

OD-47

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/860/2023
BHARAT PETROLEUM CORPORATION LTD
VS
M/S PETROLUBE CENTRE AND ORS.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 29th April, 2024.

Appearance:
Mr.. Kajal Ray, Adv.
Mr. Suman Nandi, Adv.
...for the petitioner.

The Court: Affidavit of Service filed by the petitioner be kept with the records. None appears on behalf of the respondents nor is any accommodation prayed for on their behalf. The matter has been repeatedly adjourned and the respondents despite service, remain unrepresented. It is evident that the respondents are not interested in contesting this proceeding.

This is an application under Section 11 of the Arbitration & Conciliation Act, 1996.

Briefly, the disputes between the parties arise out of a Franchisee Agreement dated 18 April, 2016, whereby the respondents were to carry out a franchisee business under the petitioner.

It is alleged that in breach of the obligations under the agreement dated 18 April, 2016, the respondents have refused to honour their obligations, and there are outstanding dues payable to the petitioner aggregating to Rs.18,69,505.68/- (inclusive of interest) till 23 July 2021 under the agreement.

Clause 16 of the arbitration agreement, inter alia, provides as follows :

- “16. (a) Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter claim or set off of BPCL/Franchisee against Franchisee/BPCL 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 referred to the Sole arbitration of Director (Marketing), BPCL or to some officer of BPCL who may be nominated by the said Director (Marketing).*
- (b) In the event the Arbitrator being unable or refusing to act for any reason whatsoever, the Director (marketing), BPCL shall designate another officer of BPCL to act as an Arbitrator in accordance with the terms of this Agreement. The Arbitrator newly*
- (c) appointed shall be entitled to proceed with the reference from the point at which it was left by his predecessor.*
- (d) The Award shall be made in writing and published by the Arbitrator within two years after entering upon the reference.*
- (e) The law applicable to such proceedings will be the Arbitrator and Conciliation Act, 1996 or any other enactment in replacement thereof.*
- (f) The language of the proceedings will be in English and the place of the proceedings will be Kolkata.*
- (g) The parties hereby agree that the Courts in the city of Kolkata alone shall have jurisdiction to entertain any application or other proceedings in respect of anything arising under this Agreement and any award or awards made by the Sole Arbitrator hereunder shall be filed in the concerned Courts in the city of Kolkata alone.”*

By a notice under section 21 of the Act, dated 16 November, 2020, the petitioner had invoked the arbitration clause. Upon receipt of notice, the respondents replied on 12 December, 2020 and refused to accede to the appointment of an Arbitrator. Hence, this application.

I find that there are live disputes between the parties arising out of the agreement dated 18 April 2016 and are covered by the arbitration clause.

In such circumstances, AP 860 of 2023 stands disposed of by appointing Hon'ble Mr. Justice Ashim Banerjee (Retd.) subject to the Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The Advocate on Record of the petitioner shall communicate this order to the Learned Arbitrator forthwith and positively within 10 days from the date of passing of this order.

With the aforesaid directions, AP/860/2023 stands disposed of.

(RAVI KRISHAN KAPUR, J.)