

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

ARBITRATION PETITION (L) NO.454 OF 2009

BF Utilities Limited ...Petitioner.

V.

Enercon India Limited ...Respondents.

Mr.S.U.Kamdar, Sr.Counsel alongwith Mr.V.R.Dhond and
Mr.Harsh Magoon i/by DSK Legal , advs. for the
Petitioner.

Mr.Atul Rajadhyaksha, Sr.Counsel, Ashwini Shete i/by
Khaitan & Jayakar , advs. for the Respondents.

CORAM: J.H.BHATIA ,J.
VACATION JUDGE.

DATE: 28TH MAY, 2009.

P.C.

1. Heard the learned counsel for the Parties.

2. It is admitted fact that out of the 9 WECs which
were commissioned on different dates during the month of
June, 1998, five have been already overhauled and
remaining four are yet to be overhauled. Petitioners
have already paid an amount of Rs.1 crore on 21st
November, 2008 and an amount of Rs.14,83,249/- on 13th
February, 2009 to the respondents. With consent of the
learned counsel for the parties, the present petition
stands disposed off with the following directions:

i. Respondents shall take up the work of the
overhauling of remaining 4 WECs within one week after
the petitioners deposit further amount of Rs.40 lacs
with the respondents.

ii. Petitioners shall deposit the said amount of Rs.40 lacs with the respondents within one week from this date.

iii. Petitioners shall pay O & M fees at the rate of 2.77 lacs per annum per unit for all the 9 WECs on the completion of 10th year from the commencement of the said units without prejudice to the contentions of both the parties.

iv. Dispute between the parties in respect of the overhauling charges as well as the O & M fees shall be referred to the arbitrator as per the terms of the contract. The arbitrator shall decide rate of overhauling as well as the O & M fees beyond the period of 10 years from the date of commissioning of the units. The payments of Rs.1 crore, Rs.14,83,249/- as well as an amount of Rs.40 lacs to be deposited by the petitioners with the respondents shall be subject to the award which may be passed by the Arbitrator. In case, the payment made and the deposit to be made by the petitioners with the respondents falls short of the amount which may be awarded by the arbitrator, the petitioners shall make the balance payment with interest as may be determined by the arbitrator. In case, the payment made and the deposit to be made by the petitioners with the respondents is found to be more than the amount due to

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the respondents as per the award which may be passed by the arbitrator, respondents shall refund the excess amount to the petitioners with some rate of interest as may be determined by the arbitrator.

(J.H.BHATIA, J.)