

**In the High Court of Judicature at Madras**

**Dated : 30.01.2015**

**Coram :**

**The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice**

**O.P.No.467 of 2012**

M/s.Siemens Limited  
(Formerly known as M/s.Imetrex Technologies  
Limited), Rep. by its Manager  
Asset Management, Mr.Jerome Michael... Petitioner

-vs-

- 1.Principal Secretary,  
Industries Department,  
State of Tamilnadu, George Town,  
Chennai-9.
- 2.M/s.State Industries Promotion Corporation  
of Tamil Nadu Limited, 19-A, Rukmani  
Lakshmipathy Road, Post Box No.7223,  
Egmore, Chennai-8. ... Respondents

Petition filed under Section 11 (4) of the  
Arbitration and Conciliation Act, 1996, to appoint an  
Arbitrator to decide the dispute arising out of the Lease  
Deed dated 16<sup>th</sup> June, 2005.

For Petitioner : Mr.M.Vijayan,  
for M/s.King & Patridge

For Respondents : Mr.Venugopal, Spl.G.P. for R-1  
M/s.Sudharshana Sundar for R-2

\* \* \* \* \*

**O R D E R**

M/s. State Industries Promotion Corporation of Tamil

Nadu Limited / the second respondent allotted M/s. DATS (India) Limited, land measuring approximately 4.57 acres vide an order dated 05.03.2004 and in terms of Clause 9 of the Allotment Order, the allottee was required to obtain approval for change in constitution or change in the management or control or amalgamation with any other company or transfer of interest to third party, either in whole or in part and the second respondent "shall grant approval" provided the allottee or any person claiming under him agrees to pay the cost determined by the second respondent.

2.The case of the petitioner is that shares of DATS (India) Limited were acquired by iMetrex Group and accordingly, the name of the company was changed to iMetrex Technologies Limited. On the amended certificate of incorporation being issued by the Registrar of Companies, the second respondent was addressed a communication dated 05.04.2005, which granted approval on 19.05.2005. Thus, a lease deed came to be executed by the second respondent in favour of iMetrex Technologies Limited on 16.06.2005 for a period of 99 years, after having received the entire amount due and payable for 99 years and the possession was handed over on 04.07.2005.

3.The petitioner pleads that in the year 2007, M/s.Siemens Limited, acquired 77% of the equity of iMetrex Technologies Limited, though the management control continued to be with the erstwhile Directors of iMetrex. The lease deed, in clause 26, incorporated the same term as clause 9 of the allotment order. The name of iMetrex Technologies Limited was changed to Siemens Buildings Technologies Private Limited and a certificate was issued by the Registrar of Companies on 24.08.2007. The second respondent was informed on 13.06.2007. There was, however, no response from the second respondent, despite reminders and a personal visit on 25.06.2008 of the Managing Director of Siemens Building Technologies Ltd. On 03.09.2010, M/s.Siemens Buildings Technologies Private Limited was amalgamated with Siemens Limited, as per Sections 391 and 394 of the Companies Act, 1956, on the scheme of amalgamation being duly approved by the learned Company Judge of the Madras High Court, in terms of order dated 03.09.2010 in C.P.Nos.60 and 61 of 2010.

4.The second respondent issued a show cause notice to the petitioner on 17.09.2008 alleging violation of clause 9 and non-completion of building, within 24 months, which was replied to by the petitioner on 25.09.2008, once again reiterating the request for change of name. However, on 30.09.2011, without responding to the petitioner, the

second respondent passed an order cancelling the lease deed and threatening action under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. These proceedings were initiated with the show cause notice and thereafter, an order was passed on 12.04.2012 received on 19.04.2012.

5.The petitioner invoked Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') in O.P.No.350 of 2012 and by an order dated 25.04.2012, protection was provided for the petitioner restraining eviction from the property.

6.The lease deed contains a clause for resolution of disputes through arbitration being clause 35, which reads as under:

'35.During the currency of the lease, any question of dispute or difference in relation to or in connection with the terms of the lease deed shall not be raised by the Party of the Second Part and, if at all raise, such question of dispute or difference shall be referred to an arbitrator appointed by Government of Tamil Nadu.'

