

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**ARBITRATION APPLICATION NO.11 OF 2019**

Asaram Bansilal Laddad

Applicant

Versus

The Indian Oil Corporation Ltd.

Respondent

Mr.S.G.Ladda, advocate for the applicant.

Mr.Anand P. Bhandari, advocate for the Respondent.

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 07<sup>th</sup> July, 2021.**

**PC :**

1            Heard Mr.Ladda, learned Counsel for the applicant and  
Mr.A.P.Bhandari, learned Counsel for the Respondent.

2            There is no dispute that there exists an arbitration clause  
between the parties hereto, under the agreement dated 17.06.2000,  
which was an agreement for lease of an open land executed by the  
applicant in favour of the Respondent. The arbitration clause, for the  
sake of ready reference, is reproduced as under :

“(c) Any dispute or difference of any nature  
whatsoever, regarding any right liability act omission  
or account of any of the parties hereto arising out of or

in relation to these presents shall be referred to the sole arbitration of the Director (Marketing) of the Lessee and if the Director (Marketing) is unable or unwilling to act as a sole arbitrator then the matter will be referred to the sole arbitration of any other person designated or nominated by such Director (Marketing) in his place and stead willing to act as such Arbitrator and the Lessor will not be entitled to raise any objection to any such arbitration on the ground that the arbitrator so appointed is an officer of the Lessee or that as such officer he had dealt with the matters to which the disputes relate or had expressed his views thereon. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such Director (Marketing) as aforesaid at the time of such transfer vacation of office or on his inability to act shall nominate or designate another person to act as an arbitrator pursuant to this clause and such other person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is expressly agreed that no person other than the Director (Marketing) or the person or persons designated by such Director (Marketing) of the Lessee as aforesaid, shall act as an arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all. The Award of the Arbitrator so appointed as herein provided shall be final, conclusive and binding on both the parties and such arbitration shall be held subject to and in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof.”

(emphasis supplied)

3           Mr.Ladda, learned Counsel for the applicant, submits that since there was a dispute, notices were issued to the respondent on 30.06.2017 and 06.09.2018 whereby the arbitration clause was invoked. As there was no compliance, the present application has been filed.

4           Mr.Bhandari, learned Counsel for the Respondent, invites my attention to the language of the arbitration clause, which, in its later part, mandates that in case no person other than the Director (Marketing) or his designate is to act as an arbitrator, the matter shall not be referred to arbitration at all. Mr.Bhandari, by placing reliance upon **Vidya Droliya & others Vs. Durga Trading Corporation**, (Civil Appeal No.2402 of 2019, decided on 28<sup>th</sup> February, 2020) and **Suresh Shah Vs. HIPAD Technology India Pvt.Ltd.**, (Arbitration Petition (Civil) No.08 of 2020, decided on 18<sup>th</sup> December, 2020), fairly points out that in case the eviction is not having a statutory protection under the Rent Act, but is sought under the Transfer of Property Act, there is no difficulty in referring the issue to an arbitrator. He also admits that the lease in question is in respect of an open land and, therefore, in view of the definition of premises, as contained in Section 7 (9) and the exemption granted to Companies under Section 3(1)(b) of the Maharashtra Rent Control Act 1999, is not attracted and, therefore, this is not a case where statutory protection is available.

5           Mr.Bhandari, learned Counsel for the Respondent, however,

submits that in view of the amendment to the Arbitration and Conciliation Act, by insertion of Section 12(5) read with para 1 of the 7<sup>th</sup> Schedule, the Director (Marketing) or his designate, was statutorily prohibited from entering into arbitration and this would be a contingency which is covered by the arbitration clause prohibiting referring of the dispute to an arbitrator.

6           Mr.Ladda, learned Counsel for the applicant, faced with the above, relies upon **Deep Trading Co. Vs. Indian Oil Corporation** (2013) 4 SCC 35, to contend that an identical clause as the present one, has been considered by the Hon'ble Apex Court and on failure of the respondents, on receipt of notice, to appoint an arbitrator, one has been appointed.

7           A careful perusal of the arbitration clause would demonstrate that when the Director (Marketing), of the Respondent was statutorily prohibited from entering into arbitration, in view of the mandate of Section 12(5) read with 1<sup>st</sup> clause of the 7<sup>th</sup> Schedule, the situation envisaged by the arbitration clause, that if for any reason, it was not possible for the Director (Marketing) or his designate to act as an arbitrator, clearly became applicable in view of which, what was agreed between the parties, has to be enforced, namely that the matter cannot be referred to the arbitration. In **Deep Trading** (*supra*), relied upon by Mr.Ladda, the later part of the arbitration clause, as is extant in the present matter, i.e. "and if for any reason that is not possible, the matter

shall not be referred to the arbitration at all”, was not under consideration as it was not included in the said clause.

8           In view of this situation, the application cannot be allowed. Same is, therefore, dismissed. Needless to state that the applicant would be entitled to take recourse to any other remedy as may be available to the petitioner under law including the plea of Section 14 of the Limitation Act.

**(AVINASH G. GHAROTE)**  
**JUDGE**

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