

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT
AT JABALPUR**

Case No.	Arbitration Appeal No.80/2021
Parties Name	Indian Oil Corporation Ltd. and others Vs. M/s Tatpar Petroleum Centre
Date of Order	27/01/2022
Bench Constituted	<u>Division Bench:</u> Justice Sheel Nagu Justice Purushaindra Kumar Kaurav
Judgment delivered by	Justice Sheel Nagu
Whether approved for reporting	No
Name of counsels for parties	Shri Aditya Adhikari, Senior Advocate with Shri Deepak Tiwari, Advocate for the appellants. Shri R.K. Sanghi, Advocate for the respondent.
Law laid down	-
Significant paragraph numbers	-

J U D G M E N T

27.01.2022

Per: Sheel Nagu, J.

This appeal filed under Section 37(1)(b) of the Arbitration & Conciliation Act, 1996 (for brevity "*the 1996 Act*") by the appellant–Indian Oil Corporation Ltd. assails the order dated 03.09.2021 passed in MJC AV No.73 of 2021 by Commercial Court, Jabalpur allowing an application of the respondent preferred under Section 9(1)(d) of the 1996 Act restraining the IOC from cancelling MS(HD)(B Site) retail outlet dealership.

2. Learned counsel for the rival parties are heard on the question of admission and so also on final disposal.

3. The sole argument of the learned senior counsel for the appellant-IOC is that in the given facts and circumstances where a

mere show cause notice dated 31.03.2021 for termination of the dealership was issued and a reply was taken from the respondent and personal hearing was afforded to the respondent. But since no decision as regard termination of dealership was reached by the IOC, no cause arose to the respondent to invoke Section 9(1)(d) of the 1996 Act. It is submitted that in the given facts and circumstances since there was no dispute between the parties in the absence of any final decision taken by the IOC, the question of approaching the Court under Section 9 of the 1996 Act was not there.

4. Learned counsel for the appellant further submits that though the expression 'dispute' is not defined in the definition clause contained in Section 2 of the 1996 Act but by its very dictionary meaning and the usage to which it is put in common parlance it is evident as daylight that dispute is not unilateral but arises when one party asserts and the other refutes the assertion and a decision is taken which is not to the liking of one of the party who can then triggered the mechanism under Section 9 of the 1996 Act. It is submitted that unless and until the IOC took a decision regarding termination after taking the reply of the respondents and affording him personal hearing, the respondent has no cause of action in the absence of arising of any dispute to approach the Court under Section 9 of the 1996 Act.

5. Reliance is placed by the learned senior counsel on the provision of Section 7 of the 1996 Act.

6. *Per contra*, learned counsel for the respondent relying upon the decision of *AIR 1952 SC 119 (Ruby General Insurance Co. Ltd. Vs Pearey Lal Kumar and another)*, 2007 (3) SCC 686 (*M/S. Agri Gold Exims Ltd vs M/S. Sri Lakshmi Knits & Wovens*) and 2021 (2) SCC 1 (*Vidya Drolia and others vs Durga Trading Corporation*) contends that the very fact of a show cause notice having been issued to the respondent and the respondent having

refuted the same, they have rise to the concept of dispute thereby opening the doors of Section 9 to the respondent to seek the remedies provided therein before commencement of arbitral procedure.

7. The only question before this Court is that in the absence of any termination of the dealership, any dispute had arisen between the rival parties to enable the respondent to invoke Section 9 of the 1996 Act.

8. Surprisingly, the expression 'dispute' is not defined in the 1996 Act though the expression find reference in number of provisions contained in the 1996 Act, and the principal object behind the Act is to resolve dispute between rival parties through different modes including arbitration.

Since the 1996 Act does not define the expression 'dispute', this Court has to fall upon the dictionary meaning of the said expression which is as follows:

Black's Law Dictionary, 5th edition, page 424 defines 'dispute' as under:

"to argue about, to contend ... words; an argument; a debate; a quarrel".

Cambridge Dictionary defines 'dispute' as under:

"a disagreement or argument between two people, groups or countries."

Collins' Dictionary defines 'dispute' as under:

"A dispute is an argument or disagreement between people or groups."

9. From the aforesaid dictionary meaning of expression 'dispute', it is evident as daylight that for a dispute to arise there should exist an assertion/claim which is refuted by the other side. Thus, dispute is a bilateral contract where atleast two rival parties have disagreement over a particular aspect. A dispute cannot arise

when only one party asserts and other remains silent. Whether the assertion made by one and the denial made by the other leaves to passing of any particular order by one of the party is not necessary for arising of a dispute. An assertion by one and denial/said assertion by another is enough for germination of the concept of a dispute.

10. Reverting to the factual matrix of the case, it is seen that show cause notice was issued on 31.03.2021 asking the petitioner to show cause as to why his dealership agreement be not terminated for certain lapses for discovery of illegalities *prima facie* demonstrating manipulation of dispensing unit, operation and delivery of fuel from dispensing unit. In response, the respondent initially sought time on 03.05.2021 vide Annexure A/3 which was granted by extending the period of submission of reply by 11.6.2021. As per the contents of para 4.3 of this appeal, the IOC has submitted that the respondent had filed reply to the show cause notice and thereafter was given a personal hearing on 09.09.2021 vide Annexure R/5.

In the reply and as well as the personal hearing, the respondent refuted the contents of the show cause notice and sought its withdrawal. This act of assertion by way of show cause notice and refuting by way of reply by the respondent gives rise to dispute as contemplated in clause 62(a) of the dealership agreement (Annexure R/3) thereby concurring right upon the respondent to invoke Section 9 of the 1996 Act for seeking the remedies provided therein before arbitral proceedings are commenced.

11. The legal pronouncement of the Apex Court relied upon by the rival parties need not be dealt with since none of them pertain to the issue attending the instant case. However, the decisions are clear on the point that whenever an assertion is made by one party and denied by the other then a dispute arises. Thus, the decisions relied upon by the rival parties support the cause of the respondent herein. This Court accordingly refrains from entering into the prolixity of

undertaking discussion regarding applicability/non-applicability of each citation relied upon.

12. From the above discussion, it is vivid that on the IOC issuing a show cause notice and respondent refuting the same by way of reply and in the personal hearing, dispute between the rival parties germinated making available cause of action to the respondent to invoke Section 9 of the 1996 Act.

13. Consequently, filing of the application under Section 9(1)(d) of the 1996 Act before the Court by the respondent and the Court deciding the same do not suffer from any jurisdictional error.

14. Since no other ground has been raised by the appellant, the decision in this appeal is confined to the sole ground raised as above. Accordingly, no case for interference is made out. Appeal stands **dismissed**.

(Sheel Nagu)
Judge

(Purushaindra Kumar Kaurav)
Judge