

O.A.No.709 of 2019

PUSHPA SATHYANARAYANA, J.

The prayer of the applicant is to grant an order of interim injunction prohibiting the first respondent from giving effect to the step in right which are sought to be invoked by the first respondent contrary to the terms of the Project Development Agreement dated 29.08.2018 and further direct the respondents to maintain status quo in respect of the respective roles assigned to the parties under the PDA pending adjudication in arbitration.

2. The applicant is engaged in the business of land gathering and acquisition for windmill purposes. The second respondent is in the business of setting up of wind farms. The second respondent had engaged the applicant with the job of acquisition of lands by way of sale or lease and for obtaining requisite approvals from the statutory authorities for setting up wind turbines and wind farms. The applicant and the second respondent entered into a Project Development Agreement (in short, "PDA") dated 25.01.2018. Similarly, the second respondent also entered into a separate contract with the first

respondent, who is the manufacturer of the windmills and other allied equipments. The applicant also had entered into a separate agreement with the first respondent dated 29.08.2018, in and by which, the applicant would perform the very same obligations undertaken by them in the previous agreement.

3. It is stated that as per the Agreement dated 29.08.2018, the applicant would purchase the land and convey it to the second respondent and the same will be under the supervision and approval of the first respondent. The applicant alleged that the first respondent interfered with the acquisition process by setting up a third party competitor for land gathering purpose by executing two lease deeds dated 22.01.2019 and also two sale deeds dated 11.01.2019 and 18.01.2019 with the third parties in breach of the terms of the PDA dated 29.08.2018. The said act of the first respondent had caused negative effect on the land owners, with whom the applicant had already negotiated and contracted to buy at a lesser price. As the action of the first respondent is contrary to the PDA, the applicant also had discussion with the second respondent. There was a joint meeting of the applicant and the respondents on 19.02.2019 and an agreement was arrived at, which was reduced into writing on the same date.

According to the applicant, none of those terms and commitments agreed upon at the meeting dated 19.02.2019 were complied with by the first respondent.

4. While so, the first respondent issued a notice dated 18.06.2019 indicating its intention to invoke step-in rights, thereby causing a threat of unilateral termination of the Project Development Agreement dated 29.08.2018. The applicant also had requested the second respondent, who is well-aware of the acts of the first respondent, to cancel the sale deeds. The Step-in right action by the first respondent is detrimental to the interest of the applicant causing serious damages and loss. As any action that may be taken by the first respondent by invoking the Step-in rights would result in removal of the applicant from the project itself entirely, the applicant has sought for an order of injunction prohibiting the first respondent from giving effect to the Step-in rights, which are sought to be invoked by the first respondent contrary to the terms of the PDA dated 29.08.2018.

5. This Court had granted an order of interim injunction on 24.07.2019. Upon service, the first and second respondents had

appeared through their counsels.

6. Though originally the matter was directed to be listed on 21.08.2019, expressing the urgency, the learned counsel for the first respondent mentioned it and hence, it is listed today. The learned counsel for the first respondent also, considering the urgency and there was no time for filing a counter-affidavit, chose to argue the matter waiving their right to file a counter. He had also filed a memo to that effect.

7. Heard learned Seniors counsels appearing on either side and perused the materials placed before this Court.

8. According to Mr.Aravind Pandian, learned Senior Counsel appearing on behalf of the first respondent, the prayer itself is couched in such a manner that their Step-in rights are sought to be invoked by the first respondent contrary to the PDA dated 29.08.2018, whereas, admittedly, on 18.06.2019, the first respondent had issued a notice to invoke the Step-in rights due to delays and deviations from the agreed timeline in providing services under the PDA dated 29.08.2018. In the said notice, the first respondent had highlighted

certain delays and deviations from the mutually agreed terms/timeline of the PDA and also issued the notice to invoke its rights to Step-in in accordance with the PDA dated 29.08.2018.

9. In response to the same, the applicant also sent a reply dated 20.06.2019 contending that the notice to Step-in rights as per the PDA dated 29.08.2018 is not at all binding on the applicant as the first respondent, as early as on 04.01.2019, had breached the contract by purchasing the land through a third party without the knowledge of the applicant causing a total damage to their business.

10. When the first respondent had already put on notice the applicant about its intention to invoke the statutory right as early as on 18.06.2019, which was also acknowledged by reply dated 20.06.2019, in the affidavit filed in support of this application, it is stated that there is every possibility of the respondents invoking the Step-in rights, which would result in serious damages and loss. It is stated as if the Step-in rights had not been invoked by the first respondent. Such an averment of the applicant to take the order of interim injunction is a mischievous one.

11. Whether the order of interim injunction granted in favour of the applicant can be extended till the parties are referred to an arbitration is the question now to be decided ?

12. Learned counsel for the applicant referred to the Minutes of the Meeting regarding the land and development activities, progress and completion dated 19.02.2019 between the applicant and respondents 1 and 2. As per the minutes, it was agreed that the applicant and the respondents 1 and 2 would work jointly to see all possibility of the land purchase. Clause 11 of the said minutes is as follows :

*"Further Nordex to monitor performance and schedule of Ishvaryam committed schedule as per point No.3 above till April 2019 and in case of no progress or delay from Ishvaryam, Nordex can engage second developer to achieve the project schedule."*

In view of the above, it was pointed out that there was a delay and there was no progress in the activities of the applicant and hence, it was decided by the first respondent to invoke Step-in rights as there was no progress or delay on the part of the applicant.

13. It is contended by the learned counsel for the second respondent that the original PDA dated 25.01.2018 executed between the second respondent and the applicant was in force only upto 31.12.2018 and though it contained renewal clause on mutually agreed terms and conditions, it was not renewed. It is also relevant to point out that the dispute is between the first respondent and the applicant with respect to the PDA dated 29.08.2018 and there is no dispute between the applicant and the second respondent. The very same agreement dated 29.08.2018 supersedes all previous written or oral arrangements regarding the Project. The Step-in rights of AWPI (the first respondent) is provided for in clause 11.1 of the Agreement dated 29.08.2018.

*"Notwithstanding anything contained in this Agreement, if, in the sole opinion of AWPI, the Developer fails to perform any of its obligations including but not limited to achieving any of the Completion Date(s) as per Annexure E, AWPI/its nominee/assignee shall have the right but not the obligation to step-in ("Step-in Rights") with prior notice of three (3) days to Developer and perform or cause the performance of the Defaulted Obligations by itself or through a third party, and recover from the Developer any additional costs incurred therefor."*

14. It is further firmed up by the Minutes dated 19.02.2019. Therefore, there cannot be any difficulty for the first respondent to exercise its Step-in right. Whether there was a delay or deviation as mentioned in the minutes dated 19.02.2019 is an arbitrable dispute. However, that cannot curtail the rights of the first respondent. Having agreed that the first respondent will have the Step-in right, the applicant can have no objection.

15. In such circumstances, the applicant cannot have the benefit of order of injunction restraining the first respondent from exercising its Step-in rights. Accordingly, the interim order of injunction dated 24.07.2019 stands vacated.

16. In the result, this application is dismissed as devoid of merits. It is open to the parties to take recourse to arbitration clause in accordance with law.

06.08.2019

gg

PUSHPA SATHYANARAYANA, J.

99



O.A.No.709 of 2019

WEB COPY

06.08.2019