketing Discipline Guidelines of respondent and the appeal is pending. Dr. Saraf further states that as mentioned in clause 8.9 (1) of the guidelines, the appeal will be disposed within 90 days from the date it was filed. At the same time, Dr. Saraf states that respondent is ready to go for arbitration with petitioner under the Memorandum of Agreement dated 22nd April, 2010. Mr. Dhakephalkar is also in agreement with the same.

2 Therefore, by consent, Mr. Justice F.I. Rebello, former Judge of this Court, having his office at 11-A, Examiner Press Building, First Floor, 35, Dalal Street, Fort, Mumbai – 400 001 (Telephone Nos.022-22643576/

022-26572621, Email ID – frcj49@gmail.com), is appointed as Sole Arbitrator to arbitrate on all disputes and differences, including counter claim, if any, between the parties arising out of or in connection with or relating to Memorandum of Agreement dated 22nd April, 2010.

3 The fees, to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by petitioner and 50% by respondent and the same shall be subject to cost in the arbitral proceedings.

4 The Arbitrator to communicate to the Advocate for petitioner with copy to respondent the disclosures as required under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 within four weeks of receiving a copy of this order from petitioner's Advocates or respondent's Advocates.

5 The present petition is to be considered by the Learned Sole Arbitrator as an application under Section 17 of the Arbitration and Conciliation Act, 1996 and reply being filed by respondent be considered as reply to the said application. The parties are at liberty to file further pleadings and documents.

6 All rights and contentions of the parties are kept open including respondent's contention that the dispute is not arbitrable in view

of petitioner having invoked the appellate provision under the guidelines.

7 Until the application under Section 17 is disposed by the Learned Sole Arbitrator, respondent shall not engage any third party or dealer to operate the dispensing outlet. The outlet shall be run only as company owned company operated outlet. It is clarified that if respondent, for dispensing fuel or carrying out service or fill air or render any other service, is required to engage any person on contract basis or on daily basis, respondent may do so.

 Mr. Dhakephalkar states that petitioner will extend all co-operation as necessary for implementation of this arrangement.

8 Liberty to apply.

9 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)