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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/207/2025

PALLAB GHOSH

VS

INDIAN OIL CORPORATION LIMITED AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 16th December, 2025.

Appearance:

Mr. T.M. Siddiqui, Sr.Adv.

Mr. Subhasis Bandopadhyay, Adv.

Mr.Saptak Sanyal, Adv.

...for the petitioner

Mr. Subhrendu Halder, Adv.

Mr. Abhirup Halder, Adv.

Mr. Aritra Saha, Adv.

...for the respondents

The Court: Affidavit of service and notice of motion filed in Court are taken on records.

The petitioner prays for appointment of a learned arbitrator, for adjudication of the dispute which arose out of a dealership agreement dated July 13, 2020. The dealership agreement contains an arbitration clause. It provides that disputes between the parties arising out of the said agreement and any claim, cross-claim, counter-claim or set-off and, any right, liability, act or omission of the parties in respect of the said agreement, shall be referred to the sole arbitrator. The Director (Marketing) of the Corporation may either

himself act as an arbitrator or nominate some other officer of the Corporation to act as an arbitrator.

Mr. Siddiqui submits that a notice was issued by the authority for various non-compliances of the Marketing Discipline Guidelines (MDG). The respondent also informed the petitioner, by issuing a show cause notice, that if the reply to the allegations made therein, was not received within 10 days from the date of issuance of such notice, steps would be taken as per clauses 8.2(iv) of MDG 2024 and clauses 7(a), 7(b), 42 and 45(a) and (k) of the dealership agreement dated July 13, 2020.

It is submitted by Mr. Siddiqui that, upon receipt of such notice a reply was issued by the petitioner on June 11, 2025. The allegations made by the respondents were denied. Meetings were held between the parties and a personal hearing was also given to the petitioner.

Thereafter, the petitioner filed an application under Section 9 of the Arbitration and Conciliation Act before learned Judge, 10th Bench, City Civil Court at Kolkata. An order of interim injunction was passed, restraining the respondents from proceeding with the show cause notice. The petitioner invoked arbitration by a notice dated November 23, 2025 and suggested the name of a sole arbitrator. The respondent did not agree to the nomination and issued a reply to the said invocation on October 13, 2025.

Learned advocate for the respondent submits that the application is premature. The show cause notice was issued under the MDG 2024. The MDG

2024 provides a mechanism for redressal of the grievances of the petitioner. The said MDG does not contain any arbitration clause. Under such circumstances, it is prayed that the application be dismissed, by relegating the petitioner to the authority, with liberty to ventilate his grievance in terms of the Marketing Discipline Guidelines.

I have considered the rival contentions of the parties.

The respondents have raised the question of jurisdiction of the learned arbitrator and arbitrability of the dispute. According to the respondent, the dispute can only be adjudicated as per MDG 2024. The MDG 2024 does not contain any arbitration clause.

In my prima facie view, the referral Court can only ascertain whether there is existence of an arbitration clause or not. The objection which has been raised before this Court by the respondents, are factual in nature and also touch the question of jurisdiction and arbitrability. The said issues can be decided under Section 16 of the Arbitration and Conciliation Act, 1996, by the learned arbitrator.

Moreover it appears that, in the show cause notice, the petitioner had been cautioned that steps shall be taken by the authority, not only under MDG but also under Clauses 7(a), 7(b), 42 and 45(a) and (k) of the dealership agreement dated July 13, 2020. The contractual relationship between the parties emanates from the dealership agreement. The dealership agreement has an arbitration clause, which provides that all disputes arising out of the said

agreement shall be referred to arbitration by the Director of Marketing and any officer appointed by the Director of Marketing. Clause 7(a) and (b) deals with the obligation of the dealer arising out of the said agreement. As per the show cause notice, if the dealer fails to comply with certain clauses in the agreement, steps would be taken under clauses 7(a) and (b) of the dealership agreement.

Clauses 7(a) and (b) provide that in the event the dealer does not comply with the clauses, not only the supplies would be discontinued, but the agreement would stand terminated. Clause 42 provides that the dealer shall, at all times faithfully, promptly, diligently observe, perform and carry out all directions, instructions, guidelines and orders given or as may be given by the Central or State Government or Chief Controller of Explosives, Government of India.

Clause 45(a) provides that if the dealer commits a breach or default of any of the terms, conditions covenants and stipulations contained in the agreement or does not adhere to the Marketing Discipline Guidelines, the Corporation could terminate the agreement.

Under such circumstances, this Court finds that the requirement to comply with the Marketing Discipline Guidelines has been incorporated in the dealership agreement as well, and the dealership agreement can be discontinued or terminated if there are breaches or acts of indiscipline with regard to the guidelines. Under such circumstances, the MDG and the dealership agreement appear to be interconnected. The mechanism provided

for appointment of an arbitrator is also contrary to law. The Director (Marketing) of the Corporation cannot act as the arbitrator. He also cannot appoint an arbitrator. The said provision is hit by section 12(5) of the Arbitration and Conciliation Act, 1996.

The application is allowed, by referring the dispute to the sole arbitrator, leaving the question of arbitrability of the dispute, admissibility of the claim, limitation etc. open and to be decided by the learned arbitrator.

Mr. Amitesh Banerjee, learned Senior Advocate, Bar Library Club, is appointed as the learned Arbitrator.

The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration.

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(SHAMPA SARKAR, J.)