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Arb.O.P.(Comm.Div.) No.485 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Arb.O.P.(Comm.Div.) No.485 of 2022
and O.A.No.369 of 2022
and Arb.Appln.No.129 of 2022

M/s.Sri Kalaimagal Transport,
A Registered Partnership Firm (Reg.No.470/2014)
Represented by its Partner Mr.R.Rajesh
AP-200, I - Block,
10th Street, Vallalar Kudiyruppu,
Anna Nagar West,
Chennai - 600 040.

... Petitioner

VS.

M/s.Hindustan Petroleum Corporation Limited,
Represented by its Managing Director,
Having their registered office at
17, Jamshedji Tata Road,
Mumbai - 400 020.

Also at
Thalamuthu Natarajan Building,
1, Gandhi-Irwin Road, P.B.No.3045,
Egmore, Chennai - 600 008.

Also at

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Chennai New Terminal, NCTPS Main Road,
Attipattu Pudu Nagar (RS), Vallur Village,
Chennai - 600 120.

Respondent

...

PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, pleased to constitute an Arbitral Tribunal by appointing a sole arbitrator as per the Bulk POL Contract Agreement dated 04.02.2019 which includes Conditions of Contract wherein parties had agreed to refer the dispute to Arbitration.

For Petitioner : Mr.S.S.Rajesh

For Respondent : Mr.M.Vijayan for M/s.King & Partridge

ORDER

The petitioner seeks constitution of an arbitral tribunal to decide the dispute arising out of Bulk POL Contract Agreement dated 04.02.2019.



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2. According to the petitioner, a dispute arose in relation to the performance of obligations under the above mentioned contract. After filing an application seeking interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner invoked the arbitration clause and called upon the respondent to take necessary steps. In response to this communication, the respondent issued a communication dated 28.07.2022 suggesting the names of three arbitrators. By a reply dated 04.08.2022, the petitioner declined to accept the persons suggested by the respondent. The present petition is filed under these facts and circumstances.

3. The arbitration clause reads, in relevant part, as under:

"It is agreed between parties to this Agreement that:

(a) HPCL shall suggest the names of 3 persons to the Dealer. The said persons shall not be employees of either party nor connected to either party, in any way prohibited by the Arbitration & Conciliation Act, 1996.



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(b) The Dealer shall choose one name from among the said three persons to be appointed as Sole Arbitrator.

(c) If the Dealer is not agreeable to the appointment of any one person from the said three names, then both parties shall mutually agree and decide upon the name of the Sole Arbitrator. Failing this, a party is free to approach the Court of competent jurisdiction for making an appointment."

4. From the above clause, it is evident that the dealer / petitioner is required to choose one name from the panel of three names and in case the dealer does not accept any of the names, the contract provides for the parties to approach the court of competent jurisdiction.

5. Learned counsel for the respondent agrees that the arbitration clause enables the petitioner to approach the Court in the present facts and circumstances. Both parties request that the arbitral proceedings be held at the Madras High Court Arbitration Centre. They further request that the schedule of fees of the Madras High Court Arbitration Centre be adopted by the arbitral tribunal.



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6. Accordingly, this petition is allowed by appointing Mr. Justice V. Bharathidasan, a retired judge of this Court, as the sole arbitrator. The sole arbitrator is requested to enter upon reference and adjudicate the dispute. The fees and expenses in relation to the arbitral proceedings may be decided in consultation with the parties by taking note of the preference of the parties for the adoption of the fees structure of the Madras High Court Arbitration Centre. Learned counsel for the petitioner seeks permission to withdraw O.A.No.369 of 2022, which is filed under Section 9 of the Arbitration and Conciliation Act, 1996, subject to leave to present the same before the arbitral tribunal as a petition under Section 17 of the above enactment. By recording the said submission, O.A.No.369 of 2022 is dismissed as withdrawn by granting leave to the petitioner as prayed for. Consequently, Arb.Appln.No.129 of 2022 is closed.

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Index : Yes / No

Internet : Yes / No

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