



WEB COPY



Arb. O.P(Com.Div). No.659 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Arb. O.P(Com.Div).No.659 of 2022

M/s.Bharat Petroleum Corporation Ltd.,
Represented by its Territory Manager (Retail), Karur,
V.V.S.Gunnaji Rao,
Karur Retail Territory,
Karur Receiving Terminal
Athur & Kadhaparai Village,
Athur (post), Karur – 639 008.
Represented by power Agent Velama V.S.Gunnaji Rao

... Petitioner

Vs.

1.R.Mayakannan,
Proprietor of PR Maayakhannan Agency,
S/o.P.Rangan,
B5 Police quarters,
Narayanan Nagar,
Uthangarai PO & Uthangarai Taluk,
Krishnagirti District – 635 207.

Also at

1.Door No.24, Vinayagar Koil Street,
Peeththampatti Village & Post,
Pappireddipatti Taluk,
Dharmapuri – 636 903.

2.PR Maayakhannan Agency,
Kottapatti,
Harur-Tk,
Dharmapuri District – 636 906.

... Respondents



WEB COPY

PRAYER : Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to pass an order of appointing a sole arbitrator to adjudicate the disputes between the petitioner and the respondents under the Dispensing Pump and Selling License Agreement dated 30.11.2017 and as per Clause 19.a) stated therein.

For Petitioner : Mr.Gautham Venkatesh

For Respondents : No Appearance

ORDER

This petition has been filed under Section 11(6) of Arbitration and Conciliation Act, 1956, seeking to appoint an Arbitrator for adjudication of dispute between the petitioner and respondents under the Dispensing Pump and Selling License Agreement dated 30.11.2017 and as per Clause 19.a) stated therein.

2.When the matter came up for hearing on 11.01.2023, this Court passed the following orders:

“This petitioner has been filed for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996. 2. Learned counsel for the petitioner



submits that the petitioner has entered into dispensing pump and selling licence agreement dated 30.11.2017 with the respondent. He further submits that when the petitioner made a surprise inspection of the respondent's premises, it was noticed that there are certain irregularities and therefore, the petitioner had terminated the contract with the respondent by virtue of the letter dated 28.06.2019. He further submits that the respondent is liable to pay a sum of Rs. 10,00,000/- towards corpus amount. He further submits that the petitioner is supposed to have deposited the corpus amount with the petitioner immediately after entering into agreement, but the respondent has not deposited the corpus amount till date. 3. However, this Court is unable to understand as to how the respondent is liable to pay the corpus amount, which would be deposited only during the course of the existence of the agreement and returned when the agreement period is over. In the present case, before the respondent deposits the corpus amount with the petitioner, the agreement was terminated by the petitioner by virtue of the letter dated 28.06.2019. In such circumstances, Learned counsel for the petitioner is directed to clarify as to whether the liability of the respondent for depositing the corpus amount with the petitioner would arise even after the termination of the agreement. Post the matter on 07.02.2023.”



3.Today, learned counsel appearing for the petitioner by referring the corpus fund agreement dated 02.03.2018 stated that as per the said agreement, the respondent has to make the payment to the petitioner. Clause No.1 of the said agreement is extracted hereunder:

“1. (a) The Corporation will give to the dealer the following products on credit the total value of which would not exceed Rs.6,43,260.08/- (Rupees Six Lakhs Forty Three Thousand Two Hundred and Sixty Rupees Eighty Paise only)

(i) KL of MS

(ii) KL of HSD

(iii) KL of Lubricating Oil

(b) The ownership of the aforesaid product will be passed on the dealer as and when the same is delivered to the retail outlet.

(c) The invoice value of the aforesaid product delivered on credit will be treated as loan (hereinafter called as the 'said loan' and the same will be repaid by the dealer to the Corporation.”

4.Reading of the above would show that upto a sum of Rs.6,43,260.08/- the applicant could provide a credit facilities by sending the products to and in favour of the respondent. The respondents have utilised the full extent of the



credit facilities but failed to make the payment. Therefore, the petitioner sent a demand notice to the respondents on 16.03.2020. Even after receiving the same, the respondents failed to make the payment. Thereafter, on 07.07.2022, as per Section 21 of the Arbitration and Conciliation Act, the petitioner sent a notice invoking Clause 19.a) of the agreement dated 30.11.2017. Despite the receipt of the notice, the respondent failed to respond the same and hence, he prays for appointment of Sole Arbitrator.

5.Though notice has been served against the respondents and the name of the respondents are printed in the cause lists, none appeared on behalf of them, which shows that the respondents are not interested to contest the case.

6.For better appreciation Clause 19.a) of the Dispensing Pump and Selling License Agreement dated 30.11.2017 is extracted hereunder:

“19. a) Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set off of the Company against the Licensee or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be refereed to the Sole Arbitration of the Director (Marketing) of the Company or of some Officer of the Company who may be nominated by the Director



WEB COPY



Arb. O.P(Com.Div). No.659 of 2022

(Marketing). The licensee will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an officer of the Company or that he has dealt with the matters to which the contract relates or that in the course of his duties as an Officer of the Company, he had expressed view on all or any other matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Director (Marketing) as aforesaid at the time of such transfer, vacation of office or inability to act may in the discretion of the Director (Marketing) designate another person to act as arbitrator in accordance with the terms of the agreement to the end and intent that the original Arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an officer of the Company if the Director(Marketing) does not designate another person to act as arbitrator on such transfer, vacation of office or inability of original arbitrator. 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 Director (Marketing) of the Company or a person nominated by such Director (Marketing) as aforesaid shall act as arbitrator hereunder. 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 & Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause.”

7.In view of the above submissions and a perusal of Clause 19.a) of the Agreement dated 30.11.2017, it is clear that the present dispute falls within the purview of the said Agreement and accordingly, the present dispute is arbitrable in terms of the said agreement. Hence, this Court is inclined to appoint an Arbitrator to adjudicate the dispute between the petitioner and the respondents.

8.Accordingly, **Mr.G.K.Selvarajan, Advocate, having office at Plot No.381, East Main Road, Anna Nagar western extension, Chennai – 600 101, contact No.9790980899**, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. 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. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.



Arb. O.P(Com.Div). No.659 of 2022

WEB COPY

9.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 respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996 before the Arbitrator.

07.02.2023

rst



WEB COPY



Arb. O.P(Com.Div). No.659 of 2022



WEB COPY



Arb. O.P(Com.Div). No.659 of 2022

KRISHNAN RAMASAMY. J.,
rst

Arb. O.P(Com.Div).No.659 of 2022

07.02.2023