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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO (COMM) 65/2022 & C.M.Nos.21586-21587/2022**

**M/S RAMENDER OIL CARRIER** ..... Appellant

Through: Mr.D.K.Sharma with Mr.Vishal  
Tyagi, Advocates.

versus

**M/S HINDUSTAN PETROLEUM CORPORATION LTD**

..... Respondent

Through: Mr.Naveen Kumar Raheja with  
Mr.Saurabh Kumar Dixit, Advocates.

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Date of Decision: 22<sup>nd</sup> August, 2023

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

### **J U D G M E N T**

**MANMOHAN, J: (ORAL)**

1. Present appeal has been filed challenging the impugned order dated 23<sup>rd</sup> February, 2022 passed by the learned District Judge in OMP (Comm) No.40/2019, whereby the petition to set aside the Arbitral Award dated 13<sup>th</sup> August, 2019 passed by the Sole Arbitrator was dismissed.

2. Learned counsel for the appellant states that the learned District Judge failed to appreciate that the Sole Arbitrator was a serving officer of the respondent and was ineligible to be appointed as an Arbitrator to adjudicate the disputes between the parties in accordance with Section 12(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act, 1996') read with its Seventh Schedule.

Signature Not Verified

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Signing Date: 23.08.2023  
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3. Learned counsel for the appellant further states that as per para 7 of the letter dated 06<sup>th</sup> October, 2016, the appellant had consented to appointment of an independent Arbitrator only to conduct the arbitration proceedings. He clarifies that the appellant vide letter dated 06<sup>th</sup> June, 2018 had agreed to initiation of arbitration process to be conducted by the 'Arbitration Officer' and that the respondent with ulterior motives persuaded the appellant to insert the word 'Company' in the aforesaid letter.

4. In support of his submission, he relies upon the judgment of the Supreme Court in ***Perkins Eastman Architects DPC and Another V. HSCC (India) Limited, 2019 SCC OnLine SC 1517***, wherein it has been held that an officer of the respondent is a person having direct interest in the dispute and as such he cannot act as an Arbitrator.

5. Having perused the paper book, this Court finds that on 17<sup>th</sup> April, 2018, the respondent had written a clear and categorical letter to the appellant/claimant stating that it was desirous of appointing one of its officers as an Arbitrator. The proviso to Section 12(5) of the Act, 1996, as amended, was also specifically brought to the notice of the appellant and a confirmation in writing for waving the applicability of Section 12(5) of the Act, 1996 was asked for. The letter dated 17<sup>th</sup> April, 2018 written by the respondent to the appellant/claimant is reproduced hereinbelow:-

*"Ref: DT/SKS/TPT*

*Date: 17.04.18*

*To,*

*M/s Ramender Oil Carrier (Transporter)*

*B-156, Indra Park, Najafgarh (Near Sai Baba Mandir)*

*New Delhi – 110 043*

*Kind Attn: Shri Yogendra Singh*

*Sole Proprietor*

*Sub: Appointment of Sole Arbitrator in respect of disputes and Differences*



*pertaining to Bulk Petroleum Product Road Transport Agreement (Terminated) dated 28.02.2015*

*Ref: your letter dated 09.04.2018*

*Dear Sir,*

*We are in receipt of your above referred letter (received by us on 10.04.18) for appointment of sole arbitrator in the matter pursuant to judgment passed by Hon'ble Delhi High Court in CWP 10925 whereby said writ petition was dismissed by the Hon'ble High Court with the observations that "it will be open for the petitioner to invoke the arbitration clause and agitate its grievances before the Arbitral Tribunal...."*

*It is a matter of record that, thereafter, you have not approached the corporation for appointment of arbitrator in the matter.*

*However, with coming into force of the Arbitration and Conciliation (Amendment) Act, 2015 with effect from 23.10.2015, I have been instructed to obtain your prior written consent in view of the following provisions i.e. Section 12(5) as inserted by the Act, which states that*

*"Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject – matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator.*

*Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing...."*

*In view of above change in law, we would like your confirmation as to whether you are ready and willing to waive applicability of the sub-section 5 to Section 12, as inserted by the Act and that whether you are ready to giving consent for appointment of serving officer or retired officer of Hindustan Petroleum Corporation Limited or a retired officer of any other Govt. Company in the Oil Sector to be appointed as sole arbitrator to adjudicate the differences and disputes between Hindustan Petroleum Corporation Limited and yourself.*

*Kindly convey your written response (i.e. giving consent or not giving consent) within 10 days from the date of this letter to enable us to take further necessary action in the matter.*

*Thanking you,*

*Very truly yours,*

*Sd/-*

*DGM Installation and duly  
Constituted attorney*

*Hindustan Petroleum Corporation Limited"*

Signature Not Verified

Digitally Signed By: ASWANT  
SINGH RAWAT  
Signing Date: 23.08.2023  
16:15:22



6. The appellant gave its consent to appointment of a 'company officer' as an Arbitrator vide letter dated 06<sup>th</sup> June, 2018. An English translation of the said letter, annexed by the appellant to the present appeal is reproduced hereinbelow:-

*"To,  
The Senior Manager,  
Hindustan Petroleum Corporation Ltd.  
Tikri Kalan, New Delhi.*

*SUBJECT: FOR PROCESS OF ARBITRATION*

*Sir,*

*It is respectfully submitted that we have received a letter dated 03 June 2018, wherein there are many question about process of arbitration. Sir we have no difficulty in arbitration process. We want that as early as possible you conduct the arbitration proceeding with the company arbitrator officer. We shall be great full.*

*For Ramender Oil Carrier  
Sd/-  
Proprietor*

*Received on 6/6/18  
Sd/-  
HPCL"*

7. From the aforesaid, it is apparent that the appellant subsequent to the disputes having arisen and that too with full knowledge of law had given its consent to appointment of respondent's officer as an Arbitrator. Consequently, the appointment of the Arbitrator in the present instance was in accordance with the proviso to Section 12(5) of the Act, 1996.

8. Further, in response to a pointed query, learned counsel for the appellant fairly admits that during the pendency of the arbitration proceedings, the appellant had never raised any objection to the appointment



of the Arbitrator. In fact, admittedly the objection to the appointment of the Arbitrator was raised by the appellant for the first time in a petition filed under Section 34 of the Act, 1996.

9. Accordingly, this Court is of the opinion that the appellant is estopped from challenging the appointment of the Arbitrator as the appellant had participated in the arbitration proceedings willingly and without any objection.

10. For the aforesaid reasons, the present appeal is dismissed along with pending applications. No order as to costs.

**MANMOHAN, J**

**MINI PUSHKARNA, J**

**AUGUST 22, 2023**  
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