



WEB COPY



Arb.O.P (Com.Div).No.54 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div).No.54 of 2022

Heligo Charters Private Limited

A Company incorporated under the Companies Act, 1956

Through its authorised representative Mr.Udhay Deshmukh

Having its registered address at:

Hanger No.3A, Juhu Airport, S.V.Road, Vile Parle (West)

Mumbai 400 056.

... Petitioner

vs.

Hindustan Oil Exploration Company Limited

A Company incorporated under the Companies Act, 1956

Having its registered office at:

HOEC House, Tandalja Road, Vadodra 390021

And its Corporate office at:

Lakshmi Chambers, 192, St.Mary's Road, Alwarpet,

Chennai – 600 018.

... Respondent

Prayer:

Arbitration Original Petition filed under Section 11(6)(b) of Arbitration and Conciliation Act, 1996 to appoint an arbitrator to adjudicate the dispute between the Petitioner and the Respondent in terms



Arb.O.P (Com.Div).No.54 of 2022

of Clause 31.1 of the Contract bearing No.B80C20A0020 dated November 15, 2019.

For Petitioner : Mr.Bhavesh Parmer
for Mr.Rahul Gaikwad

For Respondent : No Appearance

ORDER

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 11.02.2022 which reads as follows:

'Captioned 'arbitration original petition' [hereinafter 'said OP' for the sake of convenience] has been presented in this Court on 20.01.2022 under Section 11(6)(b) 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.

2. In the virtual Court today, Mr.Bhavesh Parmer, learned counsel representing Mr.Rahul Gaikwad, learned counsel on record for the petitioner is before me. Learned counsel submits that the arbitration agreement between petitioner and respondent Company i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is in the form of a clause in a 'contract dated 15.11.2019 is



Arb.O.P (Com.Div).No.54 of 2022

captioned CONTRACT FOR PROVISION OF HELICOPTER SERVICES' [hereinafter 'said contract' for the sake of convenience and clarity]. Learned counsel draws the attention of this Court to Clause 31 and more particularly 31.1 of said contract and submits that the same serves as an arbitration agreement between petitioner and respondent company.

3. Learned counsel submits that said contract ran into rough weather and turbulence resulting in a trigger notice dated 21.08.2021 from petitioner-Company. This evoked a reply dated 20.09.2021 from respondent is learned counsel's say.

4. Learned counsel submits that this is a case where the parties have agreed for procedure for appointment of arbitrators and it is a case where the appointment procedure has hit a deadlock. In this regard, learned counsel submits that petitioner and respondent have nominated respective arbitrators and the two nominated arbitrators have not been able to agree on the third arbitrator. It is pointed out that the arbitration agreement between the parties provides for arbitration by a three member 'Arbitral Tribunal' ['AT']. An electronic mail dated 13.12.2021 (Page No.79 of typed set of papers) is being referred to say that there is a deadlock.

5. Learned counsel also points out that the venue is Chennai and therefore, this is the Jurisdictional Court.

6. Arbitration clause, more particularly, Clause 31.1 of said contract refers to Indian Arbitration and Conciliation Act,



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

1996. This Court is informed that this is the typographical error and request is made to read the same as A and C Act.

7. Issue notice to respondent returnable in a fortnight i.e., returnable by 25.02.2022. Private notice permitted. Private notice through electronic modes of services (subject of course to proof being demonstrated) also permitted.

8. List on 25.02.2022.'

2.The short forms, abbreviations used in the previous proceedings shall continue to be used in this order also. To be noted, the previous proceedings shall be read as an integral part and parcel of this order.

3.Mr.Bhavesh Parmer, learned counsel for petitioner who is before this virtual Court submits that pursuant to aforementioned earlier proceedings, private notice has been sent to the lone respondent and lone respondent has been duly served. To be noted, an Affidavit of Service (AOS) has been filed/placed before this Court as part of the case file and a scanned reproduction of the same is as follows:



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

प्राप्ति स्वीकृति (रसीद) ACKNOWLEDGEMENT

* एक रजिस्टर्ड पत्र/पोस्टकार्ड/पैकेट/पारसल प्राप्त हुआ
 * Received a Registered Letter/Postcard/Packet/Parcel
Insured
 पाने वाले का नाम } Hindustan Oil Exploration Co Ltd.
 Addressed to (Name) } Lakshmi Chambers,
192, St-Mary's Road, Alwarpet
 * बीमा का मूल्य (रुपयों में) } CH-18
 * Insured for Rupees
 वितरण की तारीख /Date of delivery 12/2/22
 * अनुपस्थित को कटु दिया जाए।
 * Stamp out the master not required.
 * केवल बीमा वस्तुओं के लिए।
 * For Insured articles only.

