



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-07-2025

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THE HON'BLE MR JUSTICE ABDUL QUDDHOSE

Arb O.P(COM.DIV.) No. 334 of 2025

M/s.FRIENDS EARTH MOVERS

Having its Registered office at.

N13 Lawyers Colony,Agra,

Uttar Pradesh-282005

Represented by its Sole Proprietor

Mr.Mukul Jain.

..Petitioner(s)

Vs

Indian Oil Coporation Limited

Registered and Head Quarter at,

G-9,Ali Yavar Jung Marg,Bandra

(East)Mumbai-400051

Also at.

Marketing Division,Southern Region,

Indian Oil Bhavan,139,Mahatma Gandhi Road,

(Nungambakkam High Road,Chennai-600034

Represented Through Managing Director

..Respondent(s)

a) To appoint an arbitrator to adjudicate the disputes between the

Petitioner and the Respondent as set-out in this petition, b) Direct the

Respondent to pay the cost of this petition

For Petitioner(s): Mr. Tushar Roy

for Lilly Francis

For Respondent(s): Mr. Mohammed Fayaz Ali,

**ORDER**

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This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) seeking for appointment of an Arbitrator by this Court.

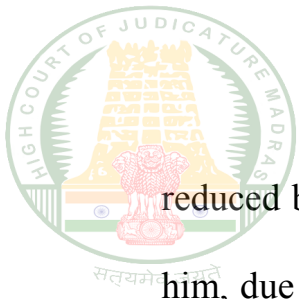
2. There seems to be a dispute between the petitioner and the respondent arising out of the contract dated 24.02.2022. The petitioner was appointed as a contractor by the respondent under the aforesaid contract dated 24.02.2022. The petitioner claims that certain sums of monies are still due and payable by the respondent to the petitioner under the contract dated 24.02.2022. The petitioner has invoked arbitration in accordance with the arbitration clause by issuing notice to the respondent on 20.05.2024 to comply with the requirements of Section 21 of the Act. A reply has also been sent by the Advocate of the respondent on 15.06.2024 denying the existence of the arbitration agreement between the parties with regard to the claim made by the petitioner against the respondent. Since there is no consensus between the parties with regard to arbitration, the petitioner has been constrained to file this petition under Section 11 of the Act seeking for appointment of an Arbitrator by this Court.



3. A counter affidavit has been filed by the respondent stating that the petitioner, having received the amount due and payable under the contract dated 24.02.2022 towards full and final settlement, cannot file this petition under Section 11 of the Act, since there is no arbitral dispute existing between the parties.

4. The learned counsel for the petitioner drew the attention of this Court to the No claim/No due certificate dated 11.05.2023 relied upon by the learned counsel for the respondent and would submit that the said letter was issued by the respondent on their behalf without the petitioner having submitted its final bill. According to the petitioner, only after submission of the final bill and on payment of the final bill amount by the respondent to the petitioner, a receipt towards full and final settlement will be issued by the respondent in favour of the petitioner.

5. The learned counsel for the petitioner also drew the attention of this Court to the final bill dated 19.11.2024 signed by the petitioner. According to him, the sum disclosed in the said bill has not been paid by the respondent to the petitioner. He would further submit that the total value of the contract awarded to the petitioner by the respondent was Rs.5 crores, but, the same was



reduced by the respondent to an extent of Rs.3,80,00,000/- only. According to him, due to the same, the petitioner has suffered losses, which includes loss of profit, for which, the petitioner is entitled to claim from the respondent through arbitration.

6. The learned counsel for the petitioner also drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of ***SBI General Insurance Co. Ltd. Vs. Krish Spinning [2024 (6) ALD 69]*** and would submit that even in cases where the respondent claims that the claim has been fully settled, but, the petitioner disputes the same, the claim of the petitioner is still arbitrable in view of the arbitration clause contained in the contract. Therefore, he would submit that the petitioner having satisfied the requirements of Section 21 of the Act and since the contract contains an arbitration clause, this Court has to necessarily appoint an Arbitrator as prayed for in this petition.

7. On the other hand, the learned counsel for the respondent drew the attention of this Court to Clause 6.7.1.0 of the General Conditions of the Contract and would submit that since the claim of the petitioner has been settled, the arbitration clause contained in the contract gets discharged. Therefore, he would submit that the present petition is not maintainable. He



would further submit that the bill dated 19.11.2024 relied upon by the learned counsel for the petitioner is not the final bill. He would submit that once the claim of the petitioner has been settled by the respondent, the petitioner cannot raise another bill against the respondent, as the arbitration clause contained in the contract has already got discharged.

DISCUSSION:-

8. While deciding a petition under Section 11 of the Act, this Court will have to look into whether there exists an arbitration clause or not; and whether the claim of the petitioner is an arbitrable dispute or not. In the case on hand, the respondent contends that the claim of the petitioner has been fully settled. However, the same is disputed by the learned counsel for the petitioner. According to the petitioner, only after the petitioner raises the final bill and payments are made thereof by the respondent in accordance with the final bill, the claim of the petitioner will get settled as per the terms and conditions of the contract. The respondent has relied upon No claim/No due certificate dated 11.05.2023 signed by the parties. According to the respondent, as per the No claim/No due certificate dated 11.05.2023, the claim of the petitioner has been fully settled by the respondent. However, the petitioner contends that the contract value awarded to the petitioner under the contract dated 24.02.2022



was for a sum of Rs.5 crores, but, the same has been reduced by the respondent to a sum of Rs.3,80,00,000/-. According to the petitioner, in view of the same, they have suffered losses, for which, they claim that the respondent will have to compensate them. Though the said contention is disputed by the respondent, this Court, while deciding a petition under Section 11 of the Act, cannot adjudicate the said dispute, as this Court is only a referral Court having only a limited scrutiny. If at all the said dispute can be adjudicated, it can be adjudicated only by the Arbitrator and not by this Court.

