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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.11.2024

Coram:

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

Arb.O.P.(Com.Div.) No.404 of 2024

M/s.Chikku Energy Private Limited,
Mysore Mercantile House,
#46, III & IV Floor, 36th Cross,
Jayanagar 4th T Block,
Bangalore - 560 041.

Rep. by its authorized Signatory Mr.Rakesh Shetty

.. Petitioner

Vs.

M/s.Siemens Gamesa Renewable Power Private Limited,
Formerly Known as Gamesa Renewable Private Limited,
The Futura IT Park, Block B,
8th Floor, No.334, Rajiv Gandhi Salai,
Sholinganallur,
Chennai – 600 119.

Presently at,

No.489, GNT Road, Thandal Kazhani Village,
Chennai – 600 052

.. Respondent

This Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint an arbitrator for the respondent or alternatively, appoint a Sole Arbitrator to resolve the disputes amongst the parties arising out of the two Work Orders dated 09.03.2016.

For petitioner : Mr.S.Sathiyanarayanan

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ORDER

This Original Application has been filed taking advantage of Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator consequent to two separate Work Order Agreements, the first one relating to supply of 3 MV Grid – Interactive ground mounted solar PV system in Karnataka and the second one relating to installation and commissioning of 3 MV Grid – Interactive ground mounted solar PV System in Karnataka.

2.The petitioner, M/s.Chikku Energy Private Limited having registered office at Bangalore in Karnataka is a company incorporated under the provisions of the Companies Act, 2013 and are in the business of production, generation, distribution, sales, development and maintenance of renewable energy and renewable energy products. The Government of Karnataka had called for tenders through KREDL for development of 1 to 3 MW Solar Power Project for land owned farmers on a scheme. This was invited through online bidding process. The farmers who owned land of 5 acres were eligible to set up 1 MW AC solar power project. The farmers who owned land of 10 acres were eligible to set up 2 MW AC solar power project. The farmers who owned land of 15 acres were eligible for 3 MW AC solar power project.



3. One of the Directors of the petitioner company, Mr. Halady Srinivasa Shetty was eligible for allotment of 3 MW AC solar power project. He had applied for such allotment. He owned 19 acres and 01 guntas of land at S.No.104/2 of Devasamudra Village, Molakalmur Taluk, Chitradurga District. He was also allotted 3MW AC solar power project. In accordance with the allotment letter, he had to give a bank guarantee. He also furnished a bank guarantee.

4. M/s. Chamundeshwari Electricity Supply Company Limited entered into a power purchase agreement with him. Mr. Halady Srinivasa Shetty was under an obligation to commission the project within 18 months of execution of the power purchase agreement executed on 20.06.2015.

5. Thereafter, offers were invited from prospective bidders for actual supply of the 3 MW AC solar power and for its installation. The respondent was chosen as the successful bidder. Two work order agreements had been entered with the respondent as stated above. Both the agreements had clauses to refer disputes to Arbitration.



6.Clause 17 of 1st Work Order Agreement (Supply of 3 MV Grid –

Interactive ground mounted solar PV System in the State of Karnataka

(Project) relating to arbitration is reproduced below:

“17.Dispute Resolution: (a) Any Controversy or claim (“Dispute) arising out of or in connection with the validity, application or interpretation of this order shall be settled by consultation between the parties initiated by written notice of the Dispute to the other party. The parties shall attempt to settle such Disputes by way of negotiation within sixty (60) days of notice of any Dispute by any party to the other party. In such events, the parties shall each arrange for an officer or member of management with authority to meet resolve, in good faith, any pending Disputes during such time period.

(b) In the event of parties cannot reach settlement pursuant to sub-clause (i) supra within sixty (60) days of receipt notice thereunder, the parties agree to refer such dispute to arbitration. The venue of arbitration shall be Chennai. Each party will appoint one arbitrator and 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.

(c) Responsibility of payment for all costs of arbitration, excepting counsel fees, shall be as per the arbitration award.



(d) While any Dispute under this order is pending, the parties shall continue to perform all of their respective obligations under this order without prejudice to the final determination in accordance with the provisions under this Clause.”

7.Clause 14 of 2nd Work Order Agreement (Installing & Commissioning of 3 MV Grid – Interactive ground mounted solar PV System in the State of Karnataka (“Project)) relating to arbitration is reproduced below:

“14.Dispute Resolution: *(a) Any Controversy or claim (“Dispute) arising out of or in connection with the validity, application or interpretation of this order shall be settled by consultation between the parties initiated by written notice of the Dispute to the other party. The parties shall attempt to settle such Disputes by way of negotiation within sixty (60) days of notice of any Dispute by any party to the other party. In such events, the parties shall each arrange for an officer or member of management with authority to meet resolve, in good faith, any pending Disputes during such time period.*

(b) In the event of parties cannot reach settlement pursuant to sub-clause (i) supra within sixty (60) days of receipt notice thereunder, the parties agree to refer such dispute to



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arbitration. The venue of arbitration shall be Chennai. Each party will appoint one arbitrator and 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.

(c) Responsibility of payment for all costs of arbitration, excepting counsel fees, shall be as per the arbitration award.

(d) While any Dispute under this order is pending, the parties shall continue to perform all of their respective obligations under this order without prejudice to the final determination in accordance with the provisions under this Clause.”

8.Mr.Halady Srinivasa Shetty then assigned to the petitioner herein the said agreements. It is for that reason that the petitioner had come forward before this Court seeking appointment of an arbitrator.

9.Disputes had arisen between the parties. The respondent had initially responded to notices and had also come forward to negotiate the issues. The petitioner had issued the first notice on 07.02.2022 and a second notice again on 03.03.2022. They were both issued to two separate addresses. The first



notice was not received and therefore, the second notice was issued.

Thereafter, the respondent had come forward accepting a joint inspection to be conducted. There was a meeting between the parties on 13.05.2022. The minutes of the meeting were also reduced in writing. It is alleged that still the respondent did not fulfil their part of the agreement. Thereafter, an e-mail had been sent by the respondent on 28.06.2022 for which the petitioner replied on 29.06.2022, again on 30.06.2022 and again on 04.07.2022. A further notice was issued by the petitioner on 06.12.2023. In all these notices, the petitioner had been insisting on resolution of the disputes either by negotiation or by appointment of an arbitrator. There were further e-mail correspondences between the parties on subsequent dates.

10.It is under those circumstances, since the respondent had not come forward for appointment of arbitrator though the petitioner had actually named the arbitrator, this petition has been filed.

11.The learned counsel stated that the agreements contemplated appointment of two separate arbitrators and a third arbitrator to be appointed as an umpire.



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12.I am however of the considered opinion that it would only appropriate that a sole arbitrator with some experience would be able to examine the issues between the parties and come to a conclusion within a reasonable period of time.

13.In view of the fact that settlement could not be reached and the respondent had also not come forward to accept for constitution of arbitral tribunal, there was no other alternate left with the petitioner, but to approach this Court seeking constitution of an arbitral tribunal.

14.Accordingly, I would appoint Hon'ble Mr. Justice P. Kaliyarasan, former Judge of this Court, **[Plot No.64, 3rd Cross Street, CBI Colony, Kandanchavai, Chennai - 96,** as sole Arbitrator to enter reference on the issues between the petitioner and the respondent.

15.The following order is therefore passed:

(i) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral



proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(ii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remain ex parte, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

16.This Arbitration Original Application stands allowed.

20.11.2024

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Speaking order : Yes / No

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