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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1448/2013, IAs 11591-11592/2013 & 3389-3390/2016**

VESTAS WIND SYSTEMS A/S Plaintiff
Through: Mr. Anirudh Das, Mr. Sulabh Rewari,
Mr. Arjun Pall, Advs.
Mr. Parveen Arora, authorized
representative.
versus

RRV EBERGY LTD. & ORS. Defendants
Through: Mr. Indranil Ghosh, Mr. Samiron
Borkataky, Mr. Sarvesh Kumar, Mr.
R.K. Sachdeva, Advs. For D-1 to 2
Mr. Rajashekhar Rao, Mr. Arvind
Verma, Mr. S. Nanda, Advs. For D-3

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **31.03.2016**

IA 3942/2016 (u/S 151 CPC)

This is an application filed by defendant No.3 for early hearing. Para
1 and 2 of the application reads as under:-

“1. The present Application is being filed on behalf of Defendant No.3 given that the connected matter, CS(OS)1449 of 2013, has been listed before the Hon'ble Court on 31 March 2016 by an order of the Learned Joint Registrar dated 15 March 2016.

2. The Plaintiff and the Defendants (hereinafter referred to as the 'Parties') have entered into a full and final resolution of their disputes in terms of a Settlement Agreement dated 25 February 2016 (hereinafter referred to as the 'Settlement Agreement'). Following the execution of the Settlement

Agreement, the Parties moved joint applications in the subject suit and CS(OS)1449 of 2013, bearing I.A. No. 3387 of 2016 and I.A. No.3389 of 2016 respectively (hereinafter referred to as the 'Compromise Applications') under Order XXIII Rule 3 of the Civil Procedure Code, 1908 (hereinafter referred to as the 'CPC'), praying for recording the terms of the Settlement Agreement and passing a decree in accordance therewith."

In view of the fact that connected CS(OS) No. 1449/2013 and IAs 3387/2016 and 3389/2016 are listed today, the request of the learned counsel for the petitioner for listing and hearing IA 3389/2016 in this suit i.e CS(OS) 1448/2013 which is an application under Order XXIII Rule 3 CPC, the application is allowed. The application IA 3389/2016 is taken up for hearing.

Application is disposed of.

IA 3389/2016 (u/O XXIII Rule 3 CPC)

1. This is a joint application filed by the plaintiff and the defendants, inter-alia, making the following prayers:-

"a. pass a decree in terms of the Settlement Agreement dated 25 February 2016 entered into between the Plaintiff and the Defendants; and

b. pass any other or further Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The application is signed on behalf of the plaintiff by Mr. Praveen

Arora (SPA holder for plaintiff), defendant Nos. 1 & 2 by Mr. Sarvesh Kumar (the authorized representative of defendant No.1 and constituted attorney of defendant No.2) and on behalf of defendant No.3 by Mr. Pradeep Yadav (power of attorney holder of defendant No.3). The application is also signed by the learned counsel for the parties i.e for plaintiff, defendant Nos.1 and 2 and defendant No.3. The application is supported by the affidavits of Mr. Praveen Arora, power of attorney holder of the plaintiff; Mr. Sarvesh Kumar authorized representative of defendant No.1 who is also constituted attorney of defendant No.2 and by Mr. Pradeep Yadav, power of attorney holder of defendant No.3.

3. It is stated in the application that parties have entered into full and final resolution of their disputes in terms of the settlement agreement dated February 25, 2016. Copy of the settlement agreement has been annexed to the application as Annexure 'A'. The terms of settlement are as under:-

“4. The Parties hereby agree that the terms of this SA are in full and final settlement of all claims, causes of action, past, present and future, that either Party may have arising out of, or in connection with, or in relation to

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a. The Settlement Agreement dated 11 May 2006 (between Vestas Wind Systems A/S and Vestas RRB India Ltd.);

b. Memorandum of Understanding (MOU) dated 18 September 2011 (between Vestas Wind Systems A/S and RRB Energy Limited);

c. MOU dated 27/30 September 2011 (between Wind Power Invest A/S and EcoRRB Infra Private Limited);

d. Two MOUs dated 23 January 2012 (between Vestas Wind Systems A/S and RRB Energy Limited);

e. Employment agreement (between Vestas Wind Systems A/S and HN) dated 12 October 2005 and subsequent amendments including agreements related to stock option programmes; and

f. Severance agreement dated 13 February/5 March 2012 (between Vestas Wind Systems A/S and HN).

Subject to the present SA, and in consideration of the corresponding releases offered by the Parties herein, each Party releases and forever discharges the other Parties, their parents, affiliates, successors and assigns and each of their respective directors, officers, shareholders, representatives from and against any and all causes of action, suits, claims, present or future arising out of the above described agreements, and any other MOUs/arrangements executed between RRB and Vestas prior to the date of this SA, save and except Clause 2.1 A (xi) of the said Settlement Agreement dated 11 May 2006.