पाने वाले के हस्ताक्षर /Signature of addressee

आर.पी.-54—(एस)
 R.P.-54—(S)

भारतीय डाक विभाग DEPARTMENT OF POSTS, INDIA

प्रेषक डाकघर
 की नाम मोहर
 Name stamp of
 office of posting

भेजने वाले
 का पता
 Sender's
 Address

R. Pushkar, Advocate,
No.6, Flat No 5, Sreyas Kranchi Apartments,
Annai Nagar, St, Mandaveli

GMGIPN— 63/PSD/CHENNAI/2021—1,31,600 Pads

पिन/PIN

6 0 0 0 2 8



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Ordinary Original Civil Jurisdiction)

Arb O.P. (Comm. Div) No. 54 of 2022

In the matter of Arbitration & Conciliation Act, 1996.

AND

In the matter of Contract for Provision of Helicopter Services being Contract No. B80C20A0020 dated November 15, 2019 executed between Hindustan Oil Exploration Company Limited and Heligo Charters Private Limited.

Heligo Charters Private Limited

A company incorporated under the Companies Act, 1956
Through its authorised representative Mr. Uday Deshmukh
Having its registered address at:
Hanger No. 3A, Juhu Airport, S.V. Road, Vile Parle (West),
Mumbai 400056

...Petitioner

Versus

Hindustan Oil Exploration Company Limited

A Company incorporated under the Companies Act, 1956
Having its registered office at:
HOEC House, Tandalja Road, Vadodara 390021
And its Corporate office at:
Lakshmi Chambers, 192, St. Mary's Road, Alwarpet,
Chennai 600018

...Respondent

AFFIDAVIT OF SERVICE

I, R.Pushkar, s/o. G. Ravishakar, aged about 29 years having office at 11/6, 11nd Floor, Railway Colony, 3rd Street, Nelson Manickam Road, Aminjikarai, Chennai 600029, do hereby solemnly affirm and state as follows:

1. I am one of the counsel on record for the Petitioner. I submit that the subject matter was listed for hearing before this Hon'ble Court on February 11, 2022. This Hon'ble Court was pleased to order private notice returnable by the next date of hearing i.e., February 25, 2022. Pursuant to the said order, I issued a notice to the Respondent *via* Speed Post Acknowledgment Due ("SPAD") to the Respondent. A copy of the said notice is annexed herewith as Annexure A.

Ry



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

2. I submit that in respect of the service to the registered office of the Respondent, the office of the counsel for the Petitioner has not received any Acknowledgement Due card from the Post Office, till date. Therefore, I have ascertained the status of delivery of notice from the official website of the Indian Post and the status depicts that the notice has been delivered to the address of Respondent on February 18, 2022. A printout from the official website of the Indian Post depicting the status of delivery of notice is annexed herewith as Annexure B.

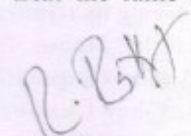
3. I submit that in respect of the service to the corporate office of the Respondent, the notice was delivered on February 12, 2022. The original of the acknowledgment due card is annexed along with this affidavit.

4. I submit that the counsel for the petitioner also issued a private notice *via* email on February 28, 2022. A printout of the email issued to the Respondent is annexed herewith as Annexure C.

In view of the above, I pray that this Hon'ble Court may be pleased to treat the same as sufficient service and thus render justice.

Solemnly affirmed at Chennai on this
the 21st day of February 2022, and
Signed his name in my presence.

BEFORE ME


Adu Priya V
BAR/16742/2017
No.5, Surya Kannamal Appath
Anna Nagar street Mandaveli, Chennai - 2
ADVOCATE :: MADRAS



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

Counter No:1,11/02/2022,16:54
To: HINDUSTAN OIL,
PIN: 390021, T B Sankarling S.O
From: PUSKAR R.,
M1:260gas
Amt:106.20(Cash)Tax:7.20
(Track on www.indiaiposts.gov.in)
(Dial 1002600000) (Dear Rishi, Stay Safe)

R. Pushkar & Rahul Gaiwkad
Advocates

via RPAD / SPAD

February 11, 2022

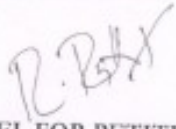
1. Hindustan Oil Exploration Company Limited,
HOEC House, Tandalja Road, Vadodara 390 021.
2. Hindustan Oil Exploration Company Limited,
Lakshmi Chambers, 192, St. Mary's Road,
Alwarpet, Chennai 600 018.

