
(2009) 05 DEL CK 0384
In the Delhi High Court
Case No : O.M.P. 571 of 2008

Haryana Packaids Pvt. Ltd.

APPELLANT

Vs

Indian Oil Corporation Ltd. and Another

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 11(8), 14, 14(1)

Citation : (2009) 05 DEL CK 0384

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Usha Mann, for the Appellant; M.M. Kalra, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This application u/s 14(1)(a) & (2) read with Section 11(6) and 11(8) of the Arbitration & Conciliation Act, 1996 (for short, "the Act") has been made by the applicant/petitioner with a prayer that this Court should terminate the mandate of respondent No. 2 as the Sole Arbitrator and appoint the Micro and Small Enterprises Facilitation Council as new Arbitrator to decide the disputes of petitioner within three months as provided under the Act.

2. Brief facts relevant for the purpose of deciding this application are that this Court passed an order dated 22nd July 1998, on an application u/s 11 of the Act made by the petitioner, that the Director (Marketing Division of Indian Oil Corporation) respondent No. 2 herein shall act as the Arbitrator and the disputes and the counter claims be referred to the Sole Arbitrator i.e. respondent No. 2. After that order, counsel for the petitioner wrote letters to the Sole Arbitrator asking him to enter the reference on 21st August 1998, 21st September 1998, 24th October 1998 and 23rd November 1998.

3. The contention of the petitioner is that the petitioner received no response from the arbitrator and the arbitrator did not enter into the reference although the petitioner again reminded the arbitrator on 22nd January 1999, 5th May

1998, 26th July 1999 and 11th August 1999. Thereafter, petitioner stopped writing letters to the Arbitrator and on 28th October 2006, another notice was sent by the petitioner asking the arbitrator to enter into the reference. There was no response and the petitioner then moved an application being IA No. 8703 of 2007 in August 2007 which was dismissed by this Court holding that such an application in a disposed of petition was not maintainable. The petitioner herein then filed the present petition u/s 14 asking this Court to change the Arbitrator with a prayer that a fresh arbitrator be appointed.

4. Section 43 of the Act provides that the Limitation Act, 1963 shall apply to the arbitration and to the proceedings in respect of the Act as it applies to other proceedings in the Court. It is obvious that an application for removal of an arbitrator, who is not acting, has to be made within a reasonable time. It was obvious that the Arbitrator was not acting from the very beginning. Letters of the petitioner from July 1998 till September 1999 did not evoke any response from the Arbitrator. The petitioner was supposed to approach the Court right away for change of arbitrator u/s 14 of the Act. Law does not permit a person to sleep over his rights for long and then suddenly wake up and approach the Court. The period of limitation for making an application under any law for which no period of limitation is provided in the schedule is years. Three years are to be counted when right to apply accrued. The right to apply in the present case accrued initially in July 1998. However, respondent had made an application for modification of this order which was dismissed in December 1998. Thereafter, again petitioner had asked respondent to appoint the arbitrator and give date of hearing but respondent No. 2 did not give any response. Thus, it was clear to the petitioner in 1999 that respondent No. 2 was not acting as arbitrator. The right to move an application for changing the arbitrator accrued to the petitioner in 1999 and the application could have been made by the petitioner latest by 2002. The petitioner made this petition in October 2008 i.e. after lapse of almost nine years. This petition/application is barred by limitation and is hereby dismissed. No orders as to costs.