

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.05.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.13520 of 2017 and 8712 of 2017
and WMP Nos.14603 to 14606 of 2017 in W.P.No.13520 of 2017
and W.M.P.Nos.9546 to 9548 of 2017 in W.P.No.8712 of 2017
and O.A.Nos.181 of 2017 and 268 of 2017
and A.No.1238 of 2017 in O.A.No.181 of 2017

W.P.No.13520 of 2017

Navajuga Infotech Private Ltd.,
Rep. by its Vice President U.B.Raju,
#250/94 Parsn Apartment, 3rd Floor,
Lloyds Road, Gopalapuram,
Chennai - 600 086.

... Petitioner

v.

1.The Tamil Nadu Electricity Board,
Rep. by its Chief Engineer/R-APDRP,
144, Anna Salai, Chennai - 600 002.

2.The Indian Telecom Industries Ltd.,
Corporate Marketing Unit F 84 ITI
Complex, Dooravani Nagar,
Bangalore - 560 016.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order of the first respondent in their letter proceedings letter No.CE/RAPDRP/SE-II/RAPDRP/EE-4/AEE1/FTIA-Notice/D.143/17 dated 28.03.2017 and quash the same and consequently direct the first respondent to make the milestone payment of a sum of Rs.140 Crores for the work already completed by this petitioner in terms of the contract dated 30.10.2010

between the petitioner and first respondent pursuant to the contract of Restructured Accelerated Power Development Programme.

For Petitioner : M/s.P.Bagyalakshmi
For Respondents : Mr.Abdul Hameed (For R1)
No appearance (For R2)

W.P.No.8712 of 2017

Navajuga Infotech Private Ltd.,
Rep. by its President N.Gautham,
#250/94 Parsn Apartment, 3rd Floor,
Lloyds Road, Gopalapuram,
Chennai - 600 086.

... Petitioner

v.

1.The Chair Person,
The Ministry of Power
Government of India,
Sewa Bhawan, R.K.Puram, Sector 1,
New Delhi, India.

2.The Managing Director,
Power Finance Corporation Ltd.,
Urjanidhi # 1, Barakhamba Lane,
Cannaught Place, New Delhi - 1.

3.The Tamil Nadu Electricity Board,
Rep. by its Chief Engineer/R-APDRP,
144, Anna Salai, Chennai - 600 002.

4.The ITI Ltd.,
Corporate Marketing Unit F 84 ITI
Complex Dooravani Nagar,
Bangalore - 560 016.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus, directing the third respondent herein to sanction and disburse a sum of Rs.140 Crores in accordance with the representation dated

12.01.2017 and in accordance with the terms and conditions or Clause of GCC 14.1 Contract dated 30.10.2010 in pursuance of the Restructured Accelerated Power Development and Reforms Programme.

For Petitioner : M/s.P.Bagyalakshmi
 For Respondents : Mr.Abdul Hameed (For R3)
 No appearance (For R1, R2 and R4)

O.A.No.181 of 2017

Navajuga Infotech Private Ltd.,
 Rep. by its Authorised Signatory,
 #250/94 Parsn Apartment, Flat No.14, 3rd Floor,
 Lloyds Road, Gopalapuram,
 Chennai - 600 086.

... Applicant

v.

1.The Tamil Nadu Electricity Board,
 Now known as TANGEDCO Ltd.,
 Rep. by its Chief Engineer/R-APDRP,
 144, Anna Salai, Chennai - 600 002.

2.The ITI Ltd.,
 Corporate Marketing Unit F 84 ITI
 Complex, Dooravani Nagar,
 Bangalore - 560 016.

... Respondents

Original Application filed under Order XIV Rule 8 of O.S. Rules read with Section 9(ii)(d), Arbitration and Conciliation Act, 1996 seeking for an order of interim injunction restraining the first respondent, their men, agents, or any one claiming through or under them, from in any manner, altering or dismantling or otherwise harming the hardware components, being computer systems and accessories supplied by the applicant under the Contract or the software installed by the applicant in the operational system of the first respondent under the contract dated 30.10.2010 between the parties in

pursuance of the Restructured Accelerated Power Development and Reforms Programme, pending disposal of arbitral proceedings.

