

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

114

CWP-5852-2023 (O&amp;M)

Date of Decision: 13.07.2023

M/s Shubhkarman Petroways

...Petitioner

Versus

Appellate Authority, Hindustan Petroleum Corporation Limited,  
Tel Bhawan and Another

...Respondents

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Amit Jhanji, Senior Advocate with  
Ms. Nitika Garg, Advocate for the petitioner  
Mr. Vikas Chatrath, Advocate with  
Mr. Rajbir Singh, Advocate and  
Ms. Tanya Sehgal, Advocate for the respondents  
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**JAGMOHAN BANSAL, J. (Oral)**

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking quashing of order dated 27.12.2022 (Annexure P/24) and order dated 10.01.2022 (Annexure P/20) whereby dealership of the petitioner has been cancelled.

2. The brief facts of the case which are necessary for the adjudication of the present petition are that the petitioner entered into agreement dated 14.07.2014 (Annexure P/1) with Hindustan Petroleum Corporation Limited (for short hereinafter referred to as '**corporation**') for dealership of petroleum products. The petitioner belongs to Scheduled Caste Category and retail outlet was allotted under SC/ST Category. The initial period of the agreement was 10 years which was extended from time to time. The officials of the respondent-corporation

on 04.03.2021 conducted physical verification of the retail outlet and found the following irregularities:-

- “1. *Positive Stock Variation of 48194 ltrs observed in HSD.*
2. *One MS nozzle of Dispensing Unit DU-2 with totalizer reading 163959 found delivering 30 ml short.*
3. *Mismatch in T/T receipts as per automation and JDE.*
4. *Water inside water cooler not clean & unfit for drinking.*
5. *Air facility not operational at the time of inspection.*
6. *DSR & Density register not available at the time of inspection. Recorded density taken as displayed on Stock Board.*
7. *CPR chart not displayed in the Electric Panel Room.”*

3. On the basis of aforesaid irregularities, the respondent initiated proceedings against the petitioner which culminated into termination of agreement. The petitioner preferred an appeal before Appellate Authority which came to be dismissed.

4. Mr. Amit Jhanji, Senior Advocate for the petitioner, *inter alia* contends that as per Marketing Discipline Guidelines-2012 (for short hereinafter referred to as the ‘**Guidelines**’) an order of termination qua SC/ST Category dealership can be passed only with the approval of Director (Marketing) H.Q. In the case in hand, an order of termination was passed without the approval of Director (Marketing), thus,

impugned order has been passed in violation of Guidelines. The order is *per se* bad in the eye of law. He further submits that termination order has been passed alleging various irregularities, however, there is only one alleged irregularity warranting termination i.e. unauthorized purchase/sale of products. The respondent-corporation had drawn samples of the alleged unauthorized stock, however, no adulteration was found which establishes that stock was purchased from respondent-corporation. The respondent-corporation has not proved source of alleged unauthorized purchase, thus, petitioner has been penalized on the basis of assumptions and presumptions. In support of his contention, learned senior counsel relies upon judgment of Hon'ble Supreme Court in ***ABL International Ltd. and Another Versus Export Credit Guarantee Corporation of India and Others; (2004) 3 SCC 553.***

5. Mr. Vikas Chatrath, Advocate for the respondents, at the outset, produced record of the respondent-corporation which is taken on record as Annexure-A. Registry is directed to tag the same at appropriate place.

6. Mr. Chatrath submits that termination order was passed after placing relevant record before the Director (Marketing) who had granted 'approval' prior to passing of impugned order, thus, there was compliance of Marketing Guidelines.

He further submits that it is a purely contractual dispute and there is no *prima facie* infirmity in the impugned order warranting interference by this Court. There is arbitration clause in the agreement,

thus, petitioner is supposed to invoke arbitration proceedings and it is settled proposition of law that in case of availability of arbitration clause, the writ petition is not maintainable. To buttress his contention, he relies upon judgment of Division Bench this Court in ***Munish Gupta Versus Union of India; 2009 (1) R.C.R (Civil) 365***, wherein it has been held that writ petition in contractual matter is not maintainable.

7. I have heard arguments of learned senior counsel for the petitioner and learned counsel for the respondents and perused the record with their able assistance.

