

GAHC010038932024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./6/2024

DANIEL KRO
S/O- SRI AHINA RAM KRO, R/O- V.I.P ROAD NARENGI, DIST. KAMRUP(M),
ASSAM, GUWAHATI-781026.

VERSUS

M/S KANCHITA SERVICE STATION AND 6 ORS.
(FORMERLY M/S GANDHI KRO ENERGY STATION) A PARTNERSHIP FIRM
HAVING ITS OFFICE AT V.I.P. ROAD, NARENGI, GUWAHATI-781026, DIST.
KAMRUP(M), ASSAM

2:JAGAT JIWAN GOSWAMI @ JAGAT JIWAN GOSWAMI
PARTNER OF M/S KANCHITA SERVICE STATION
V.I.P. ROAD
NARENGI
GHY-781026
DIST. KAMRUP(M)
ASSAM

3:INDIAN OIL CORPORATION LIMITED
GUWAHATI DIVISIONAL OFFICE
NOONMATI
GUWAHATI-781020
DIST. KAMRUP(M)
ASSAM

4:SENIOR DIVISIONAL RETAIL SALES MANAGER
INDIAN OIL CORPORATION LIMITED (MD)
GUWAHATI DIVISIONAL OFFICE
NOONMATI
GUWAHATI-781020
DIST. KAMRUP(M)

ASSAM

5:AHINA RAM KRO
S/O- LATE GANDHI RAM KRO
R/O- VILL.- BABUBASTI
P.O. NARENGI
GUWAHATI-781026
DIST. KAMRUP(M)
ASSAM

6:BHUBANESHWAR KRO
S/O- LATE GANDHI RAM KRO
R/O- VILL.- BABUBASTI
P.O. NARENGI
GUWAHATI-781026
DIST. KAMRUP(M)
ASSAM

7:SMTI. NIRANI KRO
D/O- LATE GANDHI RAM KRO
R/O- VILL.- BABUBASTI
P.O. NARENGI
GUWAHATI-781026
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. R GOSWAMI, MR. M SARMA,MR JITRA DEKA,B J BAROOAH

Advocate for the Respondent : MR. B D DEKA, MR R DAS (r-5,6,7),MS C DAS,MR. M DAS,MR. P MAHANTA,MS. M BORGOHAIN,N CHAUDHURY

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 25.10.2024

Heard Mr. R. Goswami, learned counsel for the petitioner.

2. It is submitted by the learned counsel for the petitioner that in pursuant to order being passed by this Court on 16.08.2024, service on respondent Nos. 3 and 4 was duly effected upon and an affidavit confirming the *dasti* service has

also been filed and the same is available before the Court.

3. Mr. A. Deka, learned counsel appears for the respondent Nos. 1 and 2 submits that he has no objections to the prayer made in the petition. However, in spite of service being affected through *Dasti* and the affidavit affecting *dasti* service having been filed, none represents the respondent Nos. 3 and 4. On earlier occasion, Mr. R. Das, learned counsel had appeared for the respondent Nos. 5, 6 and 7.

4. However, today when the matter was called up, none represented the respondent Nos. 5, 6 and 7 also. No objections opposing the prayer made in the petition have also been filed by any of the respondents. Under such circumstances, the Court proceeds to take up the petition filed under Section 11(6) and pass appropriate orders in the matter.

5. The petition is filed by the petitioner praying for appointment of an Arbitrator in terms of Clause 11 of the agreement entered by and between the petitioner and the respondents No. 1 and 2. By the said agreement, the petitioner and the respondents No. 1 and 2 entered into a partnership under the name and style of "M/s Gandhi Kro Energy Station". The said agreement was executed by and between the petitioner and the respondent Nos. 1 and 2 on 26.08.2016. By the said agreement, the parties are agreed to run a business under the name and style of "Gandhi Kro Energy Station". The place of the business is at Babubasti, Post Office- Narengi, Guwahati- 781026 under P.S. Noonmati in the district of Kamrup, (M). The nature of the business is to run a petrol pump. In the said agreement, there is a specific clause at Clause 11, which provides for arbitration. The same reads as under:-

"That if any dispute on difference which may arise between the partners with regard to the constrictions meaning and effect of this deed or any

part thereof, or respecting the accounts, profit or losses of the business or the rights and liabilities of the partners under this Deed, on the dissolution or writing up of the business, or any other matter relating to the firm, shall be referred to arbitration and the decision, of a sole arbitrator, if the parties in dispute so agree otherwise two or more arbitrators, accordingly to the numbers of the partners of the firm one to be nominated by each party and in case of opinion between them by the umpire selected by them at the commenced of the reference and this clause shall be deemed to be a submission with the meaning of the Arbitration and Conciliation Act, 1996 including its statutory modification and re-enactment."

