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Arb.O.P.(Comm.Div.) No.186 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2024

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.(Comm.Div.) No.186 of 2022

Sunil Hi Tech Engineers Ltd., (under liquidation)
54/B, Shree Tower, Adjacent to Sai Vatika Lawn,
Shankar Nagar, Nagpur – 440 010,
through its Authorized Officer,
Miss Jyoti Kondagurley.

... Petitioner

VS.

BGR Energy Systems Private Limited,
A5 Pannamgadu Industrial Estate,
Ramapuram Post, Sulurpet Taluk,
Nellore, Andhara Pradesh.

Power Projects Division's Office at
Plot No.1, Sector 16-A, Film City,
Noida – 201 301,
Uttar Pradesh.

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 14(2) of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the Hon'ble Justice S.R.Singaravelu (Retd), whose incapacity to adjudicate the matter in a justiciable manner has been reiterated time and again.

[Prayer amended as per order dated 26.07.2022 in Appln.No.2882 of 2022]



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For Petitioner : Mr.Avinash Wadhwani
for Mrs.V.Srimathi

For Respondent : Mr.Vishnu Mohan
for Mr.Rahul Balaji

ORDER

This Arbitration Original Petition has been filed under Section 14(2) of the Arbitration and Conciliation Act, 1996, seeking substitution of the presiding arbitrator by terminating his mandate and to pass such further orders.

2.Heard Mr.Avinash Wadhwani, learned counsel for Mrs.V.Srimathi, learned counsel for the petitioner and Mr.Vishnu Mohan, learned counsel for Mr.Rahul Balaji, learned counsel for the respondent.

3.Admittedly, it is a case where the applicant went into the liquidation before the National Company Law Tribunal and the arbitral Tribunal, citing the moratorium period, has refused to go ahead with the arbitration proceedings.

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4.It is the case of the applicant that it is only the applicant who has gone into liquidation and not the respondent and therefore, there is no impediment for the arbitration proceedings to go on since the moratorium would not apply in a case of this nature. However, the learned counsel for the respondent submits that the respondent has filed a counter claim and therefore, the claim cannot be dissected from the counter claim and stay granted in respect of the claim alone and not the counter claim. I find force in the said submission of the learned counsel for the respondent.

5.In any event, now it is admitted on both sides that the moratorium period has also come to an end with passage of more than 180 days and therefore, the arbitral Tribunal is at liberty to go ahead with the arbitration proceedings and pleadings are yet to be completed.

6.The learned counsel for the applicant however states that he has to file a rejoinder/reply to the counter claim and therefore, he seek time to file a rejoinder to the counter cum counter claim filed by the respondent. The



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said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the arbitral Tribunal shall dispose of the original petition within one year.

7. With the above observations and directions, this petition is disposed of.

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,
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