HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Arbitration Application No. 18/2020

M/s Blue City Indane, Through Its Representative Smt. Urmila Godara W/o Rajendra Godara, Aged About 37 Years, R/o 357 Laxmi Nagar Paota B Road, Jodhpur.

----Petitioner

Versus

Indian Oil Corporation Ltd., Through The Chief Area Manager, Iocl Office, Sector -12, Chopasani Housing Board, Jodhpur - 342008

----Respondent

For Petitioner(s) : Ms. Shreshtha Mathur
For Respondent(s) : Ms. Akshiti Singhvi

HON'BLE MS. JUSTICE REKHA BORANA

Order

07/05/2024

1. The present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed on behalf of the applicant for appointment of independent and impartial Arbitrator for resolution of the disputes as have arisen between the parties.

2. It has been submitted in the application that in the year 2018, distributorship of LPG was awarded to the firm by respondent-Indian Oil Corporation and agreement dated 13.04.2018 was entered into between the parties for the purpose. The said distributorship was qua Bhadwasiya area of Jodhpur. In terms of the agreement, the firm undertook all formalities and made efforts so as to perform the functions as assigned vide the dealership agreement. However, despite the efforts of the firm,

on an average 1500-2000 cylinders could only be distributed by the firm. It has been alleged in the application that the other gas agencies in the adjoining areas were having 25,000-30,000 connections whereas the firm was only granted 1500-2000 connections which caused a huge loss to the firm and it became difficult for it to even survive. Therefore, regular communications were made to the respondent-Corporation to increase the number of connections to the firm or to transfer the connections from the other agencies to it. Even name of such agencies were specified by the firm. However, no additional connections were awarded/transferred to the firm and hence, the dispute arose.

3. As the agreement in question contained an arbitration clause, the notice under Clause 36(a) of the agreement was served on the respondent-Corporation on 03.02.2020. The same been not responded to, the present application for appointment of an independent and impartial Arbitrator by the Court has been preferred.

4. Learned counsel for the applicant submitted that a dispute does exist between the parties and the same deserves to be referred to arbitration in terms of the Arbitration Clause by which both the parties are governed. Whether the disputes are arbitrable or not, should be left for the Arbitrator to decide and this Court is not required to go into the said question.

In support of her submission, counsel relied upon the judgment passed by Jaipur Bench of this Court in the case of ***Rajesh Indian Oil Highway Facility vs. Indian Oil Corporation Ltd.; S.B. Civil Arbitration Application No.96/2018*** (decided on 10.05.2019).

5. Reply to the application has been filed on behalf of the respondent-Corporation wherein firstly, it has been averred that the alleged notice dated 03.02.2020 was never served on it.

Further, a preliminary objection has been raised that the agreement in question did not prescribe for allotment/transfer of any specified number of connections to a distributor and hence, the respondent-Corporation was not under any contractual obligation to transfer the same from any other distributor. However, on request of the firm, attempts were made to transfer certain connections from the other distributors to the firm but the said other distributors assailed the said orders of the corporation before Court of law wherein interim orders were granted in their favour. Therefore, the respondent-Corporation could not have transferred any additional connections in favour of the firm.

6. Learned counsel further submitted that even otherwise the circular dated 04.01.2018 vide which the policy of "market restructuring-transfer of customers" was introduced, has been quashed by the Division Bench of Bombay High Court in ***Mrs. Shailaja R. Khanvilkar & Ors. Vs. Union of India & Ors.; Writ Petition No.8753/2018*** (decided on 30.09.2019). Therefore, as of date, the respondent-Corporation is not even authorised/ entitled to transfer the connections of any one distributor to the other.

7. With the above submissions, counsel submitted that as of date, there exists no dispute which can even be adjudicated by the Arbitrator.

8. Heard learned counsel for the parties and perused the material available on record.

9. So far as the Arbitration Clause 36(a) in question is concerned, the same reads as under:

> *"36(a) All questions, disputes and differences* ***arising under or in relation to this Agreement*** *shall be referred to the sole arbitration of an officer to be nominated by the Director (Marketing) of the Corporation The arbitrator to whom the matter is originally referred by the Director (Marketing), on his being transferred or vacating his office or being unable to act, for any reason, the Director (Marketing) may designate any other officer to act as arbitrator. It is also the express term of this Agreement that no person other than the officer designated by the Director (Marketing) as aforesaid shall act as arbitrator. The award of the Arbitrator so appointed shall be final, conclusive and binding on all Arbitration & of the parties to the Agreement and provisions Act, 1996 or any statutory modification or re-enactment Conciliation thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause."*

A bare perusal of the above clause makes it clear that the same prescribes of reference to Arbitration of the disputes, questions or differences arising under or in relation to the agreement. So far as the dispute as raised in the present application is concerned, this Court is of the clear opinion that same does not even fall within the ambit of the terms/conditions of the agreement. The agreement in question nowhere specifies that a distributor is mandatorily to be granted a specified number of connections. Neither does the agreement prescribe for any obligation on part of the respondent-Corporation to transfer/allot specific number of connections to a particular distributor.

Further, not a single averment in the complete application has been made by the applicant as to which term of the agreement has not been complied with or has been breached by the respondent-Corporation. Further, it has also not been

mentioned as to which clause of the agreement, the dispute pertains.

As is the settled position of law, only 'arbitrable disputes' can be referred to arbitration.

In the case of ***BCC-Monalisa (JV) vs. Container Corporation of India Limited; ARB.P. No.933/2022 and I.A No.5219/2023*** (decided on 28.08.2023), Hon'ble Delhi High Court held as under :

> *"As stated above, the court even in this limited jurisdiction under Section 11, could conduct a preliminary enquiry to find out if the claims are ex facie arbitrable. This court is not relegated to a post office to be completely oblivious to the obvious legal infirmities in the request for appointment of arbitrator. It is not enough for the Petitioner to say that let the arbitrator decide all the jurisdictional issues. The Petitioner must cross the minimum threshold that is required in law as stated above, before the court can act upon such request. Respondent, unless it concedes to such request, cannot be mechanically burdened with the arbitration proceedings, and the costs attached thereto, even for adjudication of jurisdictional issue, that is otherwise apparent at the stage of Section 11 enquiry itself."*

10. This Court is of the clear opinion that the dispute as sought to be raised by the applicant does not pertain to any condition of the agreement as entered into between the parties. Without any breach/non-compliance/non-adherence of conditions of the agreement having been averred, it cannot be observed that a question of dispute or difference has arisen out of the agreement in question. That being so, there is no dispute as such which can be said to be 'arbitrable' and can be referred to arbitration in terms of Clause 36(a) of the agreement.

Arbitration presupposes a 'dispute' and the dispute ought to have arisen out of the agreement governing the parties. A dispute, foreign to the agreement as entered into between the parties, cannot be governed by the Arbitration clause and cannot be referred to arbitration in terms of the said clause. This Court hence, does not find any dispute which can be said to be arbitrable so as be referred to arbitration.

11. The application is hence, **dismissed**.

(REKHA BORANA),J

314-Kashish/T.Singh/-