$~12 & 63

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ARB.P. 986/2025

M/S VIMULAN GLOBAL PVT. LTD. .....Petitioner

Through: Mr. Manu Seshadri, Mr. Sahil Manganani, Mr. Siddharth Shekhar, Ms. Prachi Jain, Advs.

versus

M/S NACOF OORJA PVT. LTD. & ANR. .....Respondents

Through: Mr. Shrey Kumar, Adv. for R1

63

\+ O.M.P.(I) (COMM.) 252/2025

M/S VIMULAN GLOBAL PVT. LTD. .....Petitioner

Through: Mr. Manu Seshadri, Mr. Sahil Manganani, Mr. Siddharth Shekhar, Ms. Prachi Jain, Advs.

versus

M/S NACOF OORJA PVT. LTD. & ORS. .....Respondents

Through: Mr. Shrey Kumar, Adv. for R1

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **14.10.2025**

ARB.P. 986/2025

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.

2. The brief facts of the case are that a solar project was awarded to respondent no. 2 by the Maharashtra State Electricity Distribution Company Limited (***"MSEDCL"***) for the development of a 500 MW Grid-Interactive Ground Mounted Solar PV Plant under the "Mukhyamantri Saur Krishi Vahini Yojna" (***"MSKVY"***). Respondent no. 1 was incorporated as a Special

Purpose Vehicle (***"SPV"***) for execution of the project under the direction and supervision of respondent no. 2.

3. The petitioner submitted an Expression of Interest (***"EOI"***) on 06.05.2023, pursuant to which respondent no. 2 issued a Letter of Acceptance (***"LOA"***) and a Letter of Intent on 08.05.2023 for a 200 MW project. Relying on the assurances of respondents nos. 1 and 2 that it would be awarded the EPC contract, the petitioner deposited a sum of Rs. 10.40 crores via Demand Draft dated 08.05.2023 in favour of respondent no. 1.

4. Subsequently, an MoU was executed between the petitioner and respondent no. 2 on 12.05.2023, followed by a Joint Venture Agreement between the petitioner and respondent no. 1 on 14.06.2023, both containing arbitration clauses. Despite these agreements, no EPC work order was issued to the petitioner. As per the terms of the LOA, the EMD was to be refunded by 06.08.2023; however, despite repeated requests, only a partial refund of Rs. 5.40 crores was made between January and November 2024.

5. The MoU dated 12.05.2023 contains an arbitration clause under Article 9, and the Joint Venture Agreement dated 14.06.2023 contains a similar clause under Article 7. The relevant clauses read as follows:

> ***"Article 9 Dispute Resolution:***
>
> 1. *In case of any dispute or difference arising out of or incidental to this MoU, NACOF and VIMULAN both shall attempt to settle all disputes or differences amicably in good faith by holding conciliation proceeding. Such disputes or differences shall be settled within reasonable time from the date of submitting the request in writing for resolution of the disputes or differences by conciliation by either parties.*

2. In the event of failure of the conciliation proceedings, all disputes/ differences shall be referred for adjudication by Sole Arbitrator and the order/award passed by the sole Arbitrator shall be final & binding on the parties. The Sole Arbitrator shall be appointed by the Executive Director, NACOF, after consulting with the Managing Director, within 30 days from the date of receipt of request in writing for appointment of the Sole Arbitrator and the Executive Director, NACOF after consulting with the Managing Director, shall appoint an independent Sole Arbitrator. The fee fixed by the Sole Arbitrator shall be payable by both the Parties in equal proportion. The proceedings of the arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the venue of the arbitration will be New Delhi only."

<u>Article 7: Dispute Resolution</u>

" 1. In case of any dispute or difference arising out of or incidental to this Agreement, NACOF and `VCR: shall attempt to settle all disputes or differences amicably in good faith by holding conciliation proceeding. Such disputes or differences shall be settled within reasonable time from the date of submitting the request in writing for resolution of the disputes or differences by conciliation.

2. in the event of failure of the conciliation proceedings, all disputes/ differences shall be referred for adjudication by Sole Arbitrator and the order/award passed by the sole Arbitrator *shall be final &binding on the parties. The Sole Arbitrator shall be appointed through consultation between both the parties, within 30 days from the date of receipt of request in writing for appointment of the Sole Arbitrator. The fee fixed by the Sole Arbitrator shall be payable by both the parties in equal proportion. The proceedings of the arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the venue of the arbitration will be Delhi only."*

6. Since there were disputes between the parties the petitioner invoked arbitration *vide* legal notice dated 03.06.2025.

7. Mr. Kumar, learned counsel for the respondent(s) has no objection to the appointment of the arbitrator.

8. I am satisfied that there is a valid arbitration Agreement and there are disputes which need to be adjudicated through the arbitral mechanism.

9. For the said reasons, the petition is allowed and the following directions are issued:-

i) Mr. N. Waziri (Retd. Justice, Delhi High Court) (Mob. No. 9810031696) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

10. The present petition is disposed of in the aforesaid terms.

O.M.P.(I) (COMM.) 252/2025 & CCP(O) 89/2025

11. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 read with Section 151 of the CPC, 1906 seeking the following reliefs:

> "*Allow the present petition filed by the Petitioner and restrain the Respondent No. 1 and Respondent No. 2 from alienating or transferring an amount of INR 5,00,00,000/- from the accounts maintained by Respondent No.1 and/or 2 in the Respondent No. 3 bank pending disposal of the petition; and…* "

12. The brief facts of the case are that a solar project was awarded to Respondent No. 2 by the Maharashtra State Electricity Distribution Company Limited (***"MSBDCL"***) for the development of a 500 MW Grid Interactive Ground Mounted Solar PV Plant under the "Mukhyamantri Saur

Krishi Vahini Yojna (***"MSKVY"***). Respondent No. 1 was set up as the Special Purpose Vehicle (***"SPV"***) for execution of the project under the direction and supervision of Respondent No. 2.

