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

\+ O.M.P.(I) (COMM.) 468/2025

KLEIO SOLAR POWER PRIVATE LIMITED .....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. Mr. Jayant Mehta, Sr. Adv. with Mr. Kumar Kislay, Ms. Anjali Anchayil Ms. Ridhima Sharma and Mr. Krisna Gambhir, Advs.

versus

VESTAS WIND TECHNOLOGY INDIA PRIVATE LIMITED

.....Respondent

Through: Mr. Amit Sibal, Sr. Adv. Mr. Rajshekhar Rao, Sr. Adv. with Mr. Sulabh Rewari, Ms. Mansi Binjrajka, Ms. Ishita Jain, Ms. Smriti Nair, Mr. Darpan Sachdeva, Mr. Zahid, Mr. Harshil and Mr. Abeer Malik, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **18.11.2025**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, among others, seeking the following reliefs:

> "*a) direct the Respondent to not act on the demand raised vide Invoice Nos. 0807000096 dated July 18, 2025, 807000098 dated August 06, 2025, 807000103 dated September 02, 2025, 807000107 dated October 10, 2025,*

and 807000108 dated November 01, 2025 issued by the Respondent under the Service and Energy Based Availability Agreement dated March 29, 2024;

b) stay the operation and effect of the notice of suspension dated November 01, 2025 issued by the Respondent;

c) direct the Respondent to continue operation and maintenance of the Wind Turbine Generators under the Service and Energy Based Availability Agreement dated March 29, 2024;

d) direct the Respondent to immediately resume the provision· of services under the Service and Energy Based Availability Agreement dated March 29, 2024;"

2. The brief facts of the case are that the petitioner had to develop a 209.4 MW Hybrid Solar-Wind Power Project with 104.4 MW as wind component and 105 MW as solar component.

3. For the development of the said wind component, the petitioner and the respondent entered into several agreements. The first agreement being a Supply Contract dated 21.03.2023 under which the respondent had to supply 29 Wind Turbine Generators ("***WTGs***") to the petitioner.

4. Post commissioning, the parties entered into Service and Energy Based Availability Agreement ("***O&M Contract***") dated 29.03.2024 which pertained to operation and maintenance services to be provided by the respondent for WTGs. Under the said O&M Contract, the respondent was entitled to interim fee from the date first WTG was commissioned till the last WTG is commissioned.

5. After commissioning of last WTG, annual service fee provided under the O&M Contract was to be payable, putting an end to the interim fee. There is a moratorium of two years for the annual services.

6. Mr. Sethi, learned senior counsel for the petitioner, states that the petitioner has already commissioned 28 WTGs and 29th WTG could not be commissioned due to the acts of the respondent.

7. The same is disputed by Mr. Sibal, learned senior counsel for the respondent, stating that 29th WTG is being commissioned.

8. The said Supply Contract contains an arbitration clause being Clause No. 33 and the said O&M contract contains an arbitration clause being Clause No. 13. Clause No. 13 being relevant for this petition reads as under:

> *"13. **GOVERNING LAW & DISPUTE RESOLUTION***
>
> *……..*
>
> *13.4 **Dispute Resolution***
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> *…….*
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> *(f) If, in case of a Technical Dispute, the matter is not resolved by the Expert, and in other cases as per negotiations under this Clause 13.4 [Dispute Resolution], then either Party may refer such Dispute to arbitration in accordance with Clause 13.4(g) below. However, if the resolution provided by the Expert is acceptable to both Parties, then it will be final and binding for both Parties.*
>
> *(g) The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 (as amended),*

in effect as on the date of commencement of such arbitration. The venue and seat of arbitration shall be New Delhi. The arbitral tribunal shall comprise of a sole arbitrator mutually appointed by both the Parties. The language of such arbitration shall be English.

(h) The Parties agree that the arbitration award, materials in the proceedings created for the purpose of the arbitration, and all other documents produced by another party not otherwise in the public domain, except where they have agreed otherwise in writing, or where disclosure is required by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in bona fide legal proceedings before a court or other judicial authority, shall be confidential.

(i) The Parties agree that any arbitration award obtained pursuant to this Clause 13.4 [Dispute Resolution] will be final and binding. Subject to the dispute resolution provision in this Clause 13.4 [Dispute Resolution] and the adjudication of the Disputes finally by arbitration, the Parties agree that nothing in this Clause 13.4 [Dispute Resolution] shall preclude any Party from seeking interim relief and/or specific performance from the court of competent jurisdiction as may be permitted under Applicable Law.

