

In the High Court of Judicature at Madras

Dated : 16.12.2016

Coram :

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

O.P.No.545 of 2016

M/s.Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Gardens,
Off 11th Main Road, Anna Nagar,
Chennai 600 040.

.. Petitioner

-VS-

M/s.Samalpatti Power Co. Pvt. Ltd.,
"Sreyas Virat", No.14, First Floor,
3rd Cross Road, Raja Annamalaipuram,
Chennai 600 028.

.. Respondents

Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to adjudicate the dispute relating to the claim of the petitioner towards liquidated damages for the years 2013-14 and 2014-15 arising under the Fuel Supply Agreement dated 13.12.1997.

For Petitioner : Mr.Krishna Srinivasan
for M/s.Ramasubramanian Associates

For Respondents : Mr.Rahul Balaji

* * * * *

O R D E R

Heard the learned counsel for parties.

2. An Arbitral Tribunal has already been constituted which is hearing the dispute inter se the parties. The bank guarantee furnished by the respondent was subsequently encashed only in the year 2016 and for the amount recovered by the petitioner, the respondent sought to file a counter-claim before the Arbitral Tribunal.

3. The Arbitral Tribunal initially opined on 06.02.2016 that the respondent may file an application to bring on record the counter-claim and the petitioner would have all rights to object to the same. However, the respondent filed the counter-claim before the Arbitral Tribunal which has taken it on record and has not accepted the contention of the petitioner that such a counter-claim cannot be taken on record without an application, apart from defences as may be available to the petitioner.

4. Learned counsel for the petitioner vehemently contends that the matter should not go to the same Arbitral Tribunal as it pertains to a subsequent period of the same contract and is a separate cause of action. He further submits that the Arbitral Tribunal could not have taken on record the counter-claim and a new

Arbitral Tribunal should be constituted for the claim of the respondent based on the encashment of the bank guarantee by the petitioner.

5.I am not inclined to accept this plea and I am of the view that the counter-claim be dealt with by the same Arbitral Tribunal and whatever defences are available to the petitioner on merits of that claim can always be raised before the Arbitral Tribunal. This would naturally envisage that even the claim made by the petitioner for the subsequent period in respect of which bank guarantee has been encashed would also stand referred to the same Arbitral Tribunal.

6.Original Petition, accordingly, stands disposed of. No costs.

(S.K.K., CJ.)
16.12.2016

sra

The Hon'ble Chief Justice

(sra)

O.P.No.545 of 2016

16.12.2016

<http://www.judis.nic.in>