8. Learned senior counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in *ABL International (supra)*. The paragraphs relied upon by learned senior counsel read as:-

*"15. The learned counsel then contending that this Court will not entertain a writ petition involving disputed questions of fact relied on a judgment of this Court in the case of State of Bihar & Ors. Vs. Jain Plastics and Chemicals Ltd. [2002 (1) SCC 216] wherein this Court held :*

*"7. In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants*

*would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs."*

*16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Smt. Gunwant Kaur & Ors. vs. Municipal Committee, Bhatinda and Ors. where dealing with such a situation of disputed questions of fact in a writ petition this Court held :*

*"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition*

*under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.*

*15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.*

*16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has*

*jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."*

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*19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Smt. Gunwant Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.*

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*27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-*

*(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State*

*arising out of a contractual obligation is maintainable.*

*(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*

*(c) A writ petition involving a consequential relief of monetary claim is also maintainable.*

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*51. From the terms of the contract, we have noticed in Clause (6) as amended by the addendum, consideration by way of barter of goods is not the sole consideration. The said clause contemplates alternate modes of payment of consideration one of them being by barter of goods and the other by cash payment in US \$. The terms of the insurance contract which was agreed between the parties were after the terms of the contract between the exporter and the importer were executed which included the addendum, therefore, without hesitation we must proceed on the basis that the first respondent issued the insurance policy knowing very well that there was more than one mode of payment of consideration and it had insured failure of all the modes of payment of consideration. From the correspondence as well as from the terms of the policy, it is noticed that existence of only two conditions have been made as a condition precedent for making the first respondent Corporation liable to pay for the insured risk, that is, (i) there should be a default on the part of the Kazak Corporation to pay for the goods received; and (ii) there should be a failure on the part of the Kazakhstan Government to fulfil their*

*guarantee. This is clear from the terms of the insurance contract read with the letter of the first respondent dated 8th September, 1993 wherein at Clause 3A, it is stated : "Our liability will arise only after default has been established on the guarantee of the Ministry." From the above, it is clear both the grounds as put forth by the learned counsel for the respondent before us as well as in the two letters of repudiation issued by the first respondent are unsustainable. In our opinion, the first respondent insured the export risk of the appellants in regard to the non payment of the consideration for the tea exported whether it arose from the non fulfillment of the barter clause or for the non fulfillment of the cash payment clause. The argument advanced on behalf of the respondent that the appellants refused to accept the barter by goods offered by the first respondent which amounted to a default under the contract on the part of the appellants has no legs to stand in view of the clear language of the amended Clause 6 of the agreement which as noted above states that the obligation of the buyer, namely, Kazak Corporation to pay for the goods received by it in US \$ arises when payment by barter fails for "any reason whatever". The use of the words "any reason whatever" in the said amended clause includes the reasons of refusal by the appellants to accept the goods offered in barter. On the face of the said language of amended clause, there could be no room for two opinions at all in regard to the liability of the first respondent to pay for the loss suffered by the appellants even in cases where payment by barter fails at the instance of the appellant. The learned counsel for the respondent contended for a correct*

*interpretation of this amended clause and the other clauses of the contracts i.e. the contract of export and the contract of insurance between the parties there is need for oral evidence being led without which a proper interpretation of this clause is not possible, therefore, it is fit case in which the appellants should be directed to approach the Civil Court to establish its claim. We find no force in this argument. We have come to the conclusion that the amended Clause 6 of the agreement between the exporter and the importer on the face of it does not give room for a second or another construction than the one already accepted by us. We have also noted that reliance placed on sub-clause (d) of the proviso to the insurance contract by the Appellate Bench is also misplaced which is clear from the language of the said clause itself. Therefore, in our opinion, it does not require any external aid much less any oral evidence to interpret the above clause. Merely because the first respondent wants to dispute this fact, in our opinion, it does not become a disputed fact. If such objection as to disputed questions or interpretations are raised in a writ petition, in our opinion, the courts can very well go into the same and decide that objection if facts permit the same as in this case. We have already noted the decisions of this court which in clear terms have laid down that mere existence of disputed questions of fact ipso facto does not prevent a writ court from determining the disputed questions of fact.”*

9. In the case at hand, respondents are relying upon arbitration clause of the agreement. The petitioner is seeking setting aside of termination order and arbitrator cannot set aside termination order. The

respondent passed an appealable order and petitioner availed remedy of appeal. The Appellate Authority dismissed appeal of the petitioner. Learned counsel for the respondent has also accepted that arbitrator cannot set aside order of termination.

10. A two Judge Bench of Hon'ble Supreme Court in ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.***, (2023) 2 SCC 703 has held that arbitration clause is not an absolute bar to invoke writ jurisdiction of Constitutional Courts. The relevant extracts of the said judgment read as:-

“82. *We may cull out our conclusions in regard to the points, which we have framed:*

82.1. *It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.*

82.2. *The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] , may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir*

*Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847].*

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82.7. *The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.*

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82.9. *The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.*

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82.11. *Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the*

*unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL [ABL*

*International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] . It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.*

[Emphasis Supplied]

In view of facts involved, this Court does not find substance in the objection of the respondent. The arbitration clause cannot refrain this Court from invoking its writ jurisdiction.

