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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.4544 of 2019
and
W.M.P.No.5135 of 2019

M/s. Power Konz,
Plot No.51/62/92, Rajammal Business Centre,
Velachery Railway Station Main Road,
Annai Indira Nagar, 4th Street,
Velachery, Chennai - 600 042
Rep. by its Proprietor,
R.Sureshkumar,
S/o. S. Ramakrishnan

...Petitioner

Vs

- 1.The Chief Mechanical Engineer,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai - 600 001.
- 2.The Deputy Chief Mechanical Engineer,
Mech & Elec. Engg. Department,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai - 600 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 1st Respondent in No.MEE/FR3/192/2014/Dy.CME (W) dated 25.01.2019 and to quash the same and consequently directing the Respondents to settle the bill for the contract works carried out by the Petitioner along with interest for the delay in payment, within a time frame to be fixed by this Court.



For Petitioner : Mr.G.Sankaran

For Respondents : Mr.P.M.Subramanian

O R D E R

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Read this order in conjunction with order dated 15.03.2022 that reads as follows:

'Heard Mr.G.Sankaran, learned counsel for the petitioner and Mr.P.M.Subramanian, learned counsel for R1 and R2 in detail.

2. WMP.No.540 of 2022 is ordered in the light of present listing of the matter.

3. Pending writ petition, the petitioner is permitted to make a detailed representation setting out its version of the events and seeking relief as appropriate in regard to the termination of the contract as well as payments that, according to it, are due and pending to the petitioner.

4. Mr.Subramanian would state that such representation may be addressed to the Chief Mechanical Engineer, Chennai Port Trust arrayed as R1.

5. Recording this, the matter is adjourned by a period of four weeks. The petitioner is permitted to appear before R1 on Saturday, the 19th of March, 2022 at 10.30 a.m. along with its representation as above as well as supporting material, if any.

6. List this matter on 18.04.2022 to report progress in the matter/order of R1 on the representation to be filed by the petitioner.'

2.Learned counsel for the petitioner states that pursuant thereto, the petitioner appeared before R1, as permitted and a Memorandum of Understanding has been executed between the parties i.e., the Chennai Port Trust and the petitioner, to following effect:

'MEMORANDUM OF UNDERSTANDING BETWEEN CHENNAI PORT AUTHORITY AND M/S.POWERCONZ, CHENNAI CONSEQUENT TO THE DIRECTIONS OF HON'BLE HIGH COURT OF MADRAS DT. 15.3.2022 IN WMP.NO.5135/2019 IN WP.NO.4544/2019

This MoU is made and entered into on this 16th day of April 2022 at Chennai, between Chennai Port Au-



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thority, a body corporate under the Major Port Trusts Act, 1963 as amended thereafter under the laws of India, and having its principal place of business at No.1 Rajaji Salai, Chennai - 600 001, (hereinafter called "the First Party" which term shall unless repugnant to the context shall mean and include their successors, assignees and administrators) through its Chief Mechanical Engineer ON THE FIRST PART.

AND

M/s.Powerconz, a proprietary concern with its registered office located at Plot NO.51/62/92, Rajammal Business Centre, Velachery Railway Station Main Road, Annai Indira Nagar, 4th Street, Velachery, Chennai 600 042 through its Proprietor Shri. R.Sureshkumar (hereinafter called as the "Second Party", which term shall unless repugnant to the context shall mean and include their successors, assignees, and administrators) ON THE SECOND PART

And WHEREAS, based on the directions of the Hon'ble High Court of Madras vide order dt. 15.3.2022 in WM-P.No.5135/2019 in WP.No.4544/2019, the First Party has been approached by the Second Party with a representation dt. 19.3.2022 seeking relief in the matter of the agreement No.MEE/1/2018/-19 Dy.CME(W) dt. 9.4.2018 entered between the parties for supply and laying of 6th dia and 4th dia GI pipes from Timber Pond to I-section I-section to user complex and pass section in ChPA premises.

And WHEREAS, the parties met in person on 19.3.2022 and 24.3.2022 and held discussions on the issues.

NOW THEREFORE THE PARTIES HERETO AGREE AS UNDER:

1.The request of Second Party for payment for the balance items supplied was agreed to be made by ChPA, amounting to Rs.3,69,107/- including GST @ 18%.

2.The request of Second Party for payment of pending labour charges was agreed to subject to the condition that the cost incurred by the First Party for carrying out removal and re-laying of pipeline at their risk and cost through another contractor, amounting to Rs.5,88,383/- excluding GST, is recovered from the



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Second Party. The Second Party agreed to this proposal. The second party has submitted the print out from the GST Portal as documentary proof for having remitted GST calculated on the full taxable value in July 2018 and October 2018.

3. Accordingly the amount payable to Second Party by the First Party is as under:

Sl.No .	Description	Amount (inclusive of GST @ 18%) (Rs.)
1	For balance items supplied	3,69,107/-
2	For labour charges	19,27,478/-
3	TOTAL	22,96,585/-
4	Less: Recovery towards realignment of pipeline	5,88,383/-
5	BALANCE PAYABLE (3-4)	17,08,202/-

Applicable statutory recoveries including TDS under Income Tax, TDS under GST, etc., will be deducted / recovered while accounting for or making payments to the Second Party as per the applicable laws.

4. The Second Party confirmed and agreed that the security deposit made by them for temporary electricity connection to the First Party has been already refunded to them on 31.8.2019.

5. The expired original performance bank guarantee submitted by the Second Party will be returned to the Second Party by the First Party.

6. Both parties agree that the payment to the Second Party will be made by the First Party within a period of 30 days from the date of this MoU.

7. In consideration of above, the Second Party agrees that they shall have no further claim whatsoever on any account, against the First Party, under the contract agreement above.



This MoU is irrevocable, final and binding on both the parties.'

3. Recording the above Memorandum of Understanding, this writ petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vs

To

1.The Chief Mechanical Engineer,
Chennai Port Trust,
Administrative Office,
Rajaji Salai,
Chennai - 600 001.

2.The Deputy Chief Mechanical Engineer,
Mech & Elec. Engg. Department,
Chennai Port Trust,
Administrative Office,
Rajaji Salai, Chennai - 600 001.

+1 CC to Mr.P.M.Subramanian, Advocate sr 26065.

W.P.No.4544 of 2019 and
W.M.P.No.5135 of 2019

MT(CO)
SP(02/05/2022)