Sir/Ma'am,

Sub: Arb O.P (Comm. Div.) No. 54/2022 – Heligo Charters Private
Limited v. Hindustan Oil Exploration Company Limited - Reg.

We write on behalf of the Petitioner, Heligo Charters Private Limited in the subject arbitration petition. On February 11, 2022 (today), the subject captioned petition was listed for hearing before Hon'ble Mr. Justice M. Sundar, Hon'ble Madras High Court. Please note that the Hon'ble Court was pleased to order private notice to you returnable by the next date of hearing i.e. on February 25, 2022. The copy of the petition and the typeset of papers filed along with the petition is annexed herewith.

Kindly make it convenient for yourselves to be present in person or through your counsel before the Hon'ble Madras High Court, Chennai on **February 25, 2022**, at 10:30 A.M, failing which the matter would be heard and decided in your absence.


COUNSEL FOR PETITIONER

Encl : 1. A copy of the Petition

2. Typeset of Papers



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY
21/02, 7:13 PM

Track Consignment



Sign In

Register



हिन्दी



You are here Home>> Track Consignment

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

ET288546108IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
Mylapore H.O	11/02/2022 16:54:45	390007	106.20	Inland Speed Post	T B Sanatorium SO	18/02/2022 14:32:59

Event Details For : ET288546108IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
18/02/2022	14:32:59	Racecourse SO	Item Delivery Confirmed
18/02/2022	11:55:15	Racecourse SO (Beat Number 39)	ITEM DELIVERED Item Delivered [To: A (Addressee)]
18/02/2022	10:24:37	Racecourse SO	Out for Delivery
17/02/2022	10:28:45	Racecourse SO	Item Received
17/02/2022	07:34:59	Vadodara NSH	Item Dispatched
17/02/2022	06:47:45	Vadodara NSH	Item Bagged
16/02/2022	21:31:16	Vadodara NSH	Item Received
16/02/2022	17:07:02	Subhanpura SO	Item Dispatched
16/02/2022	14:34:41	Subhanpura SO	Item Bagged
16/02/2022	12:58:00	Subhanpura SO	Item Redirected to Racecourse SO INSUFFICIENT ADDRESS
16/02/2022	09:39:30	Subhanpura SO	Item Received
16/02/2022	06:24:02	Vadodara NSH	Item Dispatched
16/02/2022	00:35:42	Vadodara NSH	Item Bagged
15/02/2022	20:31:11	Vadodara NSH	Item Received
15/02/2022	05:19:48	Mumbai NSH	Item Dispatched
12/02/2022	18:59:59	Chennai NSH	Item Received
11/02/2022	19:03:50	Mylapore H.O	Item Bagged
11/02/2022	18:54:45	Mylapore H.O	Item Booked



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

12/12/22, 5:50 PM

Gmail - ARBITRATION O.P. (Com. Div) NO. 54 OF 2022 Heligo Charters Private Limited Versus Hindustan Oil Exploration C...

Annexure C



Pushkar Ravishankar <pushkar025@gmail.com>

**ARBITRATION O.P. (Com. Div) NO. 54 OF 2022 Heligo Charters Private Limited
Versus Hindustan Oil Exploration Company Limited .**

1 message

Rahul Gaikwad <rahul.gaikwad@gravitaslegal.co.in>

Fri, Feb 18, 2022 at 3:35 PM

To: contact@hoec.com, elango@hoec.com, Prabhakar Sastry <psastry@hoec.com>

Cc: Pushkar Ravishankar <pushkar025@gmail.com>, Nikita Abhyankar <nikita.abhyankar@gravitaslegal.co.in>

To,

Hindustan Oil Exploration Company Limited

Ref:

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION O.P. (Com. Div) NO. 54 OF 2022**

Heligo Charters Private Limited

.. ..Petitioner

Versus

Hindustan Oil Exploration Company Limited

.. ..Respondent

Dear Sir,

We write on behalf of the Petitioner, Heligo Charters Private Limited in the subject arbitration petition. On February 11, 2022 (today), the subject captioned petition was listed for hearing before Hon'ble Mr. Justice M. Sundar, Hon'ble Madras High Court. Please note that the Hon'ble Court was pleased to order private notice to you returnable by the next date of hearing i.e, on February 25, 2022. The copy of the petition and the typeset of papers filed along with the petition is annexed herewith.

Kindly make it convenient for yourselves to be present in person or through your counsel before the Hon'ble Madras High Court, Chennai on February 25, 2022, at 10:30 A.M, failing which the matter would be heard and decided in your absence.

