

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MCA No.68/2022

M/s Agrasen Petroleum and another V Indian Oil Corporation Ltd and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Sawan Alaspurkar, Adv. for applicants.

Mr. C.S. Samudra, Adv. for non-applicant no.1.

CORAM : AVINASH G GHAROTE, J.

DATE : 20-01-2023

Yesterday after hearing the learned Counsel
for the parties, I had passed the following order :-

*"Heard Mr. Alaspurkar, learned counsel for
the applicants and Mr. Samudra, learned counsel
for the non-applicant Nos.1 and 2.*

*2. It is contended, that there was a lease of
open land between the applicant No. 2 Sunil
Laddha and the Indian Oil Corporation Ltd., (for
short "IOC") on 31.12.2003 of open land
whereupon the IOC was permitted to erect a
petrol pump. The lease was for the period of 29
years. There is no dispute that clause V (c) of the
said agreement of lease contains an arbitration
clause. On 31.12.2003, the petrol pump started
operation by the IOC itself which continued till
01.04.2004. On 01.04.2004 a dealership
agreement came to be executed between Sunil
Laddha and IOC which contains an arbitration
clause 67 (page 36). A notice invoking the*

arbitration clause issued on 20.11.2018, pursuant to which an application under Section 11 of the Arbitration and Conciliation Act came to be filed, which however came to be rejected by this Court by the order dated 30.09.2019 holding that since the applicant No.2 (Applicant therein) had by that time entered in a partnership with certain persons under the name and style of the applicant No.1, it would be the applicant No.1 who be entitled to invoke the arbitration clause (page 68). The earlier dealership agreement of 01.04.2004 between the applicant No. 2 and IOC by that time had come to an end. On 10.04.2018, IOC entered into another dealership agreement with the applicant No. 1/M/s Agrasen Petroleum in which the applicant No. 2 Sunil Laddha was also one of the partners. Consequent to this, on 27.01.2020 again the arbitration clause was invoked (page 89). Since the other partners of M/s Agrasen Petroleum did not support the applicant No. 2 a notice was issued to them on 15.03.2021 (page 98). By that time as the applicant No. 2 was facing certain financial difficulties, he agreed to sell the land in question to M/s. Krushak Farms Pvt. Ltd., (Non-applicant No. 5), for which the permission of the IOC/Non-applicant Nos. 1 and 2 was sought. By a communication dated 20.07.2017 (page 256) IOC granted permission to sell the land of Plot no. 7/3 to M/s. Krushak Farms Pvt. Ltd., on the condition that the clause indicated therein, should be incorporated in the sale deed which may be executed in M/s. Krushak Farms Pvt. Ltd. The sale deed was executed and registered on

20.02.2018 in faovur of M/s. Krushak Farms Pvt. Ltd., by the applicant No. 2 Sunil Laddha. Thereafter, the notice dated 27.01.2020 has been issued invoking the arbitration clause.

3. Mr. Alaspurkar, learned counsel for the applicants submits, that since there is dispute between the applicant No.1 and non-applicant Nos. 1 and 2 in respect of the dealership agreement dated 10.04.2018 (page 86), there is a requirement to appoint an Arbitrator. Since clause 61 therein contains an arbitration clause which stood invoked by the notice dated 27.01.2020. Mr. Samudra, learned counsel for the non-applicant Nos.1 and 2, cannot dispute that an Arbitrator needs to be appointed insofar as the disputes in relation to the dealership agreement is concerned.

4. He however submits, that no Arbitrator can be appointed vis-a-vis any dispute which is claimed to be in existence in respect of the lease deed dated 31.12.03 as the applicant No. 2 has transferred his right therein by the sale deed dated 20.02.2018, to M/s. Krushak Farms Pvt. Ltd. Though, Mr. Alaspurkar, learned counsel for the applicants relies upon the communication dated 20.07.2017 (page 256) to contend that the purchaser namely M/s. Krushak Farms Pvt. Ltd., has expressly agreed that all terms and conditions in the lease deed dated 31.12.2003 between the applicant No.2 and IOC would be fully binding upon it, and therefore, the IOC would continue to be bound by the arbitration clause as contained in the lease deed dated 31.12.2003,

