



Arb.O.P.(Com.Div.)No.322 of 2025

In the High Court of Judicature at Madras

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Reserved on : 15.9.2025	Delivered on: 23.9.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.322 of 2025

M/s.Aditya Energy Holdings,
Rep.by its Partner Mr.L.Uday
Mehta, No.22, Burkit Road,
T.Nagar, Chennai-17.

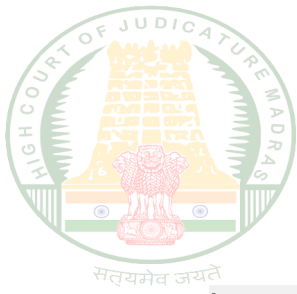
...Petitioner

Vs

M/s.Enrich Energy Private Ltd.,
Rep.by its Managing Director
Mr.Ankit Kanchal, No.302,
Orion Building, Koregoan Park,
Pune, Maharashtra-411001.

...Respondent

PETITION under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying (a) to appoint an Arbitrator on behalf of the respondent as per Article 8.2 of the Wrap Agreement dated 05.3.2018 and as per Clause 16.2.2 of the Land Development Agreement dated 05.3.2018 for the purpose of adjudication of the pending payments



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issue from the respondent and as per the MOM dated 14.5.2019 and

(b) to direct the respondents to pay the cost of this petition.

For Petitioner	: Mr.U.Vijay Metha
For Respondent	: Mr.A.K.Athiban Vijay

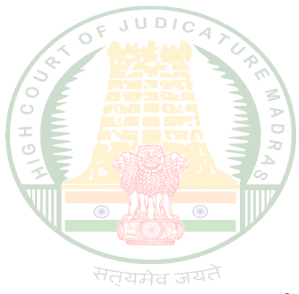
ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for brevity, the Act) seeking to appoint an Arbitrator as per Article 8.2 of the Wrap Agreement dated 05.3.2018 and as per Clause 16.2.2 of the Land Development Agreement dated 05.3.2018 for the purpose of adjudication of the pending payments from the respondent as per the Minutes of Meeting (for short, the MoM) dated 14.5.2019.

2. Heard both.

3. The case of the petitioner is as follows :

(i) The petitioner is engaged in the business of developing land for solar power projects including procurement of lands and providing



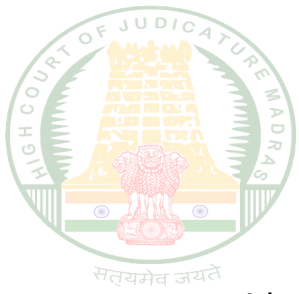
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required assistance in setting up the solar project, title clearance, obtaining approvals, etc.

(ii) The respondent is an engineering, procurement of equipment and machinery and installation and construction (EPC) company. They undertake the operation and maintenance of solar power plants. The respondent entered into an EPC contract with their client namely M/s.NLC India Limited for setting up of a 100 MW solar project in the State of Tamil Nadu.

(iii) In order to fulfill their obligation under the EPC contract with the said M/s.NLC India Limited, the respondent approached the petitioner for procurement of land, obtaining necessary approvals and land developmental related works for setting up of a solar project for their client. Pursuant to that, the petitioner and the respondent entered into three agreements namely (a) the Land Development Agreement, (b) the Project Licence & Permits Agreement and (c) the Wrap Agreement, all dated 05.3.2018, for the performance of the services.

(iv) Under the Land Development Agreement dated 05.3.2018, the petitioner was required to procure and transfer in favour of the



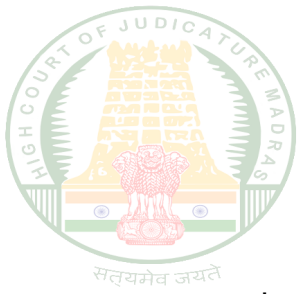
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WEB COPY said M/s.NLC India Limited the contiguous lands with allied land development works in the State of Tamil Nadu. The petitioner was also required to obtain all requisite governmental or non governmental approvals for the development and commissioning of the solar project.

(v) As per the Project Licence & Permits Agreement dated 05.3.2018, the petitioner was required to carry out the approvals of the Chief Electrical Inspector to the Government (CEIG) and liaising activities in relation to 100 MW solar power plant including 110 KV switch yard, 110 KV transmission line and bay extension work as outlined in Annexure I of the agreement. The petitioner was also expected to carry out ancillary or incidental tasks necessary for proper and effective discharge of their obligations under the main contract.

