

JUDGMENT SHEET

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**C.S. No. 249/2011**  
**Arbitration Petition**

**OMV Maurice Energy Limited (formerly Petronas Carigali**  
**(Pakistan) Limited**

Versus

**Ocean Pakistan Limited**  
**through its Chief Executive Officer & another**

Plaintiff/petitioner by: Mr. Ali Raza, Sardar M. Ishaq and Sufia Khan  
Advocates  
Defendants/respondents Syed Naeem Bukhari and Syed Hasnain Kazmi  
by: Advocates.  
Date of order: 29-11-2011

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**Riaz Ahmad Khan J:-** OMV Maurice Energy Limited filed the present suit/Arbitration petition against Ocean Pakistan Limited and Zaver Petroleum Corporation Limited under Section 20 read with Section 4 of the Arbitration Act, 1940, for enforcement of Arbitration Agreement and referring the matter to arbitrator. It has also been prayed that defendants be restrained from interfering in the working and operation being carried out by the plaintiff/petitioner Company.

2. Brief facts of the case are that on 29-12-1999, Petroleum Concession Agreement was issued in favour of Orient Petroleum Inc. for exploration, prospecting, development and production of petroleum. In this respect, Mehar Petroleum Concession Agreement was

executed between the President of the Islamic Republic of Pakistan and the Orient Petroleum Inc. (Copy of the said agreement is available on page 55 of the main file). On the same day, Joint Operating Agreement was executed between Orient Petroleum Inc. and the Federal Government of Islamic Republic of Pakistan. Since under Rule 8 of Pakistan Petroleum (Exploration and Production) Rules, 2001, a petroleum right or any working interest therein shall not be assigned without the previous consent in writing of the Government and Orient Petroleum Inc. wanted to transfer the shares to another company, so permission was obtained from the Government and thereafter, Farmout Agreement was executed between the Orient Petroleum Inc., Petronas Carigali (Pakistan) Ltd. and Zaver Petroleum Corporation Ltd. This agreement was executed on 30<sup>th</sup> March 2000 and by virtue of this agreement 75% shares for operation were assigned to Petronas Carigali (Pakistan) Limited (plaintiff), 15% to Orient Pakistan Inc. (defendant No.1), 05% to Zaver Petroleum Limited (defendant No.2) and 05% to the Government of Pakistan. (The said agreement is available on page 197 of the writ petition). Consequent to the Farmout Agreement, Deed of Assignment dated 11<sup>th</sup> of May, 2000 was executed between the President of the Islamic Republic of Pakistan, the Federal Government of the

Islamic Republic of Pakistan, Orient Petroleum Inc. and Petronas Carigali (Pakistan) Ltd. (The said deed is available on page 207 of the file). Article 7.2 of the Farmout Agreement, executed between the parties, provides as follows:-

***“This Agreement and the relationship between the Parties shall be governed by and interpreted in accordance with the laws of the Islamic Republic of Pakistan. With respect to all disputes to be resolved hereunder, the Parties agree that the forum will be in Islamabad, Pakistan and any dispute shall first be settled by negotiation by the Parties and then resolved by reference to three Arbitrators each one to be nominated by the Parties in accordance with the Arbitration Act, 1940 or any other statutory laws enforced for the time being in Pakistan. And in case of any disagreement between the Arbitrators, by an Umpire to be appointed by the Arbitrators but with the consent of the Parties, whose decision shall be final and binding upon the Parties.”***

3. Thereafter, Petronas Carigali (Pakistan) Limited started with the exploration work alongwith defendants Ocean Pakistan Limited and Zaver Petroleum Corporation Limited. According to the plaintiff, for the operation working, 75% expenditure were to be born by the plaintiff, 15% by the defendant No.1 and 5% by the defendant No.2. Allegedly, defendant No.1 was not performing his part of obligations and had refused to pay for the operation work, so as a result of that defendant No.1 had become defaulter in payment of dues. This was the main cause of dispute and under

Clause 7.2 of the Farmout Agreement, the only forum for settlement of dispute was arbitration. Since the defendants were not ready to go for arbitration, so the present petition was filed.

4. Learned counsel for the plaintiff/petitioner submitted that according to agreement, the exploration proceedings are to be carried out after joint decision by the parties, but defendant No.1 had refused to participate in the meeting and as a result of that the representative of the Government also does not attend the meeting. Since no working can be carried out without the joint decision of the parties, so the plaintiff was constrained to approach this Court and ask for interim relief to carry out the working at his own risk and cost. Learned counsel further submitted that exploration and development of petroleum cannot be stopped and in case, if the same is stopped, huge loss would be caused to the Government. It was further submitted that the plaintiff has got 75% shares, whereas, both the defendants have 20% shares and for the minority share holders, the whole working cannot be stopped. The arbitration procedure is already available in the Farmout Agreement and therefore, the matter is required to be referred to arbitration.

