

GR GREEN LIFE ENERGY PVT. LTD.

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v.

LEITWIND SHRIRAM MANUFACTURING PVT. LTD.

(Civil Appeal No.692 of 2021)

February 22, 2021

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[INDU MALHOTRA AND AJAY RASTOGI, JJ.]

Arbitration and Conciliation Act, 1996 – Appellant-contractor and Respondent had entered into a agreement to set up a Wind Farm Project – Agreement contained an arbitration clause (Clause 20) – Disputes between the parties – Respondent invoked arbitration under Clause 20 of the agreement, and nominated its arbitrator, with request to Appellant to make nomination of its arbitrator – Appellant failed to do so – Subsequently, Respondent filed petition u/s.11(6) of the 1996 Act before the High Court, requesting the Court to appoint an arbitrator on behalf of Appellant in terms of Clause 20 of the agreement – High Court took the view that since the parties had in their agreement agreed to refer all their disputes under the 1996 Act, it was a fit case for appointment of arbitrator and that the agreement provided for a three-member arbitral tribunal – Respondent having already nominated its arbitrator, the Appellant was directed to appoint an arbitrator, and it was further directed that on such nomination, the two arbitrators would appoint the presiding arbitrator – Appeal before Supreme Court by Appellant-Contractor – During proceedings before Supreme Court, the parties agreed to have their disputes adjudicated under the Arbitration & Conciliation Act, 1996 by a Court-appointed Sole Arbitrator – Accordingly, the Supreme Court appointed a former Judge of the Madras High Court, as the Sole Arbitrator.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 692 of 2021.

From the Judgment and Order dated 16.09.2020 of the High Court of Judicature at Madras in Original Petition No. 300 of 2019.

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Ms. Shweta Sharma, Diggaj Pathak, Ravi Raghunath, Ms. Aakashi Lodha, Sanyat Lodha, Advs. for the appearing parties.

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A The following Order of the Court was passed:

ORDER

Leave granted.

B 1. The present Civil Appeal has been filed by the Appellant-Contractor to challenge the Order dated 16.09.2020 passed on an Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Madras High Court in Original Petition No. 300 of 2019.

C 2. The Appellant and the Respondent had entered into a Development Agreement dated 10.02.2014 to set up a Wind Farm Project in Sangli District in Maharashtra, which contained an arbitration clause.

Clause 20 of the Agreement reads as :

“20. Governing Law and Jurisdiction and Service of Process

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E c) All disputes, differences and claims or any non-payment concerning the project work hereby created and / or touching this presents, arising out of or in relation to anything contained herein shall be referred to arbitration to be held at Chennai, under the provisions of Arbitration and Conciliation Act, 1996 (inforce from time to time). The arbitration panel shall consist of three arbitrators, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint the presiding arbitrator. The parties here to shall duly observe any interim award/s or direction/s of the arbitration tribunal and the award in pursuance to arbitration shall be final and binding on the parties hereto. The arbitration proceedings shall be in English language.”

F 3. Disputes arose between the parties with respect to claims raised by the Appellant-Contractor, which led to issuance of a legal notice dated 21.04.2018 seeking payment of outstanding dues of Rs. 3,26,08,545/-.

G 4. The Respondent *vide* letter dated 21.01.2019 rejected the allegations in the notice, and contended that the Contractor had failed to provide services as agreed under the Development Agreement. It was further contended that the Appellant-Contractor was liable to refund an amount of Rs.10,26,00,000/- with Interest @ 15% p.a., and pay liquidated damages of Rs. 1,54,00,000/- to the Respondent-Company.

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The Respondent invoked arbitration under Clause 20 of the Agreement, and nominated its arbitrator, with a request to the Appellant herein to make nomination of its arbitrator. A

5. On 18.03.2019, the Respondent herein filed a Petition under Section 11(6) of the 1996 Act before the High Court of Madras, wherein it was prayed that the Court may appoint an arbitrator on behalf of the Appellant in terms of Clause 20 of the Development Agreement, since the Contractor had failed to do so. B

6. Subsequently, the Appellant-Contractor, registered itself under the Micro, Small and Medium Enterprises Development Act, 2006 (“**MSMED Act**”), and filed an application for resolution of disputes before the Facilitation Council, Pune established under the MSMED Act. C

7. In the meanwhile, the Petition under Section 11 was taken up for hearing before the High Court, wherein it was observed that there is no provision under the MSMED Act for reference of counter-claims to the Facilitation Council, and adjudication thereof. Sections 15 to 18 of the MSMED Act provide for reference of disputes with respect to claims made by a supplier / contractor registered under the MSMED Act. Even though Section 24 of the MSMED Act gives overriding effect to the MSMED Act, it would not be applicable in this case, since there is no provision under this Act to deal with counter-claims filed against the supplier-contractor. D E

The High Court took the view that since there is no provision for raising counter-claims under the MSMED Act, and the parties had in the Development Agreement dated 10.02.2014 agreed to refer all their disputes under the 1996 Act, it was a fit case for appointment of the arbitrator. The arbitration agreement provided for a three-member tribunal. The Applicant (Respondent herein) had already nominated its arbitrator, the Contractor was directed to appoint an arbitrator. On such nomination, the two arbitrators would appoint the presiding arbitrator. F

8. The Appellant-Contractor challenged the aforesaid Order dated 16.09.2020 before this Court *vide* Special Leave Petition (C) No. 16027 of 2020. G

During the course of the proceedings, the parties have agreed to have their disputes adjudicated under the Arbitration & Conciliation Act, 1996 by a Court-appointed Sole Arbitrator. H

A In view of the statement made by the Counsel for both parties on instructions, Clause 20 of the Development Agreement dated 10.02.2014 stands superseded to the extent that the arbitration will be conducted by a three-member tribunal.

B We appoint Justice K. Kannan, former Judge of the Madras High Court, as the Sole Arbitrator to adjudicate on all the claims and counter claims made by the parties arising out of the Development Agreement dated 10.02.2014. The arbitration will be conducted in accordance with the Arbitration and Conciliation Act, 1996. The arbitral proceedings shall be conducted by the Madras High Court Arbitration Centre in accordance with its Rules.

C The appointment of the Sole Arbitrator is subject to the Declarations to be made under Section 12 of the Arbitration and Conciliation Act, 1996 with respect to independence and impartiality, and the ability to devote sufficient time to complete the arbitration. The Sole Arbitrator will be paid fees as per the Schedule of the Madras High Court Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2017.

D A copy of this Order be despatched to the Madras High Court Arbitration Centre, and Justice K. Kannan (Retd.) at the following address:

E "Justice K. Kannan
3/11, Lakshmi Colony,
North Crescent, T. Nagar
Chennai - 600017
F Mob: +91-9780008145"

G 9. In view of the aforesaid directions, the Application filed by the Appellant-Contractor under the MSMED Act, registered as MSFEC Case No. MH/26/M/PNE/02000 on 22.10.2020, will stand closed by the Facilitation Council, Pune.

10. The Appeal is disposed of in the aforesaid terms. Pending applications, if any, stand disposed.