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Arb.OP(Com.Div.)No.298 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **24.10.2024**

Coram:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Arb.OP(Com.Div.) No.298 of 2024

Morries Energy Limited,
Rep. by its Director Mr.Hemant Kumar Garg,
11-A, Embassy Apartments, 46,
Nepean Sea Road, Mumbai – 400 036.

... Petitioner

Vs.

Bonfiglioli Transmissions Private Limited,
Plot No.AC7-AC11, SIDCO Industrial Estate,
Thirumudivakkam, Kancheepuram,
Tamil Nadu – 600 132.

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking to appoint an arbitrator to arbitrate the disputes that have arisen between the petitioner and the respondent in relation to the agreement dated 17.05.2016 between BRPCI and the petitioner.

For Petitioner : Mr.S.P.Arthi

For Respondent : Mr.R.V.Che Guvera

ORDER

This petition is filed under Section 11(6) of the Arbitration and Conciliation



Act, 1996, seeking to appoint an arbitrator to arbitrate the disputes that have arisen between the petitioner and the respondent in relation to the agreement dated 17.05.2016 between BRPCI and the petitioner.

2. The petitioner states that their company entered into agreement with Bonfiglioli Renewable Power Conversion India (P) Ltd. [BRPCI] for purchasing 4 high-performance inverters and related items for Rs.53,00,000/-. The petitioner raised purchase order dated 17.05.2016 as per instructions of BRPCI. All four inverters submitted by BRPCI malfunctioned on 05.05.2022 resulting in huge loss to the petitioner. Upon intimation, one Ingeteam (BRPCI's contractor) diagnosed that all four inverters were defective and needed replacement. Due to non co-ordination from BRPCI, the petitioner forced to replace the defective parts at his own cost. Therefore, the petitioner issued notice on 15.12.2022 to BRPCI. Upon receiving the same, the BRPCI responded on 13.01.2023, denying all the aforesaid allegations and claiming company is not in existence due to demerger and the same has been transferred to Respondent. Therefore, the petitioner sent a letter to the respondent on 24.01.2024 and the respondent company in a detailed reply dated 26.02.2024 denied the existence of arbitrable dispute. As per Condition 8 of terms and conditions of BRPCI, any disputes or differences, arising between the parties, are to be referred to the arbitrators. The Condition 8 of the other terms and conditions of BRPCI is reads



as follows:-

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8.Arbitration:

All disputes arising in connection with this PO shall be finally settled and governed by the provisions of arbitration and conciliation ACT 1996. The arbitration panel shall consist of three arbitrators, one to be appointed by each party and the third arbitrator shall be appointed by the two appointed arbitrators. The third arbitrator shall serve as a chairman; the arbitral award shall be final and binding upon the parties. The place for arbitration shall be Chennai. The proceedings shall be conducted in English Language.”

3. The learned counsel appearing for the petitioner submitted that the petitioner approached the respondent invoking the arbitration clause and requested the respondent to appoint a sole arbitrator. Since there was no action, the petitioner approached this Court by filing the present petition for appointment of sole arbitrator.

4. Notice was ordered to the respondent on 02.08.2024 and the learned counsel appearing for the respondent also present before this Court today. Therefore, there is no impediment to proceed with the matter.



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5. On perusal of Condition 8 of the other terms and conditions of BRPCI, it is evident that the disputes are required to be resolved through arbitration. The petitioner has also duly invoked the arbitration clause. In view of the failure of the respondent to respond thereto, or took consent to the nominee proposed by the petitioner, the Arbitral Tribunal is required to be constituted in accordance with Section 11 of the Arbitration Act.

6. Therefore, this Court is inclined to appoint an arbitrator from the list of empanelled arbitrators. Accordingly, this petition is allowed by appointing Mr.S.G.Ramesh Kumar, Advocate, residing at New No.30, Old No.55, Second Main Road, R.A.Puram, Chennai-28 (Mobile No: 9444044031) as the Sole Arbitrator. The sole Arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law. It is open to the Sole Arbitrator to fix his fees and expenses in relation to the arbitral proceedings.

24.10.2024

Neutral citation: Yes/no

Index : Yes/No

Speaking/Non Speaking

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