IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ASHISH SHROTI

ARBITRATION CASE No. 123 of 2025

CNR No.: MPHC030268252025

INDIAN OIL CORPORATION LTD.

Versus

MOHD. IMRAN KHAN

Appearance:

Shri Amit Tatke- learned counsel for the applicant through VC.

Shri Somyadeep Dwivedi- learned counsel for the non-applicant.

RESERVED ON: 28/09/2026

ORDER PASSED ON: 12/10/2026

O R D E R

The instant application is preferred under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as Act of 1996) through which the applicant, Indian Oil Corporation (hereinafter referred to as 'Corporation') is seeking appointment of Arbitrator to resolve the dispute erupted between it and non-applicant who happened to be its dealer.

2. The facts to be noted for disposal of this case are that the non-applicant was appointed as LPG distributor by the Corporation in the year 2012 and Indane (LPG) distributorship (Domestic & Commercial) agreement was executed between the parties on 30.08.2012 (Annexure P/1) for sale of Liquefied Petroleum Gas (LPG) in cylinders for household consumer and commercial consumers within the territory of Mungaoli an area falling within 15 kms. radius of Mungaoli. Clause 37 of the agreement

provided for the procedure for resolution of all disputes/differences between the parties to the agreement.

3. It is the case of Corporation that a complaint was received on 31.07.2019 from a group of 179 customers with regard to various irregularities committed by non-applicant. After enquiry, a show cause notice was issued by Corporation to non-applicant on 25.09.2019. When no reply was submitted, Corporation passed order dated 12.11.2019 (Annexure P/4) imposing penalty of Rs.4,06,896.70. On appeal filed by non-applicant, the said penalty amount was reduced to Rs.3,75,734/- (Annexure P/4A).

4. The Corporation has further averred in this application that yet another complaint was received on 13.09.2019 (Annexure P/5) from Ministry of Petroleum & Natural Gas regarding irregularities committed by non-applicant under Prime Minister Ujjwala Yojna (PMUY). Further, vide communication dated 27.09.2019 (Annexure P/6), the Ministry issued instructions to undertake an enquiry by contacting at least 20% customers under PMUY. Accordingly, a committee consisting of two General Manager level officers was constituted for enquiry. The enquiry was conducted. It is stated that the non-applicant duly participated in the enquiry. As many as 4209 customers (20%) registered under PMUY were contacted. The committee submitted its report wherein the non-applicant allegedly found to have committed extremely critical irregularities.

5. It is further averred by Corporation that, on the basis of report of committee, a show cause notice was issued to non-applicant on 23.11.2019. After taking reply from non-applicant, order dated 02.03.2020 (Annexure P/10) thereby terminating the non-applicant's dealership. Vide the same order dated 02.03.2020, penalty of Rs.13,84,733.42 was also imposed which is termed as MDG penalty by the Corporation. From reading this order, it is gathered that the Corporation had asked the non-applicant to return all the equipment, stationary and records pertaining to the Corporation. This order further imposed penal amount of Rs.99,17,664/- on account of non-

completion of verification of 3296 customers registered under PMUY as on 26.02.2020. It was alleged against non-applicant that despite repeated follow up, it failed to complete verification of customers. Thus, vide aforesaid order dated 02.03.2020, the penalty of total amount of Rs.1,13,02,397/- was imposed upon the non-applicant.

6. The non-applicant sought appointment of Arbitrators in relation to aforesaid order dated 02.03.2020. It filed AC No.78/2023 against imposition of MDG penalty and AC No.88/2023 against termination of dealership. This Court vide order dated 11.01.2024 (Annexure P11) allowed both the applications and referred the matters for arbitration to Madhya Pradesh Domestic and International Arbitration Centre, Jabalpur. It is informed by learned counsel for both parties that the arbitration proceedings have been completed in the aforesaid cases. The order was awaited.

7. The Corporation has further averred that upon termination of its dealership, the non-applicant was required to immediately handover the entire stock of LPG filled/empty cylinders/equipment which were provided to it during currency of agreement. On account of non-handing over of these stocks of equipment, the Corporation was entitled to recover amount of loss on this count also. The Corporation served notice in this regard vide email dated 25.02.2020, 07.01.2022 and vide letter dated 28.12.2022. A letter was also affixed on non-applicant's showroom on 13.02.2023. The Corporation alleges total non-cooperation on the part of non-applicant.

8. In order to ensure continuous service to the customers, the Corporation handed over the distributorship to another dealer M/s Bhadaurpur Indane, Mongaonli. The new dealer was also given the task of verification of customers under PMUY. It is stated that, as on 31.12.2021, there were 2946 unverified customers. It is the case of Corporation that the process of verification of customers took sufficiently longer time as the mobile numbers in the system were either missing or incorrectly updated. The correct address of beneficiaries was also not recorded. The beneficiaries

were also reluctant to share their documents apprehending cancellation of their connection.