(vi) The Wrap Agreement dated 05.3.2018 was in the nature of consolidating and integrating the terms and conditions set forth in the said other two agreements. This agreement serves to outline the entire scope of the project defining the respective roles, responsibilities and obligations of the parties.

(vii) Later, disputes arose regarding payment of money as per the agreed terms in all the agreements. In order to address the issues

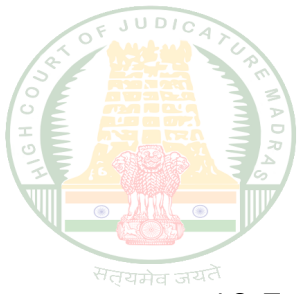


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and reach an amicable resolution, the petitioner and the respondent entered into the MoM dated 14.5.2019 wherein both parties mutually agreed to revisit the scope of the work to be undertaken by the petitioner and it only modified the scope of work in the project between the petitioner and the respondent. Under the MoM dated 14.5.2019, the Project Licence & Permits Agreement dated 05.3.2018 was terminated by the parties and the respondent agreed to pay to the petitioner the cancellation fee of Rs.17 lakhs.

(viii) The MoM dated 14.5.2019 also outlined the revised remuneration structure to be paid by the respondent to the petitioner. The petitioner completed the entire scope of work and it was communicated to the respondent by e-mail dated 23.7.2019 requesting the respondent to release the outstanding payments as agreed upon under the MoM dated 14.5.2019. A total sum of Rs.85,10,543/- has been claimed by the petitioner.

(ix) In order to resolve the dispute amicably, the petitioner issued a notice dated 23.6.2021 to the respondent under Article 8.1 of the Wrap Agreement dated 05.3.2018. But, it did not fetch any positive outcome. Once again, the petitioner sent an e-mail dated



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19.7.2021 urging the respondent to engage in an amicable resolution.

Even, this did not yield any fruitful result. Ultimately, a trigger notice dated 27.2.2023 under Section 21 of the Act was issued by the petitioner to the respondent. On receipt of it, the respondent sent a reply dated 05.5.2023 denying the claims made by the petitioner. Having no other alternative, the petitioner has approached this Court by filing the above petition seeking to appoint an arbitrator to resolve the dispute between the parties.

4. The respondent filed a counter affidavit wherein they took the following stand :

(i) There was no binding arbitration agreement between the parties and only an option was given to the parties to resolve the dispute through arbitration by usage of the words '**may refer the dispute**'.

(ii) The MoM dated 14.5.2019 is in the nature of novation of the earlier agreements and it does not contain an arbitration clause. Hence, the dispute, which is arising out of the MoM, cannot be referred to the arbitrator to resolve the dispute.



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(iii) The petitioner has invoked the clause as contained in the Wrap Agreement dated 05.3.2018 whereas the dispute has arisen between the parties pursuant to the MoM dated 14.5.2019. The arbitration clause cannot be automatically read into the MoM dated 14.5.2019 unless it is specifically provided. In the light of the above, the respondent sought for dismissal of the above petition.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

6. While considering the petition filed under Section 11 of the Act, this Court must see as to whether there is existence of an arbitration clause in a valid agreement as contemplated under Section 7 of the Act.

7. In the case in hand, the parties entered into three agreements, all dated 05.3.2018. The relevant clauses in the Land Development Agreement dated 05.3.2018 are extracted as hereunder:

"16.2.1 :



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Each Party shall designate in writing to the other Party a representative who shall be authorized to resolve any disagreement, difference, dispute, controversy or claim arising under or relating to this Agreement or the breach, interpretation, termination or validity thereof ('Dispute') in an equitable manner, and, unless otherwise provided herein, to exercise the authority of the Parties to make decisions by agreement. Each Dispute shall be initially referred to such designated representatives for resolution. The Parties agree to use their best efforts to attempt to resolve all Disputes promptly, amicably and in good faith. If the designated representatives are unable to amicably resolve any such Dispute within thirty (30) days of such referral, then either Party may refer the Dispute (or the relevant part thereof) to arbitration by serving upon the other Party a formal notice of arbitration.

