O.A.Nos.311 and 312 of 2023

Reserved on	21.06.2023
Pronounced on	30.06.2023

KRISHNAN RAMASAMY, J.

These applications were filed to grant an ad interim injunction restraining the respondent, its agents, assigns, servants, directors or any other person from preventing the applicant from accessing the project site.

2. The learned Senior appearing for the applicant would submit that the applicant had entered into Development Agreement dated 14.10.2011 and Construction and Delivery Agreement dated 19.10.2011 with the respondent. He would submit that both the agreements were entered at Chennai. As per the terms and conditions of the Development Agreement, the respondent had to procure lands from the Government on lease basis and thereafter, they have to sub-lease the said lands either to the applicant or to the applicant's nominees. Accordingly, the respondent had procured the lands on lease basis from the Government of Rajasthan and sub-lease the

same to the applicant's nominees with effect from 21.03.2016 for a period of 30 years.

3. Further, he would contend that the applicant is one of the India's largest renewable energy solution providers and is *inter alia*, engaged in the business of manufacturing, developing, erecting, commissioning, operating and maintaining Wind Power, Solar Power Projects and Hybrid Power Projects comprising combination of Wind and Solar energy, for their customers across the length and breadth of India on a turnkey basis as well as limited scope projects in India. During the course of its business, the applicant had entered into a contract of operation and maintenance (O&M Contract) of the energy project with their clients. The said O&M Contract was for a period of 10 years, which is going to be expired in the year 2026. For the purpose of provision of its O&M services to its clients, i.e., sub-lease holders of respondent, the applicant have to enter into wind farm and carry out the O&M Services as agreed. The applicant had manufactured 90 WBGS having capacity to provide nearly 80 MW of energy and sold it to the following persons:

S.No.	Customer Name	Allotted Capacity
1	National Aluminium Company Limited (NALCO)	47.6 MW (56 WTGs)
2	Oil India Limited	13.6 MW (16 WTGs)
3	Maharaja Shree Umaid Mills Limited	9.35 MW (11 WTGs)
4	Advance Metering Technologies Limited	5.1 MW (6 WTGs)
5	Jajoo Exports	0.85 MW (1 WTGs)

As per the said O&M Contract, after the sale of those WTGs, the applicant have to maintain those WTGs.

4. Further, the learned Senior counsel appearing for the applicant would submit that under these circumstances, all of a sudden on 24.04.2023, the respondent and its representatives have been engaging in an illegal conduct at the Project site by preventing the applicant from accessing the Project Site.

5. Pertinently, out of the 90 WTGs erected at the Project site, there are at least 31 WTGs which are not working in optimal conditions since

03.04.2023 and the same is resulting in severe losses to the applicant and its customers. Each WTG, under ordinary circumstances generates 20400 units of electricity in 24 hours. In view of the above illegal actions on the part of the respondent, it has already resulted in losses of 7,11,877 KWH of electricity per day between 03.04.2023 and 07.04.2023, which translates to nearly INR 27,90,338/-. Thereby everyday the quantum of losses had been incurred by the applicant and its clients since the respondent had prevented the applicant from carrying out its O&M obligation for its clients. Hence, he would submit that he had moved the present application for interim injunction restraining the respondent, its agents, assigns, servants, directors or any other person from preventing the applicant from accessing the project site.

6. The learned counsel appearing for the respondent had filed his reply stating that the said agreement was entered in the year 2011 and it was extended up to the year 2016 and since the agreement period was expired in the year 2019, the present application is barred by limitation. He would also submit that in terms of the Clause 17, 18 and 19 of the Construction and

Delivery Agreement, before institution of the suit or the present proceedings, the applicant is supposed to issue 10 days notice, however no pre-suit notice was issued and hence, the present application is liable to be dismissed on this ground also.

7. Further, the learned counsel appearing for the respondent would contend that since the property is situated at Rajasthan and applicant has been providing O&M Services in the Wind Farm situated at Rajasthan, the present application is liable to be dismissed on the ground that there is no cause of action arose within the jurisdiction of this Court.

8. He would also contend that the necessary parties in the proceedings are sub-lease holders, to whom the respondent had sub-leased the properties, and they had not been impleaded as parties in the present application and therefore, the relief sought in the present application cannot be granted.

9. He would further contend that both the agreements are not stamped. Hence, on this ground also, the applicant is not entitled for the relief sought for and the application is liable to be dismissed.

10. In support of his submissions, the learned counsel for the respondent had referred to the following case laws:

1. ***Jharkhand State Housing Board vs. Didar Singh and another*** in ***Civil Appeal No.8241 of 2009***

2. ***Moreshar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi (D) Thr. Lrs. and others*** reported in ***2022 LiveLaw (SC) 802***

3. ***Padhiyar Prahladji Chenaji (Deceased) through LRs. vs. Maniben Jagmalbhai (Deceased) through LRs. and others*** reported in ***2022 LiveLaw (SC) 241***

4. ***Samarpan Varishtha Jan Parisar and others vs. Rajendra Prasad Agarwal and others*** in ***Civil Appeal No.3520 of 2022***

5. ***Arokiyasamy vs. Periyanayagam and others*** in ***S.A.No.551 of 2014***

6. ***M/s.N.N.Global Mercantile Private Limited vs. M/s.Indo Unique Flame Limited and others*** reported in ***2023 LiveLaw (SC) 343***

11. In reply, Mr.Satish Parasaran, learned Senior counsel appearing for the applicant would submit that the lease period is for 30 years and it is the duty of the respondent to permit the applicant to have the site access throughout the lease and sub-lease period as provided in Clause 3.8 of the Construction and Delivery Agreement. Therefore, he would contend that by virtue of the Construction and Delivery Agreement, during the sub-lease period, the respondent had agreed to provide site access and hence, there is an obligation on the part of the respondent to permit the applicant to carry out O&M Services throughout the sub-lease period. Therefore, question of limitation will not arise.

