IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7431 OF 2004

Indian Oil Corporation Limited a registered public limited company having its registered office at 254-C, Dr. Anniebesant Road, Prabhadevi, Mumbai – 400 025. Through (General Manager)	..	Petitioner [original defendant]

Versus

S.G. Enterprises, M/s. S.G. Lubricants through its sole proprietor Santosh Hastimal Gandhi, Age.34 years, Occ. Business, R/o.3312, Khista Lane, Ahmednagar.	..	Respondent [original plaintiff]

Mr.A.P. Bhandari, Advocate for the petitioner.
Mr.V.S. Bedre, Advocate for the respondent.

CORAM : N.J.JAMADAR, J.
DATE : 18.03.2021

ORAL JUDGMENT :-

01. Heard learned Counsels for the petitioner and the respondent.

02. The challenge in this petition is to an order dated 15.10.2004, whereby the learned 2nd Joint Civil Judge, Junior Division, Ahmednagar rejected the application preferred by the petitioner/defendant to frame and decide preliminary issues as regards the tenability of the suit and jurisdiction of the Court, in view of clause 25 of the agreement dated 26.03.1999, executed by and between the petitioner/defendant and respondent/plaintiff.

03. The learned Civil Judge was persuaded to reject the application opining, inter alia, that the issues which the defendant prayed for trial and decision as preliminary issues were based on mixed question of facts and law and therefore it would not be expedient to hear those issues as preliminary issues. Being aggrieved, the petitioner/defendant has invoked the writ jurisdiction of this Court.

04. By an order dated 16.12.2004, while issuing notice of admission, this Court had granted ad-interim relief in terms of prayer clause (D) and resultantly further proceedings in RCS No.101 of 2003 came to be stayed. Subsequently, by an order dated 18.07.2006, Rule was issued and the said ad-interim relief continued to operate as an interim relief.

05. The controversy lies in a very narrow compass:

a] The respondent/plaintiff deals in the business of oil under the name and style of M/s. S.G. Engerprises and M/s. S.G. Lubricants. The petitioner/defendant – corporation had appointed the plaintiff as the distributor of its products under the nomenclature "Super Shoppee". The plaintiff deposited a sum of Rs.2 lakhs by way of security deposit with the defendant. The later had agreed to pay interest @ 12% per annum on the said deposit. The plaintiff claims that the defendant did not extend the necessary support and therefore the plaintiff was constrained to close the said business. On demand, the defendant repaid the sum of Rs.2 lakhs on 26.02.2002. However, interest, as agreed, was not paid on the said amount, from 21.03.1999 to 26.02.2002. A legal notice was issued on 20.04.2002. The defendant paid no heed. Hence, the plaintiff was constrained to institute the suit for recovery of the sum of Rs.92,000/- towards interest on the said deposit of Rs.2 lakhs from 21.03.1999 to 31.01.2002 @ 12% per annum.

b] The petitioner/defendant appeared in response to the suit summons. The defendant filed written statement and questioned the tenability of the suit in view of the arbitration clause contained in the agreement dated 26.03.1999, under the terms of which the plaintiff was appointed as a distributor of the products of the defendant. The defendant, on the very day, preferred the instant application seeking settlement of preliminary issues and decision thereon. The plaintiff resisted the prayer. By the impugned order, the application came to be rejected.

06. A copy of the memorandum of agreement executed by and between the parties under title “Bazaar Trader Agreement” is tendered for the perusal of the Court. The agreement contains following arbitration clause :-

> “25. Any dispute and/or difference of any nature whatsoever of regarding any right, liability, act, omission on account of any of the parties hereto arising out of or in relation to this Agreement shall be referred to the sole Arbitration of the Director (Marketing) or of some Officer of the Corporation who may be nominated by the Director (Marketing).”

07. In the light of aforesaid clause, the moot question which arose for consideration was, whether the provisions contained in Section 8 of the Arbitration and Conciliation Act, 1996 [the Act, 1996], which mandate the referral of the parties to arbitration, were attracted. Indisputably, the defendant had not sought the referral of the matter to arbitration. Nonetheless, the defendant claimed that in view of aforesaid clause, the Civil Court had no jurisdiction to entertain, try and dispose of the suit.

08. By a catena of precedents, it is now crystallized that for invoking provisions contained in section 8 of the Act, following conditions are required to be satisfied :-

(i) There is an agreement between the parties.

(ii) The agreement contains an arbitration clause.

(iii) One of the parties has approached the judicial authority and brought an action in a matter, which is the subject of such arbitration agreement.

(iv) The other party, not later than the date of submitting his first statement of substance of the dispute, seeks reference of the matter for arbitration.

(v) The matter is arbitrable.

09. In the case at hand, it seems that all the aforesaid conditions are adequately made out. There is not much dispute over the fact that the distributorship styled “Super Shoppee” was based on the agreement between the parties executed on 26.03.1999. Nor the fact that clause 25 of the aforesaid agreement contains an

arbitration clause can be controverted. The subject matter of the suit before the Civil Court was the entitlement to interest over the amount of Rs.2 lakhs, which was deposited by the plaintiff with the defendant under the terms of the said agreement. In the aforesaid view of the matter, though the petitioner had sought framing and determination of the issues as regards the tenability of the suit and the jurisdiction of the Civil Court as preliminary issues, yet, the substance of the claim of the petitioner/defendant was that the subsisting arbitration agreement precluded the Court from entertaining the suit.

10. In the aforesaid circumstances, it cannot be gainsaid that the Civil Court was made aware of the conditions which justified referral of the parties to arbitration by invoking the provisions contained in Section 8 of the Act, 1996. Thus, at this juncture, this Court is of the considered view that, it may be appropriate to refer the parties to arbitration instead

of determining the legality, propriety and correctness of the impugned order, as the later course would yield no fruitful result. As this Court has come to the conclusion that the subject matter of the dispute is covered by the arbitration clause, extracted above, there is no other go but to refer the parties to arbitration.

11. In the arbitration clause, extracted above, the parties had agreed that the Director (Marketing) or some other Officer of the Corporation, who may be nominated by the Director (Marketing), shall be the sole arbitrator to whom the dispute could be referred to. In view of the provisions contained in Section 12 of the Act, 1996, the said clause cannot be given effect to.

12. In the aforesaid backdrop, the learned Counsel for the parties have made a joint statement that the dispute may be referred to arbitration, and Mr.Samir Soni, Advocate, practicing at Ahmednagar, be appointed as the sole arbitrator.

13. Thus, the petition stands allowed in the following terms:-

The petition stands partly allowed.

The impugned order stands quashed and set aside.

The parties are referred to arbitration by invoking provisions contained in Section 8 of the Arbitration and Conciliation Act, 1996.

Mr. Samir Soni, Advocate is appointed as the sole arbitrator.

Mr. Samir Soni, Advocate shall submit a disclosure in terms of section 12(1) of the Act, 1996, which shall be kept on the file of the Trial Court.

The parties shall appear before the Arbitrator on 19.04.2021.

No costs.

Rule made absolute in aforesaid terms.

[N.J.JAMADAR,J.]