7.The petitioner, thus, vide letter dated 28.05.2012 requested the first respondent to nominate an Arbitrator to resolve the dispute, but there was no action, compelling

the petitioner to approach this Court under Section 11(4) of the said Act, vide the present petition.

8.The respondents have entered appearance as recorded in the order dated 23.11.2012. However, no reply has been filed and it is a case of no return.

9.In view of the facts aforesaid, it is quite apparent that disputes have arisen inter se the parties, which are liable to be resolved through the mode of arbitration. In fact, there is really no dispute over this and the only submission made by the learned counsel for the respondents was that there is a question mark on the identity of the petitioner, as it has been filed by M/s.Siemens Limited. I find no force in this contention, in view of the facts set out above, which show how M/s.Siemens Limited has acquired the rights and M/s.Siemens Buildings Technologies Private Limited was amalgamated into the petitioner entity.

10.In view of the aforesaid, as proposed and agreed by the learned counsel for parties, I appoint **Mr.M.S.Janardhanan, a Retired Judge of this Court,** as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order.

The learned Arbitrator is at liberty to fix the



remuneration and other incidental expenses, which shall be borne by the parties equally.

11.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

Sd/(S.K.K., CJ.)

30.01.2015

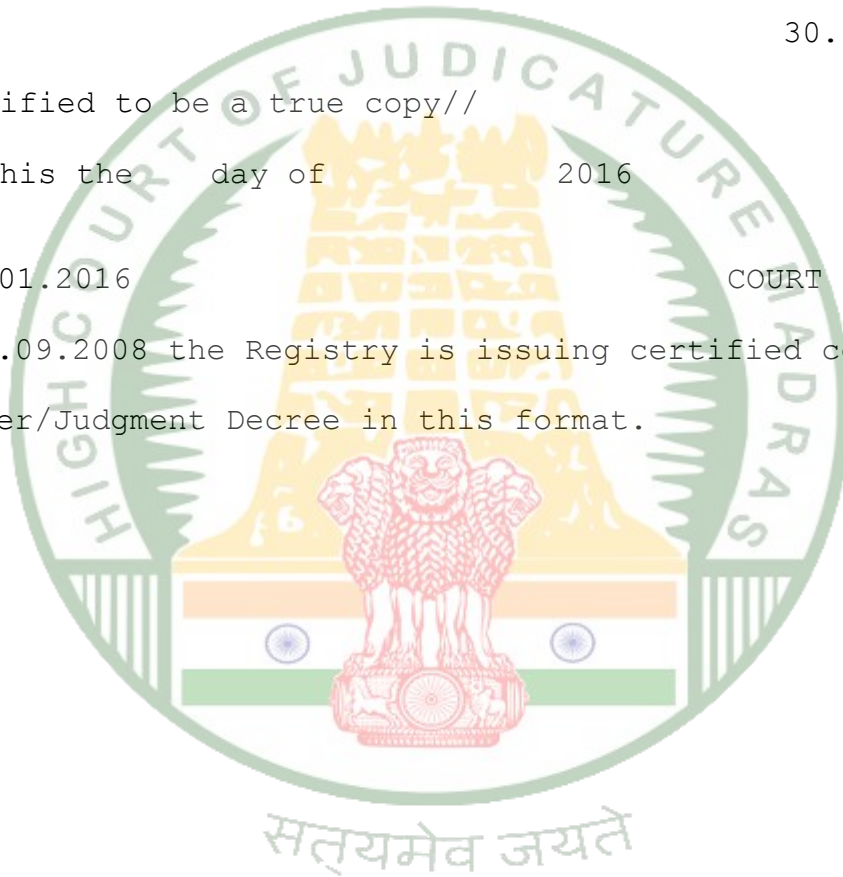
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Dated this the       day of       2016

R.s/06.01.2016

COURT OFFICER

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