O.A.Nos.66 and 67 of 2025

Ennore Tank Terminals Pvt. Ltd. ... Applicant

Vs.

IndianOil Petronas Pvt. Ltd. ... Respondent

ABDUL QUDDHOSE.J.,

These applications have been filed under Section 9 of the Arbitration and Conciliation Act, seeking for interim protection pending arbitration. The applicant has entered into a Memorandum of Understanding dated 20.04.2010 and Pipeline Services Agreement dated 13.07.2012 with the respondent, under which, it was agreed between the parties that the pipelines are being created and tailor made exclusively for the respondent to handle the products and was further agreed that the agreement was valid upto 31.05.2036, which should be the lockin period. Under the aforementioned agreements, the respondent has waived its rights to terminate the agreements either wholly or partly prior to 31.05.2036.

2. According to the applicant, under the aforementioned agreements, the respondent has agreed to receive the products only from the applicant's pipelines, except road receipts, as seen from clause 6.5. Clause 26 of the

Pipeline Services Agreement dated 13.07.2012 stipulates that in the event of default in the usage of the facilities by the respondent then it would amount to material breach and the affected party would have the right to specifically enforce the agreement. Clause 29 contains the arbitration clause. The applicant has expressed its willingness to go for arbitration in accordance with the said arbitration clause since the dispute has arisen out of the Memorandum of Understanding dated 20.04.2010 and Pipeline Services Agreement dated 13.07.2012. As per the arbitration clause, the parties have agreed to a mechanism through which the arbitration will have to be initiated.

3. At the first stage, the parties will have to seek for an amicable resolution of the dispute at the managerial level of both the parties and if the said attempt fails, the CEO/Managing Directors of the respective parties shall meet for the purpose of arriving at an amicable resolution. Only thereafter, any party can go for arbitration. The said mechanism is also not disputed by both the counsels.

4. Learned senior counsel appearing for the applicant by drawing the attention of this Court to a communication sent by the applicant to the

respondent on 02.08.2024 submits that, the first stage of negotiation i.e., to comply with the dispute resolution clause has been complied with by the applicant, as according to him, the said communication has been rejected by the respondent on 23.09.2024. However, the same is disputed by the learned senior counsel appearing for the respondent, who would reiterate that the dispute resolution mechanism as stipulated in the agreement is yet to commence.

5. According to the learned senior counsel appearing for the applicant and as seen from the affidavit filed in support of these applications, the respondent is attempting to use the pipeline of I.O.C.L. (third party) for the purpose of transporting propane, butane and other LPG gases mentioned in the agreement, thereby committing breach of contract of Pipeline Services Agreement dated 13.07.2012. To protect its interest, pending arbitration, it has filed these applications.

6. However, the learned senior counsel appearing for the respondent disputed the submissions made by the learned senior counsel appearing for the applicant and he would submit as follows:

a) I.O.C.L. is not a party to these applications and therefore, the submissions made by the learned senior counsel appearing for the applicant is not sustainable;

b) Since the applicant has achieved its target as per the Pipeline Services Agreement dated 13.07.2012, the question of granting an interim protection, pending arbitration, in favour of the applicant does not arise.

7. However, the learned senior counsel appearing for the applicant would submit that as per the contract, no target was fixed for the applicant to achieve. On the last hearing date i.e., on 13.02.2025, learned senior counsel appearing for the respondent sought time to get instructions as to whether the CEO/Managing Director of the respondent is willing to meet the CEO/Managing Director of the applicant for the purpose of arriving at an amicable settlement in accordance with clause 29 of the Pipeline Services Agreement dated 13.07.2012, which is the subject matter of dispute between the parties.

8. Today, the learned senior counsel for the respondent, on instructions, would submit that the managerial team of both the parties have

to meet at the first instance as per clause 29 of the agreement for the purpose of arriving at an amicable resolution of the dispute. He would submit that if the conciliation through the managerial level fails, only thereafter, both the CEO/Managing Director of the applicant and the respondent shall meet for arriving at an amicable settlement as per clause 29 of the Pipeline Services Agreement dated 13.07.2012.

9. However, the learned senior counsel appearing for the applicant would submit that the interim protection granted by this Court by its order dated 28.01.2025 in these applications will have to continue until further orders to enable the parties to meet and to arrive at an amicable settlement for which the learned senior counsel for the respondent has not raised any serious objection but at the same time, he would submit that any interim protection granted by this Court for the purpose of arriving at an amicable settlement may be granted without prejudice to the rights and contentions of the respondent to raise objections if the conciliation fails. The applicant is having the benefit of an interim order in these applications from this Court from 28.01.2025.

10. Learned senior counsel for the respondent, on instructions, would submit that the respondent undertakes as follows:

a) They shall not permit any third party connection to the respondent's LPG pipelines;

b) They shall not accept supplies of propane, butane and/ or LPG through any means apart from the applicant's facilities, except by road receipts.

11. This Court, after giving due consideration to the submissions made by both the counsels and after giving due consideration to the fact that the parties are willing to negotiate the dispute amongst themselves, as per the dispute resolution clause contained in clause 29 of the Pipeline Services Agreement dated 13.07.2012 and, to balance the interest of both the parties to the dispute, is issuing the following directions:

a) The applicant as well as the respondent at their respective managerial level shall meet within a period of one week from the date of receipt of a copy of this order as per the dispute resolution clause in clause 29 of the Pipeline Services Agreement dated 13.07.2012 in order to arrive at an amicable settlement of the dispute;

b) If in the managerial level, the dispute does not get resolved, the CEO/Managing Director of the respective parties shall meet thereafter within a period of three weeks from the date when the conciliation in the managerial level had failed in order to arrive at an amicable settlement as per clause 29 of the Pipeline Services Agreement dated 13.07.2012.

12. In terms of the undertaking given by the respondent before this Court, the respondent is restrained from permitting any third party connection to the respondent's LPG pipelines. They are also restrained from accepting supplies of propane, butane and / or LPG through any means apart from the applicant's facilities, except by road receipts until further orders of this Court. If the parties are unable to arrive at an amicable settlement, either of the parties are granted liberty to approach this Court once again by filing an application under Section 9 of the Arbitration and Conciliation Act, seeking to protect their interests. This arrangement is made without prejudice to the rights and contentions of the respective parties for the purpose of arriving at an amicable settlement.

ABDUL QUDDHOSE.J.,

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13. In terms of the above directions, these applications are disposed of.

25.02.2025

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