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Arb.OP(Com.Div.)No.324 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.324 of 2024

Sri KPR Industries Limited
Rep. by its Director
and the Authorised Signatory,
Mr.N.Srinath Reddy
Petitioner

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Vs.

Siemens Gamesa Renewable Power Private Limited,
(Formerly known as Gamesa Wind Turbines Pvt. Ltd.)
Rep. by its Authorised Signatory,
Pannirselvam Rajenthiram
Respondent

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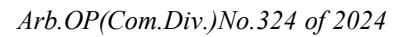
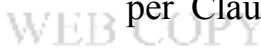
Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking to appoint the nominee arbitrator on behalf of the respondent as per Clause 21.2 of the O&M Contract to adjudicate on the disputes between the Petitioner and the Respondent herein in connection with the Operation and Maintenance Contract dated 13.03.2015.

For Petitioner : Mr.Sashidhar Sivakumar

For Respondent : Mr.N.Sasank Iyer

ORDER

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



2. The petitioner states that the petitioner engaged in business of owning and operating wind power projects in India and the respondent engaged in providing, operating and maintaining Wind Turbine Generators (WTG). The respondent (Gamesa/SGRP) approached the petitioner for providing 2MW WTG and also provide services for operation and maintenance of WTGs. Later, the petitioner entered into a contract with respondent on 13.03.2015 and the same was amended on 05.09.2019 (on which name of respondent changed from “gamesa” to “SGRP”). On 03.05.2023, the petitioner intimated the respondent regarding malfunction of R-93 turbine and the respondent directed the petitioner to claim insurance. Thereafter, the respondent shared Root Cause Analysis Report (RCA) dated 05.06.2023 with petitioner's insurance surveyor. The petitioner lodged his claim with the petitioner's insurer i.e., Royal Sundaram General Insurance and the Insurer appointed “surveyors” to inspect WTG and submit a report. Thereafter, the respondent shared another RCA dated 05.09.2023. The Surveyor along with Insurer's representative, petitioner, AMC team of the respondent, conducted survey on 04.05.2023,



11.05.2023, 15.09.2023, 05.10.2023, 26.02.2024 and 27.02.2024. Subsequently, the Surveyor submitted closure report, dismissing claims of the petitioner. The Petitioner submits that in closure letter, it is crystal clear that fault lies with the respondent. Therefore, the petitioner sent notice under clause 12.1 and 12.2 claiming indemnity and notice invoking arbitration under clause 21.2 on 25.05.2024 through e-mails. The Condition 21.2 of the O&M Contract is reads as follows:-

21. DISPUTE RESOLUTION:

21.2. In the event the parties cannot reach settlement pursuant to Clause 21.1 within 30 (thirty) days of receipt notice under Clause 21.1, the parties agree to refer such Dispute to arbitration. The venue of arbitration shall be Chennai. Each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator who will act as a presiding arbitrator. The language of such arbitration shall be English. The arbitration shall, in all other respects, be conducted as per the Arbitration and Conciliation Act, 1996.”

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 04.09.2024 and the learned counsel appearing for the respondent also present before this Court today. Therefore, there is no impediment to proceed with the matter.

5. On perusal of Condition 21.2 of the O&M Contract, 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 Hon'ble Justice Sanjay V.Ganga Purwala Former CJ, MHC, residing at Durga Mata Mandira Samor, House No.2-2-278, Govardhanagiri, Kharakuwa, Aurangabad – 431 001 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



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Index : Yes/No
Speaking/Non Speaking

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G.K.ILANTHIRAIYAN, J.

The matter is listed today before this Court under the caption '**For Being Mentioned**' at the instance of the Learned Counsel appearing for the Petitioner.

2.The Learned Counsel appearing for the petitioner submitted that in the order passed by this Court in Arb.O.P.(Com.Div)No.324 of 2024, dated 24.10.2024, in paragraph Nos.3 & 6, the word sole arbitrator must be replaced with respondent's nominee arbitrator and seeks for rectification of the same.

3.In the light of the submissions made, paragraph Nos.3 & 6 of the order passed in Arb.O.P.(Com.Div)No.324 of 2024, dated 24.10.2024, shall stand modified as follows:

*“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 **its nominee arbitrator**. Since there was no action, the petitioner approached this Court by filing the present petitioner*



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for appointment of the respondent's nominee arbitrator.

6. Therefore, this Court is inclined to appoint an arbitrator from the list of empanelled arbitrators. Accordingly, this petition is allowed by appointing Hon'ble Justice Sanjay V.Ganga Purwala Former CJ, MHC, residing at Durga Mata Mandira Samor, House No.2-2-278, Govardhanagiri, Kharakuwa, Aurangabad – 431 001 as the respondent's nominee arbitrator. The respondent's nominee arbitrator is directed to enter upon reference and adjudicate the dispute in accordance with law. It is open to the respondent's nominee arbitrator to fix his fees and expenses in relation to the arbitral proceedings.”

3. Registry is directed to carry out the necessary corrections in the order passed in Arb.O.P.(Com.Div)No.324 of 2024, dated 24.10.2024, and issue order copy afresh.

18.12.2024

MR



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