

In the High Court of Judicature at Madras

Dated : 27.02.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.552 of 2012

Indowind Energy Limited,
Rep. by its Vice President and
Company Secretary, Mr.s.Diraviam. ... Petitioner

-vs-

M/s.Suzlon Infrastructure Services Limited
Now merged with its Holding Company
M/s.Suzlon Energy Limited, Hadapsar,
Pune. ... Respondent

Petition filed under Section 11 (6) of the
Arbitration and Conciliation Act, 1996, to appoint the
Second Arbitrator in terms of Section 11(6) of the Act, to
resolve disputes that has arisen between the Petitioners
and the Respondent, by an Arbitration Tribunal.

For Petitioner : Mr.K.Ramasamy

For Respondent : No appearance

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O R D E R

The petitioner company is stated to be engaged in
the business of generating electricity from Wind Mills and
in the course of its business, entered into a Memorandum of
Understanding (MOU) with the respondent dated 24.01.2008
qua purchase of 12 WTGs. These are stated to be purchased

for 18 Mega Watt project at Elkornahilli, Chitradurga District, Karnataka, by the petitioner for a total cost of Rs.108.60 crores.

2.The petitioner claims that in terms of the MOU, the first 6 Windmills (WTG) were to be commissioned by 30.03.2008 and the balance on or before 30.04.2008. They were to be purchased in two phases of 6 Windmills (WTGs). A sum of Rs.50 crores is stated to have been given to the respondent in respect of the first phase, which was commissioned on 31.03.2008. The balance of Rs.4.30 crores was paid only in September, 2008, though the blame is sought to be shifted to the respondent for the delay in handing over the documents for Phase-I. The plant was commissioned, but with delay as aforesaid and the allegation is of respondent's failure to obtain permanent power evacuation approval. This resulted in signing of another MOU dated 26.02.2009, which provided for free maintenance for a period of 32 months. The loss caused by delay in generation of power is what is stated to have given rise to a dispute, which could not be resolved. A problem also arose about signing of the Operation and Maintenance agreement, as the respondent failed to return the agreement executed on a stamp paper signed by the petitioner. The petitioner also moved for interim relief by filing an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the

said Act'), where the draft Operation and Maintenance agreement being reduced into writing in terms of the meeting held on 24.08.2009 was acknowledged. The legal notice issued by the petitioner is dated 02.09.2011.

3. There appears to be disputes about the constitution of the Arbitral Tribunal, as the petitioner wanted it in terms of the MOU (O&M) dated 24.08.2009, while the respondent was wanting it in terms of the Purchase Order. The difference was that while the clause in respect of the first document required a Arbitral Tribunal of Three Members, the second required an Arbitral Tribunal of only one Member. This becomes an academic exercise, as learned counsel for the petitioner states that the petitioner is agreeable to an arbitration of a Single Arbitrator instead of Three Members Tribunal in terms of the agreement inter se the parties.

4. The respondent has chosen not to appear, despite notice nor has defied by way of reply. It is, thus, a case of no return.

5. The learned counsel for the petitioner states that it is a continuing dispute and their further claims also have arisen with passage of time. These too, in my view, can be decided by the Arbitrator.

6.The existence of agreement for arbitration, the disputes having arisen and there being no unanimity on the Arbitrator to be appointed, this Court would have to appoint an Arbitrator.

7.In view of the aforesaid, I appoint **Mr.Justice K.Chandru, a retired Judge of this Court,** as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally. In the event of respondent not entering appearance, the same may be borne by the petitioner at the initial stage to form part of the main cause.

8.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

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Sd/. (S.K.K., CJ.)
27.02.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/04.05.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.