9. The Corporation has stated that verification work could be completed and on the basis of the same, final recovery amount was determined to be Rs.92,55,803/-. A demand notice was accordingly issued by Corporation to non-applicant on 20.05.2025 (Annexure P/15) which was returned as the addressee left. Thereafter the demand notice was served on non-applicant's residential address of Satna on 26.06.2025 (Annexure P/16). The non-applicant then raised a dispute alleging complete record is not supplied to it. The recorded, as demanded by non-applicant was supplied to him on 21.07.2025. No response was given by non-applicant thereafter.

10. The Corporation then served a notice for appointment of Arbitrator to the non-applicant on 28.07.2025 (Annexure P/19). It appears, the reply to this notice is not given by non-applicant. That is how the applicant has approached this Court for appointment of Arbitrator.

11. The objection to the request for appointment of Arbitrator is lodged by non-applicant firstly stating that the dispute now sought to be raised, is already covered by pending arbitration pursuant to order of this Court dated 11.01.2024. It is averred that the subject matter of demand notice dated 20.05.2025, is nothing but consequences flowing from order of penalty and termination of dealership. It is alleged that the claim now raised is not independent but is connected with and arise out of same cause of action which forms subject matter of pending arbitration proceedings. As per non-applicant, the Corporation was required to file a counter-claim under Section 23(2A) of the Act in the same arbitration proceedings. As per non-applicant, having chosen not to file counter claim, the Corporation cannot now be permitted to initiate second arbitration in respect of disputes arising out of same agreement and same transaction.

12. The non-applicant has raised an objection of limitation inasmuch as the cause of action for raising claim arose in March' 2020 when the order of

termination was passed. The limitation being three years, the present claim is barred by limitation. As per its submission, issuance of subsequent demand notice, debit notes, reminders, correspondence or internal calculations cannot extend, revive or postpone the limitation.

13. The learned counsel for Corporation requested for appointment of Arbitrator reiterating the facts stated above. As per his submission, since the process of verification was not complete, final demand could not be made by the Corporation earlier and, therefore, it was not possible for the Corporation to have raised the demand in the earlier arbitration proceedings. Now, since the earlier arbitration proceedings have concluded, the dispute with regard to demand of Corporation is also required to be referred to Arbitrator in terms of Clause 37 of agreement. It is his submission that the cause of action for raising demand arose only after completion of verification process whereupon a final amount to be recovered from non-applicant could be determined. He thus submitted that the request for appointment of Arbitrator is within limitation.

14. Relying upon the Apex Court judgment in the case of ***Vidya Drolia v. Durga Trading Corpn.*****, (2021)2 SCC 1**, and ***Arif Azim Co. Ltd. vs. Aptech Ltd.*****, (2024)5 SCC 313**, the learned counsel for Corporation submitted that the issue of limitation is a mixed question of law and fact which cannot be adjudicated at this stage of appointment of Arbitrator. Referring to para 29 of its application, learned counsel argued that because of non-cooperation from non-applicant, the verification took substantially long time. However, since the process was on-going, it cannot be said that the demand of Corporation has become time barred.

15. On the other hand, learned counsel for non-applicant relied upon ***SBI General Insurance Co. Ltd. vs. Krish Spg.*** reported in ***(2024)12 SCC 1*** and submitted that the decision of ***Arif Azim*** (supra) has been explained by Apex Court in this case. He also relied upon ***Magic Eye Developers (P) Ltd. v. Green Edge Infrastructure (P) Ltd.*** reported in **(2023)8 SCC 50** to say that

the issue of non-arbitrability of dispute has to be considered by this Court at this stage of making reference. He also relied upon ***BSNL vs. Nortel Networks (India) (P) Ltd.*** reported in **(2021)5 SCC 738** and argued that the limitation for filing this application for appointment of Arbitrator has already expired when counted from the date of order of termination of dealership which gave rise to the dispute.