16.2.2 : Arbitration

In the event the Parties are unable to resolve any Dispute in accordance with Clause 16.1, such Dispute shall be resolved by arbitration in accordance with the following:

(a) Submission of Disputes

Any Dispute shall be settled exclusively and finally by arbitration. In any such arbitration, either Party shall be entitled to present positions and rely



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upon information supplemental to or different from those relied upon for purposes of any attempted amicable dispute resolution pursuant to Clause 17.1.

(b) Arbitration Act

The conduct of any arbitration proceedings and any award rendered hereunder and the validity, effect and interpretation of this Clause 16 shall be governed by the laws of India and the enforcement of this Clause 16 and any award rendered hereunder shall be governed by the Arbitration and Conciliation Act, 1996 (the Arbitration Act) as amended from time to time.

(c) Number of Arbitrators and appointment of Arbitrators

The arbitral tribunal shall consist of 3 (three) arbitrators, each party shall appoint 1 arbitrator and the 2 appointed arbitrators shall appoint the third umpire arbitrator with mutual consent of each Party. In the event of the failure by either Party to give consent for appointment of the 3rd arbitrator within thirty (30) days from the date of receipt of the demand for arbitration received from the other Party, such arbitrator shall be appointed by in accordance with the Arbitration Act.

(d) Seat of Arbitration

The seat of arbitration shall exclusively be at Chennai City, India.



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(e) Language of Arbitration

The language to be used in the arbitration shall be the English language exclusively, and any award shall be made in the English language.

(f) Finality and Enforcement of Award

Any decision of award of the arbitral tribunal shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found."

8. The relevant articles in the Wrap Agreement dated 05.3.2018 are extracted as hereunder :

"8.1. Each Party shall designate in writing to the other Party a representative who shall be authorized to resolve any disagreement, difference, dispute, controversy or claim arising under or relating to this Agreement or the breach, interpretation, termination or validity thereof ('Dispute') in an equitable manner, and, unless otherwise provided herein, to exercise the authority of the Parties to make decisions by agreement. Each Dispute shall be initially referred to such designated representatives for resolution. The Parties agree to use their best efforts to attempt to resolve all Disputes promptly, amicably and in good



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faith. If the designated representatives are unable to amicably resolve any such Dispute within thirty (30) days of such referral, then either Party may refer the Dispute (or the relevant part thereof) to arbitration by serving upon the other Party a formal notice of arbitration.

8.2. Arbitration - In the event the Parties are unable to resolve any Dispute in accordance with Clause 8.1 above, such Dispute shall be resolved by arbitration in accordance with the following:

(a) Submission of Disputes

Any Dispute shall be settled exclusively and finally by arbitration. In any such arbitration, either Party shall be entitled to present positions and rely upon information supplemental to or different from those relied upon for purposes of any attempted amicable dispute resolution pursuant to Clause 8.1.

(b) Arbitration Act

The conduct of any arbitration proceedings and any award rendered hereunder and the validity, effect and interpretation of this Clause 8 shall be governed by the laws of India and the enforcement of this Clause 8 and any award rendered hereunder shall be governed by the Arbitration and Conciliation Act, 1996 (the 'Arbitration Act') as amended from time to time.

(c) Number of Arbitrators and appointment of Arbitrators



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The arbitral tribunal shall consist of 3 (three) arbitrators, each party shall appoint 1 (one) arbitrator and the 2 (two) appointed arbitrators shall appoint the third umpire arbitrator with mutual consent of each Party. In the event of the failure by either Party to give consent for appointment of the 3rd arbitrator within thirty (30) days from the date of receipt of the demand for arbitration received from the other Party, such arbitrator shall be appointed by in accordance with the Arbitration Act.

(d) Seat of Arbitration

The seat of arbitration shall exclusively be at Chennai City, India.

(e) Language of Arbitration

The language to be used in the arbitration shall be the English language exclusively, and any award shall be made in the English language.

(f) Finality and Enforcement of Award

Any decision of award of the arbitral tribunal shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found."

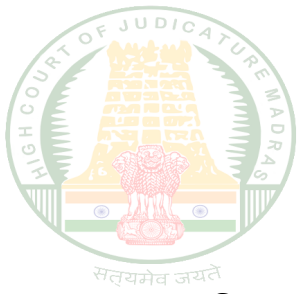


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9. The first ground that was raised by the learned counsel for the respondent is that there is only an option for the parties to refer the matter for arbitration since the word '**may**' has been used and that there is no binding arbitration clause in the agreements.

