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* IN THE HIGH COURT OF DELHI AT NEW DELHI

I O.M.P. 754/2011

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Judgment Delivered on: 21.02.2012

GANTON LIMITED

..... Petitioner

Through: Mr.Anil Sapra, Sr. Advocate with
Mr.Gaurav Mitra, Mr.Sachin Midha, Advs.

versus

ANOVA INFRACON PRIVATE LTD & ANOTHER..... Respondent

Through: Mr.Harish Malhotra, Sr. Advocate and
Mr.Sanjeev Sachdeva, Sr. Advocate with
Sanjay S. Chhabra, Adv for respondent 1 & 2
Mr.Puneet Jain and Mr.Shailendra
Paul, Adv for applicant in I.A. No.1226/2012**CORAM:****HON'BLE MR. JUSTICE G.S.SISTANI****G.S.SISTANI, J. (ORAL)**

1. Petitioner had approached this court by filing the present petition under Section 9 of the Arbitration & Conciliation Act, 1996 with the following prayer:

- a) Pending disposal of the accompanying petition and during the arbitration proceedings, this Hon'ble Court may be pleased to pass an ad interim ex-parte order restraining the Respondents, their employees, agents, successors, representatives and assignees from disposing, selling, creating third party interest, letting, mortgaging, further leasing or so of the property bearing plot No.TS-3, Sector 22 D, NOIDA admeasuring about 4,00,000 square meters situated at Yamuna Expressway under the Scheme Code YEA-RT-02 till the arbitral award is made by the arbitrator and till the said award, if made in favour of the petitioner is fully satisfied."

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By:AMULYA

2. While issuing notice in the matter, this court by an order dated 10.10.2011 had restrained the respondents from disposing, selling, creating third party interest, letting, mortgaging, further leasing or so of the property bearing plot No.TS-3, Sector 22 D, NOIDA admeasuring about 4,00,000 square meters situated at Yamuna Expressway under the Scheme Code YEA-RT-02.
3. After completion of pleadings, the matter was taken up for hearing on 30.11.2011 and on various other dates. During hearing of this matter, the parties expressed their desire to enter into an amicable settlement, and the agreed terms were recorded in the order dated 16.12.2011, which are reproduced below:

“(i) Petitioner or a nominee of the petitioner, which shall be a subsidiary of the petitioner and whose name will be given within fourteen (14) days from today, will contribute 70% of the entire dues payable to Yamuna Expressway Industrial Development Authority (for short, “YEIDA”) by way of premium and all instalments. Upon payments being made to YEIDA and the execution of a lease deed, respondent no.1 shall immediately execute a sub-lease, as per YEIDA norms, in favour of the aforesaid nominee of the petitioner for 55% of the unencumbered area which should be of the same character/use as the 45% being retained by the respondent.

(ii) Petitioner and/or its subsidiary shall make all such payments to YEIDA on or before 04.02.2012, so that the ratio of payments between the petitioner and the respondent is 70:30 respectively, to facilitate execution of a lease deed by YEIDA.

(iii) Respondent shall make an application for extension of time to make the balance payment to YEIDA on or before 04.02.2012.

(iv) In the event of the petitioners and/or their nominees fail to comply with and make payment to YEIDA on or before 04.02.2012, petitioners and/or its subsidiary-nominee shall pay to the respondent a sum of Rs.1.0 crore in lieu of all

or every claim of the respondent, and shall forfeit all the rights of the petitioner and/or its subsidiary nominee by or under or in the joint venture agreement dated 27.12.2010 and the land in question.

(v) In the event of respondent failing to comply with the respondent's obligation to immediately executing a sub-lease, as stated aforesaid, it will be open to the petitioner and/or its subsidiary nominee, to enforce the said obligation by way of specific performance.

(vi) Parties agree to withdraw and/or not press all proceedings against each other and/or their officers and employees."

