

High Court rules against Fraser Solar



GERMAN Solar energy company, Frazer Solar has shot down a ruling made on Wednesday by the High Court of Lesotho that declares the supply agreement of a renewable energy project signed in 2018 by Lesotho and the company unlawful.

Frazer Solar is an Australian-German developer of utility-scale and nationally significant renewable energy projects. After the 2018 project failed to take off, the company accused Lesotho of a series of contractual breaches related to the energy project.

In January 2020, an independent arbitrator ruled in Frazer

Solar's favour in the matter that ensued.

Lesotho was ordered to pay Frazer Solar M 894,171,014 million (50 million Euros) in damages but failed to do so. Consequently, in May 2021, Frazer Solar's lawyers commenced a worldwide enforcement action against assets held by Lesotho.

But the High Court of Lesotho in its judgment this week declared that the supply agreement between the government and Frazer Solar was unconstitutional, unlawful, and invalid.

This is despite the fact that the decision enables the company to restart global enforcement proceedings against Lesotho.

This, after the Government of Lesotho, approached the High Court seeking a review and the setting aside of the decision by the former Minister in the office of the Prime Minister, Temeki Tšolo, to appoint Fraser Solar as the sole supplier of goods and services and enter into an agreement on September 24, 2018, with them without the authority of the Cabinet and the former Minister of Finance.

At the end of October 2022, a court in Belgium issued an order allowing Frazer Solar to seize Lesotho's assets in that country, including its Gem Diamond operations and a bank account of Lesotho's embassy in Brussels.

"The Belgium court has recognised Frazer Solar GmbH's

50 million pounds arbitration award against the kingdom's assets in Belgium, including the bank account of the Lesotho embassy in Brussels. This enforcement followed an international arbitration ruling against Lesotho concerning a series of contractual breaches related to a renewable energy project developed by Frazer solar," Frazer Solar said in a statement on Monday this.

In response to the claims, the Lesotho government said it would do everything possible to protect its assets in Belgium and elsewhere.

It said without any notice, Frazer Solar approached the court in Belgium and obtained an order freezing the Lesotho embassy's bank account in Brussels.

"Upon discovering that the bank account had been frozen, the embassy immediately relayed the message to Lesotho and as we issue this statement, the matter is in the hands of our lawyers in Brussels who have now filed papers in court in order to protect the Kingdom's interests.

"The nation can therefore rest assured that the Kingdom of Lesotho will do everything it can to protect its assets in Belgium and anywhere they are," the office of the Prime Minister said on Monday evening.

The government further revealed that its embassy only came to know about the frozen account through the bank when they tried to transact on October 24.

After the court's ruling this week, Frazer Solar released a statement that fundamentally disagrees with that decision.

The statement shows that the company's lawyers plan to re-commence legal action in the United States of America, United Kingdom, Mauritius, and South Africa in the near future.

It further highlights that the utility outfit will pursue assets owned by Lesotho in other jurisdictions around the world.

The company says the High Court's ruling this week is irrelevant, as it (the company) has a legal award from an independent arbitrator that is final, unappeasable, and globally enforceable.

“The judges have confirmed that the government of Lesotho chose the wrong method with which to proceed with Frazer Solar's renewable energy project. We acted in good faith throughout by proceeding with the procurement rules provided by government officials.”

“If the government thought that the High Court's decision could be used as a further delaying tactic, then they face an unpleasant surprise. The Belgium court's recent ruling in Frazer Solar's favour demonstrates our ability to target the Kingdom's assets and bank accounts anywhere in the world.

“The High Court's decision will only serve to accelerate our plans to launch fresh enforcement proceedings across multiple legal jurisdictions,” Frazer Solar said in the statement.