

ORDER SHEET
AP/356/2020
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

GOURI SARKAR
VS
INDIAN OIL CORPORATION LIMITED

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 3rd February, 2023.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Chiranjib Sinha, Adv.
...for the petitioner

Mr. S. Halder, Adv.
...for the respondent

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 wherein the petitioner relies on Clause 37(a) of the Dealership Agreement dated 22nd day of July, 2009. The case of the petitioner is that a show-cause was levied upon the petitioner under the Marketing Disciplines Guidelines, 2018 that forms part of the main agreement and a fine was imposed upon the petitioner. Section 9 application has been filed by the petitioner wherein the said fine has been stayed. This action was taken by the petitioner almost two years ago. An application for vacating the said order has

been filed by the respondent but the same is still pending before the Alipore Court.

In light of the above, I am of the view that the disputes are arbitrable under the arbitration clause. However, since the arbitration clause speaks of the Director (Marketing) of the respondent as the sole Arbitrator or a person appointed by him to be the sole Arbitrator, the said clause is not valid to that extent in light of the judgments of the Supreme Court in *Perkins Eastman Architects v. HSCC (India) Limited* reported in (2019) 9 SCC Online SC 1517 and in *TRF Limited v. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377.

Accordingly, Mr. Debarshi Das, Advocate (Mobile No.9007449637) is appointed as an Arbitrator to resolve the disputes between the parties.

The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original side forthwith.

The parties shall be at liberty to file an appropriate application before the Arbitrator in accordance with law.

AP No. 356 of 2020 is, accordingly, disposed of.

(SHEKHAR B. SARAF, J.)