5. On the other hand, learned counsel for defendants/ respondents submitted that the plaintiff has not come to the Court with clean hands and has concealed the actual facts. According to him, the permission for exploration and production of petroleum was granted to Orient Petroleum Inc. and transfer of 75% shares from Orient Petroleum Inc. to Petronas Carigali (Pakistan) Limited was illegal as the same could not have been done. Learned counsel further submitted that the said transfer has already been challenged by the defendant, in a writ petition, which is pending in this Court. It was further submitted that the demand made by the plaintiff regarding payment is also illegal, as the plaintiff had no right to carry out the exploration work and therefore, those have been challenged in Civil Suit, which are pending in the Court at Islamabad. According to learned counsel for defendant No.1, in presence of writ petition as well as Civil Suit, the matter cannot be referred to arbitration. It was further contended that the Farmout Agreement was superceded by the Deed of Assignment, and therefore, the Farmout Agreement had no application.

6. I have heard learned counsel for the parties and have also perused the record.

7. Farmout Agreement, available at page 197 of the file, shows that Article 1 of the same provided that 75% working interest was assigned to Petronas Carigali (Pakistan)Limited, the present plaintiff/petitioner, 15% to Orient Petroleum Inc., 5% to Zever Petroleum Corporation Limited and 5% to the Government of Pakistan. This agreement was signed by the plaintiff and defendant No.1 and defendant No.2. The agreement itself provided that the transfer of share will be subject to the approval of President of the Pakistan and the approval of the President was given by virtue of the Deed of Assignment (available at page 206 of the file), which was executed between the President of the Islamic Republic of Pakistan, the Orient Petroleum Inc. and Petronas Carigali (Pakistan) Ltd. (plaintiff). This Deed of Assignment was issued on the basis of Farmout Agreement, so it cannot be said that the Deed of Assignment had overruled the Farmout Agreement. As a matter of fact, on the basis of Farmout Agreement, the Orient Petroleum Inc. (defendant No.1) had agreed to transfer 75% of its working interest to the plaintiff and 5% of its working interest to the defendant No.2. The Farmout Agreement as well as the Deed of Assignment determines the rights and liabilities of the parties. Learned counsel for the defendants submitted that Article 7 of the Deed of Assignment provided that any

dispute or differences between the parties with respect to any matter under or relating to this Deed shall be settled through arbitration in accordance with the provisions set out in Petroleum Concession Agreement. Developing this argument, the learned counsel submitted that the arbitration proceedings could not be carried out under the Farmout Agreement, rather the same could be done under the Petroleum Concession Agreement. Infact, this argument is totally misleading. The fact is that the Deed of Assignment was executed between the President, Federal Government, the Orient Petroleum Inc. and Petronas Carigali (Pakistan) Ltd. (plaintiff). It obviously means that any dispute with the Government or with the President of Pakistan could be resolved through arbitration under the Petroleum Concession Agreement. This view is also fortified by Para-28.3 of Article XXVIII of the Mehar Petroleum Concession Agreement, which is as follows:-

***“This Article is only applicable in case of a dispute between foreign Working Interest Owners inter se, or between foreign Working Interest Owners and THE PRESIDENT, provided that in the event of a dispute between the Pakistani Working Interest Owner(s) inter se, or between the Pakistani Working Interest Owners and THE PRESIDENT, the arbitration shall be conducted in accordance with the Pakistan Arbitration Act, 1940.”***

8. In the present case, the dispute is not between the Government or the President of Pakistan and the present parties. The basic dispute is in between the

parties, who have only working interest in the exploration and production of petroleum products.

9. The basic dispute is regarding payment, required to be made by the defendant No.1, however, defendant No.1 can raise any other issue, if deem proper before the arbitrator. In the circumstances, I accept this petition and the matter is referred to the arbitrator. Both the parties are directed to nominate one arbitrator each, who shall decide the dispute and in case of disagreement between the arbitrators, an Umpire shall be appointed by the arbitrators, but with the consent of the parties, whose decision shall be final and binding upon the parties.

10. The plaintiff has also submitted application under Section 41 of the Arbitration Act, 1940 read with Order XXXIX Rule 1 & 2 CPC to the effect that the plaintiff may be permitted to carry out the exploration and development work at site at his own risk and cost. According to learned counsel for the plaintiff, according to the agreement, the working cannot be carried out without the joint decision of the parties, who have got working interest and defendant No.1 does not attend the meeting, as a result, no decision can be taken and the object of the defendant No.1 is to stop the plaintiff from carrying out the assigned work. The plaintiff has,



therefore, prayed that the plaintiff Company be allowed to carry out the work, even if the defendants do not participate in the meeting.

11. The available record shows that the plaintiff has got 75% working interest, whereas, defendant No.1 and 2 have got 20% working interest, therefore, the plaintiff has got prima facie case. Balance of convenience is also in favour of the plaintiff, because if work at site is stopped, huge loss will be caused to the plaintiff as well as Government Exchequer and the same would result into irreparable loss not only to the plaintiff but also to the public, as the interest of public is also indirectly involved in the matter.

12. In the above said circumstances, the plaintiff would be at liberty to carry out the working, even if defendant Nos.1 and 2 do not participate in the meetings and the arbitrators would decide the shares to be paid by the defendant Nos. 1 and 2 for the work done in their absence. As far as, Government is concerned, the learned counsel for the plaintiff submitted that the representative of the Government does not participate only because defendant Nos.1 and 2 do not participate in the meeting, as the representative of the Government feels that there is no use of participating in the meeting, therefore, the representative of the Government is

directed to participate in the meeting, if otherwise he has no objection. Accordingly, the petition is accepted.

**(RIAZ AHMAD KHAN)**  
*Judge*

*Wajid*

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