

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.789 of 2019

M/s.Bharat Petroleum Corporation Ltd.,
Regional Office at III Floor, Ceekey Towers
Vandipetta, Kannur Road, Nedakkavu West
Calicut-673 011 rep. By its Territory Manager
(Retail), Manoj.K ... Petitioner

vs.

N.K.Sundaram
Proprietor
M/s.Salila Auto Fuels
Bharat Petroleum Dealers
Koppalam, Panthakkal
Mahe - 673 310 ... Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with Rule 2 of the Appointment of Arbitrators of Madras High Court Scheme, 1996 to resolve the disputes between the petitioner and the respondent in terms of Clause 19(h) of the Dispensing Pump and Selling Licence Agreement dated 30.06.2004.

For Petitioner : Mr.O.R.Santhanakrishnan

For Respondent : Mr.K.M.Balaji

ORDER

Mr.O.R.Santhanakrishnan, learned counsel on record for petitioner and Mr.K.M.Balaji, learned counsel on record for sole respondent are before this Court.

2. Instant 'Original Petition' ('OP' for the sake of brevity) is *inter alia* under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity and the prayer obviously is for appointment of an arbitrator.

3. Before proceeding further, this Court reminds itself of ***Duro Felguera*** principle [***Duro Felguera S.A. vs. Gangavaram Port Limited*** reported in (2017) 9 SCC 729] and ***Mayavati Trading*** Principle [***Mayavati Trading Pvt. Ltd., vs. Pradyut Deb Burman*** reported in (2019) 8 SCC 714]. Relevant paragraphs in ***Duro Felguera*** case are Paragraphs 47 and 59, which read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

'59. The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co.*

*(supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in **Section 11 (6A)** ought to be respected. '*

*(underlining made by this Court to
supply emphasis and highlight)*

4. Relevant paragraph in **Mayavati Trading** case is Paragraph 10 and the same reads as follows:

"10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA."

*(underlining made by this Court to
supply emphasis and highlight)*

5. In the light of aforesaid principles i.e., **Duro Felguera** and **Mayavati Trading** principles laid down by Hon'ble Supreme Court, all that this Court has to look into in instant Section 11 OP is the existence of an arbitration agreement between the parties and *prima facie* satisfaction

about the existence of arbitration agreement between the parties. If this determinant is satisfied, this Court will proceed to appoint an arbitrator.

6. In the instant case, both the learned counsel submit without any disputation or contestation that the arbitration agreement between the parties is in the form of a covenant in 'Dispensing Pump and Selling Licence Agreement dated 30.06.2004' (hereinafter 'said agreement' for the sake of brevity) and that the relevant clause is Clause 19. In other words, Clause 19 in said agreement is the arbitration agreement between the parties being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Notwithstanding the language in which Clause 19 of said agreement is couched, learned counsel for petitioner fairly submits that an arbitrator can be appointed at the discretion of this Court. This makes the task of disposal of instant OP fairly simple.

7. Therefore, Mr.N.K.Vanan, Advocate, having address for service at Chamber No.329, New Additional Law Chambers, (2nd Floor), High Court Buildings, Chennai - 600 104 (Mob: 9444050416), is appointed as sole Arbitrator. Learned sole Arbitrator is requested to enter upon reference, adjudicate upon the arbitral disputes that have arisen between the parties qua said agreement and pass an award in accordance with A and C Act. The

arbitration shall be in the Arbitration Centre under the aegis of this Court and therefore, the arbitration shall be in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

Instant OP disposed of on above terms. No costs.

14.02.2020

Speaking order: Yes/No

Index: Yes/No

gpa

Note: Registry is directed to communicate this order to Mr.N.K.Vanan, Advocate, having address for service at Chamber No.329, New Additional Law Chambers, (2nd Floor), High Court Buildings, Chennai - 600 104 (Mob: 9444050416).

सत्यमेव जयते

WEB COPY

O.P.No.789 of 2019

M.SUNDAR.J.,

gpa



O.P.No.789 of 2019

WEB COPY

14.02.2020