10. This Court holds that the above submission of the learned counsel for the respondent is unsustainable. While reading Clause 16.2.2 of the Land Development Agreement dated 05.3.2018 and Article 8.2 of the Wrap Agreement dated 05.3.2018, these clauses will have to be read as a whole. They only state that the parties must make best efforts/attempts to resolve the disputes amicably and in good faith and that if the parties are not able to amicably resolve the disputes within 30 days of such referral, either party may refer the dispute for arbitration.

11. If the clauses in the agreements had stopped there, it can be held that the parties were only given the option to refer the dispute for arbitration as a mode of dispute resolution. However, Clause 16.2.2 of the Land Development Agreement dated 05.3.2018 and Article 8.2 of the Wrap Agreement make such reference of dispute to arbitration mandatory by using the word '**shall be resolved**'. Therefore, this



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Court holds that the relevant clauses in the said agreements, if read as a whole, provide for two different mechanisms.

12. The first step is to resolve the dispute amicably and the second step is to refer the matter for arbitration if the parties are not able to come to an amicable settlement. Such reference for arbitration has been made mandatory and it is not left to the option of the parties.

13. The second issue that was raised by the learned counsel for the respondent to the effect that the MoM dated 14.5.2019 acted as a novation of the earlier three agreements is also found to be unsustainable. The MoM dated 14.5.2019 was more in the nature of modifying the earlier obligations under the Land Development Agreement and the Wrap Agreement, both dated 05.3.2018. Under the MoM dated 14.5.2019, the parties had agreed to specifically cancel the Project Licence & Permits Agreement dated 05.3.2018 alone and the other two agreements were kept intact.

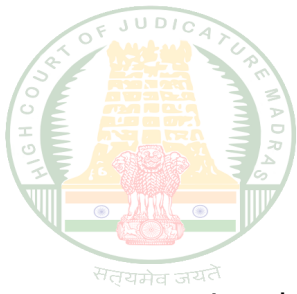


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14. If the MoM dated 14.5.2019 must be construed as a novation of the earlier three agreements, there is no need for specifically mentioning that the Project Licence & Permits Agreement dated 05.3.2018 alone stood canceled by the MoM dated 14.5.2019. There was no such agreement between the parties that all the three earlier agreements dated 05.3.2018 stood canceled. The Land Development Agreement and the Wrap Agreement, both dated 05.3.2018 were kept intact and the terms and conditions in these two agreements will have to be necessarily read into the MoM dated 14.5.2019 except certain modifications that were made with respect to acquisition of lands, settlement of overall payments, compliances, etc.

15. Hence, this Court holds that the MoM dated 14.5.2019 is only a fall out/continuation of the Land Development Agreement and the Wrap Agreement, both dated 05.3.2018 and that the dispute between the parties pursuant to the MoM dated 14.5.2019 can be resolved only by referring the parties for arbitration as contemplated in those agreements. In the light of the above discussions, this Court further holds that there is existence of an arbitration clause in the



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Land Development Agreement and the Wrap Agreement, both dated 05.3.2018, which must be read into the MoM dated 14.5.2019 and that consequently, an arbitrator has to be appointed to refer the parties to resolve the disputes.

16. Accordingly, the above original petition stands allowed and **the Honourable Mr.Justice T.S.Sivagnanam, Retired Chief Justice of the Calcutta High Court, residing at No.12, II Main Road, Kottur Gardens, Kotturpuram, Chennai-600085 (Mobile No.9445373838)** is appointed as the sole Arbitrator. The learned Arbitrator is requested to enter upon a reference to adjudicate the disputes that are arising between the parties by holding the sittings in any venue at Chennai to the convenience of all concerned and render an award. The fees of the learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC)(Administrative Cost and Arbitrator's Fees) Rules 2017. The learned Arbitrator is also requested, after issuing notice to both the parties and upon hearing them, to pass an award as expeditiously as possible as the requisite work was stated to have been completed even in the year 2019.



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Index : Yes

Neutral Citation : Yes

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N.ANAND VENKATESH,J

RS

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