

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO. 28 OF 2018
WITH
CIVIL APPLICATION NO. 31 OF 2018**

Appasaheb Nabhiraj Rukade,
Prop. N. A. Rukade ... Appellant/Applicant
vs.
Deputy General Manager (Retail Sales)
Goa Divisional Office, Indian Oil Corporation Ltd. ... Respondent

**ALONGWITH
ARBITRATION APPEAL NO. 29 OF 2018
WITH
CIVIL APPLICATION NO. 32 OF 2018**

Ashwinkumar Shankarrao Patil
Prop. M/s. Prathmesh Flying Station ... Appellant/Applicant
vs.
Indian Oil Corporation Limited ... Respondent

**ALONGWITH
ARBITRATION APPEAL NO. 30 OF 2018
WITH
CIVIL APPLICATION NO. 33 OF 2018**

Savita Manohar Padawe,
Prop. M/s. Navnath Petroleum ... Appellant/Applicant
vs.
Indian Oil Corporation Limited ... Respondent

**ALONGWITH
ARBITRATION PETITION NO. 157 OF 2022**

Appasaheb Nabhiraj Rukade,
Prop. N. A. Rukade ... Petitioner
vs.
Indian Oil Corporation Limited ... Respondent

WITH
ARBITRATION PETITION NO. 161 OF 2022

Ashwinkumar Shankarrao Patil
Prop. M/s. Prathmesh Flying Station ... Petitioner
vs.
Indian Oil Corporation Limited ... Respondent

WITH
ARBITRATION PETITION NO. 159 OF 2022

Ashish Mohanrao Patil,
Prop. M/s. Krishna Agencies ... Petitioner
vs.
Indian Oil Corporation Limited ... Respondent

WITH
ARBITRATION PETITION NO. 160 OF 2022

Savita Manohar Padawe,
Prop. M/s. Navnath Petroleum ... Petitioner
vs.
Indian Oil Corporation Limited ... Respondent

WITH
ARBITRATION PETITION NO. 158 OF 2022

Ashish Mohanrao Patil,
Prop. M/s. Krishna Agencies ... Petitioner
vs.
Indian Oil Corporation Limited ... Respondent

Mr. Deepak Lad for appellants/petitioners.

Mr. Chirag Mody a/w. Mr. Sunil Gangan and Mr. Shrikant Seegarla for
respondent-Corporation.

CORAM : MANISH PITALE, J
DATE : 13th FEBRUARY, 2023

P.C. :

. In these proceedings, there are three arbitration appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996, four arbitration petitions filed under Section 11 of the said Act and one arbitration petition filed under Section 9 of the said Act. In all these proceedings, the Indian Oil Corporation Limited is a respondent. These proceedings are pending in this Court, since the year 2018.

2. At the outset, the learned counsel for the respondent-Corporation submits that in view of the disposal of appeals by the Division Bench of this Court, arising from petitions filed before the learned Single Judge of this Court and order passed by the Supreme Court in Special Leave Petitions, arising from the order of the Division Bench, nothing survives in these proceedings and that all the proceedings can be disposed of.

3. The backdrop in which the aforesaid submission is made on behalf of the respondent-Corporation is that the appellants/petitioners before this Court were aggrieved by Show Cause Notices issued on different dates by the respondent-Corporation, in the context of dealership agreements executed between the respondent-Corporation and the appellants/petitioners before this Court. By the Show Cause Notices, the appellants/petitioners were called upon to explain as to why the dealership agreements ought not to be terminated on various grounds.

4. It was at this stage itself that the appellants/petitioners proceeded to file applications under Section 9 of the said Act for interim measures before the District Court. In the present case, one such petition under Section 9 of

the said Act, is filed and is a part of the connected proceedings listed before this Court.

5. The common grievance raised by the appellants/petitioners in these proceedings before the District Court and this Court is that, as an interim measure, the respondent-Corporation ought to be restrained from acting upon the Show Cause Notices and further ought to be restrained from terminating the dealership agreements. This is in the backdrop of the arbitration clause in the said dealership agreements.

6. It appears that in some cases, parties similarly situated like the appellants/petitioners herein, were able to obtain orders of status quo from the District Court. In such cases, the learned Single Judge of this Court passed an order dated 9th February, 2018, directing the parties to maintain status quo.

7. It is also relevant that the learned Single Judge of this Court, by order dated 11th January, 2019 in Arbitration Petition No.755 of 2017 and connected petitions, proceeded to direct the respondent-Corporation to maintain status quo with regard to dealership for a period of three weeks from the date of communication of orders, in pursuance of the proceedings undertaken as per the Show Cause Notices. The learned Single Judge further directed that if adverse orders were passed against the dealer, the respondent-Corporation would not allot the dealership in question to any third party. The said order dated 11th January, 2019, was made the subject matter for challenge in appeals before the Division Bench of this Court.

