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Case No. 324Date of filing: 11 Nov 86

\*\* AWARD - Type of Award \_\_\_\_\_  
 - Date of Award \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of Mr Ansari

- Date 10 Nov 86  
4 pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
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\*\* DISSENTING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

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- Date \_\_\_\_\_  
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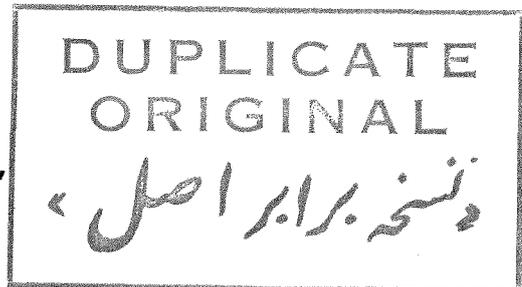
In the Name of God

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IRAN UNITED STATES CLAIMS TRIBUNAL	داوری دعاوی ایران - ایالات متحدہ
<b>ثبت شد - FILED</b>	
Date	11 NOV 1986
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No.	324
	شماره

CASE NO. 324  
CHAMBER THREE  
AWARD NO. 263-324-3

FUTURA TRADING INCORPORATED,  
Claimant,  
and  
THE NATIONAL IRANIAN OIL COMPANY,  
Respondent.




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CONCURRING OPINION OF JUDGE PARVIZ ANSARI

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1. I concur with the conclusion reached in the Award, wherein the Claimant has been found to have no cause of action. However, in light of the available evidence submitted in the case, in my opinion the Claimant's suit should on principle be dismissed on two further grounds as well, in addition to the lack of a cause of action. These two grounds consist of the following:

(a) Nonattributability of the claim to NIOC, owing to the absence of any binding legal relationship between that Company and the Claimant;

(b) The Claimant's breach of its obligations, even if it be assumed, in arguendo, that a binding legal relationship were found to have existed between the Parties.

2. As to the first point, what is at issue is whether or not the legal-commercial relationship between Gostaresh Maskan ("GM") and Nordon can be extended so far as to include NIOC on the one hand and Futura on the other. Even if we admit, in order to avoid prolonging the discussion, that Nordon acted as Futura's agent--whereby one link in this chain of ties would be deleted--what evidence is there for extending the relationship between GM and Futura so far as to take in NIOC, or for our regarding GM as NIOC's agent?

On the basis of available evidence, it is certain that GM, which was NIOC's contractor, carried out all of its commercial activities directly and independently. The legal relationship between NIOC and GM was that of Employer-Contractor. In obtaining the Employer's advice concerning certain specifications of items, prices of goods and fluctuations therein, and in making similar inquiries relating to the subject matter of the contracting agreement, the Contractor did not alter this relationship or convert it into one of agency. The Contractor was independently and directly liable to those persons with whom it concluded contracts for the purchase of goods or services; here, the principle of the privity of contract, res inter alios acta, which is a general principle accepted under various legal systems, cannot be lightly disregarded on the basis of flimsy and rebuttable secondary evidence. See: Art. 231, Civil Code of Iran; Art. 1165 Civil Code of France; Alex Weill & François Terré, Droit Civil (les Obligations); 503 et seq., Dalloz 1980; Treitel, An Outline of the Law of Contract, pp. 229, 230 & 266, Butterworths 1979.

In the instant case, GM was both the orderer and purchaser of the goods, as well as the user thereof. In this connection, the identity of the Employer (NIOC) had no bearing upon the matter; nor did acquisition of the

Employer's advice and approval with respect to the manufacturer and the price of the said goods affect its standing. For the Contractor was at any rate obligated to fulfill its obligations towards the Employer and to carry out the terms thereof and those duties with which it was charged.

Based on the above, in my opinion GM stands directly and independently vis-à-vis the Claimant; and for this reason, no claim can be brought against NIOC in this connection.

3. As to the second point: even if it be accepted, solely in arguendo, that there existed an indirect legal relationship between NIOC and the Claimant, and if its claim be taken up on its merits, it can still be concluded that the Claimant failed to fulfill its contractual obligations.

One breach of contract by the Claimant is, that whereas the goods were supposed to be obtained from an Italian manufacturer named Alfacavi, the Claimant obtained the goods in question from a Spanish company named General Cable CEAT instead. The Claimant has asserted, in justifying its action, that it was immaterial from what manufacturer the goods were obtained, so long as their specifications conformed to the order. This assertion is valid where the parties have not stipulated and agreed to a particular manufacturer or country of origin, but in the instant case the Buyer had previously been notified specifically as to both the manufacturer and place of origin of the goods, and these were regarded as being among the terms of the transaction. Therefore, the Seller breached the contract by unilaterally altering those terms without the consent of, and without even notifying, the Buyer. The issue as to whether or not the

Buyer was injured thereby cannot ipso facto be taken as constituting a criterion for releasing the Seller from its obligations and liability, because the Claimant's failure to perform on its obligations confirms the Buyer in its entitlement to make claim against the Seller, whether the obligation in question was a contractual condition or a contractual description.

4. In view of the foregoing, it is my opinion that:

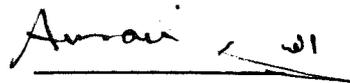
Firstly, NIOC was not a party to the Claimant's contract. Therefore, the claim brought against NIOC is inadmissible in this regard and is not within the Tribunal's jurisdiction.

Secondly, assuming in arguendo that NIOC can be regarded as a party to the Claimant's contract, the Buyer is nonetheless released from its obligations-- or its obligations are at least reduced-- as a result of breach of contract on the part of the Claimant.

Thirdly, in addition to the two points set forth above, and as is reflected in the Tribunal's Award, the Claimant has no cause of action, and the claims brought by it must consequently be dismissed.

The Hague,

Dated 10 November 1986

  
Parviz Ansari