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O.A.No.685 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Original Application No.685 of 2023
and
Arbitration Application No.401 of 2023
and
Arb.O.P.(Com.Div.)No.370 of 2023

S.P.Pandian .. Applicant in both applications
& Petitioner in Arb.O.P.370/23

-VS-

1.Bharathiyar .S
2.Dr.Agasthiya Bharathi .. Respondents in both applications &
in Arb.O.P.No.370/23

Original Application No.685 of 2023 has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking for an interim injunction restraining the respondents from submitting applications to M/s.Indian Oil Corporation Limited for seeking permission for the conversion of M/s.Nandaa Gas Indane Agency to partnership firm and to induct any other third parties in the proposed partnership firm and for award of gas distribution license/agency to proposed partnership firm.



O.A.No.685 of 2023 etc.

Arbitration Application No.401 of 2023 has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking to direct the respondents to produce the audited statement of accounts of Nanda Gas Agency from April, 2007 till date.

Arb.O.P.(Com.Div.) No.370 of 2023 has been filed under Section 11 of the Arbitration and Conciliation Act, 1996, seeking for appointment of an arbitrator to adjudicate the dispute between the petitioner and the respondents in terms of the Memorandum of Understanding dated 21.10.2019.

For Applicant/petitioner : Mr.V.M.Karikalan

For Respondents : No Appearance

COMMON ORDER

O.A.No.685 of 2023 has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking for an interim injunction restraining the respondents from submitting application to M/s.Indian Oil Corporation Limited seeking permission for the conversion of M/s.Nandaa Gas Indane Agency to partnership firm and for award of gas distribution license/agency to proposed partnership firm; and to induct any other third parties in the proposed partnership firm.



O.A.No.685 of 2023 etc.

2. Arbitration Application No.401 of 2023 has been filed under Section 9 of the Act seeking to direct the respondents to produce the audited statement of accounts of Nanda Gas Agency from April, 2007 till date.

3. Arbitration O.P.(Com.Div.) No.370 of 2023 has been filed under Section 11 of the Act seeking for appointment of an arbitrator to adjudicate the dispute between the petitioner and the respondents arising out the Memorandum of Understanding dated 21.10.2019.

4. For better understanding, the parties will be referred to as arrayed in O.A.No.685 of 2023.

5. Notice has been duly received by the respondents in these matters. An affidavit of service has also been filed enclosing the acknowledgment card as well as tracking report. As seen from the acknowledgment and tracking report, the respondents have received the notice in these matters and the names of the respondents are also printed in the cause list today. Since, till date, no one has entered appearance in these matters, the



O.A.No.685 of 2023 etc.

respondents are set exparte in these matters.

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6. There seems to be a dispute between the applicant and the respondents arising out of the Memorandum of Understanding dated 21.10.2019. As seen from the Memorandum of Understanding, the applicant has invested certain sums of money with the respondents based on the promise given by the respondents that they will induct him as a partner in the partnership business for Indane Gas Distributorship in the name and style of “Nandaa Gas Indane Agency”.

7. This Court has perused and examined the Memorandum of Understanding dated 21.10.2019. The relevant clauses, which are the basis of the petitioner's claim, are extracted hereunder:-

“1.Acknowledgement of Investment Amount

The parties of the First part do hereby acknowledge that the party of the second part has paid the sum of Rs.1,15,00,000/- (Rupees On Crore and Fifteen Lakhs Only) (“Investment Amount”) to acquire 49% (Forty Nine) stake in the business of



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O.A.No.685 of 2023 etc.

Nandaa Gas Agency. However, due to acute financial distress and other difficulties, the Parties of the First Part have now decided to sell the said firm together with the land and building in Lakshmi Nagar Extn., Porur, Chennai, where the godown is situated to third parties, with the prime intention of settling the sums due to the party of the Second Part together with share in the Goodwill of the firm, namely, 49% of the sale proceeds of the licence of the agency when it is being sold subject to a minimum of Rs.35,00,000/- (Rupees thirty five lakhs only) and the unpaid due of 49% share in the profits of the firm from 10.04.2017 upto 16.07.2019 amounting to Rs.27,00,000/- (Rupees Twenty Seven Lakhs only), on or before 30.03.2020 which still remains due to the Party of the Second Part, for which purpose the Party of the Second part has also agreed assuring to extend fullest co-operation for such sale. However, if the parties of the First Part are not able to complete the said sale or pay the entire sum due to the Party of the Second Part as agreed above by sale of agency and the godown or through some other means or sources within the agreed period, then the party of the Second part



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O.A.No.685 of 2023 etc.

shall be officially inducted as a partner of the said firm forthwith with effect from 01.04.2020 in which event, the Parties of the first part herein agree to reconstitute the proprietorship Gas Distribution Agency originally operated by Mrs.R.Kalaivani under the name of style of a 'Nandaa Gas Indane Agency' into a partner ship firm on or before 30.06.2020 by obtaining sanction from IOC and the Party of the Second Part shall automatically deemed to be a Partner of the Agency with effect from 01.04.2020. Until then the Party of the Second Part shall be eligible and entitled to get 49% share in the profits of the agency until the full and final settlement of the entire sums due to him. For this purpose the Parties of the First Part shall continue to pay the sum of Rs.3000/- (Rupees Three Tousand only) per day on daily basis and the balance of the monthly profit shall be paid or adjusted on the last date of the month after scrutinizing the accounts for the said month.

a. The parties further agree that the Parties of First and Party of the Second Part shall own share and stakes in the proposed firm in the following proposition



WEB COPY



O.A.No.685 of 2023 etc.

