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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.31.08.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.193 of 2018  
and CMP No.2296 of 2018

M/s Chiranjeevi Wind Energy Ltd.  
A Public Limited Company,  
Having Office at  
No.26A, Kamaraj Road,  
Mahalakshmiapuram  
Pollahi 642 002  
Represented by its Managing Director  
R.V.S. Marimuthu

... Appellant

vs.

1.Siddhi Sales Corporation  
A Proprietorship Concern of  
Mr. Nigmesh Sanghvi  
S/o. Prabudas  
No. 45, Eureka Junction  
Opp to ICICI Home Finance  
Travellers Bungalow Road  
Hubli 580 029.

2.Mr. Shanmugam,  
District Judge - Retd,  
Sole Arbitrator,  
No.44/3, 4th Cross Street,  
Thirumurugan Nagar, Vadavalli,  
Coimbatore 641 041.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 37 (1) and (2) of Arbitration and Conciliation Act, 1996, to set aside the Order and Dereetal Order dated 08.08.2017 in AOP No. 173 of 2012 on the file of learned Principal District Judge, Coimbatore confirming the order dated 18.07.2011 in Arbitration Proceedings No. 154 of 2009 by the learned Sole Arbitrator.



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For Appellant : Mr.AR.L. Sundaresan  
Senior Counsel for  
Ms. AL. Ganthimathi

For 1<sup>st</sup> Respondent : Mr. Anirudh Krishnan  
For 2nd Respondent : No Appearance

JUDGMENT  
(through Video Conferencing)

Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant and Mr.Anirudh Krishnan, learned counsel for the first respondent.

2. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the order dated 08.08.2017 passed by the Principal District Judge, Coimbatore in Arbitration A.O.P.No. 173/2012, dismissing the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996, challenging that the Arbitral Award dated 18.07.2011 passed in Arbitration Proceedings No. 154/2009.

3. The brief facts leading to the filing of this appeal are as follows:-

The appellant had approached the First Respondent for installation of Wind Electrical Generator["WEG"] and accordingly, the first respondent had placed an order for the supply, installation and commissioning of one No. C2920 MODEL 250 KW WEG vide purchase order dated 27.12.2005. The essential terms of the Purchase Order are:-

Clause 1: Schedule of delivery/commissioning

Clause 2: Terms of Payment

4. As per Clause 1 of the Purchase Order, the WEG was to be commissioned before 31.03.2006. Failure on the part to do so entitled the first respondent to a penalty to the tune of 2% of the project cost and compensation of the depreciation benefit quantified at approximately INR 13,80,000/-(Rupees thirteen lakhs eighty thousand only).

5. On account of the non-commissioning of the Wind Electrical Generator by the appellant, the first respondent could not avail the depreciation benefit and accordingly they raised an arbitral dispute with the appellant and they made a claim of Rs.18,37,449/- before the Arbitral Tribunal, constituted as per the Arbitration Clause contained in the



Purchase Order.

6. The Arbitral Tribunal by its order dated 18.07.2011 awarded a sum of Rs.14,45,046/- (Rupees fourteen lakhs forty five thousand forty six only) in favour of the first respondent against the appellant. Aggrieved by the same, the first respondent filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the Principal District Judge, Coimbatore in Arbitration Original Petition No.173 of 2012. The learned Principal District Judge, Coimbatore, by order dated 08.08.2017, dismissed the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996. Aggrieved by the same, the present civil miscellaneous appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996.

7. The appellant has raised the following grounds in this appeal.

(a) There is no delay on the part of the appellant in commissioning the Wind Electrical Generator and the said delay was due to the delay on the part of the first respondent to make payments to the appellant as per the terms and conditions of the purchase order.

(b) According to the appellant, in view of the delay in making the payments by the first respondent, the appellant is not liable to pay the depreciation benefits to the first respondent.

