

In the High Court of Judicature at Madras

Dated : 03.06.2016

Coram :

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

O.P.No.70 of 2016

M/s.Goyal MG Gases Pvt. Ltd.,
A-38, First Floor,
Mohan Co-operative Industrial Estate,
Main Mathura Road,
New Delhi – 110 044
rep. by the Manager (Commercial)
Mr.A.K.Bakshi.

.. Petitioner

-VS-

1.M/s.Sagar Power Ltd.,
Registered office at Plot No.111, Road No.10,
Jubilee Hills, Hyderabad – 500 033,
Telangana State.

2.M/s.J.S.V.Energy Pvt. Ltd.,
Registered office at
No.2/134, Ayya House,
Ambalavanapuram,
Mahendragiri via,
Tirunelveli District – 627 133.

.. Respondents

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to commence the Arbitration in the matter of disputes and differences between the petitioner and the respondents regarding the Slump Sale Agreement dated 09.05.2015, Deed of Assignment dated 18.6.2015 and M.O.U. dated 28.7.2015.

For Petitioner : Mr.B.Ravi Raja

For Respondents : Mr.Santosh Ukkur for R1

Mr.S.Ramesh for R2

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ORDER

A Slump Sale Agreement dated 09.05.2015 was entered by the first respondent in favour of the second respondent for sale of Wind Power Plant for a consideration of Rs.3.95 Crores. This agreement, in the eventuality of disputes, provided for resolution thereof through an arbitration as per Clause 10.13, which envisaged an Arbitral Tribunal of three Arbitrators, with one Arbitrator being appointed by each party.

2. The agreement also contained an assignment Clause 10.2, as under:-

“10.2 This Agreement may be assigned by the Transferee subject to: (a) the prior written consent to the Transferor such Consent shall not be unreasonably withheld; and (b) the assignee and the Transferee confirming to the Transferor in writing that the assignee and the Transferee shall be jointly and severally bound by all provisions of this Agreement (including Clause 8 and Clause 10.13) and the assignee shall be subject to all obligations of the Transferee hereunder as if she/he/it was a party

hereto and had executed the same.”

3. The second respondent, exercising rights under the said Clause, executed a Deed of Assignment in favour of the petitioner on 18.06.2015 for a sale consideration of Rs.9.16 Crores.

4. It is not in question that disputes have arisen *inter se* the parties, though the stand of the first respondent is that on account of non-fulfilment of the conditions by the first respondent, the agreement has come to an end on 31.05.2015 in terms of Clause 4.2, which reads as under:-

“4.2 Upon fulfilment of all the Conditions Precedent (or the waiver thereof, as applicable), the Transferor shall inform the Transferee (**“CP Fulfilment Notice”**) together with the relevant documents, that all the Conditions Precedent have been completed (or where necessary have been waived by the Transferee). In case the Conditions Precedent are not fulfilled (or waived in writing by the Transferee) on or before May 31, 2015 or such other date as mutually agreed to between the Parties, in writing, this Agreement shall automatically terminate after lapse of 30 days thereafter, without any financial consequences to either Party, except as specified in Clause 9.4.”

5. It may also be noted qua the issue of assignment, the stand of the first respondent is that they never gave prior written consent and thus, there is no valid assignment. Surprisingly, the stand of the second respondent is that though they executed the Assignment Deed, they have not obtained prior consent of the first respondent.

6. In my considered view, the aforesaid are all matters of controversy on merits to the extent that the obligations of the first respondent to the petitioner would be in turn dependant on the validity of the Assignment Deed, which would be a matter of trial. The fact that on this aspect, the second respondent now supports the first respondent, would again be an issue on merits.

7. The requirements of reference of disputes to arbitration under Section 11 of the Arbitration and Conciliation Act, 1996 are specified – that there are agreements *inter se* the parties, that the disputes have arisen *inter se* the parties and the jurisdiction of this Court is not disputed. The merits have to be left to the Arbitrator.

8. At this stage, the learned counsel for parties suggest that instead of three member Arbitral Tribunal for arbitration, one single member Arbitral Tribunal be appointed to save costs and the exercise be

governed by the rules of the Madras High Court Arbitration Centre.

9. In view of the aforesaid submissions, as proposed by the learned counsel for parties, I appoint **Mr. Justice R.S.Ramanathan**, a retired Judge of this Court as the Sole Arbitrator, to enter upon the reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

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

(S.K.K., CJ.)
03.06.2016

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Note: Mark a copy to

- (i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.
- (ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

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