



Arb. O.P(Com.Div). No.41 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.41 of 2022

Manickkem

... Petitioner

Vs.

1.Hindustan Petroleum Corporation Limited (HPCL),
Represented its General Manager (South),
Having its registered office at
No.8, No.1, Thalamuthu Natarajan Building,
4th Floor, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

2.I.M.Udhayasankar
3.I.M.Radjasegarane
4.I.M.Ramakrishnan

... Respondents

[Respondent 2 to 4 are impleaded as per
Order dated 01.03.2023 in the Application
No.1180 of 2023 and time extended as per
order dated 23.03.2023]

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order to constitute an Arbitral Tribunal by appointing an Arbitrator, as per the Dealership Agreement dated 15.04.1986, wherein the parties had agreed to refer the dispute to Arbitration.



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For Petitioner	: Mr.Aravind for M/s.V.Kamala Kumar
For R1	: Mr.M.Vijayan for M/s.King and Patridge
For R2 & R3	: No Appearance
For R4	: M/s.Akshaya Benjamin

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1996, (hereinafter referred as “the Act”), seeking to constitute an Arbitral Tribunal by appointing an Arbitrator, as per the Dealership Agreement dated 15.04.1986, wherein the parties had agreed to refer the dispute to Arbitration.

2.Learned counsel appearing for the petitioner and the 1st respondent would submit that the present dispute arising out of the dealership agreement dated 15.04.1986 issued by the partnership firm and in terms of Clause 66 of the said agreement, the present dispute is arbitrable and they prayed to appoint a neutral and sole arbitrator.

3.Learned counsel appearing for the 4th respondent would submit that he has no objection in appointing a sole Arbitrator to resolve the present dispute.



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4. Though notice served on the respondents 2 and 3 and their names are printed in the causelist, none appeared on behalf of them, which shows that the respondents 2 and 3 are not interested in contesting the case.

5. For better appreciation, Clause 66 of the Dealership Agreement dated 15.04.1986, is reproduced hereunder:

“66. Any dispute or difference of any nature whatsoever or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement (other than those in respect of which the decision of any person, is by the agreement expressed to be final and binding) shall be referred to the sole arbitration of the Chairman and Managing Director of the Corporation or of some officer / retired officer of the Corporation or retired officer of other oil PSUs or retired senior central Govt. officer who may be nominated by the Chairman and Managing Director. The dealer will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is or was an officer and / or shareholder of the Corporation or that he has to deal with or dealt with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation he had expressed views on all or any of the matters in dispute or difference. In the event of the



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arbitrator to whom the matter is originally referred vacating his office or being unable to act for any reason the Chairman and Managing Director as aforesaid at the time of such vacation of office or Inability to act, shall designate another person to act as arbitrator. In accordance with the terms of the agreement such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Chairman and Managing Director or a person nominated by such Chairman and Managing Director of the Corporation as aforesaid shall act as arbitrator hereunder. The cost of arbitration shall be shared equally by the parties. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provisions of the arbitration and conciliation act, 1996 or any statutory modification of or re- enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.

The award shall be made in writing within six months after entering upon the reference or within such extended time not exceeding further four months as sole arbitrator shall by a writing under his own hands appoint.



In witness whereof the parties here to have hereunto set their hands at MADRAS the date, month and year first above written.”

6.Considering the submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 1 and 4 and in view of the fact that the present dispute is arising out of the Dealership Agreement dated 15.04.1986, and the same is arbitrable under Clause 66 of the said agreement, this Court is inclined to appoint a sole Arbitrator and pass the following orders:

i) Accordingly, **The Hon'ble Mr.Justice M.Vijayaraghavan (Retd), residing at Door No.2/15, Dr.T.V.Naidu Road, Flat No.2B, Abirami Foliage, Chetpet, Chennai, (Phone No.9003268968),**is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order without influencing any of the observations made by this Court in this order.



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iii) Learned Arbitrator is requested to conduct arbitration proceedings in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the fee of the learned Arbitrator shall be fixed in accordance with Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017.

iv) In the event of non-appearance of the petitioner/s herein, the respondents herein shall bear the entire remuneration and other expenses and thereafter, the respondents can recover the same directly from the petitioner/s herein.

7.This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Since this Court has appointed an Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

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KRISHNAN RAMASAMY. J.,
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