Regards,

Rahul Gaikwad

Partner



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

2/21/22, 5:50 PM

Gmail - ARBITRATION O.P. (Com. Div) NO. 54 OF 2022 Heligo Charters Private Limited Versus Hindustan Oil Explor

7



New Delhi | Mumbai

102, Vikas Building, 1st Floor, Bank Street Fort, Mumbai - 400001

T: +91 22 49725818 | M: +91 9987151603

Website: www.gravitaslegal.co.in

CONFIDENTIALITY CAUTION: This e-mail and any attachment(s) is/are privately communicated and may contain information which is confidential and/or legally privileged. If you are not the intended recipient, please refrain from disseminating, distributing or copying information contained herein, notify the sender immediately by return e-mail and delete the original message.

2 attachments

 **Final_Heligo Section 11 Application.pdf**
249K

 **Heligo Typeset.pdf**
17631K



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

MSD

22

HIGH COURT :: MADRAS
(Ordinary Original Civil Jurisdiction)

Arb O.P. (Comm. Div) No. 54 of 2022

Heligo Charters Private Limited

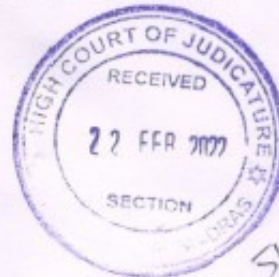
... Petitioner

Vs

Hindustan Oil Exploration Company Limited

... Respondent

AFFIDAVIT OF SERVICE



R.Pushkar MS/ 3255/2014
Rahul Gaikwad MAH/4540/2011
Gravitas Legal

COUNSEL FOR PETITIONER

#6, 2nd Floor, Flat no.5, Sreyas Kannammal
Apartments, Annai Nagammai Street,
Mandaveli,
Chennai - 600 028.
Ph: +91 88700 40132



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

4.The above AOS makes it clear that the sole respondent has been duly served on 18.02.2022 but there is no representation for the sole respondent today. This Court is informed by the Registry that no counsel has entered appearance on behalf of the lone respondent. This means that the lone respondent has not chosen to come before this Court to enter upon any disputation or disagreement about the existence of an arbitration agreement between the parties i.e., between petitioner and respondent.

5.The scope of a legal drill under Section 11 of A and C Act is largely controlled by sub section (6-A). This principle was laid down by the Hon'ble Supreme Court in **Mayavati Trading case law** i.e., **Mayavati Trading Pvt. Ltd vs Pradyuat Deb Burman** reported in **2019 (8) SCC 714**. The relevant paragraph in **Mayavati Trading case law** is paragraph No.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



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

judgement, 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 judgement in Duro Felguera'

6.As the respondent has not chosen to come before this Court and raise any disputation or disagreement regarding the existence of arbitration agreement between the parties, this Court deems it appropriate to accede to the prayer for constitution of an Arbitral Tribunal.

7.Though the arbitration agreement between the parties contemplates arbitration by a three member Arbitral Tribunal, learned counsel submits that this Court can abridge the size of the Arbitral Tribunal and appoint a sole arbitrator. This position i.e., the position that size of the Arbitral Tribunal can be abridged/reduced by a Section 11 Court is now beyond any pale of discrepancy.

8.The earlier proceedings made in the previous listing on 11.02.2022 shall be read as an integral part and parcel of this order.



Arb.O.P (Com.Div).No.54 of 2022

WEB COPY

9.Owing to the narrative thus far, this Court appoints Hon'ble Mr.Justice G.Rajasuria, Former Judge, High Court of Madras residing at No.31, III Cross Street, Brindavanam, Puducherry – 605 013 [Mobile : 9445000864] as sole arbitrator to enter upon reference, adjudicate the arbitrable disputes that have arisen between the petitioner and the respondent. Hon'ble Sole Arbitrator is requested to conduct the arbitration in Madras High Court Arbitration Centre under the aegis of this Court (MHCAC) in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

10.Captioned Arb.O.P is disposed of in the aforesaid manner. There shall be no order as to costs.

28.02.2022

pgp



WEB COPY



Arb.O.P (Com.Div).No.54 of 2022

M.SUNDAR, J.,

pgp

Note: Registry is directed to communicate a copy of this order forthwith to

1.Mr.G.Rajasuria,
Former Judge,
High Court of Madras,
No.31, III Cross Street,
Brindavanam,
Puducherry – 605 013
[Mobile : 9445000864]

Arb.O.P (Com.Div).No.54 of 2022

2.The Director
Tamil Nadu Mediation and conciliation Centre
-cum-
Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.

Dated : 28.02.2022