*Mr. Samudra, learned counsel for the non-applicant Nos.1 and 2 submits, that the applicant No. 2 and M/s. Krushak Farms Pvt. Ltd., are two different legal entities and the applicant No. 2 is not the agent or authorized representative of M/s. Krushak Farms Pvt. Ltd., and therefore, has no legal right to invoke the arbitration clause as contained in the lease deed dated 31.12.2003. He further contends, relying upon **M.R. Engineers and Contractors Private Limited Vs. Som Datt Builders Limited, (2009) 7 SCC 696**, that since the communication dated 20.07.2017 does not specifically make a reference to the arbitration clause as contained in the lease deed dated 31.12.2003, the letter dated 20.07.2017 cannot have the effect of the arbitration clause having been incorporated in the sale deed dated 20.02.2018. He submits, that law laid down in **M.R. Engineers (supra)** has been followed in **Elite Engineering and Construction (Hyderabad) Private Limited Vs. Techtrans Construction India Private Limited, (2018) 4 SCC 281**, and also by learned Single Judge of this Court in **N Kumar Projects & Infrastructure Private Limited Vs. The Chirman & Anr., MCA (ARBN) No. 408/2020, decided on 20.07.2022**, and therefore, there is no question of any Arbitrator being appointed vis-a-vis the terms of the lease deed dated 31.12.2003.*

5. Mr. Alaspurkar, learned counsel for the applicants seeks time till tomorrow i.e. on 20.01.2023 to address the Court on this issue.

6. List the matter on 20.01.2023."

2. In pursuance to order dated 19-01-23, Mr Alaspurkar, learned Counsel for the applicant, has relied upon **M/s INOX Wind Limited Vs Thermocables Ltd (2018 (2) SCC 519)**, which after considering **MR Engineers and Contractors Private Limited V Som Datt Builders Limited (2009) 7 SCC 696**, holds that though general reference to earlier contract is not sufficient for incorporation of a arbitration clause in the latter contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. However, in the instant case, on facts, there is nothing on record to indicate that the memorandum of agreement of lease dated 10-4-18 between the applicant no.1 and the non-applicant no.2, is a standard form of contract. He also relies upon **Great Offshore Ltd Vs Iranian Offshore Engineering and Construction Company (AIR 2008 SC Suppl. 429)** paras 75 and 76 to contend that the existence of partition agreement can be inferred by the documents in terms of Sec 7(4)(b) of the Arbitration and Conciliation Act, 1996 (for short, 'A and C Act') and it is not necessary that it should be signed by both the parties on every page. In **Great Offshore Ltd** (supra) the Hon'ble Apex Court was considering the language of Sec. 7(4)(a) r/w Sec 7(4)(b), in the contextual background that each and every page was not signed

and since it was found that both the parties had signed the facts CPA in the signature box at the bottom of Part-1 that would be sufficient compliance. This fact does not help to Mr Alaspurkar, learned Counsel in any way whatsoever. He also places reliance upon **M/s Caravel Shipping Services V M/s Premiere Sea Foods Exhim Pvt Ltd (AIR Online 2018 SC 706)**, in which it was found that the reference in the bill of lading was such as to make the arbitration clause part of the contract between the parties, and moreso as the bill of lading itself found part of the cause of action in the suit filed.

3. The contention, that the lease deed dated 31-12-2003 has to be read in conjunction with the sale deed dated 20-02-18 in favour of M/s Krushak Farms Private Ltd, no doubt may be true in the light of the clause inserted by the communication dated 20-7-17, (page 256), however what is material to note is that the applicants herein have not concerned with M/s Krushak Farms Private Ltd nor do they claim represent Krushak Farms Private Ltd in any capacity whatsoever. Therefore even presuming otherwise that the arbitration clause as contained in the agreement of lease deed dated 31-12-03 got incorporated in the sale deed dated 20-2-2018, the same cannot enure to the benefit of the present applicants as they had no right remaining in the land in question or for that the lease having transferred

in favour of M/s Krushak Farms Private Ltd by the sale deed dated 20-02-18. Thus even viewed in this context the it was not permissible for the present applicants to have invoked the arbitration clause as contained in the lease deed dated 31-12-2003 (pg 16).

4. To reiterate, there is no incorporation of the arbitration clause as contained in the lease deed dated 31-12-03, in the sale deed dated 20-02-18 by virtue of the communication dated 20-07-17 in light of what has been held in *Elite Engineering and Construction (Hyderabad) Private Limited Vs. Techtrans Construction India Private Limited, (2018) 4 SCC 281* as there is no specific reference to the arbitration clause apart from which even if it was held otherwise since the present applicant no.2 had already transferred all his rights in respect of the land and which was the subject matter of the lease and also the lease in favour of the M/s Krushak Farms Private Limited by the sale deed dated 20-2-18 on that count also it was not permissible for the applicant to have invoked the arbitration clause. I do not see any reason to accept the application, the same is dismissed. No costs.

JUDGE