6. During the course of executing the partnership deed and running the business, certain disputes arose between the parties to the partnership. This led to the petitioner approaching the Civil Court by filing Title Suit No. 13/2020 by the petitioner. A miscellaneous petition was filed by the respondents No. 1 and 2 being Misc(J) Case No. 376/2021 of Title Suit No. 13/2020 prayer for referring the matter to the Arbitration in view of the Clause 11 of the Deed of partnership. The learned Court of Civil Judge No.3, Kamrup (M) by order dated 05.10.2023 referred the matter to Arbitration overruling the objections of the defendants No.1 and 2, namely, respondent Nos. 1 and 2 herein that the original copy of the partnership deed be called for effective disposal of the application filed by the defendants No. 1 and 2 under Section 8 of the Act. However, the same, however, was dismissed on the ground that in view of the clause for Arbitration, the same can be decided even in the absence of the original deed.

7. It is submitted by the learned counsel at the bar that subsequently in view of the presence of the Clause 11 of the deed of partnership whereby disputes were required to be referred to Arbitration, the suit came to be dismissed by an order dated 05.10.2023. The copy of the said order has, however, not been placed before this Court.

8. The learned counsel for the parties have been heard. Pleadings available on record have been carefully perused.

9. It is seen that in terms of the partnership deed executed by and between the parties vide deed No. 13390 dated 26.08.2016, the petitioner and the respondent Nos. 1 and 2 entered into a partnership deed to carry on a business of running an Energy Station for sale of Petrol and other Lubricants. In the said agreement, there is a clause being Clause 11, which provides for referring the disputes to Arbitration.

10. The parties before the Court agree that there are disputes which have arisen between the petitioner and the respondent Nos. 1 and 2 and because of which they had earlier approached the competent Civil Court and in view of the presence of the Arbitration Clause, the proceedings came to be disposed of.

11. The petitioner by a notice dated 07.11.2023, issued a notice through his Advocate Mr. M. Sharma for appointment of an Arbitrator by choosing any of the two names mentioned in the notice.

12. Pursuant to issuance of the notice, the respondent Nos. 1 and 2 did not file any response. Before this Court, the learned counsel representing respondent Nos. 1 and 2 also does not dispute the receipt of the notice dated 07.11.2023.

13. Under Clause 11 of the Arbitration and Conciliation Act, 1996, the parties are free to agree on any procedure for appointment of Arbitrator(s). Under Section 11(5), upon failure of the parties to arrive at any agreement for appointment of an Arbitrator within 30 days from the date of request made by one party on the other, the appointment shall be made on an application made by the party in accordance to the provisions provided under Section 11(4).

14. As discussed, there is no dispute in the notice dated 07.11.2023 was issued by the petitioner calling upon respondent Nos. 1 and 2 to agree on an Arbitrator mentioned in the said notice for appointment to proceed for Arbitration.

15. In ***Datar Switchgears Ltd v. Tata Finance Ltd. reported in (2000) 8 SCC 151*** it is been held that where in terms for the provisions of Section 11, one party calls upon the other party to appoint an Arbitrator by way of proper notice and where there is no dispute that the notice was duly received by the other party and if they failed to appoint an Arbitrator even after the expiry of the prescribed period which is 30 days from the date of receipt of the notice and the party issuing the notice has approached the Court under Section 11(6) then the other party loses its claim for appointment of an Arbitrator.

16. In the present Case, not only do the respondents No. 1 and 2 do not dispute the receipt of the notice dated 07.11.2023 but they also do not dispute that there was no response from them in terms of the said notice calling upon them to agree upon an Arbitrator nor have they agreed for appointment of an Arbitrator, in spite of opportunities being granted, the respondents have not filed any objections in the present proceedings. Under such circumstances and in view of the law laid down by the Apex Court, the respondents No. 1 and 2 lose

their right to make any appointment of an Arbitrator once the Court assumes its jurisdiction under Section 11.

17. When there is no dispute that an Arbitration agreement exists between the parties, it is the duty of the Court under Section 11 to proceed for appointment of an Arbitrator. Any or all objections pertaining to the arbitrability of the dispute are entitled to be raised before the Tribunal by either or both the parties once the parties appeared before the Tribunal appointed by the Court.

18. Accordingly, this Court under the powers under Section 11(6) of the Arbitration and Conciliation Act, 1996 duly appoint Mr. Motilal Dutta, Advocate, whose name finds mentioned in the notice dated 07.11.2023 to Act as an Arbitrator to resolve the disputes between the parties arising between them in terms of the partnership Deed entered by and between them by way of agreement dated 26.08.2016. The appointment of the prospective Arbitrator however is subject to the declaration to be furnished by the prospective Arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996.

19. The petitioner will furnish a copy of this order before the prospective Arbitrator Mr. Motilal Dutta. The appointment of the prospective Arbitrator will be confirmed upon receipt of a declaration from the prospective Arbitrator in terms of Section 12 of the Arbitration and Conciliation Act, 1996. Let this declaration under Section 12 be placed before the Court by the next date fixed.

20. List this matter on 26.11.2024.

JUDGE

Comparing Assistant