11. In the case in hand, the conceded position emerging from the record is that petitioner belongs to SC Category. He was granted dealership of respondent-corporation. The officials of the corporation conducted physical verification of the stock wherein infirmities were found. The petitioner was issued show cause notice which was followed by impugned order. The petitioner was duly granted opportunity of personal hearing. The petitioner preferred an appeal before the Appellate Authority which came to be dismissed.

12. The dispute between the parties is purely a contractual dispute and in view of judgment of Hon'ble Supreme Court, there is no bar for interference in contractual matters either statutory or pure commercial where one of the party is Government or Government Authority, however, scope of interference is limited.

The petitioner has attempted to make out his case for invoking writ jurisdiction of this Court on the ground that impugned

(Marketing), however, this Court has perused record of the corporation and finds that entire record was placed before Director (Marketing) and there was approval from his end, thus, it cannot be concluded that impugned order was passed without jurisdiction warranting interference by this Court. The findings recorded by Director (Managing) read as:-

“ *File Note:*

*Welcome Gakhar Naveen*  
*File Note ID: e-fileNote:121251*  
*Doc No: CRO/T/01*  
*Date: 04 December 2021*

*File Note Completes Life Cycle*

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| <i>Division/Department:</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>Chandigarh Retail Ro</i>                                                                                                                                                                                                     |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>File Note Category/Type:</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i>Other Miscellaneous Type</i>                                                                                                                                                                                                 |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>AKAM Category:</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <i>NA</i>                                                                                                                                                                                                                       |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>Subject:</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i>File Note For Shubkarman Petroways, Kalma Morh, District Ropar (category-SC) for approval of Director Marketing for Termination of Dealership Agreement of the dealer for breach of the clauses of dealership agreement.</i> |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>Details:</i><br><br><i>This proposal is being originated to seek the approval of Director-Marketing for the Termination of Dealership Agreement of M/s Shubkarman Petroways, Kalma Morh, District Ropar, an SC category dealership</i><br><b><u>Background</u></b><br><i>M/s Shubkarman Petroways is a CO retail outlet under CFS category with Sh Charanjit Singh as sole proprietor; the outlet is situated at Kalma Morh, District Ropar.</i><br><br><b><u>DETAILS OF THE DEALERSHIP</u></b><br><br><table><tr><td><i>Name</i></td><td><i>M/s Shubkarman Petroways</i></td></tr><tr><td><i>Location</i></td><td><i>Kalma Morh</i></td></tr><tr><td><i>District</i></td><td><i>Ropar, Punjab</i></td></tr><tr><td><i>Customer Code</i></td><td><i>16626340</i></td></tr><tr><td><i>Sales Performance</i></td><td><i>MS-12 KLPM; HSD-204 KLPM</i></td></tr></table> |                                                                                                                                                                                                                                 | <i>Name</i> | <i>M/s Shubkarman Petroways</i> | <i>Location</i> | <i>Kalma Morh</i> | <i>District</i> | <i>Ropar, Punjab</i> | <i>Customer Code</i> | <i>16626340</i> | <i>Sales Performance</i> | <i>MS-12 KLPM; HSD-204 KLPM</i> |
| <i>Name</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>M/s Shubkarman Petroways</i>                                                                                                                                                                                                 |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>Location</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i>Kalma Morh</i>                                                                                                                                                                                                               |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>District</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i>Ropar, Punjab</i>                                                                                                                                                                                                            |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>Customer Code</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <i>16626340</i>                                                                                                                                                                                                                 |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |
| <i>Sales Performance</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <i>MS-12 KLPM; HSD-204 KLPM</i>                                                                                                                                                                                                 |             |                                 |                 |                   |                 |                      |                      |                 |                          |                                 |

