

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.NO.1109 OF 2018

Omkar Clean Energy Service
Private Limited,
No.1/A, Saraswathi Street,
Mahalingapuram,
Chennai 600 034
represented by its Authorised Signatory
Mr.N.Srinivasan

.. Petitioner

-VS-

Cheran Spinner Private Limited,
477/1, Padharai Village,
Anangur Main Road,
Sowthapuram Post,
Erode 638 008

.. Respondent

Prayer: Petition filed under Section 11(6)(A) & (C) of the Arbitration & Conciliation Act, 1996 read with Rule 2 of the Appointment of Arbitrators of Madras High Court Scheme, 1996, to appoint a Sole Arbitrator to resolve the disputes between the petitioner and the respondent in terms of Clause 18 of the Operations and Maintenance Agreement dated 5.7.2017.

For Petitioner : Mr.P.Giridharan

For Respondent: No appearance

ORDER

This petition is filed seeking to appoint a Sole Arbitrator to resolve the disputes between the petitioner and the respondent in terms of Clause 18 of the Operations and Maintenance Agreement dated 5.7.2017.

2. The petitioner is engaged in the business of operating, managing and maintaining power plant and wind turbine generators.

2.1. The respondent is engaged in the business of setting up Wind Turbine Generators.

2.2. During the course of their business, the respondent availed the services of the petitioner to operate and maintain the Wind Turbine Generators owned by the respondent. Both the parties entered into an Operations and Maintenance Agreement dated 5.7.2017.

2.3. In view of the dispute that arose between the parties, the respondent issued a termination notice dated 13.08.2018. On the other hand, the petitioner issued notice claiming the outstanding dues to be paid to them by the respondent. Thereafter, the petitioner

invoked arbitration clause and issued notice dated 29.09.2018 nominating Mr.P.J.Rishikesh, Advocate, as Sole Arbitrator. However, the respondent by their reply dated 31.10.2018, rejected the nomination made by the petitioner and also failed to nominate an Arbitrator.

3. In these circumstances, the petitioner is before this Court seeking appointment of a Sole Arbitrator to resolve the disputes between the parties.

4. I have perused the materials available before this Court.

5. Clause 18 of the Operations and Maintenance Agreement dated 05.07.2017, reads as under:

"18. Dispute Resolution:

18.2 In the event that the Parties hereto are unable to settle the dispute or difference or fail to negotiate their differences whether relating to the interpretation, meaning, validity, existence or breach of this Agreement or any clause herein, within a period of 30 days from the date of the commencement of the discussion/negotiations, then the aggrieved party shall by giving a notice to the other party, be entitled to

invoke the arbitration provisions of the Agreement. The reference shall be made to a sole arbitrator, appointed jointly by the parties. The arbitration shall be conducted according to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or reenactment thereof?"

6. Despite the notice issued by this Court in the above matter, the respondent has not chosen to appear before this Court. The name of the respondent is also printed in the cause list and yet, when the matter is taken up for hearing today, none appears on behalf of the respondent.

7. According to the petitioner, as per Clause 18 of the Operations and Maintenance Agreement, there exists an arbitration clause and the petitioner has invoked the arbitration clause by their notice dated 29.09.2018 and the nomination was rejected by the respondent on 31.10.2018. As of today, none was appointed as Arbitrator and the respondent has failed to perform their part in appointing an Arbitrator.

8. Considering the facts and circumstances of the case, this Court is inclined to appoint an Arbitrator.

9. I, thus, appoint **Mr.B.Nedunchezhiyan, Advocate, having office at No.157, Linghi Chetty Street, Chennai 600 001 (cell: 9840094227)** as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. He may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

10. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

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M.GOVINDARAJ, J.

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