8. By order dated 9th August, 2019, the Division Bench of this Court allowed the appeals and set aside the order of status quo granted in favour

of the dealers, similarly situated like the appellants/petitioners in these proceedings. While allowing the appeals, the Division Bench of this Court took into consideration the fact that the appellants/petitioners, filed proceedings for interim measures under Section 9 of the said Act, at the stage when only Show Cause Notices were issued by the respondent-Corporation. In that light, the Division Bench of this Court, while allowing the appeals, observed as follows:

- '15. Assuming orders adverse to the dealers are passed, the question of Indian Oil Corporation allotting dealership to third parties within three weeks does not arise for the reason applications have to be invited for appointing dealers and thus the second measure granted by the learned Single Judge is of no consequences at all. Indian Oil Corporation can hardly have any grievance against the same.
16. Pertaining to first measure, assuming the dealership is cancelled, right would accrue to the dealers to invoke the Arbitration Clause if they are aggrieved by the cancellation and at that stage interim measures can be sought.
17. Prima facie case can then be considered by the learned Single Judge keeping in view the order passed and the stand taken by the parties.
18. Needles to state if orders adverse to the respondents are passed, Indian Oil Corporation cannot take possession of the sites pertaining to eight appeals because the land is owned by the dealers. Post cancellation of the dealerships, Indian Oil Corporation would have to take steps to take possession of the equipments and goods supplied which would grant sufficient time to the dealers to invoke remedies under the Arbitration and Conciliation Act. As regards the respondent in Appeal No. 374 of 2019, who carries on business from a company owned site, the process of taking possession would need time because inventory would have to be prepared and this time would be sufficient even for said respondent to avail remedies as per law.

19. Accordingly Appeals are allowed setting aside the impugned orders concerning the status quo directed to be maintained for the reason the Petitions filed under Section 9 were premature.'

9. The said order passed by the Division Bench of this Court was challenged before the Supreme Court in Special Leave Petition No.19962 of 2019 and connected petitions. On 26th August, 2019, the Special Leave Petitions were dismissed by the Supreme Court.

10. In this backdrop, when the present appeals/petitions were taken up for hearing, the learned counsel for the respondent-Corporation submitted that in the present case, the respondent-Corporation was at a better footing, for the reason that the impugned orders of the District Court, which are the subject matter of challenge in the appeals, refused to continue orders of status quo, granted earlier. It is submitted that in the light of the observations made by the Division Bench of this Court in the aforementioned order, while allowing the appeals against orders passed by the learned Single Judge, which stood upheld by the Supreme Court, nothing really survives. It is submitted that the respondent-Corporation is ready to give hearing to the appellants/petitioners herein, in consonance with the principles of natural justice and that therefore, this Court may dismiss the appeals/petitions. It is submitted that the petitions filed under Section 11 of the said Act also do not deserve consideration, for the reason that dispute may arise only upon the proceedings initiated by the respondent-Corporation in terms of Show Cause Notices, resulting in orders that may be passed by the respondent-Corporation.

11. The learned counsel for the appellants/petitioners in the present case could not dispute the factual circumstances brought to the notice of this

Court. There is no dispute about the fact that in cases concerning identical circumstances, the Division Bench of this Court, in the aforementioned order, held that there was no propriety in directing status quo. It was also an admitted position that the judgment was upheld by the Supreme Court. It was submitted that if time was given, appropriate instructions could be taken from the appellants/petitioners.

12. This Court is of the opinion that there is no point in keeping the appeals/petitions pending, in view of the admitted facts and the effect of the aforementioned order of the Division Bench of this Court and order of the Supreme Court referred to above.

13. It is also noted that the orders impugned in the appeals filed before this Court are interim orders, which appear to be pending further orders in the applications filed under Section 9 of the said Act, by the appellant/petitioner before the District Court. There is lack of clarity on the aspect as to whether the applications under Section 9 filed before the District Court, are still pending. Be that as it may, in the light of the orders passed in connected petitions and since this Court intends to dispose of the appeals/petitions in that light, the applications filed in the District Court, if at all pending, deserve to be disposed of.

14. In view of the above, the aforementioned appeals bearing Arbitration Appeal No.28 of 2018, No.29 of 2018 and No.30 of 2018, are dismissed. The observations of the Division Bench of this Court, quoted hereinabove, upheld by the Supreme Court, shall apply in equal measure to the case of the appellants/petitioners before this Court. The respondent-Corporation has already undertaken before this Court that appropriate hearing would be

given to the appellants/petitioners herein, while proceeding ahead, on the basis of the Show Cause Notices issued to the appellants/petitioners.

15. In the light of the above, this Court is of the opinion that no ground is made out on behalf of the petitioner in the petition bearing Arbitration Petition No.158 of 2022, filed under Section 9 of the said Act and hence, the same is dismissed, specifically in the light of the above-quoted observations of this Court.

16. Insofar as the four arbitration petitions bearing Arbitration Petition No.157 of 2022, No. 161 of 2022, No.159 of 2022 and No.160 of 2022, filed under Section 11 of the said Act are concerned, this Court is of the opinion that the stage for invoking Section 11 of the said Act, is yet to arrive, for the reason that the outcome of proceedings, in pursuance of the Show Cause Notices issued to the petitioners, may create a situation for them to invoke arbitration. Therefore, the said petitions are also dismissed.

17. In this light, the applications filed by the appellants before the District Court, under Section 9 of the said Act, if pending, are disposed of.

18. All pending applications also stand disposed of.

(MANISH PITALE, J)