

OCD-5

ORDER SHEET

AP-COM/78/2024

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE  
(Commercial Division)

RUKMANI DEVI BANGUR AND ORS.  
VS  
HINDUSTAN PETROLEUM CORPORATION LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 16<sup>th</sup> February, 2024.

Appearance:

*Mr. Sarosij Dasgupta, Adv.*

*Mr. S.N. Pandey, Adv.*

*Mr. Shwetank Ginodia, Adv.*

*Mr. Biswanath Chatterjee, Adv.*

*Mr. Sobhan Pathak, Adv.*

The Court: This is an application for appointment of an Arbitrator under Section 11(6) of The Arbitration and Conciliation Act, 1996.

The arguments made on behalf of the parties are premised on a Deed of Lease dated 10<sup>th</sup> January, 2007. The respondent before this Court is the lessee. Clause 11(6) of the said Agreement contains an arbitration clause contemplating 3 Arbitrators for resolving the disputes and differences arising out of the said Lease Agreement.

The petitioner claims that the Lease Agreement was terminated on 21<sup>st</sup> July, 2023 and the petitioner followed up the termination with a letter on the

same day claiming an amount of approximately Rs. 6.14 crores from the respondent on account of the respondent holding over the Leased area. The respondent replied on 3<sup>rd</sup> August, 2023 denying the allegations made in the petitioners' letter but referring to the arbitration clause in the Deed of Lease. The petitioner thereafter invoked the arbitration clause by way of a Notice under Section 21 of the Act. The Notice was dated 17<sup>th</sup> October, 2023. The Notice outlines the dispute between the parties. The respondent did not send its reply to the Notice of invocation.

The objection taken by learned counsel appearing for the respondent is that the Deed of Lease has transformed to an Agreement of Tenancy by efflux of time. However, the respondent's reply dated 3<sup>rd</sup> August, 2023 does not spell out this dispute but instead relies on Clause 11.6 of the Agreement with regard to renewal of the lease- the respondent also undertook to vacate the premises by 22 July, 2023. Learned counsel for the respondent also submits that the respondent has made payment on a monthly basis to the petitioner till November, 2023.

The other contention raised on behalf of the respondent on the arbitration clause being insufficient to cover the dispute which has now been brought to the Court is answered in favour of the petitioner. The arbitration clause makes it clear that the rights and obligations of any party to the Agreement will also be governed by the arbitration clause.

This Court is hence of the view that any further construction of the arbitration Agreement including whether the Deed of Lease has been

transformed into a tenancy agreement will also be subject-matter of adjudication in the arbitration. The dispute between the parties would be evident from the tenor of the demand notice and the respondent's denial of the same. The dispute is also evident from the disagreement with regard to the construction of the Agreement.

AP-COM 78 of 2024 is accordingly allowed and disposed of by appointing Mr. Ranjit Kumar Bag, former Judge of this Court, to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 19<sup>th</sup> February, 2024 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)