16. Considered the submissions made by learned counsels for parties and perused the records.

17. The objection to appointment of Arbitrator is basically about the limitation. In the context, the Apex Court in the case of ***Vidya Drolia (supra)***, held as under:

> ***"148.*** *Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21.* ***Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable****.* ***The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits****. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". As observed in Premium Nafta Products Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : 2007 Bus LR 1719 (HL)], it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen.*"

18. Likewise, in the case of ***Arif Azim Co. Ltd. (supra)***, the Apex Court reiterated the similar legal position. The Court explained the stage at which cause of action can be said to have arisen. It held thus:

> ***"80.*** *In B & T AG [B & T AG v. Union of India, (2024) 5 SCC 358] three principles of law came to be enunciated by this Court regarding the manner in which the point in time when the cause of action arose may be determined. First, that the right to receive the payment ordinarily begins upon completion of the work. Secondly, a dispute arises only when there is a claim by one side and its denial/repudiation by the other and thirdly, the accrual of cause of action cannot be indefinitely postponed by repeatedly writing letters or sending reminders. It was further emphasised by this Court that it was important to find out the "breaking point" at which any reasonable party would have abandoned the efforts at arriving at a settlement and contemplated referral of the dispute to arbitration. Such breaking point would then become the date on which the cause of action could be said to have commenced.*"

19. The learned counsel for non-applicant sought to distinguish ***Arif Azim***, relying upon ***SBI General Insurance Co. Ltd. (supra)***. However, on going through this judgment also, it is gathered that the legal position has not changed, but has only clarified by Apex Court by holding as under:

> ***"134.*** *Our findings on both the aforesaid issues have been summarised in para 92 of the said decision thus: (Arif Azim case [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] , SCC p. 357)*
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> > *"92. Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the 1996 Act, the courts should satisfy themselves on two aspects by employing a two-pronged test — first, whether the petition under Section 11(6) of the 1996 Act is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an Arbitral Tribunal."*
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> ***136.*** *Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the 1996 Act, the Referral Court should limit its enquiry to examining whether Section 11(6) application has been filed*

> *within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim [Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313 : (2024) 3 SCC (Civ) 358 : 2024 INSC 155] .* ***As a natural corollary, it is further clarified that the Referral Courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time-barred and should leave that question for determination by the arbitrator****. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .”*

20. Keeping in view the aforequoted legal position, the facts of this case needs to be examined. The Corporation has come up with a specific case that the process of verification was not complete at the time of passing of order of termination of dealership, final demand could not be made by the Corporation earlier. The Corporation has alleged that because of non-cooperation from non-applicant, the verification took substantially long time and since the process was on-going, it cannot be said that the demand of Corporation has become time barred. It is its case that the cause of action for raising demand arose only after completion of verification process whereupon a final amount to be recovered from non-applicant could be determined.

21. As held by Apex Court, the issue of limitation is a mixed question of law and fact which is not supposed to be adjudicated at this stage of appointment of Arbitrator. This Court is only required to *prima facie* see if the application for appointment of Arbitrator and/or the claim of Corporation is time barred. From the facts stated above, it *prima facie* appears that the plea of limitation as raised by non-applicant involves determination of factual issues which could be done by Arbitrator during

arbitration.

22. Therefore, application preferred by applicant for appointment of Arbitrator needs to be accepted. The matter is referred for arbitration at Madhya Pradesh Domestic and International Arbitration Centre, Jabalpur to undertake appointment of Arbitrator and for arbitration proceedings to be proceeded in accordance with law.

23. At this stage, the event subsequent to conclusion of hearing of this case needs to be taken note of. Pursuant to order passed by this Court on 11.01.2024 in A.C. No.78/2023 and A.C. No.88/2023, the Arbitrator has passed an award dated 07.08.2026. The copy of the same was provided to this Court after the matter was reserved for passing of order. By the aforesaid award, the learned Sole Arbitrator has set aside the penalty order as also the order of termination of dealership of non-applicant. In view of the same, the matter was re-listed giving an opportunity to the parties to address if any dispute still survives warranting appointment of Arbitrator. The learned counsel for non-applicant submitted that no dispute now survives as the basic penalty order has been set aside. On the other hand, the learned counsel for applicant Corporation was of the opinion that since the award passed by Sole Arbitrator is now final yet, as the Corporation is intending to challenge the same, it cannot be said that there is no dispute in existence.

24. The demand in question flows from the penalty order, dated 02.03.2020 (Annexure P/10) whereby the non-applicant's dealership was also terminated. Thus, once, the order dated 02.03.2020 itself has been set aside by Arbitrator, at this stage, it cannot be said that any arbitrable dispute exists between the parties. Therefore, proceedings cannot be allowed to proceed at this stage, so long as award dated 07.08.2026 is in force.

25. Therefore, further proceedings for appointment of Arbitrator by Madhya Pradesh Domestic and International Arbitration Centre, Jabalpur, shall be kept in abeyance till the award dated 07.08.2026 is in force. If said

award is set aside, the proceedings shall be taken further, else, the matter shall stand closed.

26. Application stands disposed of with the aforesaid observation/direction.

(ASHISH SHROTI)
JUDGE

jps/-