OCD-1

AP-COM/903/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

ANUBHAV GHOSH AND ANR.
VERSUS
BHARAT PETROLEUM CORPORATION LTD.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 27th January, 2025.

<u>*Appearance:*</u>
Mr. Chayan Gupta, Adv.
Mr. Sayantan Chatterjee, Adv.
Mr. Anirban Ghosh, Adv.
. . .for the petitioners.

Mr. Sanjib Kr. Mal, Adv.
Mr. Bimalendu Das, Adv.
Ms. Shomrita Das, Adv.
. . .for the respondents.

The Court: Supplementary affidavit is taken on record.

This is an application for appointment of a learned Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996). The petitioners' claim to be the present partners who are running the partnership firm named and styled as M/s. Ambika Service Station (hereinafter referred to as the said firm). Bharat Petroleum Corporation Ltd. (BPCL) had granted a dealership license to the said partnership firm. The petitioners rely on an agreement dated November 8, 2015 in support of the contention that they are the existing partners of the said firm. Referring to the memorandum of agreement between BPCL and the Ambika Service Station (hereinafter referred to as the service station) dated December 29, 2017, Mr.

Gupta submits that the recitals make the licence agreement with BPCL applicable to the existing partners their heirs, successors and assigns. Thus, on the strength of the agreement between the erstwhile partners and the petitioners dated November 8, 2015, the petitioners had not only become partners but also had a business relation with BPCL. They are also the successors of the erstwhile partners who had then signed the agreement with BPCL, on behalf of Ambika Service Station.

Mr. Gupta refers to the arbitration clause being Clause 19.a of the licence agreement with BPCL. The clause provides that any claim, cross-claim, counter-claim or set off of the Company against the Licensee or regarding any right, liability, act, omission or account of any of the parties to the license agreement and arising out of or in relation to the said agreement, shall be referred to the sole arbitration of the Director (Marketing) of the company or of some Officer of the Company, who may be nominated by the Director (Marketing). It is urged that, considering the wide perspective and the wide ambit of the arbitration clause, the dispute which is now subsisting between the petitioners and BPCL should be adjudicated by a sole Arbitrator, upon being nominated by this Court. Hence this application has been filed.

Mr. Gupta submits that the notice invoking arbitration was duly issued, enumerating the claims against BPCL. Reference is made to the decision of the Hon'ble Apex Court in the matter of *Cox and Kings Limited versus SAP India Private Limited and Another reported in (2024) 4 SCC 1,* in support of the contention that, although the petitioner is a non-signatory to the licence agreement, the recital of the licence agreement and the wide ambit of the dispute resolution clause, and the further fact that the petitioners were running the business since 2015, would entitle the petitioners to invoke the arbitration clause. The facts and circumstances since 2015 and the documents relating to the business would clearly indicate the petitioners' participation in the business with BPCL as partners of Ambika Service Station.

The involvement of the petitioner in the day to day running of the business cannot be ruled out. Moreover, the dispute whether BPCL at all recognizes the petitioners as partners or was bound by the terms and conditions of the licence agreement qua the petitioners were arbitrable disputes and thus, this Court should refer the matter to arbitration for adjudication of all issues.

Mr. Gupta further submits that although a suit for specific performance of the contract between the petitioners and the erstwhile partners is pending, the said suit deals with claims against the erstwhile partners and not against BPCL. The disputes which have arisen with BPCL, are not the subject matters of the suit. Further submission is that the writ proceeding which was initiated by the petitioners, was with regard to BPCL not receiving or accepting a cheque issued by the petitioners. The 'lis' before the writ court and in the mandamus appeal were against distinct and separate from the issues which the petitioners now raise for adjudication by the sole Arbitrator, to be appointed by the court. The claims against BPCL are with regard to non-supply of fuel and lubricants and also for damages. Such allegations against BPCL were not part of the writ proceeding and thus there would be no impediment on the part of this Court to refer the dispute to arbitration, keeping all points available to the parties open for adjudication by the learned Arbitrator.

Mr. Mal learned advocate for BPCL raises the question of maintainability. According to Mr. Mal, the license agreement was not entered into with the petitioners. BPCL did not recognize the petitioners. There were no dispute with the petitioners. The question of reference to arbitration did not arise.

