

\$~Original 1&2 (*common order*)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I)(COMM) 103/2020**
+ **O.M.P.(I)(COMM) 104/2020**

M/S VANILLA CLEAN POWER PVT. LTD.

M/S IVY ECOENERGY INDIA PVT. LTD. Petitioner(s)

Through: Mr.Ranjit Kumar, Sr Advocate with
Mr.Rupesh Gupta, Mr.Nikhil Kohli
and Ms.Ritika Kohli, Advocates.

versus

M/S INOX WIND INFRASTRUCTURE

SERVICES LIMITED Respondent(s)

Through: Mr.Sahil Chopra, Advocate with
Ms.Remya Sanjiv, Sr Manager of
respondent in person.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% **29.04.2020**

1. The hearing has been conducted through Video Conferencing.

I.A. No.3775/2020 in O.M.P.(I)(COMM) 103/2020

I.A. No.3776/2020 in O.M.P.(I)(COMM) 104/2020

2. Exemption allowed, subject to the condition that petitioner will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.

3. The application(s) stand disposed of.

O.M.P.(I)(COMM) 103/2020 & O.M.P.(I)(COMM) 104/2020

4. These petitions have been filed under Section 9 of the

Arbitration and Conciliation Act, 1996.

5. The brief facts are on 10.06.2019 the petitioner and respondent executed a Mutual Termination Agreement to terminate the existing Operation & Maintenance (*O&M*) Agreements. Further, the parties simultaneously executed an agreement for O&M services for limited and specific purposes of continuing to operate and maintain the shared services and common infrastructure.

6. On 12.04.2020 vendor of the respondent allegedly entered the wind park and demanded the employees of the respondent should switch off the interconnecting feeders connecting the Wind Turbine Generators of the Power Generation Plant to the Pooling Substation and thereby bringing the generation and evacuation of power from the Power Generation Plant to a standstill.

7. The learned senior counsel for petitioner argued per notification dated 24.03.2020 Ministry of Home Affairs, Government of India, notified the power generation, transmission and distribution units and services to be '*essential services*' and on 25.03.2020 the Ministry of Power by way of its notification also recognised power generation as an '*essential service*'.

8. It is stated respondent probably has some issue of non-payment of some charges etc and per submission of the petitioner, it has already paid an amount of Rs.3.12 Crores to the respondent as also to its vendors, per document at page 74 of the documents.

9. The learned senior counsel for petitioner also argued per clause 3.8 of the Agreement for Operation and Maintenance Services dated 10.06.2019, in the event of the contractor unable to operate a shared services on account of disturbances caused by the vendor / employee/ agent/sub-contractor the owner shall have every right to take control of the operation of the shared services and that if the owner fails to make the payment towards O & M charges on the due date, than the owner shall be liable to pay to the contractor the outstanding unpaid invoice amount along with interest @ 18% per annum over entire such due payment prorated and compounded to daily basis from the due date until the date of actual payment along with interest. It is submitted due to alleged non-payment of charges the contract cannot be given go-by.

10. On 12.04.2020, the respondent switched off the interconnecting feeders connecting the Wind Turbine Generators of the Power Generation Plant belonging to the petitioner to the Pooling Substation and thereby bringing the generation and evacuation of power from the Power Generation Plant to a standstill.

11. It is submitted the FIR was lodged against the conduct of the respondent and on 16.04.2020 the petitioner on its own switched on the inter connecting feeder line in order to operationalise the power generation and evacuation, but again it was switched off by the respondent, hence this petition.

12. Issue notice.

13. The learned counsel for respondent appears on advance notice. Accepts notice and seeks to file reply. Be filed within eight weeks from today with an advance copy thereof to the learned counsel for petitioner through email.

14. The learned counsel for respondent, under instructions of Ms.Remya Sanjiv, Sr Manager, who is also present with him, states the inter connecting feeder lines of the Wind Turbine Generator and power generation belonging to the petitioner to the pooling substation have been switched on with effect from 17.04.2020 and shall not be switched off till further orders.

15. On this submission, the parties are directed to maintain the *status quo* to continue the power generation and evacuation of power till the next date of hearing.

16. List before the Roster Bench for directions on 14.07.2020.

YOGESH KHANNA, J.

APRIL 29, 2020

DV/M