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WP.No.27447 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2022

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

WP.No.27447 of 2017

M/s.Adhiam Thermal Systems & Solutions Pvt. Ltd.,
No.126, Race View Tower,
2nd Floor, Mount Road, Guindy,
Chennai 600032.

...petitioner

Vs.

1. The Government of India,
Rep. by its Ministry of New and Renewable Energy,
Block No.14, C.G.O. Complex, Lodi Road,
New Delhi - 110 003.
2. NTPC-Sail Power Company Pvt. Ltd.,
A Joint Venture of NTPC & Sail,
Captive Power Plant-II, DSP Complex
Durgapur-3, District : Burdwan
West Bengal.
3. Eversun Energy Pvt. Ltd.,
Registered Office 1316/C, 9th Cross, 80 Ft. Road,
J.P.Nagar, 2nd Phase, (Opp-Venkateswara Temple)
Bangalore 560 078.
4. Eversun Energy Pvt. Ltd.,
Branch Office,
Tecpro Towers,
Plot No.11/A-17, 5th Cross Road,
SIPCOT IT Park Siruseri,



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Chennai 603103.

...respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings bearing No.32/01/2016-17/PVSE, dated 08.08.2016 and quash the same and further direct the 1st respondent to release the sanctioned Central Financial Assistance amount of Rs.25,50,000/- towards 100 KW Solar PV based Power Project at NSPCL, Durgapur, West Bengal vide Tender Enquiry No.1220242, dated 09.01.2013 to the petitioner company within a time frame fixed by this Court.

For Petitioner : Mr.P.Arumugarajan

For Respondents

for R1

: Mr.K.Gunasekaran,
Senior Panel Counsel

for R2

: Mr.Aswin Sam G.R.

for R3

: Batta Due

for R4

: No Appearance

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent dated 08.08.2016 and to direct the first respondent to release the sanctioned Central Financial Assistance amount of Rs.25,50,000/- towards 100 KW Solar PV based Power Project at NSPCL, Durgapur, West Bengal, which was completed by the petitioner.



2. The brief facts which are necessary for disposal of the Writ

Petition are as follows:

(i) The second respondent earlier invited a tender for supply, erection and commissioning of 100 KW Solar PV based Power Project at NSPCL, Durgapur, West Bengal. The petitioner appears to be a reputed manufacturer, supplier and service of Thermal and Solar Energy Systems and Components and they are having head office at Chennai and manufacturing unit at Kancheepuram.

(ii) In the said tender invited by the second respondent, the third respondent was the successful bidder, and the second respondent placed the purchase order to the third respondent on 19.04.2013. The project was to be executed by the third respondent with subsidy from the first respondent and further payment from the second respondent. As per the special terms and conditions of the Contract, the subsidy will be adjusted against the contractual value and the first respondent will make the payment directly to the vendor.

(iii) It is the specific case of the petitioner that the third respondent assigned the contract to the petitioner after getting consent from the second respondent and also enacted a power of attorney to the



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petitioner to execute the work and receive all payments.

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3. It is the case of the petitioner that the project was actually executed by the petitioner on behalf of the third respondent and as per the contract entered between them, the entire money should be paid to the petitioner. It is the case of the petitioner that out of the total cost of the project i.e., Rs.85,00,000/-, a sum of Rs.25,50,000/- was promised to be released by the first respondent as grant/subsidy. The grievance of the petitioner is that they completed the project and the petitioner was paid with all the amounts except the subsidy amount. Though the project was executed by the petitioner on behalf of the third respondent, the first respondent vide the impugned order turned down the request of the petitioner to pay the balance by way of subsidy.

4. The first respondent by the impugned order stated that though the petitioner has executed the contract, the amount could not be released to the petitioner as the amount has been sanctioned only in favour of the third respondent, viz., M/s.Eversun Energy Pvt. Ltd..



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5. Though the respondents 3 and 4 are party to the Writ Petition,

no counter is filed and no one has represented for the respondents 3 and 4.

It is represented by the learned counsel for the petitioner that the third respondent Company has now been wound up and the petitioner is unable to find the person, who he may contact on behalf of the third respondent.

6. From the communication and the facts narrated in the affidavit filed in support of this Writ Petition, there is nothing on record to discard or disbelieve the statement that the petitioner is not the one who completed the erection and commission of the project on behalf of the third respondent. The project of erection and commission of 100 KW Solar PV based Power Project was completed. However, the first respondent by communication to the Director of Ministry of New and Renewable Energy (SPV Off Grid Division), informed the petitioner that the amount of Rs.25,50,000/- by way of subsidy should not be released to the petitioner though the petitioner had executed the project for the reason that sanction was only for the third respondent.

7. In such circumstances, this Court is unable to sustain the



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impugned communication as issued by the first respondent dated 08.08.2016 rejecting the petitioner's representation for sanctioning the sum of Rs.25,50,000/- towards subsidy for completing the project. Having regard to the admitted facts and the position indicated above, this Court is of the view that the first respondent has miserably failed to see the nature of contract executed by the petitioner Company and the legal obligations of the respondents 2 and 3. In the absence of any counter affidavit, this Court is inclined to direct the first respondent to release the subsidy amount of Rs.25,50,000/- for completing the Solar Power Project, to the petitioner, within a period of three months from the date of receipt of a copy of this order with due intimation to the respondents 2 and 3. Accordingly, this Writ Petition is allowed and the impugned order is quashed. No costs.

11.11.2022

Index : Yes/No
pvs

To

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The Government of India,
Block No.14, C.G.O. Complex, Lodi Road,
New Delhi - 110 003.



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2. NTPC-Sail Power Company Pvt. Ltd.,
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