This Court has to decide whether the petitioners, who is a non-signatory to the memorandum of agreement/dispensing pump and selling licence dated December 29, 2017, can invoke the arbitration clause and approach this Court for appointment of a Learned Arbitrator in terms of Clause 19.a of the said agreement. It appears that there was an agreement between the petitioners and the partners of Ambika Service Station. When the petitioner came to know that another undated agreement had been signed by the partners with a third party, a suit was filed for specific performance of the agreement dated November 8, 2015. The specific contention of the petitioner in the suit was that the partners had hardly taken any responsibility since the execution of the deed of 2015, but did not fulfil the terms of the agreement. The petitioners were ready and willing to perform their remaining obligation of payment of a further sum of Rs.5 lakhs. A sum of Rs.10 lakhs had already been paid and the partners (defendants) in the suit, should transfer 100% shareholding and the license granted by BPCL to the petitioners, upon due compliance of the rules and regulations of BPCL.

From the plaint case it is the evident that the partners did not perform their part of the obligation although the petitioner was ready and willing to perform their part by paying the remaining amount to the partners. The agreement between the private parties was that, the entire shareholding of the partners, including the licence granted by BPCL, would be transferred to the petitioners. It is apparent that the licence and the 100% shareholding had not been transferred to the petitioners. Thus, the suit was filed for necessary reliefs.

The first argument of Mr. Gupta that the petitioners are the present existing partners cannot be accepted by the Court from the averments and the prayers made in the suit. The next contention of Mr. Gupta that the petitioners approached the writ court when BPCL did not accept a cheque issued by them, is also not correct.

The petitioners had approached BPCL by filing a representation dated June 28, 2022, claiming that the partners of Ambika Service Station (dealer) had leased out the Petrol Pump to one Prasenjit Halder for 10 years by the agreement dated June 29, 2006. By a subsequent agreement dated November 8, 2015 executed between Munmun Ghosh, Samir Kumar Ghosh, Debasis Kumar Ghosh, Sandipan Kumar Ghosh on the one hand and the petitioners on the other hand, the control and management of the retail outlet had been taken over by the petitioners upon payment of Rs.10 lakhs to Mr. Prasenjit Halder. Further claim was that DPSL signatories were trying to sell the petrol pump by avoiding the petitioners and hence BPCL was requested to induct the petitioners as the licensees. BPCL rejected such request, inter alia, on the ground that there was no question of accepting the agreement between DPSL signatories and Sisir Paul and any third party in respect of the retail out let, since such transfer would be completely in violation of BPCL's policy. The agreements were not binding upon BPCL in any manner. BPCL had received a request from the petitioners for reconstitution of the partnership, which was duly replied to, pointing out the deficiencies in the proposal. A family dispute between the petitioners and the DPSL signatories in respect of the subject petrol pump, was private in nature and BPCL was not in a position to resolve to the internal family dispute. Such order was challenged in WPA 471 of 2023.

The learned Single Judge was of the opinion that the guidelines of BPCL had a specific procedure for reconstitution of the retail outlet dealership. The existing partners, together with the intending incoming partners, were required to complete certain formalities within the ambit of those guidelines. The writ court did not find any arbitrariness in the refusal on the part of BPCL to reconstitute the partnership firm and in not recognizing the petitioners as the incoming partners. It was specifically recorded that the erstwhile partners had not initiated any process for induction of the petitioners and had not given any details of the same to BPCL. Under such circumstances, the writ petition was disposed of without interfering with the rejection of the claim of the petitioners, but with liberty to the parties to take steps under the policy/guidelines of BPCL.

The petitioners carried the said order in appeal and MAT 633 of 2023 was filed. The Hon'ble Appeal Court noted that the petitioners' case that, the partnership was reconstituted in terms of the agreement and 96% shares of the firm was allotted in favour of the petitioners. 4% share remained with the erstwhile partners. Such position continued from 2015 to 2022. That, a cheque issued by the petitioners was not accepted by BPCL, on the ground that they had refused to recognize the appellants as licensee. The Hon'ble Division Bench held that it was not in dispute that the agreement for reconstitution of the firm/licensee was without any prior approval of BPCL. Such position was in violation of the guidelines notified by BPCL. Therefore, it would be well within the jurisdiction of BPCL to cancel the licence granted to the erstwhile partners of Ambika Service Station. However, their Lordships did not travel further, but recorded that Their Lordships were clear in their minds that the dispute was essentially private in nature, between the petitioners and the erstwhile partners. Therefore, in the best interest of the parties, it was left upto the parties to resolve the dispute and then approach BPCL for the purpose of reconstitution of the partnership, if consensus was arrived at by the parties. On the other hand, if the parties were not ad idem and they continued to fight, BPCL could cancel the licence granted in favour of the erstwhile partners. Considering the public interest, BPCL was directed to continue to run the outlet operation. BPCL was directed to open the outlet and operate the same by deploying their own staff, till the dispute was resolved between the parties.