The present SA is being entered into by the Parties herein with a view to settle all or any disputes that exist or may arise between the Parties hereto arising out of the above described agreements, expeditiously and amicably, and is not to be construed as either an admission or acceptance by any Party of the position taken by any other Party in the proceedings described under sub-heading C, including with respect to the validity and existence of the MOUs dated 18 September 2011, 27/30 September 2011 and 23 January 2012.

The Parties confirm and acknowledge that this SA has been executed pursuant to the understanding and agreement of the Parties, to enter into a holistic settlement of all pending litigation and claims amongst them (as described under sub-heading C), with a view to finally putting an end to all the disputes amongst them.

5. *HN and RRB have executed a Supplementary Deed dated 25 February 2016, to which Vestas is not a party. The Parties agree that rights and obligations under said Supplementary Deed are of FIN and RRB alone and that FIN or RRB shall have no recourse against Vestas in relation to the performance, satisfaction and/or breach of any terms of said Supplementary Deed. For abundant caution. Parties agree and acknowledge that the present SA is binding and conclusive on its own terms, and any invalidity/illegality of said Supplementary Deed, or its terms, or any dispute in relation to its performance or lack thereof, will not affect or impact the present SA in any manner whatsoever.*

C. PENDING PROCEEDINGS

Indian proceedings

6. *The Parties agree and consent to file this SA before the Hon'ble High Court at Delhi and would jointly request the Court to pass a decree in terms of the SA in C.S. (OS) 1448 and 1449 of 2013.*

7. *Each Party shall be liable to bear its own costs in connection with C.S. (OS) 1448 and 1449 of 2013. The Parties waive their right to seek or receive any costs in relation to these proceedings. Vestas will be entitled to seek refund of court fees in C.S. (OS) 1448 and 1449 of 2013.*

Danish Proceedings

8. *Upon execution of the present SA, HN and Vestas agree to withdraw their respective claims, filed before the Court of Aarhus in Case No. BS 12-2166/2012: Henrik Norremark v. Vestas Wind Systems A/S. HN and Vestas shall bear their own costs in these proceedings. HN and Vestas waive any right or claim to request the Court of Aarhus to award costs, and also to receive such costs if awarded.*

ICC arbitration

9. *Upon execution of the present SA, Vestas and RRB also agree to withdraw their respective claim(s) and counter-claim(s) made in the ICC Arbitration No. 19554/CYK. Vestas and RRB shall be liable to pay their own share of*

costs in the ICC Arbitration No. 19554/CYK.

10. Vestas and RRB undertake to withdraw C.S. (OS) 999 of 2014 and F.A.O. (OS) 226 of 2015 presently pending before the High Court at Delhi and agree to bear their own costs in relation to said proceedings. Vestas and RRB waive their right to seek or receive any costs in relation to these proceedings.

D. CONFIDENTIALITY AND ANNOUNCEMENTS

11. Each Party covenants that it will treat as confidential and not disclose to any third party any information pertaining to the present SA including, the provisions of this SA, and the negotiations preceding the execution of this SA.

12. Notwithstanding the above. Vestas is entitled to make a stock exchange announcement in relation to the present SA in the following terms:

*"Stock exchange announcement - Vestas Wind Systems A/S
Aarhus, XX February 2016
Stock exchange announcement no. xx/2016*

[Headline] Settlement of legal proceedings in Denmark and India concerning former Chief Financial Officer Henrik Norremark, RRB Energy Limited and Eco RRB Infra Private Limited

In announcements nos. 36/2012 of 2 October 2012, 22/2013 of 24 May 2013 and 33/2015 of 24 June 2015, Vestas provided information on the disputes concerning Vestas' former CFO, Henrik Norremark, RRB Energy Limited and Eco RRB Infra Private Limited as regards financial transactions and project developments.

After successful negotiations among the parties, a confidential settlement has been concluded, which is conclusive and resolves all issues in dispute in multiple jurisdictions.

Consequently, the trial in Denmark and the pending cases in India, including the arbitration proceedings, have been and will be withdrawn.

The Chairman of Vestas' Board of Directors, Mr. Bert Nordberg states: "A settlement has now been reached between the parties regarding the mentioned disputes which is agreeable to all parties."

13. The Parties agree that the following joint statement shall be made to the media:

"Joint statement issued by Vestas Wind Systems A/S, RRB Energy Limited, Eco RRB Infra Private Limited, Mr. Rakesh Bakshi and Mr. Henrik Norremark:

After successful negotiations among the parties, a settlement has been concluded, which is conclusive and resolves all issues in dispute in multiple jurisdictions.

Consequently, the trial in Denmark and the pending cases in India, including the arbitration proceedings, have been and will be withdrawn."

