

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION (L) NO. 65 OF 2017**

CLP Wind Farms (India) Pvt Ltd	...Petitioner
<i>Versus</i>	
Wind World (India) Ltd & Anr	...Respondent

Mr Janak Dwarkadas, Senior Advocate, with Shankh Sengupta, Tina Abraham & Siddharth Ranade, i/b Tri Legal, for the Petitioner.

Mr DD Madon, Senior Advocate, with Dr Birendra Saraf, Sachin Chandarana, Akhil Tiwari, & Olga Lume Pereira, i/b Manilal Kher Ambalal, for the Respondents.

**CORAM: G.S. PATEL, J
DATED: 10th February 2017**

PC:-

1. This matter was urgently circulated yesterday for today.

2. Very briefly stated, the Petitioner's case is that the Respondents are removing wind turbine generators and other equipment from the project site at Yermala in contravention of the terms of a Facilitation Agreement. In paragraphs 13, 14 and 15 of the Petition, the Petitioners allege the Respondents failed to discharge and perform their obligations, or to do so on schedule. The

Petitioners therefore invoked their rights to downsize the project and demanded a return of their investment. In paragraphs 20 and 22 the Petitioners complain that the Respondents began “surreptitiously” removing the wind turbine generators, and other equipment from the stockyard.

3. Mr Madon for the Respondents points out that the Petition completely suppresses the fact of a meeting on 29th December 2016 at the office of the Deputy Managing Director, IDBI Bank, one Mr GM Yadwadkar. IDBI Bank was one of the financiers for the Respondents. The meeting was attended *inter alia* by the Petitioners’ representative Rajeev Ranjan Mishra. What happened at this meeting is set out in an email dated 25th January 2017 from the Respondents’ Yogesh Mehra to the Petitioners’ Rajeev Mishra. This email finds no mention in the Petition. It says clearly that on account of changes in Maharashtra State Government Policies, the Petitioners no longer believed the project to be viable. It is for this reason — and not for any default of the Respondents — the Petitioners sought to downsize and terminate the project.

4. Even more significant is the mention in this email of a question placed by the Executive Director of IDBI as to whether the Petitioners were agreeable to release the wind turbine generators and to also release the land conveyed to the Petitioners to enable the Respondents to identify a prospective buyer, sell these assets, and thus reduce IDBI’s own exposure. The email records that the Petitioners agreed to this ‘notwithstanding the terms of the Facilitation Agreement’.

5. There is not a word about this meeting or this email anywhere in the Petition. The email is not annexed. There is not even a reference to it. There is no mention of this meeting, or the question by IDBI, or the Petitioners' response.

6. I can only confess to a feeling of great dismay that an email of this significance was sought to be so completely — and it appears to me quite deliberately — kept out of the Petition. The result is that the Petition paints a very different picture. The allegations in the Petition of default by the Respondents are also at odds with what this email says.

7. It is also an admitted position that the Petitioners have invoked some of the bank guarantees in the amount of approximately Rs 254 crores. These bank guarantees were issued by other banks, not IDBI. The Petitioners still have in their hands presently valid bank guarantees of Rs 135 crores.

8. In these circumstances, I am unable to accept Mr Dwarkadas's submission on behalf of the Petitioners that the Petitioners should be secured for their claim. All equity is always defeated by suppression, mis-statement and want of candour. A litigant seeking equitable relief must not keep vital and relevant material from the court it approaches. This is what we mean when we say *they who seek equity must come with clean hands*, and *they who seek equity must act equitably*.

9. The application for ad-interim relief is rejected.

At 3.00 p.m.

10. On taking instructions, the learned Advocate for the Petitioners seeks leave to unconditionally withdraw the Petition.

11. The Arbitration Petition is dismissed as unconditionally withdrawn.

(G. S. PATEL, J.)