For Applicant : M/s.P.Bagyalakshmi
 For Respondents : Mr.Abdul Hameed (For R1)
 No appearance (For R2)

O.A.No.268 of 2017

Navajuga Infotech Private Ltd.,
 Rep. by its Authorised Signatory,
 #250/94 Parsn Apartment, Flat No.14, 3rd Floor,
 Lloyds Road, Gopalapuram,
 Chennai - 600 086.

... Applicant

v.

1.M/s.State Bank of India,
 CAG Branch Hyderabad,
 CAG Branch Ozone Building,
 Punjagutta Main Road,
 Hyderabad - 500 082.

2.The Tamil Nadu Electricity Board,
 Now known as TANGEDCO Ltd.,
 Rep. by its Chief Engineer/R-APDRP,
 144, Anna Salai, Chennai - 600 002.

2.The ITI Ltd.,
 Corporate Marketing Unit F 84 ITI
 Complex, Dooravani Nagar,
 Bangalore - 560 016.

... Respondents

Original Application filed under Order XIV Rule 8 of O.S. Rules read with Section 9(ii)(d), Arbitration and Conciliation Act, 1996 seeking for an order of

interim injunction restraining the first respondent, their men, agents, or any one claiming through or under them, from in any manner, paying any money to the second respondent and the second respondent from receiving any money against invocation of the Bank Guarantee bearing No.1303910BG0003197 dated 25.10.2010 (as extended from time to time) issued by it in favour of the second respondent, pending disposal of arbitral proceedings.

For Applicant : M/s.P.Bagyalakshmi

For Respondents : Mr.Abdul Hameed (For R2)
No appearance (For R1 and R3)

COMMON ORDER

By consent W.P.No.8712 of 2017 and O.A.No.268 of 2017 have been called for and a common order is passed.

2.An agreement has been entered into between the petitioner and the respondents on 14.10.2010 for the purpose of digitalising the entire system throughout the State of Tamil Nadu. This agreement was entered into in pursuance to the invitation of bids through tenders made by the 1st respondent followed by the bid of the petitioner having been accepted. This agreement to develop the IT Infrastructure under the Restructured Accelerated Power Programme and Reforms Programme (RPDRP) has been entered into between the parties for the above said purpose. The period mentioned for execution is

eighteen months. According to the petitioner, substantial work has been done. However, there is a continued non-cooperation on the part of the respondents. The first respondent is enjoying the completed work of the petitioner, but strangely not releasing the proportionate amount. According to the respondents, as seen from the impugned order under challenge, there is a series of non-compliance on the part of the petitioner, which has got a spiraling effect, including huge delay causing heavy loss. While the petitioner claims an approximately sum of Rs.140 Crores, the 1st respondent claims a sum of Rs.413 Crores. The respective claims are no doubt tentative in nature. The agreement also contains an arbitration clause in Annexure-3: Special Conditions of Contract. Clause GCC 8.2 speaks about the procedures for appointing the Arbitrators which is as under:

"GCC 8.2: The formal mechanism for the resolution of disputes shall be:

If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such dispute and difference, either party may require that the dispute be referred for resolution to the formal mechanisms, described below (The date of commencement of the dispute shall be taken from the date when this clause reference is quoted by either party in a formal communication clearly mentioning existence of dispute or as mutually agreed):

- a) The mechanism for resolution of disputes for bidders shall be in accordance with the Indian Arbitration and Conciliation Act of 1996. The Arbitral Tribunal shall consist of 3 (Three) Arbitrators. Each Party shall nominate an Arbitrator and the two nominated Arbitrators shall mutually agree and nominate a third Presiding Arbitrator.
- b) The Arbitrators shall necessarily be retired High Court Judges and the umpire shall be a retired Chief Justice.
- c) The place for arbitration shall be Chennai."

3.The petitioner has approached this court by invoking Section 9 of the Arbitration and Conciliation Act, 1996 and incidentally filed two writ petitions. In the meanwhile, the 1st respondent has invoked the arbitration clause and appointed an Arbitrator, namely, Hon'ble Mr.Justice K.Chandru on its behalf. Under those circumstances, this Court has suggested to both sides to thrash all the issues between them before the Arbitration Tribunal. Accordingly the matter stands adjourned to today (26.05.2017).

