



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

972 ARBITRATION APPLICATION NO. 19 OF 2023

RANDHAWA ENTERPRISES
VERSUS
INDIAN OIL LIMITED

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Advocate for Applicant : Ms. Manglani Harshita M. & Mr. Vakil Satyajit R.
Advocate for Respondents No.1&2 : Mr. A. P. Bhandari

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CORAM : ARUN R. PEDNEKER, J.

DATE : 08th FEBRUARY, 2024

PER COURT:

1. Heard.
2. The learned counsel appearing for the applicant submits that in terms of the agreement dated 30.09.2014, the disputes between the parties have to be resolved by arbitration. Arbitration clause is provided in Clause 62 of the agreement dated 30.09.2014, as under:-

“62(a) Any dispute or difference of any nature whatsoever, any claim, cross claim, counter-claim or set-off 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 the Director (Marketing) of the Corporation who may either himself act as the Arbitrator or nominate some other officer of the Corporation to act as the Arbitrator. The Dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is an officer of the Corporation.

(b) In the event of the Arbitrator to whom the matter is originally referred being transferred, he shall be entitled to

continue the arbitration proceedings notwithstanding his transfer unless the Director (Marketing) at the time of such transfer or at any time thereafter, designates another person to act as Arbitrator in his place in accordance with the terms of this agreement.

(c) In the event of the arbitrator, to whom the matter is originally referred vacating his office or being unable or refusing to act for any reason, the Director (Marketing) at the time of vacation of office or inability or refusal to act, shall designate another person to act as Arbitrator in accordance with the terms of this agreement.

(d) The Arbitrator newly nominated by the Director (Marketing) under clause (b) or under clause (c) above, shall be entitled to proceed with the reference from the point at which it was left by his predecessor.

(e) It is an express term of this contract that no person other than the Director (Marketing) or a person nominated by such Director (Marketing) of the Corporation as aforesaid shall act as Arbitrator hereunder. If for any reason, Director (Marketing) is unable or unwilling or refuses or fails to act as Arbitrator or nominate an Arbitrator then the matter shall not be referred to arbitration at all.

(f) 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 Act, 1940 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.

(g) The award shall be made in writing and published by the Arbitrator within two years after entering upon the reference or within such extended time not exceeding one further year as the parties shall by writing agree. The parties hereto shall be deemed to have irrevocably given their consent to the Arbitrator to make and publish the award within the period referred to hereinabove and shall not be entitled to raise any objection or protest thereto under any circumstances whatsoever.

(h) The Arbitrator shall have power to order and direct either of the parties to abide by, observe and perform all such directions as the arbitrator may think fit having regard to the matters in difference i.e. dispute before him. The arbitrator shall have all summary powers and may take such evidence oral and / or documentary as the arbitrator in his absolute discretion thinks fit and shall be entitled to exercise all powers under the Indian Arbitration Act, 1940, including admission of any affidavit as evidence concerning the matter in difference i.e. dispute before him.

(i) It is hereby expressly agreed that the powers of the Arbitrator nominated in the matter hereinbefore mentioned shall include the power to make interim order / orders, as the circumstances of the case may justify, to appoint a receiver, commissioner or custodian by whatever name called to take possession of the property in dispute during the pendency of the proceedings and subject to such final order as may be passed by the Arbitrator and shall also have the power to issue such further orders from time to time as he may deem fit, on an application being made to him by any of the parties to the dispute where it is apprehended that the property to which it relates is in danger of being wasted, damaged, deteriorated or parted with or rights of other third parties are likely to be created thereon.

(j) The parties against whom the arbitration proceedings have been initiated, that is to say, the Respondents in the proceedings shall be entitled to prefer a cross-claim, counter-claim or set off before the Arbitrator in respect of any matter in issue arising out of or in relation to the agreement without seeking a format reference of arbitration to the Director (Marketing) for such counter-claim, cross-claim or set off and the arbitrator shall be entitled to consider and deal with the same as if the matters arising therefrom have been referred to him originally and deemed to form part of the reference made by the Director (Marketing).

(k) The Arbitrator shall be at liberty to appoint, if necessary, any Accountant or Engineer or other technical person to assist him and to act on the opinion taken from such person.

(l) The Arbitrator shall have power to make one or more award whether interim or otherwise in respect of the dispute and difference and in particular, will be entitled to make separate awards in respect of claims or cross-claims of the parties.

(m) The Arbitrator shall be entitled to direct anyone of such parties to pay the costs of the other party in such manner and to such extent as the Arbitrator may in his discretion determine and shall also be entitled to require one or both the parties to deposit funds in such proportion to meet the Arbitrator's fees and expenses as and when called upon to do so."

3. The above clause allows the adjudication of all the disputes between the parties by arbitration. The Director (Marketing) is concerned authority as the arbitrator to decide all the disputes. The applicant has no objection for the appointment of the same arbitrator.

4. The learned counsel appearing for the respondent – company submits that the present application is pre-mature, as the applicant has participated in the MDG process, which is an alternate process of dispute redressal between the parties and final order is passed in the said resolution. He submits that after the order is passed on 12.10.2023, there is no fresh notice, as such, there is no compliance of Section 11 for invoking of the arbitration proceedings. The learned counsel for the respondents submits that once the applicant has participated in the proceedings before the MDG, the arbitration proceedings would not be maintainable on account of such participation.

5. Leaving all these questions open to be raised before the concerned arbitrator, since above clause 62 provides for adjudication of disputes by arbitration, I deem it appropriate to appoint the Director (Marketing) or his nominee, as the arbitrator, in terms of Clause 62 of the agreement dated 30.09.2014. All contentions of the parties are left open to be adjudicated before the arbitrator.

6. The arbitration application stands accordingly disposed of.

[ARUN R. PEDNEKER, J.]

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