9. The arbitration clause contained in the contract dated 24.02.2022 is re-produced hereunder:-

36 Dispute Resolution:

If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Agreement, such dispute or difference shall be resolved through arbitration as per the procedure mentioned herein below:

- a) The dispute or difference shall be referred to a Sole Arbitrator.
- b) The arbitration shall be through Director (M), IOCL, HO, Mumbai (Name of institutional Arbitration Forum).
- c) The Rules of the above-mentioned Institutional Arbitration Forum shall be applicable to the arbitral



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proceedings.

d) The Indian Arbitration and Conciliation Act 1996 and Arbitration and Conciliation (Amendment) Act 2015 or any statutory modification or re-enactment thereof and the rules made there under for the time being in force shall apply to the arbitration proceedings under this clause.

e). The seat of arbitration shall be at Chennai.

f) The proceedings shall be conducted in English language.

g) The cost of the proceedings shall be equally borne by the parties. unless otherwise directed by the sole arbitrator.

h) The following shall not be referred to arbitration:

i) Disputes having financial claims less than Rs. 5 lakhs Notwithstanding anything contained herein above (except h'), upon arising of dispute the parties may agree to refer the same to arbitration of mutually acceptable sole arbitrator including employee of Indian Oil Corporation Ltd.

10. Clause 6.7.1.0 of the General Conditions of the Contract is relied upon by the respondent to contend that once the full and final settlement is made the arbitration clause contained in the contract will get discharged. Clause 6.7.1.0, referred to supra, is re-produced hereunder:-



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“6.7.0.0: DISCHARGE OF OWNER'S LIABILITY:

6.7.1.0. The acceptance by the CONTRACTOR of any amount paid by the OWNER to the CONTRACTOR in respect of the final dues of the CONTRACTOR under the Final Bill upon condition that the said payment is being made in full and final settlement of all said dues to the CONTRACTOR shall, without prejudice to the notified claims of the CONTRACTOR included in the Final Bill in accordance with the provisions under Clause 6.6.3.0 hereof and associated provisions thereunder, be deemed to be in full and final satisfaction of all such dues to the CONTRACTOR notwithstanding any qualifying remarks, protest or condition imposed or purported to be imposed by the CONTRACTOR relative to the acceptance of such payment, with the intent that upon acceptance by the CONTRACTOR of any payment made as aforesaid, the Contract (including the arbitration clause) shall, subject to the provisions of Clause 6.8.2.0 hereof, stand discharged and extinguished except in respect of the notified claims of the CONTRACTOR included in the Final Bill and except in respect of the CONTRACTOR's entitlement to receive the unadjusted portion of the Security Deposit in accordance with the provisions of Clause 6.8.3.0 hereof on successful completion of the defect liability period.”



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11. In the instant case, the petitioner contends that they never submitted the final bill to the respondent prior to the issuance of No claim/No due certificate dated 11.05.2023. The petitioner has also placed on record the final bill submitted by them with the respondent, which is dated 19.11.2024, whereas the No claim/No due certificate was issued on 11.05.2023. Therefore, it cannot be conclusively established by this Court in an application filed under Section 11 of the Act as to whether the claim of the petitioner has been fully settled or not, and it is for the Arbitrator to adjudicate the same.

12. In *SBI General Insurance Co. Ltd. Vs. Krish Spinning* [2024 (6) ALD 69]; and *Interplay between arbitration agreements under the Arbitration and Conciliation Act, 1996, and the Indian Stamp Act, 1899* [AIR 2024 SC 1], the Hon'ble Supreme Court has made it clear that the scope of judicial interference under Section 11(6-A) of the Act is only confined to the limited scrutiny of “prima-facie existence of the arbitration agreement, nothing more and nothing less” and the competence of the Arbitral Tribunal under Section 16 of the Act confers complete arbitral autonomy to rule, determine and act on the issues pertaining to impleadment or deletion of a party, signatory or non-signatory, arbitrability or non-arbitrability, necessary or not necessary party, joinder or



non-joinder to the arbitration in depth even if the ruling is contrary to that of the referral court under Section 11 of the Act.

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13. Therefore, while deciding a petition filed under Section 11 of the Act, the law is now well settled as seen from the decisions referred to supra that the referral court will have to look only into the prima-facie existence of the arbitration clause and once the court is satisfied that there exists an arbitration clause, necessarily, the court will have to refer the dispute to arbitration. Therefore, in the instant case, since there exists an arbitration clause in the contract dated 24.02.2022, and since the petitioner has also complied with the requirements of Section 21 of the Act, and since there has been no consensus between the parties with regard to the name of the Arbitrator, necessarily, this Court will have to appoint an Arbitrator as prayed for in this petition. Accordingly, this petition is allowed as prayed for with the following directions:-

(a) This Court hereby appoints Hon'ble Mr.Justice T.Ravindran, former Judge of this Court, residing at No.27, 3rd Avenue, Indira Nagar, Adyar, Chennai-20, Mobile No.9941350926, as the Sole Arbitrator to



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adjudicate the dispute between the petitioner and the respondent arising out of the contract dated 24.02.2022.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration/fees as per the schedule agreed upon by the parties to the dispute.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) The respondent is at liberty to raise all objections including the objections, which have been raised through their counter affidavit filed before this Court, by filing an application under Section 16 of the Act before the Arbitrator, or through their statement of defence filed in the arbitral proceedings.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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