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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.PET. 540/2010 & CAs 2476-2477/2010

M/S PVR LIMITED

..... Petitioner

Through: Ms. Shobhna Takiar, Advocate

versus

M/S RSA PROBUILD PVT LTD

..... Respondent

Through: Mr. Abhay Singh with Mr. D.B. Singh,
Ms. Yasmin Zafar & Mr. Izhar Ahmed, Advocates

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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01.11.2011

Present winding up petition has been filed under Sections 433(e) and 434 and 439 of the Companies Act stating that the respondent is unable to pay its debts as it had failed to refund the security deposit of Rs. 46,82,400/- along with interest.

The admitted position is that on the last date of hearing, the principal sum of Rs. 46,82,400/- has been repaid by the respondent to the petitioner. However, Ms. Takiar states that the petitioner still has a claim for interest on

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the principal security deposit.

Learned counsel for the respondent submits that the security deposit paid by the petitioner to the respondent was an interest free one and in any event, the Tripartite Agreement dated 30th August, 2006 executed amongst the petitioner, respondent and M/s. MGF Developments Ltd. stood frustrated by the show cause notice dated 12th April, 2007 issued by the Archaeological Survey of India and the order of the Punjab & Haryana High Court dated 30th May, 2008.

Keeping in view the stand of the respondent, this Court is of the opinion that the defence set up by the respondent is certainly not a moonshine and a sham. The issue whether the tripartite agreement executed between the parties stood frustrated is a question of fact which needs to be determined after allowing both the parties to lead evidence. Consequently, the present petition is disposed of with liberty to the petitioner to file a proceeding for recovery of interest, if it so desires. Needless to say, any recovery proceeding initiated by the petitioner would be decided by the appropriate forum in accordance with law, without being influenced by any observation made by this Court. The rights and contentions of both the parties are left open.


MANMOHAN, J

NOVEMBER 01, 2011/NG