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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 07.07.2025

Order pronounced on : 28.07.2025

CORAM

**THE HON'BLE MR. JUSTICE P.B.BALAJI**

Rev.Aplo.No.8 of 2025  
in Arb.O.P.(Com.Div.)No.497 of 2024

1.M/s.Bharat Petroleum Corporation Limited,  
Marketting Division  
Rep. by its Managing Director,  
Bharat Bhavan,  
No.4 & 6, Currimbhoy Road,  
Ballard Estate,  
Mumbai – 400 001

2.The Territory Manager,  
M/s.Bharat Petroleum Corporation Limited,  
Sengipatty,  
Thanjavur District – 613 402.

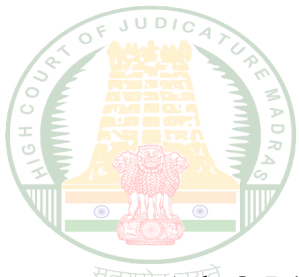
..Applicants

Vs.

M/s.Thillai Gas Service,  
Rep. by its Partner N.Nagul,  
Thillai Garden,  
No.46, Patteswaram Main Road,  
Kilakokaih, Kumbakonam,  
Thanjavur District – 612 001.

..Respondent

**Prayer:** Review Application filed under Section 114 of CPC r/w Order XLVII  
Rule 1 of CPC, to review the order dated 27.01.2025 in



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Arb.O.P(Com.Div)No.497 of 2024 to the extent that the arbitration proceedings shall be conducted as per the SCOPE Forum of Arbitration Rules.

For Applicants : Mr.P.Rajkumar Jhabakh

For Respondent : Mr.K.Selvaraj

### **ORDER**

The Review Application has been filed to review the order dated 27.01.2025 in Arb.O.P(Com.Div)No.497 of 2024 to the extent that the arbitration proceedings shall be conducted as per the SCOPE Forum of Arbitration Rules.

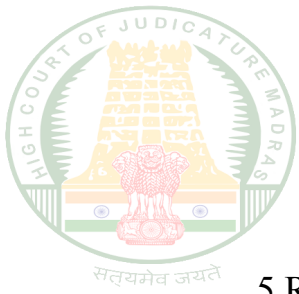
2.I have heard Mr.P.Rajkumar Jhabakh, learned counsel for the applicants and Mr.K.Selvaraj, learned counsel for the respondent.

3.In and by order dated 27.01.2025, I had allowed Arb.O.P.(Com.Div.)No.497 of 2024, which is now sought to be reviewed by the respondents in the said arbitration OP. The respondents want to modify the order to the extent requiring the arbitration proceedings to be conducted as per SCOPE forum of Arbitration Rules.



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4. The learned counsel for the review applicants would state that the 1<sup>st</sup> review applicant is a Central public sector undertaking, carrying on business of production, manufacturing, distribution and sale of petroleum products which are categorized as essential commodities. In the course of business, the applicants had entered into an agreement with the respondent in the review on 28.03.1986 and subsequently, a fresh Distributorship Agreement was entered into on 15.04.2016, owing to reconstitution of the respondent firm. Thereafter, an Addendum was executed on 20.09.2018. Inviting my attention to the Clause 38 of the fresh Distributorship Agreement dated 15.04.2016, the learned counsel for the applicants would submit that the respondent had categorically admitted that the disputes and differences shall be referred to a Sole Arbitrator and the appointment and arbitration proceedings shall be conducted in accordance with SCOPE forum of Arbitration Rules and that the Seat of arbitration would be at Sengipatti, Thanjavur and that the costs of the proceedings shall be equally borne by the parties, unless otherwise directed by the Sole Arbitrator.



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5. Referring to the said arbitration clause, the learned counsel for the applicants would state that the respondent, without approaching SCOPE forum for appointment of an Arbitrator, has approached this Court and filed the arbitration original petition under Section 11(5) of the Arbitration and Conciliation Act, which is per se violation of the arbitration agreement between the parties. He would further state that the Sole Arbitrator appointed by this Court is not entitled to fix the fees as per Schedule IV of the Act and the arbitration has to be conducted only as per the SCOPE forum of Arbitration Rules. He would further contend that the Hon'ble Supreme Court has held that the scope for judicial interference under Section 11 is very limited and this Court cannot direct the manner in which the arbitration proceedings have to be conducted, which is beyond the scope on enquiry under Section 11(6) of the Act.

6. The learned counsel for the applicants would also state that the expenses in connection with the arbitration under the SCOPE forum of Rules is more advantageous to the parties, including the respondent and hence, the respondent cannot be prejudiced in any manner, if the parties go by the SCOPE forum of the Arbitration Rules.



