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Arbitration Original Petition (Com.Div.) No.352 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Original Petition (Com.Div.) No.352 of 2025

M/s.Indian Oil Corporation Limited,
represented by Mr.RM.Naarathinam
Senior Manager (Retail Sales)
Indian Oil Corporation Limited,
Trichy Divisional Office, "Triveni"
3rd Floor, B-35, Shastri Road,
Thillai Nagar, Trichy - 620 018.

.... Petitioner

Vs.

K.Babu Santhi

.... Respondent

Arbitration Original Petition (Com.Div.) filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint a Sole Arbitrator to adjudicate the dispute arising out of Memorandum of Agreement dated 03.02.1988.

For Petitioner : Mr.Mohammed Fayaz Ali
For Respondent : Mr.K.Moorthy

ORDER

This petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 [for brevity 'the Act'] for



appointment of a Sole Arbitrator to adjudicate the disputes arising under the Memorandum of Agreement dated 03.02.1988 between the petitioner Corporation and the respondent.

2. The case of the petitioner is that the respondent was appointed as a retail outlet dealer of the Indian Oil Corporation under the dealership agreement dated 03.02.1988 to operate the retail outlet at Manikandam, Tiruchirapalli District, under the name and style of M/s.Santhi Auto Agencies.

3. The Government of India introduced initiatives to encourage cashless transactions. In view of the same, the Corporation instructed the outlet dealers to purchase card swiping machines at the retail outlet for the convenience of the customers who desire to use credit/debit cards for purchase of fuel. In order to encourage such cashless transactions, the Government of India had introduced an incentive at the rate of 0.75%, which shall be paid to the customer during every purchase on its value of purchase made through credit/debit cards.



4. The case of the petitioner is that they discovered that the respondent was involved in excessive cashless transactions at M/s.Santhi Auto Works, which has far exceeded the supplies that were made and the stock that were available at the retail outlet. Ultimately, it was found that for the period from March'2019 to July'2021, fraudulent transactions had taken place at the retail outlet to the tune of Rs.746.67 crores against the supply made to the retail outlet to the tune of only Rs.31.11 crores. On coming to know of the fraudulent activity, a complaint was also given to the Superintendent of Police on 21.07.2021. A First Information Report came to be registered and investigation is pending.

5. In view of the above, steps were taken for recovery of amount from the respondent and hence, a trigger notice was issued under Section 21 of the Act on 26.02.2025 to the respondent. Pursuant to the same, the present petition has been filed before this Court.

6. The respondent has filed a counter affidavit. The respondent has taken a stand that the dealership agreement is area specific and admittedly, the area was changed from Jambunathapuram to Manikandam and thereby the old agreement will not be in force. There



was reconstitution of the partnership firm and one Rajasekar took over the outlet and was running the outlet. An application for reconstitution was also submitted in this regard and it was accepted by the petitioner corporation. Apart from that, certain serious fraud has been alleged against the respondent. Under such circumstances, in the absence of a valid agreement between the parties and on the ground of serious fraud alleged against the respondent, the present petition filed under Section 11(6) of the Act is not maintainable.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. The applicant and the respondent had entered into the dealership agreement dated 03.02.1988 and Clause 69 of the Agreement provides for referring the dispute to arbitration.

9. The defence taken by the respondent is that this agreement pertains to running the dealership at Jambuathapuram. Admittedly, it was shifted from Jambunathapuram to Manikandam and thereby, the earlier dealership agreement dated 03.02.1988 is no more in force and therefore, there is no valid agreement between the parties.



10. The other ground raised by the respondent is that there was reconstitution in the year 2011 and one P.Rajasekar had taken over the dealership and therefore, the present petition filed against the respondent is not maintainable.

11. In the above grounds raised by the respondent, the petitioner has taken a stand that originally the retail outlet was commissioned at Jambunathapuram. Thereafter, the respondent, through letter dated 11.10.2004, informed the petitioner corporation that the outlet is being re-located to Manikandam, Trichy. This request was accepted and the respondent was permitted to run the outlet at Manikandam, Trichy District. This does not mean that the earlier agreement between the parties dated 03.02.1988 will automatically cease to exist and this agreement will continue and the specific stand taken by the petitioner is that this agreement will continue to govern the parties in spite of re-sitement of the retail outlet from Jambunathapuram to Manikandam.

12. The other ground raised is that an application was submitted by the respondent for reconstitution. This reconstitution



proposal was never accepted by the petitioner till the termination of the retail outlet. In fact, show cause notice was issued in this regard for breach of contract since inducting the said Rajasekar will constitute violation of terms and conditions of the dealership agreement. Thus, the petitioner is not even admitting reconstitution and they have taken a stand of breach of agreement which resulted in the issuance of show cause notice.

13. In the considered view of this Court, the issue as to whether the re-location/re-sitement of the retail outlet will automatically cancel the earlier agreement dated 03.02.1988 is an issue which can only be raised before the arbitrator and which will be considered on its own merits and in accordance with law. As on today, there is a valid agreement dated 03.02.1988, which contains an arbitration clause and it satisfies the requirement of Section 7 of the Act.

14. Insofar as the reconstitution is concerned, it is yet another factual issue, which can be raised only before the Arbitrator and it cannot be gone into by this Court while dealing with the petitions filed under Section 11 of the Act.



15. The third issue raised on the side of the respondent is that there is allegation of serious fraud against the respondent and therefore, the matter cannot be referred to the arbitrator.

16. The law on this issue has also been settled by the Apex Court in ***Managing Director, Bihar State Food and Civil Supply Corporation Limited v. Sanjay Kumar [2025 SCC Online SC 1604]***. The Apex Court held that allegations of fraud *per se* need not foreclose a petition filed under Section 11 of the Act. That apart, serious allegations of fraud i.e. fraud as regards the very agreement itself may require scrutiny on a case to case basis. In the case in hand, the petitioner has alleged that the respondent has committed fraud by swiping card for a value much beyond the stock that was supplied by the petitioner corporation. This is a factual dispute which can always be considered by the Sole Arbitrator. Since these are facts, it will be borne out by records. Just because a police complaint has been given in this regard that does not automatically bring this case under the category of serious fraud regards the very agreement itself. Therefore, it is left open to the parties to raise all the grounds before the Arbitrator and which will be dealt with on its own merits and in accordance with law.



17. In the light of the above discussion, this Court is inclined to proceed further and appoint Sole Arbitrator and refer the dispute between the petitioner and the respondent to the Sole Arbitrator, which will be dealt with on its own merits and in accordance with law.

18. In the light of the above discussion, this Court appoints Hon'ble Mr.Justice V.Parthiban, Former Judge, Madras High Court, No.5069, 12th Street, Z Block, Anna Nagar, Chennai - 600 040 [Mobile No.94440 94401], as the Sole Arbitrator and the Hon'ble sole Arbitrator is requested to adjudicate the arbitral disputes that had arisen between the parties and render arbitral award by holding sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble Sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Accordingly, this petition is disposed of.

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gm



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N.ANAND VENKATESH, J.

gm

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