8. The Principal District Judge, Coimbatore, after perusing the materials and evidence available on record, by order dated 8.8.2017 in A.O.P.No.173 of 2012 has held that the disputes raised by the appellant in the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 pertains to factual aspects which are beyond the scope of Section 34 of the Arbitration and Conciliation Act, 1996. The Principal District Judge, Coimbatore has also given a finding that the issue raised by the appellant has been duly considered by the learned Arbitrator under the impugned award passed in A.O.P.No.154 of 2009 dated 18.07.2011. The learned District Judge has held that the Court cannot reappraise or re-examine the evidence and also held that under Section 34 of the Act, the Court cannot sit as a court of Appeal over the factual finding of the Arbitrator and has rightly rejected the application.

9. The Hon'ble Supreme Court in the case of Associate Builders vs Delhi Development Authority reported in (2015) 3 SCC 49 has held that the Court cannot interfere with errors of fact in an application filed under Section 34 of the Arbitration and



Conciliation Act, 1996.

10. In the case of MMTC LTd vs M/s Vedanta Ltd reported in (2019) 4 SCC 163, it is held that the Court cannot undertake an independent assessment of the merits of the award.

11. When two view are possible and one view has been taken by the Arbitral Tribunal, the Court exercising power under Section 34 of the Arbitration and Conciliation Act, 1996 cannot take a different view than what was taken by the Arbitral Tribunal.

12. In the present case, by letter dated 06.03.2006, which has been marked as an exhibit, the appellants have themselves admitted that the first respondent has been making regular payments to the appellants in terms of the purchase order. The Arbitral Tribunal as well as the learned Principal District Judge, Coimbatore has perused and examined the evidence and materials available on record and only thereafter has held that the appellants are liable to pay the award amount to the first respondent. Clause - 1 of the Purchase Order deals with the schedule of delivery and Clause - 2 of the Purchase Order deals with the terms of payment.

13. Admittedly, as seen from the materials available on record, Wind Electrical Generator has not been commissioned at all. When the appellants themselves have admitted by letter dated 06.03.2006 that the first respondent has been making regular payments, naturally the first respondent is entitled to depreciation benefits which the appellant has failed to pay. Only after giving due consideration to the evidence available on record, the learned Arbitral Tribunal has passed the Award dated 18.07.2011 in favour of the first respondent in Arbitration Proceedings No.154 of 2009. The learned Principal District Judge, under the impugned order, has also rightly held that there is no scope for interference of the Arbitral Award and has rightly dismissed the application filed under Section 34 of the Arbitration and Conciliation Act, 1996. The issues raised by the appellants are of facts and only based on the materials and evidence available on record, the learned Arbitrator as well as the Principal District Judge, Coimbatore have rejected the contentions of the appellant. It is well settled law as laid down by the Hon'ble Supreme Court in the case of Associate Builders vs Delhi Development Authority reported in (2015) 3 SCC 49 as well as MMTC LTd vs M/s Vedanta Ltd reported in (2019) 4 SCC 163 referred to supra that the Court exercising power under Section 34 of the Arbitration and Conciliation Act, 1996 cannot reappraise the evidence and is not a court of appeal. Unless and until, the appellant satisfies any of the conditions stipulated under Section 34 of the Arbitration and Conciliation



Act, 1996 for setting aside an Arbitral Award, the question of setting aside the subject Arbitral Award will not arise. In the instant case, the grounds raised by the appellant does not satisfy any of the requirements of Section 34 of the Arbitration and Conciliation Act, 1996.

14. For the foregoing reasons, this Court does not find any merit in the appeal and accordingly, this civil miscellaneous appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,  
Coimbatore.

2.The Secretary,  
Arbitration & Conciliation Centre  
Coimbatore.

3.Mr.Shanmugam  
District Judge-Retd  
Sole Arbitrator,  
No.44/3, 4<sup>th</sup> Cross Street,  
Thirumurugan Nagar,  
Vadavalli,  
Coimbatore.

+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.43618

+1cc to Mr.Anirudh Krishnan, Advocate, S.R.No.43748

C.M.A.No.193 of 2018

SMI (CO)  
CB(06/10/2021)