13. The petitioner submitted an EOI on 06.05.2023, following which respondent no. 2 issued a Letter of Acceptance (***"LOA"***) and Letter of Intent on 08.05.2023 for a 200 MW project. Relying on assurances that it would be awarded the EPC Contract, the petitioner deposited Rs. 10.40 crores via Demand Draft dated 08.05.2023 in favour of respondent no. 1.

14. An MoU was executed on 12.05.2023 with respondent no. 2, and a Joint Venture Agreement on 14.06.2023 with respondent no. 1, both containing arbitration clauses. However, no EPC work order was issued. As per the LOA, the EMD was refundable by 06.08.2023, but despite repeated requests, only Rs. 5.40 crores was refunded between January and November 2024.

15. Hence, it is the case of the petitioner that:

i. The amount of around 5 crores, due and payable is an admitted amount.

ii. The respondent Nos. 1 and 2 are having problems in their finances which is evident from the letter of 12.03.2025.

16. When the present petition was listed before this Court on 11.07.2025, respondent Nos. 1 and 2 were restrained from transferring Rs. 5 crores in their account till the next date of hearing.

17. On 05.08.2025, on an application moved by respondent Nos. 1 and 2, this Court was pleased to modify the order of 11.07.2025 as under:

$~91

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ O.M.P.(I) (COMM.) 252/2025, I.A. 18928/2025

M/S VIMULAN GLOBAL PVT. LTD. .....Petitioner

Through: Mr. Manu Seshadri, Mr. Siddharth Shekhar, Mr. Sahil Manganani, Advs.

versus

M/S NACOF OORJA PVT. LTD. & ORS. .....Respondents

Through: Mr. Shrey Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **05.08.2025**

I.A. 18928/2025

1. This is an application filed under section 151 of CPC filed by the respondent No. 1 for early hearing in the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996.

2. Pursuant to the order dated 11.07.2025, this Court restrained respondent Nos. 1 and 2 from transferring funds from their bank account with respondent No. 3.

3. Learned counsel for respondent No. 1 submits that the continued restraint is hampering its business operations and ability to pay the petitioner. It is stated that a Settlement Proposal dated 29.07.2025 was submitted to the petitioner, offering to clear the dues in four instalments from August to November 2025 with interest at 8% p.a. The petitioner, however, vide reply dated 01.08.2025, sought payment of the entire principal amount of ₹5,00,00,000/- in one go.

4. It is further stated that the respondent No. 1 seeks access to the restrained bank account with respondent No. 3 to continue its business operations and to make payments to the petitioner in terms of its proposal. As an immediate step, respondent No. 1 is willing to release ₹50,00,000/- as the first tranche of payment upon vacation/modification of the injunction and has also given a re-payment schedule annexed as "Document-A" with the application.

5. For the reasons stated above, issue notice.

6. Mr. Sheshadri, learned counsel for the petitioner, accepts the notice and will file a reply within 1 week from today.

7. In the meantime, the order dated 11.07.2025 is modified to the extent that Respondent No. 1 is permitted to transfer a sum of ₹50,00,000/- from the bank account referred to in the said order to the petitioner within one week from today, as a measure to demonstrate its bona fide intent.

8. Respondent No. 1 shall also file a better re-payment schedule proposal.

9. List on 16.09.2025.

10. The next date of hearing, i.e., 13.10.2025, stands cancelled.

JASMEET SINGH, J

AUGUST 5, 2025/DM

18. Subsequently, the respondent Nos. 1 and 2 filed a reply stating that no amount is due and payable to the petitioner.

19. Hence, the petitioner has filed a Contempt Petition bearing no. 89/2025.

20. Mr. Seshadri, learned counsel for the petitioner, states that once the respondent Nos. 1 and 2 have admitted the amount, made a proposal for better repayment schedule and had undertaken to pay a sum of Rs. 50 lakhs, non-compliance of all these directions amount to an intentional and *malafide* violation of the order dated 05.08.2025.

21. While I am of the view that the conduct of respondent nos. 1 and 2 has been far from satisfactory, their failure to pay Rs. 50 lakhs, after having initially agreed to do so, does not amount to Contempt of Court.

22. The contempt proceedings under Article 215 of the Constitution of India read with 2B and 12 of the Contempt of Courts Act, 1971 contemplates intentional and *malafide* violation of the Order passed by the Court.

23. The order dated 05.08.2025 merely permitted respondent nos. 1 and 2 to transfer Rs. 50 lakhs to the petitioner's account. It was not a case where, based on their assurance, they were allowed to operate their bank account that had been attached by order dated 11.07.2025. There was no undertaking or direction in the Order that the respondent would transfer Rs. 50 lakhs to the petitioner. It was at best a 'permission'. While their conduct may be unsatisfactory, it does not constitute Contempt of Court.

24. Hence, CCP(O) 89/2025 is dismissed.

25. Mr. Kumar, learned counsel for the respondent No. 1 states that he is ready and willing to deposit Rs. 5 crores in the form of a Bank Guarantee to the Arbitrator.

26. In a connected matter, being ARB.P. 986/2025, an Arbitrator has already been appointed.

27. In view of the above, the present petition filed under Section 9 of the

Arbitration and Conciliation Act, 1996 shall be treated as an application filed under Section 17 of the Arbitration and Conciliation Act, 1996 and be adjudicated by Arbitrator in accordance with the law.

28. The Arbitrator will be free to vary, modify the order passed on 11.07.2025 and 05.08.2025.

29. With these directions the petition is disposed of.

JASMEET SINGH, J

OCTOBER 14, 2025/AS