

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3136 of 2024**

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THE OIL AND NATURAL GAS CORPORATION
Versus
M/S RADHE SHYAM BANSAL

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Appearance:

MR AKSHAT KHARE(5912) for the Petitioner(s) No. 1
MR GT DAYANI(271) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 23/02/2026

ORAL ORDER

1. Heard learned advocate Mr. Akshat Khare for the petitioner and learned advocate Mr. G T Dayani for the respondent.

2. The issue involved in the present petition is with regard to the survival of the Arbitration Clause. Learned advocate for the petitioner submits that an agreement was executed between the petitioner and respondent on 05.01.1990. Retired Hon'ble Justice Mr. B J Diwan was appointed in Special Civil Suit No.270 of 1996 as Sole Arbitrator. The first preliminary meeting was convened on 11.05.2001 and thereafter no arbitral

meeting was convened. The respondent herein addressed letters to the learned Sole Arbitrator for fixing the date of hearing. The first letter was addressed on 21.07.2007. Thereafter, on 02.11.2009, the learned Sole Arbitrator resigned because of his ill health and old age.

3. It is submitted by the learned advocate for the petitioner that, thereafter, after a long period of silence, on 25.02.2011, respondent proposed for re-appointment of Sole Arbitrator for adjudication of disputes which was refused by the present petitioner by communication dated 23.03.2011. Thereafter, the respondent herein filed Civil Misc. Application No.89 of 2012 before the learned 2nd Additional Senior Civil Judge, Surat for the substitution of learned Sole Arbitrator under Sections 5, 12 and 20 of the Arbitration Act, 1940. The said application was came to be rejected, against which the present respondent approached this Court by way of a Special Civil Application No. 21068 of 2015. The Co-ordinate Bench of this Court

remanded back the matter to the learned Court below for fresh adjudication. Upon fresh adjudication, the learned Court below granted the application and directed the present petitioner to select names from list of the retired Hon'ble Justices. Petitioner did not select any name from the list. Thereafter, the two names were suggested by the respondent herein on 02.12.2023, out of which, one Mr. L V Ashara, retired member of the Gujarat Arbitration Tribunal Ahmedabad, consented to be an Arbitrator in the matter. Thereafter, vide order dated 20.01.2024, the learned 10th Additional Civil Judge, Surat, appointed Mr. L V Ashara, as a Sole Arbitrator. The said order is assailed by the petitioner before this Court. It is further contended that before appointing learned Sole Arbitrator, the Court below ought to have addressed on a question of survival of any Arbitral Clause. However, the learned Trial Court, while deciding the application, did not gone into such aspects and allowed the application. Except above, no more submissions are made.

4. *Per contra*, learned advocate for the respondent supported the order and contended that the learned Sole Arbitrator who was appointed in the year 1996 did not adjudicate the issue and the arbitral proceedings could not be concluded on merits. The petitioner herein also did not take part in the arbitral proceedings. The claim statement was submitted before the learned sole arbitrator in May 2001 and except one preliminary meeting which was convened in the year 2001, no arbitral meeting thereafter could be convened. Therefore, by repeated requests were made through various correspondence to learned sole arbitrator for fixing the date of hearing. However, due to non-cooperation of the petitioner, the arbitration proceedings could not be proceeded. Thereafter, in response to the letter of the respondent dated 21.10.2009, the learned sole arbitrator expressed his desire to retire on 02.11.2009. Again, a request was made to the petitioner for the re-appointment of sole arbitrator, which was also turned down by the petitioner on

23.03.2011. It is contended that within the period of three years from the refusal to reappoint the sole arbitrator, the Civil Miscellaneous Application came to be filed by respondent herein for the substitution of sole arbitrator.

4.1 It is contended by learned advocate for the respondent that the application for the substitution of the sole arbitrator is well within the limitation and the arbitral disputes still subsist to be adjudicated by sole arbitrator. Except above, no more submissions are made.

5. Considering the submissions canvassed by learned advocates for the parties, the issue whether the arbitral clause survives on the date of the application for substitution of sole arbitrator is a question to be gone into.

6. In view of above, issue **Rule**. In the meantime, the order dated 02.12.2023 and 20.01.2024 passed by 10th Additional

Senior Civil Judge, Surat, is stayed till next date of hearing.

7. The Registry is directed to list the captioned Special Civil Application for final hearing on 24.03.2026.

(D. M. DESAI,J)

SHIVANI SHUKLA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHIVANI SHUKLA(HC02350), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 26/02/2026 15:05:31