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O.S.A.No.219 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.11.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

O.S.A.No.219 of 2023
and C.M.P.Nos.26071 & 26073 of 2023

Hitachi Energy India Limited
(Formerly ABB Power Products and Systems
India Limited),

represented by its Power Agent
V.Sabarinathan,
8th Floor, Brigade Opus,
Bengaluru, Karnataka – 560 092.

Also at:

Jayant Tech Park, 3rd Floor,
Old No.7, New No.41, Poonamallee Road,
Chennai – 600 081.

.. Appellant

Vs.

1.BGR Energy Systems Limited
having its corporate office at
443, Anna Salai, Teynampet,
Chennai, Tamil Nadu – 600 018.

Also at:

Plot No.A5, Pannamgadu Industrial Estate,
Ramapuram Post, Sullurpet (T),
Nellore, Andhra Pradesh – 524 401.



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2.Axis Bank Limited,
CBB Bangalore,
No.8, Nitesh Times Square Building,
3rd Floor, M.G. Road,
Bengaluru, Karnataka – 560 001.

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules r/w Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the order dated 30.06.2023 passed by a learned Single Judge of this Court in Arbitration Application No.344 of 2023 in O.A.No.30 of 2023.

For Appellant : Mr.Sivanandaraja
Senior Counsel for
Mr.S.Kaushik Ramaswamy

For R1 : Mr.D.Ravichander

JUDGMENT

[Judgment of the Court was made by R.MAHADEVAN, J.]

When the matter was taken up for hearing, the learned counsel appearing for both the parties jointly submitted that with respect to the issue involved herein, settlement has been arrived at between the parties. In support of the same, they filed a joint memorandum of compromise dated 07.11.2023 signed by all the necessary parties. For better appreciation, the



terms of the settlement are extracted below:

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“a) Respondent number 1 confirms that the amount of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) deposited by the 1st Respondent by way of Demand Draft bearing No.503640 dated 03.06.2023, before this Hon'ble Court in the proceedings pending before the Ld. Single Judge (O.A.Nos.30 & 31 and Arb Appln Nos.6 & 7 of 2023), belongs to the Appellant and Appellant is entitled to forthwith withdraw the same, without establishing bank guarantees.

b) The 1st respondent will not insist on the extension of the Bank Guarantees (Nos.15410100016926 & 15410100016932) provided by the Appellant in relation to the subject matter of the contract, as the 1st Respondent agrees that the same have expired since the warranty obligations under the contracts entered into between the parties have expired and therefore, the Bank Guarantees provided by the Appellant need not be extended at any cost. The 1st Respondent further agrees that the Appellant is also not liable to issue any new Bank Guarantee whatsoever.

c) The 1st Respondent undertakes to forthwith release all the Bank Guarantees issued in its favour by the Appellant (BG Nos.15410100016926, 15410100016932 and 15410100016923), within 2 working days of signing of this memo.

d) The 1st Respondent undertakes to pay the remainder of the dues amounting to Rs.3,74,60,000/- (Rupees Three Crores, Seventy Four Lakhs and Sixty Thousand only) directly to the Appellant on or before 30.11.2023. Subject to the entire due of Rs.7,24,60,000/- (Rupees Seven Crores, Twenty Four Lakhs and Sixty Thousand only), being received by the Appellant on



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or before 30.11.2023, the Appellant shall provide remainder of the supervision services to the 1st Respondent, in terms of the Impugned Contract.”

2. Therefore, this original side appeal stands disposed of in terms of the compromise entered into between the parties as referred to above. The joint memorandum of compromise dated 07.11.2023 shall form part of this order. No costs. Connected C.M.Ps. are closed.

[R.M.D., J.] [M.S.Q., J.]
15.11.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No

nsd



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AND
MOHAMMED SHAFFIQ, J.

nsd

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