

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: March 22, 2013*

+ **OMP No.407/2012**

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

+ **Arb.P.No.433/2012**

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

+ **Arb.P.No.125/2013**

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with


Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

+

Arb.P.No.126/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

+

Arb.P.No.127/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

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Arb.P.No.128/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur

Bansal, Advs.

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Arb.P.No.129/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

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Arb.P.No.130/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

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Arb.P.No.131/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

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Arb.P.No.132/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

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Arb.P.No.133/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

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Arb.P.No.134/2013

DALMIA INFRASTRUCTURE PVT LTD Petitioner
Through Mr.Sanjeev Anand, Adv. with
Mr.Abhas Kumar, Adv.

versus

MVL LTD Respondent
Through Mr.Anil K.Kher, Sr.Adv. with
Mr.Davesh Bhatia & Mr.Ankur
Bansal, Advs.

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. Dalmia Infrastructure Pvt. Ltd., the petitioner, has filed the abovementioned twelve petitions against MVL Ltd., the respondent herein. The first petition being OMP No.407/2012 has been filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:-

4 “(a) Stay the cancellation/operation of the respondent’s purported letter of cancellation dated 2nd April, 2012 purporting to cancel the 11 apartments purchased by the petitioner in the Tower-2 of residential complex known as “MVL Coral” situated on the Bhiwadi-Alwar bypass in Village Saidpur, Tehsil Tizara, Distt. Alwar, Rajasthan detailed in Annexure-P10 hereto and which form part of Annexure-II to the petitioner’s letter dated 12th January, 2010.

“ (b) Restrain the respondent, its agents, representatives, employees or any other person claiming through it from directly or indirectly transferring, alienating, encumbering or dealing in any manner or parting with possession of the 11 apartments purchased by the petitioner in the Tower-2 of residential complex known as “MVL Coral” situated on the Bhiwadi-Alwar bypass in Village Saidpur, Tehsil Tizara, Distt. Alwar, Rajasthan detailed in Annexure-P10 hereto and which form part of Annexure-II to the petitioner’s letter dated 12th January, 2010.”

2. The said OMP was first time listed before Court on 30th April, 2012 when the learned counsel appearing on behalf of the respondent sought time to take the instructions from his client. On the next date, i.e. 2nd May, 2012, learned Senior counsel appearing on behalf of the respondent, on

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instructions, made the statement recorded in the order. The same is reproduced here as under:-

4 “1. Mr. Anil K. Kher, Senior Advocate, on instructions from Mr. D.R. Bhatia, Advocate, enters appears on behalf of the respondent. Mr. Anil K. Kher on instructions very fair submits that the respondent will not sell, alienate, transfer, encumber or deal in any manner or part with possession of the eleven apartments purchased by the petitioner in Tower-2 of residential complex known as “MVL Coral”, situated on the Bhiwadi-Alwar bypass in Village Saidpur, Tehsil Tizara, District Alwar, Rajasthan, till the next date of hearing. Respondent shall be bound by the statement made by senior counsel in Court today....”

3. The other 11 petitions being Arb.P.Nos.433/2012 & 125-34/2013 have been filed by the petitioner under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of a sole Arbitrator under Clause 13 of the Agreements executed between the parties, for adjudicating the disputes that have arisen between them.

4. I have been informed that Justice J.P. Singh, a retired Judge of this Court has already been appointed as an Arbitrator in certain connected matters between the parties. It is so recorded in the order dated 12th December, 2012 passed in Arb.P.No.433/2012 on which date, the learned counsel for the respondent also sought time to obtain the instructions from his client for reference of the dispute to the same Arbitrator. On the next date, i.e. 15th January, 2013, as agreed, the matter was sent to the Delhi High Court Mediation and Conciliation Centre for settlement. However, the mediation ended as a ‘Non-Starter’, as per the report of the learned Mediator dated 25th February, 2013. Both the matters being OMP No.407/2012 & Arb.P.No.433/2012 were heard and were re-notified for orders for today. As

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the respondent raised the objection about the maintainability of the petition mainly on the ground that since there are independent agreements with regard to the suit properties, the petitioner ought to have filed the separate petitions, hence today, the 10 other petitions being Arb.P.Nos.125-34/2013 between the same parties are listed which have been filed by the petitioner.

5. After small hearing, learned counsel for both the parties are agreeable that all the petitions mentioned above may be disposed of with following directions; the same are accordingly passed:-

(a) Mr.J.P.Singh, a retired Judge of this Court, who has already been appointed as sole Arbitrator in connected matters between the parties, is also appointed as sole Arbitrator to adjudicate upon all the disputes and differences between the parties as mentioned in the petitions being Arb.P.Nos.433/2012 & 125-34/2013, including their claims and counter-claims. The arbitration be taken place under the aegis of Rules of the Delhi High Court Arbitration Centre. The fees of the Arbitrator be also paid under the said Rules.

(b) The statement made on behalf of the respondent on 2nd May, 2012 in OMP No.407/2012 shall continue until it is modified or vacated by the sole Arbitrator by filing of the application which would be decided as per its own merits.

6. All petitions are disposed of. No costs.

7. Copy of this order be given *dasti* to the learned counsel for the parties and a communication be also sent to the learned sole Arbitrator.

(MANMOHAN SINGH)
JUDGE

MARCH 22, 2013/ka