

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/PETN. UNDER ARBITRATION ACT NO. 71 of 2020****With****CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 1 of 2022  
In R/PETN. UNDER ARBITRATION ACT NO. 71 of 2020**

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**M/S BHARMAL INDANE SERVICE****Versus****INDIAN OIL CORPORATION CORPORATION LIMITED**

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Appearance:

MR JF MEHTA(461) for the Petitioner(s) No. 1

MR AKSHAY A VAKIL(5473) for the Respondent(s) No. 1

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE  
ARAVIND KUMAR****Date : 25/02/2022****ORAL ORDER**

1. This petition is filed under Section 11(6) of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") seeking for resolution of dispute which is said to have been arisen between the parties for appointment of an arbitrator as agreed to between the parties pursuant to agreement dated 25.7.1983.

2. Heard Mr. J.F. Mehta, learned counsel appearing for petitioner and Mr. Akshay Vakil, learned counsel appearing for respondent. Perused the case papers.

3. Petitioner is a proprietary concern and was allotted a

dealership for dealing in Liquefied Petroleum Gas (LPG) and a dealership agreement was entered into between the parties on 25.7.1983. During the year 2020 i.e. on 3.3.2020 and 17.3.2020, an inspection team had conducted the inspection and after noticing several irregularities, same was pointed out by the inspection team to the petitioner by communication dated 20.3.2020. Petitioner is said to have replied to said irregularities.

4. It is the grievance of petitioner that without issuing any show cause notice, a letter was addressed to the petitioner imposing a penalty of Rs.2,40,979/-. Hence, contending a dispute has arisen between the parties is relatable to agreement dated 25.7.1983, a notice came to be issued on 17.9.2020 to respondent and same having not been replied, present petition has been filed seeking appointment of arbitrator.

5. Learned counsel appearing for the petitioner has reiterated the grounds/contentions urged in the petition.

6. Whereas the learned counsel appearing for respondent has submitted that dispute which is said to be raised by the petitioner relates to interpretation of policy decision and it would

not be amenable for being resolved through arbitration and remedy of the petitioner is elsewhere. He would also submit that validity of guidelines cannot be questioned before the arbitrator and as such, there is no need or necessity for appointment of arbitrator. He would also draw attention of the Court to Clause 37 of agreement dated 25.7.1983 to contend that arbitrator, if any to be appointed, shall be as indicated thereunder and as such, he prays for suitable orders being passed.

7. Having heard learned counsel appearing for the parties and on perusal of the record, it would emerge therefrom that undisputedly, parties have agreed for resolution of dispute through arbitration namely, in respect of a dispute arising out of agreement dated 25.7.1983. The arbitration clause so agreed upon reads thus:

“Any dispute or difference of any nature whatsoever or regarding any rights, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the DIRECTOR (MARKETING) of the Corporation or of some Officer of the Corporation who may be nominated by the DIRECTOR (MARKETING). The Distributor will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an officer of the Corporation or that he has to deal with the matters to which the contract relates or that in the

course of his duties as an officer of the Corporation he had expressed views on all or any other matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reasons, the DIRECTOR (MARKETING) as aforesaid at the time of such transfer vacation of office or inability to act, shall designate another person to act as arbitrator in accordance with the terms of the agreement. Such persons shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the DIRECTOR (MARKETING) or a person nominated by such DIRECTOR (MARKETING) of the Corporation as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provisions of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof and rules made thereunder for the time being in force shall apply to arbitration proceedings under this clause.”

8. A plain reading of the above clause would indicate that parties have agreed that disputes arising out of said agreement would be resolved through alternate dispute redressal forum namely, arbitration. It would be apt and appropriate at this juncture to note the contention raised by learned counsel appearing for respondent namely, that there is no arbitrable dispute. By elaborating his submission, it has been contended that penalty imposed is on the basis of policy guideline which was in force as on the date it was imposed on petitioner and correctness, legality and validity of the policy guidelines cannot

be the subject matter of arbitration. As to whether there is an arbitrable dispute or not and whether the Arbitral Tribunal has got jurisdiction to decide the dispute is again an issue which can be decided by the arbitrator himself/herself by ruling on the jurisdiction as contemplated under Section 16 of the Act. As such, without going into the merits of said case and rejecting the contention regarding interpretation of policy guidelines as sought to be canvassed by learned counsel appearing for the petitioner, prayer for referring the matter to arbitration cannot be denied.

9. Insofar as the contention regarding the person named in the arbitration agreement alone should be nominated is a contention which cannot stand the test of law in the teeth of Sub-Section (5) of Section 12 of the Act read with Seventh Schedule namely, where officials or persons interested in the outcome of the dispute cannot be held as persons competent to arbitrate. In that view of the matter, contention raised by the learned counsel appearing for the respondent stands rejected.

10. For the reasons afore-stated, I proceed to pass the following

**ORDER**

- (i) Petition is allowed.
- (ii) Mr. Anil Pragmalbhai Barad, Member, Industrial Court, BhavnagarI having his address at Hinglaj Krupa, 7, Parsana Nagar, Jamnagar Road, Rajkot-360001, is hereby appointed as Sole Arbitrator to arbitrate the dispute between the parties pursuant to agreement dated 25.7.1983. It is made clear that said arbitrator would be at liberty to decide the issue with regard to jurisdiction and arbitrability of the dispute and all contentions in that regard are kept open.
- (iii) Registry to communicate this order to Sole Arbitrator forthwith by speed post.
- (iv) No order as to costs.
- (v) Civil Application No.1 of 2022 does not survive for consideration and it stands rejected.

RADHAKRISHNAN K.V.

**(ARAVIND KUMAR,CJ)**