

OCD-17

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/157/2026

SMT NABANITA MALAKAR

VS

INDIAN OIL CORPORATION LIMITED AND ANR

BEFORE:

The Hon'ble JUSTICE GAURANG KANTH
Date : 1st April, 2026.

Appearance:

Mr. Aditya Mondal, Adv.
Mr. Washim Akthir Dafadar, Adv.
...for the petitioner

Mr. Subhrendu Halder, Adv.
Mr. Abhirup Halder, Adv.
Ms. Aritra Saha, Adv.
...for the respondent

The Court: Affidavit of service is taken on record.

The petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a sole Arbitrator to adjudicate the disputes between the parties.

The petitioner was appointed as a non-exclusive dealer of the respondent for the retail sale and supply of petrol, HSD, motor oil, grease etc. at Madhya Kashiyabari, Haldibari, District Cooch Behar pursuant to a retail dealership agreement dated 29.11.2021 executed between the parties. Subsequently, disputes arose between the parties and the respondent, by a

termination letter dated 24.01.2023, terminated the said dealership agreement.

Being aggrieved thereby, the petitioner filed a writ petition being WPA No. 347 of 2023 before the Circuit Bench of this Court at Jalpaiguri. This Court, vide order dated 27.11.2024 dismissed the writ petition on the ground of existence of arbitration agreement between the parties and granted liberty to the petitioner to avail the remedy before the appropriate arbitral forum in terms of the arbitration clause. The said order was taken in appeal in MAT No. 109 of 2024. The Division Bench of this Court vide its order dated 25.04.2025 did not interfere with the order of the writ court. The order of the Division Bench was unsuccessfully challenged before the Hon'ble Supreme Court. The Special Leave Petition preferred by the petitioner came to be dismissed by order dated 04.09.2025.

Thereafter, the petitioner, by notice dated 06.12.2025, invoked the arbitration clause contained in Clause 62(a) of the agreement in terms of Section 21 of the Arbitration and Conciliation Act, 1996 and proposed the name of Mr. Biplab Ghosh to act as the sole Arbitrator. The respondent vide letter dated 05.01.2026 did not consent to the said appointment, compelling the petitioner to approach this Court by way of the present petition under Section 11 petition for appointment of an Arbitrator.

Learned Counsel for the respondent admits the existence of the agreement and does not dispute Clause 62(a) of the said agreement.

This Court notes that Clause 62(a) of the agreement provides for appointment of an Arbitrator by one of the parties. However, the law is now settled that unilateral appointment of an Arbitrator by an interested party is

impermissible. At this stage, while exercising jurisdiction under Section 11 of the Act, this Court is only required to examine the *prima facie* existence of an arbitration agreement.

Having considered the materials placed on record and the submission advanced by the parties, and since the arbitration agreement is not in dispute, this Court is satisfied that the parties can be referred to arbitration. Since the parties have failed to constitute the arbitral tribunal in accordance with the agreed procedure, this Court considers it appropriate to exercise its jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996.

Accordingly, this Court appoints Mr. Sourojit Dasgupta, Advocate (Mobile No. 8697542775) as the learned sole Arbitrator to adjudicate the disputes between the parties. The learned Arbitrator shall communicate his consent to the Registrar, Original Side, within a period of two week from the date of receipt of this order.

The parties undertake not to seek unnecessary adjournments before the learned Arbitrator.

The appointment of the learned sole Arbitrator shall be subject to compliance with Section 12 of the Arbitration and Conciliation Act, 1996.

The learned sole Arbitrator shall be entitled to fix the remuneration in accordance with the Fourth Schedule of the Act.

A copy of this order shall be communicated by the petitioner to the learned sole Arbitrator for necessary action.

All issues regarding arbitrability of the disputes, limitation or any other issue are kept open to be adjudicated by the learned sole Arbitrator.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

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