14. The Parties undertake not to make any press releases or communications to third parties, and any text deviating from the above joint statement must be approved in writing by the Parties.

15. Each Party undertakes to make best efforts to prevent disclosure of the provisions of this SA, save where:-

- a. required in law, or by any statutory authority;*
- b. required by Bankers, Auditors and Board of Directors;*
- c. required to enforce the terms of the SA; and*
- d. the other Parties have agreed in writing to such disclosure.*

16. The Parties agree and acknowledge that the clauses contained under the present sub heading D are material terms of the present SA.

E. ANTI-DISPARAGEMENT

17. Each Party agrees and undertakes not to take any action, make or cause

to be made, any statement, ratification or endorsement, whether written or oral, in relation to matters that are subject matter of the present SA, which is intended, or could reasonably be expected to harm, disparage or defame any other Party or its reputation or which may lead to negative or unfavourable publicity to any other Party.

18. The Parties agree and acknowledge that the clauses contained under the present sub heading E are material terms of the present SA.

F. REPRESENTATIONS, WARRANTIES AND COVENANTS

19. Each Party represents and warrants to the other Parties that as of the date of this SA:

a. It has full power and authority to enter into this present SA and to perform its obligations under this SA.

b. The execution and delivery of this SA by it and the performance of its obligations under this SA have been duly and validly authorized by all necessary corporate actions on the part of Vestas and RRB.

c. The SA constitutes a legal, valid and binding obligation of the Party and is enforceable against such Party in accordance with its terms.

d. It is not precluded by the terms of any contract, agreement, arrangement, or any other instrument by which it is bound from entering into the present SA.

e. The execution, delivery and performance by it of this SA and the compliance by it with the terms and provisions hereof do not contravene any provision of law.

20. Each Party confirms that it has received independent legal advice in connection with this SA.

G. GOVERNING LAW AND ARBITRATION

21. All disputes arising out of or in connection with the present SA shall be finally settled under the Rules of Arbitration of the International Chamber of

Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of the arbitration shall be at London, United Kingdom. The language of the arbitration proceedings shall be English.

22. This SA shall be governed by the laws of England.

H. MISCELLANEOUS PROVISIONS

23. This SA may be executed in counterparts, each of which shall be treated as original but which together shall constitute one and the same instrument.

24. The present SA constitutes the entire agreement between the Parties and supersedes all previous negotiations, agreements and commitments whether known or unknown between the Parties. The SA shall not be released, discharged, changed or modified in any manner except by instruments signed by duly authorized representatives of each of the Parties hereto.

If any of the provisions of this SA is found to be illegal, invalid or unenforceable, then to the extent it is declared illegal, invalid or unenforceable, the said provision will be given no effect and will be treated as though it was not included in this SA, but the validity or enforceability of the remaining provisions of this SA will not be affected.

25. No claim or right arising out of or in relation to a breach of this SA can be discharged in whole or in part by a waiver or renunciation of the claim or right, unless such waiver or renunciation is in writing signed by the aggrieved Party. Any failure by a Party to enforce at any time any provision under this SA shall not be considered a waiver of that Party's right thereafter to enforce each and every provision of this SA, including such provision.

26. Save and except Clause 2.1 A(xi) of the Settlement Agreement dated 11 May 2006, the Parties agree that, upon execution of the SA, there are no subsisting agreements/contracts/arrangements, whether written or oral, whether known or unknown, with respect to any pending obligations between the Parties as on the date of the SA. Any such agreement shall stand automatically terminated upon execution of the present SA.”

4. I note that three copies of the agreement have been filed as annexure-A. The first one at pages 378-388 is signed on behalf of the plaintiff; the second copy at pages 389-398 has been signed on behalf of defendant No.1 by its authorized representative and on behalf of defendant No.2 by his constituted attorney and the third copy at pages 399-408 by Mr. Henrik Norremark.

5. As noted from serial No. C under heading 'Pending Proceedings', the parties have agreed and consented to file the Settlement Agreement dated February 25, 2016 in this Court and would jointly request this Court to pass a decree in terms of the Settlement Agreement in CS(OS) 1448/2013 (the present suit), and each party shall bear its own costs.

6. In view of the above, the suit being CS(OS) 1448/2013 is decreed in terms of settlement agreement dated February 25, 2016. The decree sheet be drawn accordingly. Parties to bear their own costs.

7. Application and suit are disposed of.

IA 3390/2016

This is an application filed under Section 16 and 16A of the Court fees Act by the plaintiff for refund of excess Court fees paid at the time of institution of the suit and also refund of 50% of the Court fee to be actually

paid.

Let the Registry give its report on the refund of excess Court fee said to have been deposited by the plaintiff at the time of the institution of the suit.

Renotify this application on May 4, 2016.

V. KAMESWAR RAO, J

MARCH 31, 2016

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