4.When the matter is taken up for hearing today, both the learned counsels fairly submit that they would ventilate their grievances through the Arbitration Tribunal consisting of three Arbitrators. While the learned counsel for the first respondent has already named Hon'ble Mr.Justice K.Chandru, the

learned counsel for the petitioner agrees with the appointment of Hon'ble Mr.Justice K.Venkataraman, as the nominee of the petitioner. Both the parties have also agreed that the Presiding Arbitrator would be Hon'ble Mr.Justice N.Paul Vasanthakumar, Retired Chief Justice of Jammu and Kashmir.

5.Though the clause referred above gives the discretion to the two nominated Arbitrators to nominate the third Presiding Arbitrator, in view of the agreement between the parties, coupled with the fact that it would avoid more delay, this Court is inclined to request Hon'ble Mr.Justice N.Paul Vasanthakumar, Retired Chief Justice of Jammu and Kashmir, to act as the Presiding Arbitrator. The Presiding Arbitrator shall also act as an Umpire as per Sub-Clause GCC 8.2(b), being the Retired Chief Justice.

6.There is an interim order in currency in the Original Application, not to precipitate the matter any further though pending mediation, which appears to have failed. The impugned order under challenge in W.P.No.13520 of 2017 merely states that action is being contemplated. Therefore, this Court is of the view that it is appropriate to protect the interest of the petitioner by ordering Status Quo as on today with specific reference to the proposed order of cancellation that is likely to be passed by the respondents. This order would be

in currency till the petitioner makes an appropriate application before the Arbitration Tribunal, pending adjudication of the main arbitration.

7.Considering the urgency involved, this court requests the Arbitration Tribunal to convene a sitting at the earliest, preferably, within a period of two weeks from the date of receipt of a copy of this order. The parties are at liberty to file appropriate interim applications before the Arbitration Tribunal, if so advised . The learned Arbitrators are at liberty to fix their own fees.

8.With the above direction, the writ petitions and the original applications stand disposed of. No costs. Consequently, connected miscellaneous petitions and A.No.1238 of 2017 are closed.

26.05.2017

Index: Yes/No

Internet: Yes

ars/cse

Note:

1. Issue order copy on 29.05.2017.

2. Registry is directed to communicate a copy of this order to the learned Arbitrators, viz.,

(i) Hon'ble Mr.Justice N.Paul Vasanthakumar,
Retired Chief Justice of Jammu and Kashmir
"Ashirvadh", No.24-A, II Street, Kamaraj Avenue, Adyar, Chennai-20.

(ii) Hon'ble Mr.Justice K.Chandru
No.4-B, Kanchana, 78, St. Mary's Road, Abiramapuram, Chennai - 18.

- (iii) Hon'ble Mr.Justice K.Venkataraman
L-Block, No.125, East Anna Nagar, Chennai - 600 102.

To

- 1.The Chair Person,
The Ministry of Power
Government of India,
Sewa Bhawan, R.K.Puram, Sector 1,
New Delhi, India.
- 2.The Managing Director,
Power Finance Corporation Ltd.,
Urjanidhi # 1, Barakhamba Lane,
Cannaught Place, New Delhi - 1.
3. The Tamil Nadu Electricity Board,
Rep. by its Chief Engineer/R-APDRP,
144, Anna Salai, Chennai - 600 002.
- 4.The Indian Telecom Industries Ltd.,
Corporate Marketing Unit F 84 ITI
Complex, Dooravani Nagar,
Bangalore - 560 016.
- 5.M/s.State Bank of India,
CAG Branch Hyderabad,
CAG Branch Ozone Building,
Punjagutta Main Road,
Hyderabad - 500 082.

M.M.SUNDRESH,J.

ars/cse

**W.P.Nos.13520 of 2017 and 8712 of 2017
and WMP Nos.14603 to 14606 of 2017
in W.P.No.13520 of 2017 and W.M.P.Nos.9546
to 9548 of 2017 in W.P.No.8712 of 2017
and O.A.Nos.181 of 2017 and 268 of 2017
and A.No.1238 of 2017 in O.A.No.181 of 2017**

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