The writ proceedings and/or proceedings before the Hon'ble Division Bench clearly indicate that from the first instance, BPCL refused to reconstitute the partnership firm and refused to recognize the petitioners as the existing partners. BPCL did not accept that the petitioners were entitled to operate the outlet. By a reasoned order, the request of the petitioners for reconstitution of the partnership was denied. The reasoned order was upheld by the learned Single

Judge and the Division Bench. The Division Bench also permitted BPCL to cancel the license if the parties could not resolve the dispute. Recognizing the petitioners as incoming partners, had to be done by a specific procedure under the guidelines of BPCL. BPCL had already informed the petitioners that reconstitution was not possible in the facts of the case. The decision of BPCL has been upheld by the Writ Court and by the Division Bench. Further, the Division Bench has recognized that even if there was an agreement between the petitioners and the erstwhile partners, the same was without prior approval of BPCL and such agreement was in clear violation of the guidelines of BPCL. Therefore, the Division Bench held that it would be well within the jurisdiction of BPCL to cancel the license granted to the erstwhile partners. Under such circumstances, liberty was granted to the parties to resolve the dispute with the erstwhile partners and then approach BPCL for further purpose of reconstitution. Admittedly, the dispute is not resolved. The suit is pending.

The Hon'ble Division Bench directed BPCL to run the outlet by deploying their own staff. The fact that the petitioners were not recognized as the partners of Amibka Service Station is a matter of record and the decision of the Hon'ble Division Bench is clear. Such point cannot be reiterated once again. The same is barred by the principle of issue estoppel. Thus, the dispute with regard to non-supply of fuel and lubricants and the claim for damages, are not germane at this stage. Only if the dispute between the private parties are resolved or the petitioners are successful in the suit, can they approach BPCL for reconstitution of the partnership as per the procedure/guidelines. BPCL may then consider such prayer. The direction of the Hon'ble Division Bench is clear. BPCL is running the retail outlet on the direction of the Division Bench. The petitioner has raised a dispute with regard such issues, which are covered by the decision of the Hon'ble Division Bench.

The fact that BPCL did not have any obligation towards the petitioners as the exiting partners, is available from the decisions of the writ court and the appeal court. Thus, nothing remains to be decided at this stage by way of arbitration. There is no cause of action which permit the petitioners to go for arbitration. The petitioners may take steps at the appropriate stage, if permissible in law.

The petitioners are non-entities, insofar as, the license agreement with BPCL is concerned. The fact that BPCL is not bound to recognize them and supply petrol for operation of the business, has been clearly held by the order of the Hon'ble Division Bench. No derivative right or interest can be claimed by the petitioners.

The contention of Mr. Gupta that the petitioners all along were performing the job as the dealers was not accepted. Rather, it was held that any attempt at reconstitution was in violation of the guidelines of BPCL. The notice invoking arbitration clearly lays down the nature of dispute which includes non-recognition of the petitioners as the partners of Ambika by BPCL and failure of BPCL to reconstitute as also to supply fuel, so that the petitioners can run the business. In short, the grievance of the petitioners is that, BPCL did not recognize the petitioners as the existing partners of Ambika Service Station in spite of the fact that the petitioners had invested money, had been operating the pump and were possession. These aspects have already been covered by the Division Bench in the mandamus appeal.

Under such circumstances, this Court is not inclined to refer the dispute to arbitration as there does not exist any agreement between BPCL and the petitioners.

The application is dismissed.

However, if the private party parties resolve their disputes and approach BPCL, the matter can be decided by the BPCL in terms of the order of the Hon'ble Division Bench.

(SHAMPA SARKAR, J.)

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