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| D'ship Agreement Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 14.07.2014                                                                             |
| Social Category                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | SC                                                                                     |
| Name of Dealer                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Shri Charanjit Singh                                                                   |
| Class of Market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Rural                                                                                  |
| Outlet Type                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Company Owned- CFS                                                                     |
| Lease                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Valid till 14.04.2033                                                                  |
| Landlord Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Smt Pratibha Chabbra                                                                   |
| Land Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 1764 sq. meters with rental of Rs.4,000/- per month and escalation of 5% every 5 years |
| xxxx                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | xxxx                                                                                   |
| xxxx                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | xxxx                                                                                   |
| 12/5/2021 12:38:14 AM CHOUDHRY SUBODH -> PRAVEEN MISHRA for recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                        |
| Approval is requested from Director- Marketing for the Termination of Dealership Agreement of SC category dealership viz. M/s Shubkarman Petroways, Kalma Morh, District Ropar, as the dealership has failed to provide satisfactory reply to our show cause notice dated 13-09-2021.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                        |
| xxxx                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | xxxx                                                                                   |
| xxxx                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | xxxx                                                                                   |
| 1/6/2022 8:49:23 PM MISRI RAKESH-> GAKHAR NAVEEN for Approval Confirmation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                        |
| Joint Approver 1:A SCN was issued to the dealer for explaining the stock variation beyond permissible limits (which is a critical irregularity), and other irregularities. The dealer cited jumping of Totalizer as the reason for variation. However, as per the report of OEM of DU, there was no jumping of Totalizer and that the dealer had fabricated his report. Considering the report of OEM and Automation records, reply of the dealer was not found tenable by the Retail SBU. Meanwhile the dealer filed a writ petition in Punjab and Haryana Court seeking resumption of supplies, which the Hon'ble Court allowed. The Court also directed to give a personal hearing to the dealer. A personal hearing was given to the dealer to explain the critical irregularity and other irregularities. No new facts were brought out by the dealer in this personal hearing and as such the explanation given by the dealer has not been found satisfactory. <u>In view of the established critical irregularity of stock variation beyond permissible limits it would be in order to terminate the dealership as proposed.</u> Joint Approver 2: Joint Approver 3:." |                                                                                        |

13. The petitioner is disputing the fact of excess decanting and receipt of additional stock on the ground that there was defect in the instruments installed at the petrol pump. Respondent No.1 in the impugned order has recorded categorical finding that petitioner prior to inspection never lodged any complaint with them. As per impugned order, 48 KL HSD was found over and above permissible quantity. It was not a small quantity, thus, it seems to be unbelievable that petitioner received such a huge stock on account of technical defect in the instruments. As noted in impugned orders, the petitioner prior to inspection never made complaint with respect to instruments installed at his outlet. The respondent-corporation has found various other infirmities which do not attract termination of contract.

All other issues raised by the petitioner are purely disputed questions of facts which cannot be adjudicated while exercising writ jurisdiction of this Court especially when it was a contractual matter, two authorities of respondent have returned concurrent findings and termination order was passed with the approval of Director (Marketing) of the corporation. It is apt to mention here that there is no allegation of *mala fide* against officials of respondent. This Court cannot sit over findings of authorities in contractual matters and act as an Appellate Court.

14. As cited by learned counsel for the respondents, a Division Bench of this Court in *Munish Gupta (supra)* has held that writ is not maintainable on the basis of guidelines framed by Oil Companies. The

Court has further held that writ petition is not maintainable in respect of contractual obligation. The relevant extracts of the judgment read as:-

*“11. However, learned counsel for the petitioners, could not refer to any precedent or principle of law to the effect that the grant of distributorship to the petitioners involves a public law character or a public law function. In fact, the grant of distributorship to the petitioners is a commercial transaction for which the petitioners are paid commission charges. Though the ultimate beneficiary of sale of LPG may be public at large, but such sale of petroleum products is a commercial transaction for which the petitioners make their profit. Such transaction does not involve any public law function, which may entitle the petitioner to invoke the writ jurisdiction of this Court.*

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*17. Still further, it was found that the writ petition under Article 226 of the Constitution of India, cannot be used for enforcement of contractual disputes. Thus, in case there is any dispute or difference between the parties regarding any right or liability arising out of or in relation to the agreement, the same shall be referred to an Arbitrator. As a matter of fact, the said judgment does not support the, cause of the petitioner, in any manner. Apart from the finding that the writ petition is not maintainable in respect of the contractual obligation, it was found that even the guidelines arise out of the powers conferred on the distributor Companies in terms of the agreement. Thus, we do not find that the guidelines confer any right on the petitioner on the basis of which the*

*termination of the agreement can be disputed in a writ petition. The guidelines have been framed not in exercise of statutory power, but are in the nature of Instructions, so as to regulate the internal working of the Oil Companies, so as to avoid the allegations of the arbitrariness and discrimination. Such guidelines do not confer any enforceable right in favour of the petitioner.”*

15. In view of aforesaid facts and findings, judgment of Hon’ble Supreme Court in *M.P. Power Management Co. Ltd. (supra)* and Division Bench of this Court in *Munish Gupta (supra)*, this Court finds no infirmity in the termination and appellate order warranting interference of this Court, invoking writ jurisdiction.

Dismissed.

(JAGMOHAN BANSAL)  
JUDGE

13.07.2023  
*Mohit Kumar*

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |