

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN
O.S.A.Nos.275 to 278 of 2017

Siemens Gamesa Renewable Power Private Limited
(formerly known as Gamesa Renewable Private Limited
and originally known as Gamesa Wind Turbine Private
Limited),

The Futura, B Block 8th Floor,
334, Rajiv Gandhi Salai,
Sholinganallur,
Chennai - 600 119.

..Appellant

(Cause title amended vide order of the Court
dated 05.10.2017 made in C.M.P.Nos.16947,
16948, 16949, 16950 of 2017 in O.S.A. Nos.
SR 71238, 71247, 71251 and 71256 of 2017)

-vs-

1. Infinitas Energy Solutions Private Limited
(formerly known as M/s.Trishe Renewable
Energy Solutions Private Limited)
Second Floor, Khivraj Complex 1,
480, Anna Salai, Nandanam,
Chennai - 600 035.

..1st Respondent/1st Respondent

2. Suzlon Gujarat Wind Park Limited,
104, 1st Floor, Delta Wing,
Raheja Tower,
177, Anna Salai,
Chennai - 600 002.

..2nd Respondent/2nd Respondent

Appeals filed under Order XXXVI, Rule II of Original Side
Rules read with Clause 15 of Letters Patent against the common
order dated 22.08.2017 passed in O.A.Nos.466 to 468 of 2017 and
A.No.2655 of 2017 on the file of this Court.

For Appellant

: Mr.Rajnish Pathiyil

For Respondents

: Mr.K.R.Arun Shabari
for respondent No.1

COMMON JUDGMENT

(Delivered by The Hon'ble Acting Chief Justice)

The present Original Side Appeals have been filed by the appellant - M/s.Siemens Gamesa Renewable Power Private Limited, Sholinganallur, Chennai-119 (formerly known as Gamesa Renewable Private Limited and originally known as Gamesa Wind Turbine Private Limited) against the respondents - (i) M/s.Infinitas Energy Solutions Private Limited, Nandanam, Chennai (formerly known as M/s.Trishe Renewable Energy Solutions Private Limited); and (ii) M/s.Suzlon Gujarat Wind Park Limited, Anna Salai, Chennai-600 002 (Garnishee), aggrieved by the order dated 22.08.2017 passed by the learned Single Judge of this Court in O.A.Nos.466 to 468 of 2017 and A.No.2655 of 2017. The learned Single Judge refused the interim measures and reliefs under Section 9 of the Arbitration and Conciliation Act, 1996 (in short, "Arbitration Act") with the following reason:

"26. The Settlement Agreement in the present case does contain a reference to the terms of the Primary Agreements in Article 4.1.2 thereof. However, the reference cannot be viewed in isolation. Seen in the context of the fact that the parties consciously vested dispute resolution only in the courts in Chennai and the fact that the parties admit that it is the terms of the Settlement Agreement that governs the field as of now, the reference to all and any rights, in clause 4.1.2, in my view is of no assistance to the applicant.

27. In the light of my conclusion that the agreement for arbitration contained in the Primary Agreements does not stand incorporated in the Settlement Agreement, the parties are left to work their remedies out in accordance with law. The applications are dismissed."

2. The learned counsel for the first respondent, Mr.K.R.Arun Shabari, at bar, has brought to our notice the order dated 06.02.2019 passed by the National Company Law Tribunal, Single Bench, Chennai in MA/341/2018, after the aforesaid order passed by the learned Single Judge on 22.8.2017, filed by Resolution Professional in CP/558/IB/CB/2017 under Section 33 of the Insolvency and Bankruptcy Code, 2016, (for brevity, "IB Code 2016") in the matter of Indian Bank v. M/s.Infinitas Energy Solutions Private Limited.

3. There is no dispute before us that the first respondent Company - M/s.Infinitas Energy Solutions Private Limited has been ordered to be liquidated. The operative portion of the order dated 06.02.2019 passed by the National Company Law Tribunal, Single Bench, Chennai, is quoted below for ready reference:

"17. In view of the facts and circumstances recorded by the Resolution Professional in MA/341/2018 filed in CP/558/IB/CB/2017 and in exercise of powers conferred under Sub-Clauses (i) (ii) and (iii) of Clause (a) of Sub-Section (1) of Section 33 of the I & B Code, 2016, this Authority proceeds to pass Liquidation Order as follows:

- I. This Authority hereby orders for liquidation of the Corporate Debtor viz., M/s.Infinitas Energy Solutions Pvt. Ltd., which shall be conducted in the manner as laid down in Chapter III of part II of the I&B Code, 2017;
- II. This Authority hereby appoints the Resolution Professional viz., Mr.R.Venkatakrishnan as Company Liquidator, who shall issue a public announcement stating therein that the Corporation Debtor is in liquidation;
- III. The moratorium declared under Section 14 of the IB Code, 2016, shall cease to have effect from the date of the order of liquidation.
- IV. Subject to Section 52 of the I&B Code, 2016, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- V. This Authority makes it clear that para (iv) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.

VI.This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

VII.All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator viz., Mr.R.Venkatakrisnan. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the I&B Code, 2016, r/w Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

VIII.The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Company Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

IX.The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation assets as may be specified by the Board. Accordingly, the fees and expenses of the conduct of the liquidation proceedings shall be paid to the Company Liquidator.

X. The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, RD, OL, Registered Office of the Corporate Debtor and Company Liquidator viz., Mr.R.Venkatakrisnan, for information and compliance.

18.In terms of the above, MA/341/2018 filed in CP/558/IB/CB/2017 by the Resolution Professional under Section 33 of the I&B Code, 2016, for initiation of the Liquidation Proceedings against the Corporation Debtor viz., M/s.Infinitas Energy Solutions Pvt. Ltd., is allowed.

19. The Order is pronounced in the open Court.

Sd/- xxxx

[CH. MOHD SHARIEF TARIZ]

MEMBER (JUDICIAL)"

4. The learned counsel for the first respondent Company, therefore, submitted that the present appeals against the order passed under Section 9 of the Arbitration Act on 22.08.2017, cannot be adjudicated on merits, though the said submission is disputed by the learned counsel for the appellant, Mr. Rajnish Pathiyil, who submitted that a claim was made before the learned Arbitrator against the first respondent Company and that claim is required to be adjudicated by the learned Arbitrator.

5. Having heard the learned counsel for parties, we are of the clear opinion that since the first respondent Company had been ordered to be liquidated under the provisions of the IB Code 2016, the special law will govern the dissolution/liquidation of Corporate bodies. We are not required to decide the present Original Side Appeals on merits. The same have to await and abide by the logical conclusion of the proceedings under the IB Code 2016 against the first respondent Company.

6. The appellant is, of course, free to make its claim before the Liquidator appointed under the said order dated 06.02.2019 passed by the National Company Law Tribunal, Single Bench, Chennai, in accordance with law and seek its adjudication there. No purpose would be served by deciding the present Original Side Appeals, which were directed against the order under Section 9 of the Arbitration Act, while the first respondent Company is in liquidation under the provisions of the IB Code 2016.

7. Therefore, we dispose of the present Original Side Appeals with the aforesaid observation. No costs. Consequently, C.M.P.Nos.17830 to 17833 of 2017 are closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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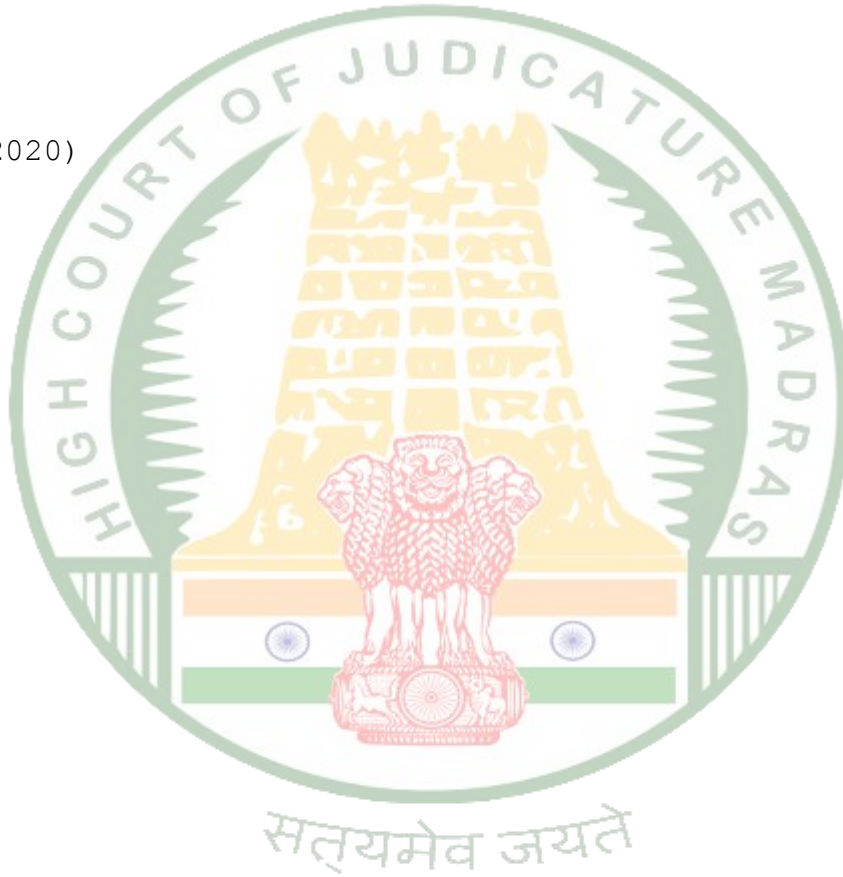
To

The Sub Assistant Registrar
Original Side
High Court, Madras 104.

+3 CCS to M/s. Arun Shabari, Advocate sr 88777, 88775, 88778
+2 Ccs to Mr.Rajnish Pathiyil, Advocate sr 88892.

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CNR(CO)
SP(23/01/2020)



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