

In the High Court of Judicature at Madras

Dated : 18.11.2016

Coram :

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

O.P.No.719 of 2016

ReGen Infrastructure and Services Pvt Ltd.,
rep. by its Authorised Signatory,
KRM Plaza, North Tower,
8th Floor, No2, Harrington Road,
Chetpet, Chennai-600 031.

.. Petitioner

-VS-

M/s.Sri Maruti Wind Park Developers,
A Partnership firm,
rep. by its Managing Partner v.Balachandra Nadar,
At Lunkad Sky, Office # 8th Floor,
No.804, New Airport Road,
Viman Nagar, Pune-411 014,
Maharashtra.

.. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator in terms of Clause 20 of the Peth Shivpur Agreement dated 14.04.2012, to arbitrate the dispute that has arisen between the parties.

For Petitioner : Mr.S.Aravindan
for M/s.Fox Mandal & Associates

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ORDER

The petitioner claims to be a Limited Company *inter alia* engaged in the business of developing wind power projects in India. The respondent is stated to have approached the petitioner claiming that they were engaged in wind farm development in the State of Maharashtra and in that capacity, a project of 450 M.W. at Peth Shivpur, Kolhapur, Maharashtra was being established. In view of the representations, the petitioner engaged the services of the respondent and three separate agreements were entered into on 01.07.2010, followed by a Memorandum of Understanding dated 21.08.2010. Subsequently, certain other customer contracts were also executed.

2. It is the case of the petitioner that the respondent has failed to honour its obligation under various agreements and a number of projects have been abandoned. There is an agreement executed on 14.04.2012 *inter se* the parties on account of the liabilities, which had been incurred by the petitioner and the petitioner was constrained to allot alternative project sites to the customers. It is this contract which is sought to be relied upon for the purposes of raising claims on the respondent and the claims not having been paid.

3. The arbitration clause is incorporated as Clause 20 in this agreement, as under:-

"20. If any dispute arises out of this agreement the parties shall discuss and settle the same amicably. If no settlement is arrived within 3 months from such dispute the same shall be referred for arbitration under the Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be in Chennai."

4. As noticed, in view of the disputes arising, the petitioner served a notice through the counsel on 20.04.2016 suggesting the names of the Sole Arbitrator, to which a reply was received through the counsel on 25.05.2016, where the principle controversy, apart from the merits of the claim, is as to who should be the Arbitrator and the respondent, in turn, suggested three other Arbitrators.

5. Since the parties were not *ad idem*, the present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to "*the said Act*"). The proceedings under Section 9 of the said Act are stated to be pending, where the respondent has entered appearance and interim orders are operating.

6. Notice was issued in the present petition and the track report of India Post confirms the delivery of notice on the respondent. However, none has entered appearance for the respondent, though served.

7. It is a case of no return. In any case, the only issue is appointment of an Arbitrator on account of lack of consent as to who should be the Arbitrator. The existence of the agreement, existence of the disputes and the jurisdiction of this Court are not in question.

8. I, thus, appoint **Mr.Justice F.M.Ibrahim Kalifulla, a retired Judge of the Supreme Court of India**, 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.

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

(S.K.K., CJ.)
18.11.2016

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