

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

**O.P.No.423 of 2017
& O.A.No.545 of 2017**

1. I. Krishna Pillai
2. P.Chandramouli
3. N.Srinivasan
4. Jayajothi Srinivasan

.... Petitioners

Versus

1. R.Rajkumar
2. P.Navendran

... Respondents

Prayer: Petition filed under section 11 (5) and (6) of the Arbitration and Conciliation Act, 1996 read with Rule 2 of the Appointment of Arbitrators of Madras High Court Scheme, 1996 praying to appoint a sole Arbitrator to resolve the disputes between the petitioners and the respondents in terms of Clause 32 of the Memorandum of Understanding dated 23.3.2016.

For Petitioners : Mr.P.Giridharan

For Respondents : Mr. P.Wilson Topaz

for M/s.Kailasam Associates

ORDER

O.P.No.423 of 2017 is filed in terms of section 11 of the Act seeking the appointment of a sole Arbitrator to resolve the disputes between the petitioners and the respondents in terms of Clause 32 of the Memorandum of Understanding dated 23.3.2016.

2. O.A.No.545 of 2017 is filed in terms of section 9 of the Arbitration and Conciliation Act, 1996 (in short Act) by four individuals seeking an interim injunction restraining respondents 1, 2, 4 and 5 from representing themselves as Directors/Officers/Key Managerial personnel of the 3rd respondent company to any third parties and restraining them from interfering with the day to day business/management of the 3rd respondent company, both reliefs sought pending disposal of arbitral proceedings inter se.

3. O.A.545 of 2017 is filed by the promoters of an entity under the name and style of Mistral Wind Energy Company Pvt. Limited, (hereinafter referred to as 'Mistral'). Mistral holds 86.15% of paid up share capital of the 3rd respondent Garuda Vaayu Shakthi Limited (in short 'Garuda'), its subsidiary, and controls its operations and management. The 4th and 5th respondents have been appointed as Nominee Directors of the 1st and 2nd respondents in Garuda. The 1st and 2nd respondents, claiming expertise in

the wind turbine business sector had offered their services to the applicants to re-structure the management and operations of Garuda.

4. A Memorandum of Understanding (in short 'MOU') dated 23.3.2016 was entered into between the applicants and respondents 1 and 2. The MOU outlined the scope of various obligations to be fulfilled by both parties and the appointment of respondents 2, 4 and 5 were effected in compliance with clause 12 of the MOU which provide for the appointment of three nominees as additional directors of Garuda to represent the 1st and 2nd respondents.

5. The applicants allege breaches by respondents 1 and 2 of their obligations under the MOU and the exchange of correspondence between the parties would establish clearly the existence of disputes between the parties.

6. Heard Mr.P.Giridharan appearing for the petitioners and Mr.P.Wilson Topaz, appearing for the respondents in both the Original Petition as well as the Original Application.

7. Both learned counsel would admit to differences that have arisen between their respective clients and would also suggest and concur on the appointment of Mr.Justice K.P.Sivasubramaniam, former Judge of this Court as Arbitrator in the matter.

8. I thus appoint Mr.Justice K.P.Sivasubramaniam, former Judge of this Court to enter reference in the matter and to adjudicate upon the disputes that have arisen interse the parties.

9. As an interim measure, the applicant in OA 545 of 17 seeks an injunction restraining the 1st, 2nd, 4th and 5th respondents representing themselves as Directors/Officers/Key Managerial personnel of the 3rd respondent company to any third parties as well as from interfering with the day to day business/management of the 3rd respondent company. In so far as the proceedings for arbitration, as agreed upon between the parties is imminent and to protect the balance of convenience between the parties, the parties will maintain status-quo for a period of eight weeks from the date of receipt of this order. The continuance or otherwise of the interim protection as well as any other interim relief thought necessary may be sought for from the learned Arbitrator.

10. At the closure of the hearing, learned counsel for the applicant would pray for a refund of the Court Fee paid citing order of this Court in A.D.No.11506 of 2017, wherein, a court fee of Rs.200/- was held to be adequate for matters falling within the purview of section 9 of the Act. The petitioner has remitted an amount of Rs.1,00,000/-sought for by the Registry being 1% of the subject matter of arbitration and the remittance has been effected, and not under protest.

11. The parties in the present case are business men and commercial entities. The payment of court fee appears to have been made on an acceptance of position adopted by the registry. In such event, no refund is called for particularly as no circumstances of prejudice or

hardship have been either projected or made out. The request stands rejected.

12. Both Original Petition and Original Application are disposed off in the above terms leaving the parties to bear their own costs.

28.07.2017

Index:Yes/No

Speaking order/non-speaking order

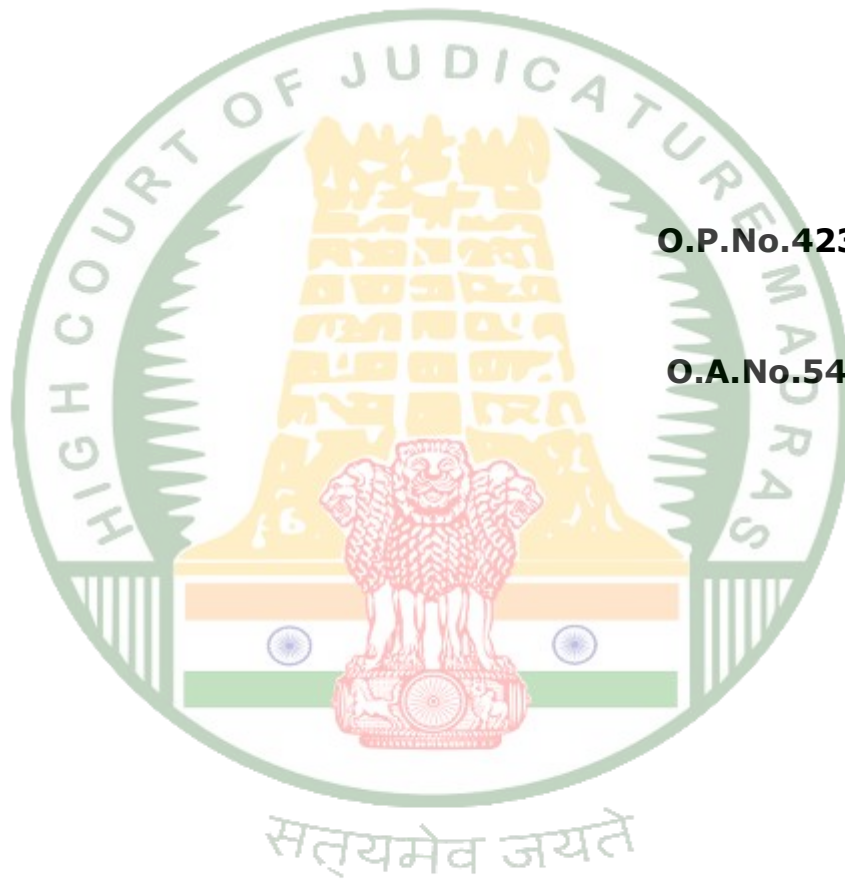
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ANITA SUMANTH, J.

Msr/sl



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