4. On 16.12.2011 this matter was adjourned to 01.02.2012. In the meanwhile an application (IA.No.1226/2012) was filed by one Mr.Karan Luthra for being impleaded as a party, as according to him the respondent had accepted a sum of Rs.20.0 crores for the same very plot, subject matter of OMP.No.754/2011. Notice was issued in the application for 30.01.2012 and thereafter the matter was adjourned to 01.02.2012. On 01.02.2012 counsel for the petitioner informed this court that petitioner has not been able to arrange the money, in terms of the order dated 16.12.2011 and sought an adjournment. Order dated 01.02.2012 reads as under:

"It is pointed out that the petitioner has not been able to arrange for money in terms of order dated 16.12.2011. Counsel for the petitioner prays for an adjournment.

Mr.Sanjeev Sachdeva, learned senior advocate for the respondent submits that his client will approach the Yamuna Authorities for enlargement of time in view of pendency of these proceedings and the stay order, which has been granted, and approach another investor.

Mr.Sundaram, learned senior counsel for the applicant in I.A.1226/2012 submits that although his client is yet to be impleaded as a party to the petition, he prays that above order passed be without prejudice to his rights and contentions, as his

client has already invested an amount of Rs.22.65 crores. This is disputed by Mr.Sachdeva, learned senior counsel for the respondent.

At request of counsel for the petitioner, adjourned to 09.02.2012.

DASTI to counsel for the parties under the signatures of the Court Master.”

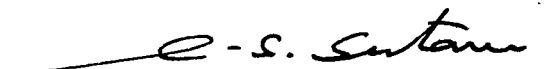
5. Subsequently the petitioner filed an application (IA.No.2212/2012) seeking extension of time in complying with the order dated 16.12.2011. The application for extension of time was opposed by counsel for the respondent, *primarily* on the ground that on account of default of the petitioner, the plot, subject matter of the petition stands cancelled by YEIDA.
6. As per this settlement, it was agreed that petitioner or his nominee will contribute 70% of the entire dues payable to YEIDA and various terms were extracted, which are reproduced above. The petitioner was to make payment to YEIDA on or before 04.02.2012. As per clause (iv) of the Settlement, in the event of the petitioner and/or his nominees fail to comply with and make the payment to YEIDA on or before 04.02.2012, the petitioner and/ or his subsidiary-nominee was to pay to the respondent a sum of Rs.1.0 crore in lieu of all or every claim of the respondent, and shall forfeit all the rights of the petitioner under or in the Joint Venture Agreement dated 27.12.2010 and the land in question.
7. Admittedly, the amount as agreed was not paid by 04.02.2012, and even the amount has not been paid till date, despite the matter being adjourned from time to time. The petitioner had made an application seeking extension of time, which was opposed by counsel for the petitioner. In the meanwhile, admittedly the plot stands cancelled on account of non-payment.

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8. Counsel for the petitioner submits that petitioner has not made the payment on account of the fact that petitioner learnt subsequently that respondent had entered into another agreement with Mr.Karan Luthra and had accepted a sum of Rs.20.0 crores for the same very project. It is also stated by counsel for the petitioner that an application has since been prepared for declaring the settlement to be null and void.
 9. Mr.Harish Malhotra, learned senior advocate for the respondents no.1 and 2 submits that the entire dispute has arisen on account of the fact that petitioner was not able to arrange for the money even after the settlement, which is evident from the fact that money has not been paid to YEIDA upto 04.02.2012 and even till date money has not been paid, which led to the cancellation of the plot. Counsel also submits that understanding, if any, between the respondent and Mr.Karan Luthra would have no effect on the arrangement with the petitioner herein, as the arrangement was arrived at in court and the same would have been implemented in case the petitioner would have paid the money.
 10. Taking into consideration that the petitioner has failed to honour the terms of the settlement and the plot having been cancelled, the present petition is liable to be dismissed, as per clause (vi) of the settlement. The petition is accordingly, dismissed with costs of Rs.50,000/-.

I.A. 1226/2012, I.A. 2272/2012, I.A. 2509/2012 & CRL.M.A. 17651/2011

11. In view of order passed in the O.M.P. No.754/2011, present applications stand dismissed.

FEBRUARY 21, 2012 ssn


G.S.SISTANI, J