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O.S.A.(CAD) No. 32 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM

THE HON'BLE MR.JUSTICE M. SUNDAR

AND

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

O.S.A.(CAD)No. 32 of 2024

&

C.M.P. No. 6530 of 2024

in

O.S.A.(CAD)No. 32 of 2024

1. M/s. Pioneer Wincon Energy Systems
Private Limited,
Corporate Office at Tamarai Tech Park,
7th floor, 16-20 A, (SP) Developed Plots,
Jawaharlal Nehru Salai,
Industrial Estate, Guindy,
Chennai 600 032,
represented by its Managing Director,
M. Pradeep Shankar.



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2. Para Enterprises Private Limited,
Corporate Office At Tamarai Tech Park,
7th Floor, 16-20 A, (SP) Developed Plots,
Jawaharlal Nehru Salai,
Industrial Estate, Guindy,
Chennai 600 032,
represented by its Managing Director,
M. Pradeep Shankar

..Appellants

Vs.

M/s. Fourth Partner Energy Private Limited,
Corporate Office at 11th Floor, Kura Towers,
Begumpet, SP Road, Pillar No. C1334,
Hyderabad – 500 016 and
having its Regional Office at
No.40, Ground Floor, F PCM Colony,
St. Thomas Mount, Chennai 600 016.
represented by its Authorized Signatory
J. Balakrishnan

..Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of O.S.

Rules read with Section 37 of the Arbitration and Conciliation Act, 1996
read with Section 13 of the Commercial Courts Act, 2015 as against the
order dated 20.02.2024 passed in O.A. No. 7 of 2024.



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For Appellants :: Mr.P.J. SriGanesh
For Respondent :: Mr.Vijay Narayan,
Senior Counsel for
Mr.A.P. Pasupathy

J U D G M E N T

*(Judgment of the Court was delivered by **M. SUNDAR,J.**)*

Captioned intra-court appeal, i.e, 'Original Side Appeal' ('O.S.A' for the sake of brevity) is directed against an order dated 20.02.2024 made in O.A. No. 7 of 2024 (to be noted, O.A. No. 7 of 2024 is an application under Section 9 of The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), hereinafter referred to as 'A&C Act' for the sake of brevity), by Honourable Single Judge. This 'order dated 20.02.2024' shall hereinafter be referred to as 'impugned order' and 'O.A. No. 7 of 2024' shall hereinafter be referred to as 'Section 9 application', both for the sake for convenience and clarity.

2. The two respondents in the Section 9 application are appellants before us and the lone respondent in the Section 9 application is obviously the sole respondent before us. Mr.P.J. SriGanesh, learned counsel for



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appellants and Mr.A.P. Pasupathy, learned counsel on record for the sole respondent led by Mr. Vijay Narayan, Senior Advocate, are before us.

3. After some arguments, learned counsel on both sides agreed for constitution of an 'Arbitral Tribunal' ('AT' for the sake of brevity). They also agreed that the Section 9 application shall be taken up by AT as an application under Section 17 of A & C Act, 1996 and deal with the same on its own merits and in accordance with law, dehors the impugned order. This was in the forenoon session. Owing to such consent/agreement between the parties, the captioned matter was passed over and in the post lunch session, both sides filed a joint memo (obviously memo dated 24.04.2024) and a scanned reproduction of the same along with the docket is as follows:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Appellate Side Jurisdiction)

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1. M/s.PioneerWincomEngery Systems Private Limited,
Corporate Office at Tamarai Tech Park, 7th Floor,
16-20 A, (SP) Developed Plots,
Jawaharlal Nehru Salai,
Industrial Estate, Guindy, Chennai 600 032,
Represented by its Managing Director,
M.PradeepSankar.
2. Para Enterprises Private Limited,
Corporate Office at Tamarai Tech Park, 7th Floor,
16-20 A, (SP) Developed Plots,
Jawaharlal Nehru Salai,
Industrial Estate, Guindy, Chennai 600 032,
Represented by its Managing Director,
M.PradeepSankar.

...Appellants/Respondents

.Vs:

M/s.Fourth Partner Energy Private Limited,
Corporate Office at 11th Floor, Kura Towers,
Begumpet, SP Road, Pillar No.C1334,
Hyderabad – 500 016 and
having its Regional Office at
No.40, Ground Floor, F PCM Colony,
St.Thomas Mount, Chennai 600 016,
Represented by its Authorized Signatory J.Balakrishnan.

.. Respondent/Applicant.

JOINT MEMO FILED ON BEHALF OF THE PARTIES

The parties jointly beg to state as follows:

1. The Appellant has filed the present Original Side Appeal [CAD] seeking to challenge the Order dated 20.02.2024 passed in OA No. 7 of 2024.



