

ORDER

OCD-13

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/372/2025
TANDRA DAS AND ORS.
VS
INDIAN OIL CORPORATION LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 30th June 2025.

Appearance:-

Mr. Dibyayan Banerji, Advocate
Mr. Abhrajit Roy Chowdhury, Advocate
Mr. Shreyash Singh, Advocate
... for petitioners.

Mr. Amit Kumar Nag, Advocate
Ms. Ranjabati Ray, Advocate
... for respondents.

1. This is an application for appointment of an arbitrator for adjudication of the disputes which arose out of an agreement dated January 24, 2018, entered into between Indian Oil Corporation Limited and the petitioners. The said agreement was captioned as "INDANE (LIQUEFIED PETROLEUM GAS) DISTRIBUTORSHIP (DOMESTIC & COMMERCIAL) AGREEMENT".
2. According to the petitioners, as the grant of distributorship to the petitioners was at the behest of the respondents. The petitioners invested in the business, upon signing of the said agreement and had also executed works pursuant to the work orders issued. The cancellation of the Letter of Intent by the court and further drawal of lots as per the court's direction, entitled the petitioners to claim damages and refund of security

deposit etc. from the respondents. The petitioners contend that Indian Oil Corporation Limited, with its eyes open, had granted distributorship to the petitioners. All the documents which were required had been submitted to the respondents. On being satisfied, the respondents had executed the agreement. Thus, if the distributorship was cancelled by court's order, on a challenge by an unsuccessful candidate, the petitioners are entitled to be compensated. The courts found that the award of distributorship to the petitioners was erroneous and contrary to the rules.

3. Learned advocate for the respondents submits that the claim is barred by limitation. A learned Single Judge set aside the Letter of Intent on April 30, 2018. The Division Bench of the High Court had also upheld the order by an order dated in June 25, 2018. The said order was challenged before the Hon'ble Apex Court and the SLP was dismissed on September 26, 2018. Thereafter, the petitioners remained silent and in the year 2025, invoked the arbitration clause.
4. Having perused the documents, it appears that one Rajib Lochan Das filed a writ petition in 2016 challenging the letter of intent. The writ petition was allowed by a judgment dated April 30, 2018. The Division Bench upheld the order by a judgment dated June 25, 2018. The order was challenged before the Hon'ble Supreme Court and the SLP was dismissed in September 26, 2018. Thereafter, the respondents conducted the drawal of lots and Rajib Lochan Das was the successful distributor. Such drawal of lots was again challenged by the petitioners in a writ petition. The said

writ petition was dismissed on August 6, 2019 and an appeal was preferred. The appeal was dismissed on September 28, 2022. Thereafter, the petitioners invoked the arbitration clause by a notice dated February 19, 2025, for settlement of its claims by arbitration. .

5. In my prima facie view, the dispute cannot be said to be *ex facie* barred. The Division Bench of the Hon'ble High Court upheld the selection of Rajib Lochan Das in the second drawal of lots, by order dated September 28, 2022. The petitioners were pursuing litigation after litigation before the High Court and the Apex Court. Whether Section 14 of the Limitation Act would be applicable in this case, is a matter which will have to be decided by the learned arbitrator. Whether the claim is time barred, should not be decided by the referral court. The contention of the respondents that nothing was due and payable to the petitioners as the grant of distributorship was void ab-initio, is also a matter to be decided by the learned arbitrator. Thus, the issues of arbitrability of the dispute, limitation, admissibility of the claim etc. are left open to be decided by the learned arbitrator. The referral court is only required to see whether there is existence of an arbitration clause.
6. The parties had agreed to be bound by a binding arbitration agreement. Clause 37(a) of the said agreement provides for settlement of disputes by the sole arbitrator and the Director (Marketing) of the Corporation will act as the arbitrator. If the Director (Marketing) is unwilling or unable to act as the sole arbitrator, the matter shall be referred to an officer of the

Corporation, by the said Director. The jurisdiction of courts at Kolkata and Durgapur have been agreed upon. In my opinion, the arbitration clause has become unworkable and the mechanism has failed as neither can the Director (Marketing) nor his nominee act as an arbitrator, in view of the settled principle of law that, unilateral appointment will be contrary to the provisions of Section 12(5) of Arbitration and Conciliation Act, 1996. Thus, this Court holds that the petitioners have rightly approached this Court. All issues raised by the respondent shall be raised before the learned arbitrator. This Court has not entered into the merits of the disputes involved.

7. The application is thus disposed of by appointing Ms. Noelle Banerjee, learned Advocate, Bar Library Club, as the arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)