

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 12TH DAY OF SEPTEMBER 2018

THE HON'BLE MR.JUSTICE C.SARAVANAN

O.A.Nos.774 and 775 of 2018

In the matter of the Arbitration
and Conciliation Act, 1996.

And

In the matter concerning the
Power Sale Agreement dated
10.01.2018.

Rama Enterprises

A Partnership firm having its registered
office located At No.196, East Coast Road,
Injambakkam, Chennai 600041, Tamil Nadu.
Represented by its Partner Mr.R.B.Rajesh

...Applicant/Plaintiff
(in both applications)

-Versus-

1. BESCOM Limited
Bangalore Electricity Supply Company Limited,
Corporate Office at BESCOM K.R.Circle
Bangalore 560001.

2. K.A.Badrinarayana
S/o. Anantha Padmanabhaiah residing at
Thippadoddi Village, ByrakurHobli, Mulbagal
Taluk, Kolar District, Pin 563 132.

..Respondents/Defendants
(in both applications)

O.A.No.774 of 2018

Original Application praying that this Hon'ble Court
be pleased to grant the Applicant interim injunction
restraining Bangalore Electricity Supply Company (BESCOM)
from making any payments to the Respondent's Account.

O.A.No.775 of 2018

Original Application praying that this Hon'ble Court be pleased to grant the Applicant interim injunction directing BESCO to remit all further payments pursuant to the PPA, to account bearing number-16290200003910, with Federal Bank.

These Original Applications coming on this day before this court for hearing the court made the following order:

The above applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996 for an order interim injunction to restrain the first respondent from making any payments to the respondents' account and to direct the first respondent to remit all further payments pursuant to the Power Purchase Agreement to account bearing Account No.16290200003910 with Federal Bank.

2.The second respondent has been awarded BESCO RR No.NP-1939 and has entered into a Power Purchase Agreement for a period of 25 years by the first respondent.

3.The first respondent has entered into a Memorandum of Understanding dated 18.05.2016 with the second respondent. The second respondent has undertaken to invest in Solar RTPV Power Project on the condition that the second respondent would assign and transfer the BESCO SRTPV Power Project Agreement rights to it.

4.The applicant has entered into a Power Sale Agreement dated 10.01.2018 with the second respondent to invest 1Mega Watt capacity SRTV assets. All the

payments received from the first respondent is to be routed through Escrow account jointly held by the applicant and the second respondent.

5. On 17.01.2018 an Escrow Account Agreement has been signed between the applicant and the second respondent with the Federal bank which sets out the terms and conditions regarding routing of payments.

6. The parties have also opened an Escrow account for such transfer.

7. The learned counsel for the applicant further submits that the generation of solar power has commenced and despite the same payments have not been made to the Escrow account. The second respondent is receiving the payments.

8. The Power Sale Agreement also has an arbitration clause to resolve the disputes. The said clauses read as under:-

"15. The parties shall make good faith efforts to resolve any disputes arising out of or in connection with this agreement through negotiation. Any dispute arising out of or in connection with this agreement including any question regarding their existence, validity or termination, shall be referred to and finally resolved by the sole arbitrator appointed by the Investor and the Arbitration shall be carried out in accordance with the Arbitration & Conciliation Act, 1996. The seat of arbitration shall be

Bangalore the proceedings shall be carried out in English. The arbitral award shall be final and binding.

16.The laws of India shall govern the terms of this 'Agreement' subject to clause 16 above, the courts at **Bangalore** shall have exclusive jurisdiction in respect of any disputes arising under this 'Agreement'."

9.Though by an order of this Court dated 21.08.2018, notice was ordered on the respondents, there is not representation on behalf of the respondents.

10.The learned counsel for the applicant submits that since signing of Memorandum of Understanding and the Agreement, multiple changes were brought with the first respondent that prevented the applicant and the second respondent from proceeding further. Thus, a Power Purchase Agreement dated 21.12.2017 signed earlier between the respondents herein was substituted with a new Power Sale Agreement dated 10.01.2018 came to be signed between the parties.

11.I have gone through the facts of the case and Memorandum of Understanding/Agreements signed between the parties.

12.Though the applicant is located in Chennai, while the respondents are located in Karnataka. Further, the Sale Agreement filed by the applicant indicates that the Courts in **Bangalore** alone will have the jurisdiction and the seat of arbitration shall be in **Bangalore**. Therefore, this Court has no territorial jurisdiction as per decision of the Hon'ble Supreme Court in **Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others** (2017) 7 SCC 678, wherein it was held that only Courts where the seat of arbitration is situated shall have jurisdiction. Even otherwise only

such a Court has jurisdiction under Section 42 of the Act. This Court cannot therefore pass any order under Section 9 of the Arbitration and Conciliation Act, 1996 for want of territorial guidelines.

13. The applicant may therefore approach the Karnataka High Court in Bangalore, to invoke under Section 9 of the Arbitration and Conciliation Act, 1996.

14. The above applications are therefore dismissed as not maintainable with liberty to the applicant to approach the jurisdictional High Court. No costs.

Sd/-C.S.N.J
12.09.2018

//Certified to be a true copy//
Dated this the day of 2018.

KY/19.09.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment/Decree in this format.

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