

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPLICATION NO.2 OF 2023

**SHUHAS PETROLIUM AURANGABAD AHMEDNGAR ROAD
THROUGH PROPRIETOR**

VERSUS

**THE UNION OF INDIA THROUGH MINISTRY OF
PETROLEUM AND NATURAL GAS**

...

Mr. S. R. Kedar, Advocate for the Applicant.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 27th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. Arbitration Application has been preferred under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the sole Arbitrator for adjudication of the dispute arising out of the Dispensing Pump and Selling License agreement dated 29.03.2007.

3. Learned counsel appearing for the applicant fairly concedes that in the agreement dated 29.03.2007 executed between the parties there was no arbitration clause incorporated. He would further submit that subsequently there has been a change in the policies and in respect of Dispensing Pump and Selling License agreement respondents have incorporated arbitration clause. In support of his submission he has tendered the copy of the Dispensing Pump and Selling License dated 29.03.2007 executed between the petitioner and the respondents

and a document claiming to be an amendment to the agreement. In this regard, it would be necessary to refer to the provisions of Section 7 of the Arbitration and Conciliation Act, which reads as under:

“7. Arbitration agreement.—(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication 1[including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

4. It is clear from the perusal of Section 7 of the Arbitration and Conciliation Act that the arbitration agreement is required to be in writing and it is in writing if it is contained in a document signed between the parties. In the present case, the Dispensing Pump and Selling License agreement dated 29.03.2007 is an agreement between the parties, which admittedly does not contain the arbitration clause. The document on which the reliance is being sought to be placed by the learned

counsel for the applicant is an amendment to the Dispensing Pump and Selling License agreement dated 29.08.2012. The said document is neither dated nor signed by any party. It appears from the perusal of the document that this is an amendment which is proposed to an agreement of 29.08.2012, with which the Petitioner has no concern. Learned counsel for the applicant is unable to demonstrate as to how this unsigned and undated document which does not form part of the Dispensing Pump and Selling License agreement dated 29.03.2007 will be applicable to the present case to claim that there is an arbitration agreement between the parties.

5. In the absence of existence of an arbitration agreement between the parties, the Arbitration Application under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the sole Arbitrator is clearly misconceived. Arbitration Application being devoid of merits stands dismissed.

(SHARMILA U. DESHMUKH)
JUDGE