Parties of the First Part :51% stake

Party of the Second Part :49% stake

Or his nominees

b. The parties of First part do hereby undertake to officially convert the Gas Distributorship issued in the name of Nandaa Gas into a 'partnership firm' within 3 months therefrom, that is to say on or before 30.06.2020 by submitting necessary documents with Indian Oil Corporation.

c. It is hereby explicitly agreed between the parties herein that the task of transfer of 'Gas Distribution licensee into a partnership firm, shall be the sole responsibility of Parties of the First Part. In the meantime, the Party of the Second part from this day onwards shall have absolute right to visit the office of the said firm and other business places as being done so far to oversee and take part in all the day to day activities of the firm to secure and safeguard his interest as aforesaid for which the parties of the First part shall have no manner of objection whatsoever.

8. As seen from the aforementioned clauses, it is clear that the



O.A.No.685 of 2023 etc.

applicant has invested money with the respondents to the extent of Rs.1,15,00,000/- and he has been promised 49% stake in the partnership business. It is also clear that the money was invested by the applicant on the promise by the respondents that he will be inducted as a partner in the partnership business for gas distributorship in the name and style of “Nandaa Gas Indane Agency”. However, according to the petitioner, as seen from the affidavit filed in support of the application, the respondents are now attempting to induct a third party into the partnership business by name Mr.G.Gokul, which will be detrimental to the interest of the applicant, who has also invested huge sums of money on the assurance given by the respondents that he will be inducted as a partner. Under such circumstances, these applications have been filed to secure the claim of the applicant under Section 9 of the Act and a petition has also been filed under Section 11 of the Act seeking for appointment of an arbitrator.

9. The arbitration clause contained in the Memorandum of Understanding dated 21.10.2019 is extracted hereunder:-

6. Dispute Resolution



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O.A.No.685 of 2023 etc.

A. Any controversy, claims, dispute or disagreement arising out of or relating to this MoU as to the interpretation or application of any of the terms, conditions, requirements or obligation under this MoU or the performance hereof which the parties are unable to resolve by agreement, the parties hereby agree to refer the controversy, dispute or disagreement to arbitration in accordance with the previous of Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force.

B. The Parties herein agree that the Arbitration shall be conducted by Mr.C.A.Duraimanicam, Advocate, having office at No.9/1115, Bobbili Raja Salai, K.K.Nagar, Chennai – 600 078. The seat of Arbitration shall be at Chennai and the Courts at Chennai alone shall have the jurisdiction to adjudicate the issues arising from and out of this MoU.

10. The applicant has also invoked the arbitration in accordance with the arbitration clause by issuing a notice to the respondents on 21.06.2023.

However, the respondents have not replied to the same. Since there is no



O.A.No.685 of 2023 etc.

consensus between the parties with regard to the name of the arbitrator, Arb.O.P.(Com.Div.) No.370 of 2023 has been filed under Section 11 of the Act seeking for appointment of an arbitrator by this Court.

11. Since a prima face case has been made out by the applicant and the balance of convenience is also in his favour, this Court is inclined to grant an order of interim injunction as prayed for in O.A.No.685 of 2023. Irreparable loss may be caused to the applicant, in case the injunction is not granted, as huge sums of money has been invested by the applicant as seen from the Memorandum of Understanding dated 21.10.2019, which is the subject matter of dispute between the parties. Accordingly, O.A.No.685 of 2023 is allowed by granting injunction as prayed for in favour of the applicant.

12. In another application filed by the applicant under Section 9 of the Act in Arbitration Application No.401 of 2023, the relief sought for by the applicant is to direct the respondents to produce the statement of accounts pertaining to Nanda Gas Agency. No prejudice would be caused



O.A.No.685 of 2023 etc.

to the respondents if such a direction is issued, as a prima facie case and balance of convenience have been established by the applicant. In his favour. Accordingly, Arbitration Application No.401 of 2023 is also allowed as prayed for.

13. Since there is an arbitration clause available in the Memorandum of Understanding dated 21.10.2019, which is the subject matter of the dispute, and the petitioner has also invoked the arbitration in accordance with the arbitration clause extracted supra by issuing a notice dated 21.06.2023 and there is no consensus between the parties with regard to the name of the arbitrator, Arb.O.P.(Com.Div.)No.370 of 2023 is allowed with the following directions:-

(a) This Court hereby appoints Mr.Sricharan Rangarajan, Senior Advocate, having office at No.20A Law Chambers, Luz avenue, 5th street, Mylapore (Mobile No.9840580040), as the sole arbitrator to adjudicate the dispute between the petitioner and the respondents arising out the Memorandum of Understanding dated 21.10.2019.

(b) The Sole Arbitrator appointed by this Court shall be paid



O.A.No.685 of 2023 etc.

remuneration as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) Both the parties shall share equally the fees payable to the sole arbitrator.

01.09.2023

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O.A.No.685 of 2023 etc.

ABDUL QUDDHOSE, J.

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