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

(k) Notwithstanding any reference to arbitration herein, except as otherwise decided by the arbitrators, the Parties shall continue to perform all of their respective obligations under this Agreement without prejudice to the final determination in accordance with the provisions under this Clause 13.4 [Dispute Resolution].”

9. Since the petitioner failed to pay the interim fee, the respondent on 01.11.2025 issued notice for suspension of services under Clause No. 4.5 of the O&M Contract. The reason cited for suspension of services is non-payment of invoice No. 0807000096 dated 18.07.2025 for the period from 27.05.2025 to 30.06.2025.

10. Mr. Sibal, learned senior counsel, has handed over a chart and as per which, five interim fee invoices are due and outstanding,

11. The same is disputed by Mr. Sethi, learned senior counsel.

12. Mr. Sibal, learned senior counsel, draws my attention towards Para 79 and 80 of his reply which reads as under:

“79. On the other hand, Respondent has re-allocated its resources (including tools, equipment and manpower) to other sites which process has taken 2-3 weeks as is typical in such instances of demobilization and remobilization. If Respondent is directed to provide services, without the compensation due to it, it is Respondent who will be put to irreparable injury since not

only would it be deprived of its contractual dues under the O&M Contract with Petitioner, but its contractual obligations with other customers will suffer as well.

80. Re para 76: It is denied that the balance of convenience lies in favour of Petitioner. For the reasons detailed above, it is denied that any irreparable damage would be caused to Petitioner or the Project or the Grid on account of Respondent's suspension of services. It is denied that Respondent's claim is "simply a monetary claim" or that no prejudice would be caused to Respondent if the present Petition is allowed. If the present Petition is allowed, Respondent would be forced to demobilize its resources from other sites, to the detriment of its contractual obligations to other customers, and be compelled to provide services without due compensation. It would also amount to a re-writing of the O&M Contract which will have long term commercial consequences for Respondent. Respondent has stated that it is ready and willing to resume services on a without prejudice basis within a period of around 10 to 14 days of Petitioner clearing the pending invoices and undertaking to pay future Interim Fee (also on a without prejudice basis). The argument of the Petitioner that Respondent's claim for interim fee is simply a monetary claim therefore applies more starkly to Petitioner itself."

13. He further states that even if part payment of invoices is made, it is not possible for the respondent to resume services within three working days as the respondent has mobilised his resources to the

other sites.

14. I have heard the learned counsel for the parties.

15. I am of the view that in the present case, the supply of wind energy is to the National Grid and is of national importance. Even though the notice of suspension is only on account of non-payment of invoice dated 18.07.2025, the petitioner has today, additionally, cleared another invoice of 06.08.2025. As regards the other three invoices, the matter is being referred to Arbitration.

16. For the said reasons, there is no valid justification for taking 10 to 14 days to deploy the sources for a project which is providing energy to the National Grid. Since, the petitioner has already paid two invoices i.e. 807000096 dated 18.07.2025 for Rs. 69,60,348 and 807000098 dated 06.08.2025 for Rs. 69,44,347, therefore, it is directed that the respondent shall restore services within three working days from today.

17. The Court in the present petition is only adjudicating the rights of the petitioner *qua* the notice of suspension dated 01.11.2025. Since the notice of suspension was issued only for non-payment of invoice dated 18.07.2025 and since that payment has been made, the O&M Contract stands restored and the notice of suspension has become infructuous.

18. However, the rights of the parties are open to be exercised in terms of the O&M Contract, including the respondent's right of future suspension for non-performance of the obligations under the O&M contract.

19. Additionally, with the consent of the parties, the following

directions are issued:-

i) Mr. Justice (Retd.) Vipin Sanghi, (Former Chief Justice, Uttarakhand High Court) (Mob. No. 9871300037) 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 days from today

20. The payment made by the petitioner is without prejudice to its rights. The learned Arbitrator is requested to ensure that the Section 17 application, if any, is adjudicated expeditiously and within two weeks

from the date of filing.

21. The petitioner also seeks the liberty to initiate arbitration for adjudication of disputes arising out of the Supply Agreement with this reference. However, the respondent has only consented to arbitration arising out of O&M contract and dispute arising out of Supply Agreement if raised before the Arbitrator shall be decided by the Arbitrator.

22. The petition is disposed of in the aforesaid terms.

23. *Dasti.*

JASMEET SINGH, J

NOVEMBER 18, 2025/jyh