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ARB.OP.(COM.DIV) No.284 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

Arb.OP.(Com.Div) No.284 of 2022

Inter-Mission Switzerland,
A Society registered under the
Laws of the Federal Republic of
Switzerland, Represented by its Secretary,
Mr.Philippe Beyeler, Son of Francis Beyeler,
Having its office at No.24, Leisenbergstrasse
4410, Liestal Switzerland.

... Petitioner

-Vs-

1. Inter-Mission Industrial Development Association
Represented by Mr.Jochen Tewes,
and Mr.T.Jothi Pandian
No.2, 6th Cross Street, Collectorate Colony,
Aminjikarai, Chennai-600 029.
2. Inter Mission India
Represented by its President Mr.K.B.Edison,
Having registered office at
No.4/108, B-Shanthi Nagar,
Kalaingar Street, Alamathi,
Chennai-600 052.
3. Inter Mission Germany,
A society registered under the
Laws of the Federal Republic of Germany,
Inter-Mission e.v.
Lohweg 11, 30559 Hannover.



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4. Ceebros Property Development,
Represented by its Director,
Mr.C.Subba Reddy,
Having office at "SUKRITI", 19/1
Third Cross Street, R.A.Puram,
Chennai-600 028.

... Respondents

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator in terms set out in Section 11(6)(A) of The Arbitration and Conciliation Act, 1996 to decide the dispute between the petitioner and the respondents.

For Petitioner : Mr.Sharath Chandran
along with Mr.T.M.Mano

ORDER

Mr.Sharath Chandran along with Mr.T.M.Mano, learned counsel who are before this Court very fairly submits that the captioned Arb OP pertains to an 'International Commercial Arbitration' within the meaning of Section 2(1)(f) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity]. This means that the captioned matter which is under sub-section (6) of Section 11 of A and C Act ought to be filed in the Hon'ble Supreme Court owing to



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sub-section (12) sub-clause (a) of Section 11 of A and C Act. Learned counsel very fairly points out that another learned counsel was in a similar situation before this Court and this Court made an order dated 02.03.2022, which reads as follows:

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

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,
Bungalow No.906,
Opp. IOCL-AOD General Office
Digboi, Tinsukia-786 171.

Also at,
M/s.Hindustan Oil Exploration Company Limited,
HOEC HOUSE
Tandaliya 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.

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ARB.OP.(COM.DIV) No.284 of 2022

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

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.



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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



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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.Subrith Parthasarathy, learned counsel for the lone respondent are before this Court.



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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.

02.03.2022

Speaking/Non-speaking order

Index : Yes / No

kmi



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2. Counsel on record Mr.T.M.Mano has made an endorsement in the case file and a scanned reproduction of the same is as follows:

Maybe Permitted
to withdraw
with liberty
to file before appropriate
forum.

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T.M.Mano
06/07/22

7 JUN 2022

3. Considering the facts and circumstances of the case and the trajectory the matter has taken request for withdrawal and request to preserve the rights of the petitioner to approach Hon'ble Supreme Court on the same cause of action are acceded to.

4. Sequitur is, captioned Arb.OP is disposed of as withdrawn (closed) albeit preserving the rights of the petitioner to approach Hon'ble Supreme Court on the same cause of action with a same/similar prayer, if so advised and if so desired. There shall be no order as to costs.

06.07.2022

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M.SUNDAR, J

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