



O.A.Nos.1071 to 1074 of 2023

WEB **C.SARAVANAN, J.**

The dispute between the parties is arbitrable in terms of Arbitration Clause on the agreement executed between the applicant and the respondent on 23.07.2021. The relevant Clause reads as under:

20.0 GOVERNING LAW, CONCILIATION AND ARBITRATION

- 20.1 . *This Agreement shall be governed by the laws of India.*
- 20.2. *All and any disputes and claims arising out of or relating in any manner to this Agreement or the breach, termination, non-performance, interpretation or validity thereof, shall first be discussed in good faith by officers duly nominated for the purpose by each party, with a view to resolving the same.*
- 20.3 *All and any disputes and claims as aforesaid, which cannot be fully and satisfactorily resolved or settled by the parties as aforesaid, shall at the request of either party, be submitted to, and be settled by arbitration of the sole arbitrator and if there is no concurrence on the appointment of the sole Arbitrator then it must be resolved by appointing 3 (three) arbitrators in accordance with the Arbitration and Conciliation Act, 1996 or any other statute as may be in force for the time being. The venue of arbitration shall be at Mumbai.*
- 20.4 *Nothing contained in this clause will preclude either party from applying for and obtaining any injunctive, prohibitory or other similar urgent or interim relief from a competent Court of law.*
- 20.5 *In respect of any matters pertaining to arbitration or to any injunctive, prohibitory or other relief sought by either party as aforesaid, the Courts of law in Chennai will have exclusive jurisdiction and the parties hereby submit to such jurisdiction.*



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2. The agreement is for supply of Nitrogen gas and Argon gas at a particular fixed rate for a period of five years under the aforesaid agreement. The agreement also contemplates for termination of the agreement. Clause 15 reads as under :

15.0 TERMINATION

15.1 This Agreement shall be terminable -

- a. *By either Party giving not less than Six (6) Calendar Month's notice in writing to the other party for breach by the other Party of any of the terms and conditions of this Agreement save as otherwise stated in the subsequent clause 14.0 and provided such breach shall not have been rectified by the end of the said notice period.*
- b. *By either Party forthwith by giving notice in writing to the other, in the event of the other going into liquidation compulsorily or voluntarily, being declared insolvent or in the event of the other consenting to amalgamation, merger or take-over.*
- c. *Notwithstanding anything contained in clauses herein above timely payment of the equipment usage charges and price for the product supplied is the essence of this agreement and in the event of breach of this obligation by the Buyer is a breach of terms of this agreement and notwithstanding any other remedy stated herein above will entitle NovaAir at its discretion to terminate this agreement forthwith.*

3. It appears that the applicant was unable to effect supply of Argon gas as it had certain technical problems in its plant and therefore, under the



agreement, the respondent was allowed to procure the same from a third party supplier with no objection from the applicant. There are E-Mails that have been exchanged in this regard between the parties which precede notice dated 09.08.2023 seeking to terminate the Agreement dated 23.07.2021.

4. The Agreement is for the terms of five years. The contract under the Agreement can be terminated before the terms of five years under special circumstances. As per Clause 15.1.a, of the Agreement either of the party are entitled to terminate the Agreement by giving six calendar month's notice in writing to the other party of the breach of any of the terms and conditions of the aforesaid agreement. However, only where such breach is not rectified by the end of the said notice period of six months, by the party breaking the condition of the Agreement. The contract under the Agreement can be terminated before the terms of five years.

5. The six month's notice period from 09.08.2023 will expire on 8.2.2024. However, the respondent has proceeded to dismantle the installation of the applicant and has started procuring Nitrogen and Argon gas from another competitor of the applicant viz., Praxair India Private Limited. *Prima facie*, the respondent has breached the arrangement with the applicant. For the aforesaid



purposes, the respondent has also proceeded to place order on Linda for setting up a installation for receiving the gas viz., Nitrogen gas and Argon gas from Praxair India Private Limited. The respondent has also obtained suitable license under the provisions of the Explosives Act on 10.11.2023.

6. The learned Senior Counsel for the respondent also confirms the same that the installation of the applicant was dismantled on 14.12.2023 after interim order was passed on 13.12.2023. *Prima facie*, the procedure prescribed under the Agreement has been breached by the respondent by dismantling the installation of the applicant before the term under Clause 15.1.a of the Agreement. In any event, whether the respondent was indeed entitled to terminate the contract or not under the Agreement is itself an “arbitrable dispute”.

7. The parties should have resorted to arbitration proceeding by invoking the arbitration clause under Section 21 of the Arbitration and Conciliation Act, 1996 and filed an appropriate application before the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996 for interim protection as an interim measure. The Court is therefore of the view, it is best, if the parties can be relegated to work out their dispute between an Arbitral Tribunal.



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8. After hearing the respective learned Senior Counsels for the applicant and the respondent, with consent, Hon'ble Justice Mr.V.Rama Subramaniam, (Retd.) former Judge of the Hon'ble Supreme Court and this High Court is appointed as the sole Arbitrator to resolve the dispute between the parties herein under the Agreement dated 23.07.2021.

9. During the interregnum, the respondent shall meet its requirements for supply of Argon and Nitrogen gas only from the applicant till this arrangement is modified by the learned Arbitrator. Respondent shall therefore refrain from sourcing Argon and Nitrogen gas from M/s.Praxiar India Private Limited until further orders are passed by the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996. The submission of the learned Senior Counsel for the applicant that the supply of Argon and Nitrogen gas will be without any interruption stands recorded.

10. The applicant is therefore directed to move appropriate application before the learned Arbitrator to extend this order passed by this Court today within a period of 30 days from today failing which this order shall stand vacated.



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11. As per the Agreement, the venue of the arbitration is Mumbai. The learned Arbitrator may therefore fix the venue/place of the arbitration at his convenience with the consent of both the parties. It is also open for the parties to appear before the learned Arbitrator through Video conferencing, subject to the convenience of the learned Arbitrator.

12. The first sitting of the Arbitration Tribunal may be fixed by the learned Arbitrator at the earliest for fixing the procedure, time lines for parties to comply in Arbitral proceedings for passing suitable order for extending this interim order on merits under Section 17 of the Arbitration and Conciliation Act, 1996 and for fixing the fee payable to the learned Arbitrator etc.

13. Accordingly, O.A.Nos.1071 to 1074 of 2023 are disposed of.

22.12.2023

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