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7.Per contra, the learned counsel for the respondent would contend that there is no infirmity in the order passed in the OP, requiring modification as contended by the learned counsel for the applicants. He would place reliance on the decision of the Hon'ble Supreme Court in *Perkins Eastman Architects Dpc Vs. HSCC (India) Limited* reported in (2019) SCC Online SC 1517, where the Hon'ble Supreme Court has come down heavily on unilateral appointment of Arbitrators. He would emphasize that the Hon'ble Supreme Court has repeatedly held that the High Court exercising powers under Section 11, can appoint an independent and impartial Arbitrator, even when parties had agreed upon a unilateral clause regarding the appointment of Arbitrators.

8.The learned counsel for the respondent would further submit that the dispute is only with regard to the agreement dated 15.04.2016 and not Addendum Agreement dated 05.03.2019 and insofar as the agreement dated 15.04.2016, the arbitration clause contained a clause of unilateral appointment of an Arbitrator and it is only under the Addendum that the parties had agreed upon the SCOPE forum for arbitration and the dispute between the parties is only pertaining to 15.04.2016 agreement and therefore there is no infirmity in



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the order passed, appointing a learned retired Judge of this Court as the Sole Arbitrator, directing him to fix his fees as per Schedule IV of the Act and to adjudicate the disputes in accordance with law.

9.Firstly, I had found that a valid arbitration clause did exist between the parties. I had also found that the Addendum Agreement only amended certain clauses of the original Agreement dated 15.04.2016 and that by agreeing to appoint a Sole Arbitrator through SCOPE forum cannot be termed as an unilateral appointment. At the same time, I have ensured that a retired Judge of this Court, who is empaneled as an Arbitrator of SCOPE forum was appointed as the Sole Arbitrator. No doubt, in the said order, I had indicated that the learned Arbitrator can fix his fees as per Schedule IV of the Act and enter reference and adjudicate the dispute in accordance with law. I have also fixed the period of nine months for the Arbitrator to conclude the proceedings.

10.It is to be borne in mind that the petitioner in the Section 11 petition is not seeking review of the order. It is only the respondent who is before this Court contending that the arbitration has to be conducted only in terms of SCOPE forum of the Arbitration Rules and not otherwise. Even the review



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applicants are not aggrieved by the appointment of the learned retired Judge of this Court, who is empaneled with SCOPE forum of Arbitration Rules.

11.The main grievance of the parties appears to revolve around the fees payable to the Arbitrator and other incidental expenses. The learned counsel for the applicants would refer to a comparative chart and state that the respondent would stand to gain if the remuneration is fixed as per the SCOPE. However, the learned counsel for the respondent would invite my attention to the additional fees and expenses that are to be paid if the fee fixation is in terms of the SCOPE. However, the learned counsel for the respondent would state that under the SCOPE, apart from the Arbitrator's fees, heavy charges towards miscellaneous expenses in the form of administrative fees, study of pleadings, etc., are additionally payable and if these amounts are factored, the total expenses would go beyond the prescribed fees under Schedule IV of the Act.

12.I have considered this aspect and also taking into account the fact that it is the specific contention of the respondent that the Addendum Agreement has not been signed by all the partners and it is not binding on the firm as such and in light of the peculiar facts of the case where the specific contention of the

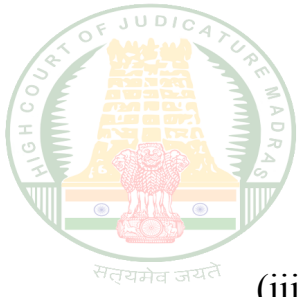


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respondent is that the dispute is only pertaining to the termination of the Agreement dated 15.04.2016 and not the Addendum Agreement dated 20.09.2018, which is also not signed by the contesting partner of the firm and at the same time, keeping in mind that a retired Judge of this Court has already been appointed, giving him liberty to fix his fees, I deem it fit to dispose of the review application in the manner following:

(i) The learned Sole Arbitrator, retired Judge of this Court is requested to fix his fees in consultation with the parties, preferably in terms of SCOPE Rules which appears to be more beneficial to both the parties, taking into consideration the serious financial constraints faced by the respondent.

(ii) As a special case, without this order being cited as a precedent, as it may defeat the very objects of SCOPE forum Rules, considering the peculiar facts and circumstances which have been discussed herein above, leading to appointment of a retired Judge of this Court and not to cause any embarrassment to the learned Arbitrator as well, the proceedings also not being held in terms of the arbitration clauses that have been referred to by the review applicant as a special case, I direct that the administrative charges shall not be imposed or demanded in the present case.



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(iii) The learned Arbitrator shall proceed with the arbitration and this Court requests the Arbitrator to pass an award, within a period of 18 months from the date of receipt of a copy of this order.

13. With the above directions, the Review Application is partly allowed.

There shall be no order as to costs.

28.07.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The Arbitrator,  
Plot No.23, Garden Street,  
VGN Monte Carlo, Gurusamy Road,  
Near VGN Minerva Apartment, Nollambur, Chennai – 600 095..



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**P.B.BALAJI.J,**

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Pre-delivery order made in  
Rev.Aplo.No.8 of 2025  
in Arb.O.P.(Com.Div.)No.497 of 2024

28.07.2025