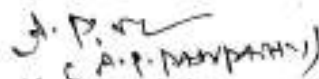
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2. During the course of the proceedings both the parties have without prejudice to their rights have consented for the appointment of a Sole Arbitrator to decide all disputes arising out of the User Agreement dated 14.12.2022. Both the parties agree on -Hon'ble Mr. Justice KK. Ravichandrababu (Retd) to be the sole arbitrator to decide all disputes arising out of the User Agreement dated 14.12.2022.
3. The Hon'ble Court may transfer the pending Appeal/Section 9 Application before the Hon'ble Sole Arbitrator for hearing on 01.05.2024. The Hon'ble Sole Arbitrator has expressed his consent to take up the interim Applications on 01.05.2024.
4. In view of the aforesaid circumstances, it is therefore prayed by both parties that this Joint memo be taken on record and pass such or further orders as this Hon'ble Court may deem fit to the facts and circumstances of the case and thus render justice.

Dated at Chennai this the 24th day of April, 2024.


Counsel for Appellant


Counsel for Respondent



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Set

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Appellate Side Jurisdiction)

O.S.A.(CAD) No. 32 of 2024

1. M/s.Pioneer Wincorn Engery Systems Private Limited,
Corporate Office at Tamarai Tech Park, 7th Floor,
16-20 A, (SP) Developed Plots,
Jawaharlal Nehru Salai,
Industrial Estate, Guindy, Chennai 600 032,
Represented by its Managing Director,
M.PradeepSankar.
And another

...Appellants/Respondents

:Vs:

M/s.Fourth Partner Energy Private Limited,
Corporate Office at 11th Floor, Kura Towers,
Begumpet, SP Road, Pillar No.C1334,
Hyderabad – 500 016 and
having its Regional Office at
No.40, Ground Floor, F PCM Colony,
St.Thomas Mount, Chennai 600 016,
Represented by its Authorized Signatory J.Balakrishnan.



... Respondent/Applicant.

JOINT MEMO FILED ON BEHALF OF THE PARTIES

M/s. P.J. Rishikesh : 1389/04
P.J. Sri Ganesh : 1796/10

Counsel for Appellants and Counsel for Respondents



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The aforementioned joint memo shall now be read as an integral part and parcel of this consent order and this is at the request of the learned counsel on both sides, who have filed the aforementioned joint memo on instructions from their respective clients/litigants.

4. Before we proceed further, we deem it appropriate to say that name of Honourable Arbitrator has been mis-spelt in the aforementioned joint memo and it should read as Hon'ble Mr.Justice. K. Ravichandrababu (Retd.).

5. Both learned counsel submitted that Arb. O.P. No. 164/2024 filed by the sole respondent before us (lone respondent in the Section 9 application) is pending before Section 11 Court and that it is scheduled to be listed on 30.04.2024. Both learned counsel submitted that in the light of the aforementioned joint memo, they shall report about the joint memo, this consent order and give a closure to the Section 11 application on 30.04.2024.



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6. In the light of the aforementioned joint memo, which is now being read as an integral part and parcel of this consent order, the following order is made:

(i) The aforementioned Honourable Arbitrator has graciously consented to sit on 01.05.2024;

(ii) Both sides shall file copies of pleadings in the Section 9 application together with supporting materials (if any) as filed before the Section 9 Court before the Honourable Arbitrator and the Honourable AT shall take up the same as a Section 17 application;

(iii) The Honourable AT shall consider the aforementioned Section 17 application on its own merits and in accordance with law dehors the impugned order, i.e, order dated 20.02.2024 made in O.A. No. 7 of 2024, notwithstanding the same being a judicial order. To be noted, this limb of the



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order is made in exercise of appellate powers of this Bench
qua impugned order in captioned intra-court appeal;

(iv) As regards arbitration qua the main matter, Honourable AT shall proceed with the same on its own merits and in accordance with law;

(v) We make it clear that arbitration shall be in accordance with 'The Madras High Court Arbitration Proceedings Rules, 2017' and 'The Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017';

(vi) However, as regards venue alone, if it is a non-working day or for any other reason, at the discretion of the Honourable Arbitrator and the parties, the hearing/sitting can be held in any other venue other than Madras High Court Arbitration Centre.



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7. Captioned O.S.A and C.M.P. are disposed of in the aforesaid manner. No costs.

nv

(M.S.J.) (K.G.T.J.)
24.04.2024

Index: Yes/No
Internet: Yes/no
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No



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M. SUNDAR,J.

AND

K. GOVINDARAJAN THILAKAVADI,J.

nv

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&
C.M.P. No. 6530 of 2024
in
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24.04.2024