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Arb.O.P(Com.Div.) No.600 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.600 of 2023

M/s.Saaki Power Project Limited,
Represented by its Director Mr.S.Vivek Karthic,
Having its registered office at,
New No.16, Old No.38,
Maharaja Surya Rao Road,
Teynampet, Chennai – 600 018.

... Petitioner

Vs.

M/s.Shalivahana Green Energy Limited,
7th Floor, Minerva Complex,
SD Road, Secunderabad,
Telangana State - 500 026.

... Respondent

Prayer: Original Petition is filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, praying to appoint an arbitrator to adjudicate the dispute between the petitioner and the respondent in terms of the Share Purchase and Takeover Agreement dated 20.01.2020 and to direct the respondent to pay cost of this proceedings.

For Petitioner	: Mr.P.Abishek
For Respondent	: No appearance

ORDER

This Original Petition has been filed under Section 11(6)(a) of the Arbitration and Conciliation Act, 1996, for appointing an Arbitrator to



adjudicate the dispute between the petitioner and the respondent in terms of the Share Purchase and Takeover Agreement dated 20.01.2020 and to direct the respondent to pay the costs.

2. Notice taken out on the respondent has returned with an endorsement "refused".

3. Considering the above, it has to be construed that the respondent has forfeited the rights to participate in the process for appointment of an Arbitrator under the Share Purchase and Takeover Agreement dated 10.01.2020 signed between the petitioner and the respondent. Relevant clause reads as under:-

"29. Arbitration:

29.1 All disputes or differences between the parties arising out of or in connection with this agreement shall be first tried to be settled through mutual negotiation.

29.2 In the event that any dispute could not be resolved between the parties, then such dispute shall be referred to a sole arbitrator mutually appointed by the parties and finally resolved by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 and rules therein shall be applied to the extent that they are not repugnant to the Act.

29.3 The place of Arbitration shall be Chennai, India and the language of the arbitration shall be English. Each party shall equally bear the costs for arbitration proceedings including legal cost thereof.

29.4 Any decision or award of an arbitral tribunal appointed pursuant to this clause shall be binding upon the parties. The parties agree that any arbitration award shall be enforced as per the



provisions of the Arbitration and Conciliation Act, 1996 and rules made thereunder."

4. The petitioner has also issued a notice to the respondent under Section 21 of the Arbitration and Conciliation Act, 1996 on 20.04.2022 followed by reminder dated 11.10.2023.

5. Considering the above facts, it is clear that the respondent has not interested in participating the process of appointment of Arbitrator/Arbitral Tribunal.

6. Considering the above, **Mr.P.Vasanthakumar Visweswaran, Advocate, Enrollment No.MS/351/1994, having Office at No.20/11, Balaji Nagar, 4th Street, Royapettah, Chennai - 600 014, Mobile No.98410 10009,** is appointed as an Arbitrator to enter upon reference to resolve the *inter se* dispute between the parties.

7. 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 from the date of receipt of a copy of this



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order, without getting influenced by any of the observations made in this order.

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8. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of the 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 remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

9. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

10. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.

29.01.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.



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