

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 2nd DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P.(Comm.Div.) No.272 of 2021

In the matter of:

The Arbitration & Conciliation Act
1996

And

In the matter of the Agreement dated
06.11.2019 between M/s.Arabian
Oilfields Supplies & Services and
M/s.Hindustan Oil Exploration
Company Limited.

M/s.Arabian Oilfields Supplies & Services,
Represented by its authorised signatory Mr.Satish Thomas,
DMCC having office at Suite 606,
Tiffany Tower,
Cluster W-Jumeriah Lakes Towers,
P.O.Box 34487,
Dubai, U.A.E.

... Petitioner

Vs.

M/s Hindustan Oil Exploration Company Limited,
“Lakshmi Chambers”, 192, St.Mary's Road,
Alwarpet, Chennai – 600 018.
Also at,
M/s.Hindustan Oil Exploration Company Limited
Bungalow No.906,
Opp.IOCL-AOD General Office,
Digboi, Tinsukia – 786 171.

Also at,
M/s.Hindustan Oil Exploration Company Limited
HOEC HOUSE,
Tandalija Road, Off Old Padra House,
Vadodara 390 020,
Gujarat, India.

.... Respondent

Arbitration Original Petition (Comm.Div) praying that this Hon'ble Court be pleased to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondent herein.

This Arbitration Original Petition coming on this day before this court for hearing in the presence of Mr.Muthuchharan Sundresh, Advocate for the petitioner herein, and Mr.Suhrith Parthasarathy, Advocate for the Respondent herein, and upon reading the petition filed herein, and the learned counsel for the petitioner having requested leave of this court to withdraw the captioned Arb OP but makes a fervent plea to preserve the rights of the petitioner to file a suitable petition in the appropriate forum and this court doth acceding the said request, it is ordered as follows:-

That the petition in Arb.O.P.(Comm.Div) No.272 of 2021 be and is hereby disposed of as withdrawn albeit preserving the rights of the petitioner to file a suitable petition in the appropriate forum.

2. That all questions including questions raised in the captioned Arb OP are left open if the petitioner chooses to approach the appropriate forum.

3. That there shall be no order as to costs.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH
BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 02nd DAY OF MARCH 2022.

Sd/-
ASSISTANT REGISTRAR (Comm. Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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21.03.2022

Arb.O.P.(Comm.Div.) No.272 of 2021

ORDER:-

DATED: 02.03.2022

THE HON'BLE MR. JUSTICE

M.SUNDAR

FOR APPROVAL: 29.03.2022

APPROVED ON : 30.03.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2022

CORAM

THE HONOURABLE Mr. JUSTICE **M.SUNDAR**

Arb O.P.(Com. Div.)No.272 of 2021

M/s.Arabian Oilfields Supplies & Services,
Represented by its Authorised Signatory Mr.Satish Thomas
DMCC having office at Suite 606,
Tiffany Tower,
Cluster W- Jumeriah Lakes Towers,
P.O.Box 34487, Dubai, U.A.E.

... Petitioner

- Vs -

M/s.Hindustan Oil Exploration Company Limited,
"Lakshmi Chambers", 192, St. Mary's Road,
Alwarpet, Chennai 600 018.

Also at,
M/s.Hindustan Oil Exploration Company Limited,
Bunglow No.906,
Opp. IOCL-AOD General Office
Digboi, Tinsukia-786 171.

Also at,
M/s.Hindustan Oil Exploration Company Limited,
HOEC HOUSE
Tandalija Road, Off Old Padra House,
Vadodara 390020, Gujarat, India.

... Respondent

Prayer: Arbitration Original Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to adjudicate on the disputes between the petitioner and the respondent herein.

For Petitioner : Mr.Muthuchharan Sundresh

For Respondent : Mr.Suhrith Parthasarathy

ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 22.02.2022, which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 07.02.2022.

2. Mr.Muthuchharan Sundresh, learned counsel on record for the lone petitioner and Mr.Arun Karthik Mohan, learned counsel for the sole respondent are before this Court.

3. Captioned Arb OP has been presented in this Court on 29.11.2021 under Section 11(5) of 'The Arbitration and Conciliation Act, 1996 [Act No.26 of 1996]' (hereinafter 'A and C Act' for the sake of brevity).

4. A counter affidavit has been filed by the respondent.

5. Notwithstanding very many averments in the counter affidavit, learned counsel for respondent points out that the petitioner is an entity incorporated in United Arab Emirates. Therefore subject matter becomes an international commercial arbitration within the meaning of Section 2(1)(f) of A and C Act is his further say.

6. Learned counsel for respondent raises a very interesting argument. Learned counsel submits that captioned Arb OP is predicated on an agreement dated 06.11.2019 to which the petitioner is a party. Therefore the matter becomes international

commercial arbitration and if it becomes international commercial arbitration, sub-section (12) of Section 11 kicks in. Sub-section (12) of Section 11 of A and C Act takes us to sub-section (3A) of Section 11 of A and C Act. Sub-section (3A) of Section 11 has not kicked in as Section 3 of 'The Arbitration and Conciliation (Amendment) Act, 2019 (Act No.33 of 2019)' (hereinafter 'said Amending Act' for the sake of convenience and clarity) has not been notified. To be noted, said Amending Act is dated 09.08.2021 and sub-section (2) of Section 1 makes it clear that the Act will come into force on the date the Central Government notifies in the Official Gazette and the Central Government can appoint different dates for different provisions. 10 out of 16 provisions in the said Amending Act were notified on 30.08.2019 vide S.O.3154(E). Section 3 of said Amending Act has not been notified as of today. This means that Section (3A) of Section 11 has not kicked in. As sub-section (12) of Section 11 talks about sub-section (3A), learned counsel submits that sub-section (12) as it stood prior to said Amending Act should be looked into. Sub-section (12) prior to said Amending Act consisting of two sub clauses namely (a) and (b) and it reads as follows:

'(12)(a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the "Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "Supreme Court"; and

(b) where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to "the Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil

Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.'

7. Adverting to clause (a), learned counsel submits that captioned Arb OP having been presented under sub-section (5) of Section 11 of A and C Act ought not to have been presented in this Court and it ought to have been presented in the Hon'ble Supreme Court.

8. Faced with the above situation, learned counsel for petitioner requested for a short accommodation to examine the position and revert to this Court. Request acceded to.

List one week hence. List on 02.03.2022.'

2. Today Mr.Muthuchharan Sundresh, learned counsel for the petitioner and Mr.Suhrith Parthasarathy, learned counsel for the lone respondent are before this Court.

3. Adverting to aforementioned earlier proceedings made in the previous listing on 22.02.2022, learned counsel for petitioner requests leave of this Court to withdraw the captioned Arb OP but makes a fervent plea to preserve the rights of the petitioner to file a suitable petition in the appropriate Forum. Request acceded to.

4. Though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the matter and the above proceedings are only to indicate the trajectory the matter has taken before this Court. As

a sequitur, it is made clear that all questions including questions raised in the captioned Arb OP are left open if the petitioner chooses to approach the appropriate Forum.

Captioned Arb OP disposed of as withdrawn albeit preserving the rights of the petitioner in the aforesaid manner. There shall be no order as to costs.

Sd./-M.S.J.
02.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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