12. As far as the 10 days notice is concerned, the learned Senior counsel for the applicant would submit that as per the terms of Clause 18.1 of the Construction and Delivery Agreement, in the event of commencement of arbitration, the dispute has to be referred to the senior officers. However in the present case, the applicant had approached this Court for interim relief and in terms of the Clause 18.3 of the Agreement, the applicant can very

well approach this Court for appropriate interim relief.

13. As far as the issue pertaining to the cause of action is concerned, he would submit that the parties had agreed in terms of Clause 18 of the Construction and Delivery Agreement that the venue of arbitration shall be at Chennai and both the agreements were signed at Chennai and the applicant's office is also situated at Chennai. Therefore, the cause of action arose at Chennai, which is within the jurisdiction of this Court.

14. As far as impleading the sub-lease holders as parties to the present application is concerned, he would submit that now the disputes is only between the applicant and the respondent. Only the respondent is preventing the applicant to enter into the premises of the wind farm. In terms of both the aforesaid agreements, the respondent is bound to permit the applicant to carry out the O&M Services. Therefore, as far as the sub-lease holders are concerned, they are not the necessary parties.

15. Further, with regard to the issue pertaining to stamping of the agreements is concerned, he would submit that since both the agreements were stamped with 100 Rupees Stamp Paper. Therefore, he would submit that there is no question of Stamping and request this Court that the reliefs may be granted as prayed for.

16. Heard the learned Senior counsel for the applicant and the learned counsel for the respondent and also perused the materials available on records.

17. Upon hearing and perusal, it is clear that the applicant and the respondent had entered into Development Agreement and Construction and Delivery Agreement on 14.10.2011 and 19.10.2011 respectively at Chennai. Those agreements were signed at Chennai and the applicant's office is also situated at Chennai. In terms of Clause 18 of the Construction and Delivery Agreement and in terms of Clause 10 of the Development Agreement, the parties had agreed that the venue of the Arbitration shall be at Chennai. Therefore, I do not find any substance in the objection raised by the learned

counsel for the respondent that this Court will not have any jurisdiction.

18. As far as the limitation is concerned, in terms of those two agreements, the respondent had agreed to provide site access to the applicant throughout the lease/sub-lease period to carry out O&M activities to its clients. The applicant had entered into the said O&M Contract with the sub-lease holders for a period of 10 years and hence, they are certainly entitled to carry out the O&M services. Since in terms of both the agreements, the respondent had obligated to provide the site access to the applicant, I do not find any substance in the submissions made by the learned counsel for the respondent with the regard to the issue of limitation.

19. As far as the stamping of the instrument is concerned, it is clear that both the agreements have been stamped with 100 Rupees Stamp Paper each.

20. Further, as far as the submission made with regard to not

impleading the sub-lease holders as one of the parties is concerned, this Court is of the view that the present dispute is only between the petitioner and the respondent with regard to the aforesaid two agreements in respect of the restraining the applicant to enter into the premises of the sub-lease holders. However, the respondent had categorically agreed to provide site access for O&M activities to the clients of the applicant. Therefore, this Court is of the considered view that it is not necessary to implead the sub-lease holders as one of the parties.

21. As far as the issue of pre-suit notice is concerned, a reading of Clause 18.3 of the Construction and Delivery agreement would show that 10 days notice would not be applicable for the filing of interim application for any interim relief. The Clause 18.3 of the Construction and Delivery agreement reads as follows:

> *“18.3 Right to interlocutory relief*
>
> *Nothing in this Section 18 preludes or restricts a party's right to seek urgent interlocutory relief or remedy where it is required by that party.”*

22. As far as the judgements referred by the learned counsel for the respondent is concerned, this Court is of the considered view that for the facts and circumstances of the present case, the judgements referred by the learned counsel for the respondent would not be applicable.

23. For all these reasons, this Court is of the considered view that a *prima facie* case has been made out by the applicant and the balance of convenience is also in favour of the applicant.

24. Further, this Court feels that if the interim injunction is not granted, the applicant cannot carry out the O&M service and ultimately the operation of the windmill will come into standstill, whereby the interest of the public would be affected at large and on the other hand, the interest of the respondent is not going to be affected any way.

25. Therefore, for all these reasons, this Court hold that the applicant

is entitled for the interim injunction as prayed for and hence, the interim injunction already granted is hereby made absolute.

26. Accordingly, these applications are allowed and the interim injunction granted by this Court dated 11.04.2023 is hereby made absolute. This Court grants liberty to the parties concerned, to approach the Arbitral Tribunal for any modification/vacation of this order.

30.06.2023

nsa

KRISHNAN RAMASAMY, J.

nsa

O.A.Nos.311 and 312 of 2023

30.06.2023