

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

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O.M.P. 745/2014

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Judgement pronounced on: 18.11.2014

M/S OPAQUE INFRASTRUCTURE PVT LTD Petitioner

Through: Mr Harish Malhotra, Senior Advocate
with Mr R.K. Modi, Advocate

versus

M/S MILLENNIUM REALTECH PVT LTD Respondent

Through: Mr B.R. Sharma and Mr Satpal Singh,
Adv.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) by the petitioner, who was the builder under a Collaboration Agreement dated 07.11.2011 between him and the respondent. The respondent was the owner of plot of land admeasuring 1148 square yards in Khasra No. 260, situated in the revenue estate of village Bahapur, Tehsil Kalkaji, New Delhi. Under this Collaboration Agreement, a vertical building was to be raised comprising of Wing-1 (South West Side) and Wing-2 (North East Side). Under the agreement, it was the obligation of the owner, i.e., the respondent to seek requisite permissions, sanctions and approvals for development on the said

plot at his costs and expenses after getting the building plan sanctioned from the concerned authorities. The sanctioned plan was to be obtained within 60 days of the date of execution of this collaboration agreement. As per the terms, the petitioner had paid a sum of Rs. 50 lakhs to the respondent on execution of this Collaboration Agreement. As per clause 5(c) of the said Collaboration Agreement, the petitioner was required to pay a sum of Rs. 1 core 50 lakhs to the owner, i.e., the respondent on his getting the approval/sanction plan of the building approved from the concerned department within 60 days of the signing of this Collaboration Agreement. It is the admitted fact that upto now, the respondent has not obtained any sanctioned plan of the building from the concerned department. After waiting for about two years, the petitioner wrote a letter dated 07.03.2013 asking the petitioner to act as per the terms of the agreement. The respondent, however, instead of acting as per the terms of the agreement, i.e., obtaining the sanctioned plan, offered to refund the security amount of Rs. 50 lakh to the petitioner and sent the said amount by way of a cheque along with his letter dated 22.03.2014. Vide this letter, the respondent also terminated the Collaboration Agreement as null and void. The ground taken by the respondent in this letter was that the petitioner was not financially

sound and had not developed any property and that he had not submitted the requisite documents showing his capability to raise such a construction. The said letter was duly replied by the petitioner vide letter dated 02.07.2014, whereby he refused to accept the refund of the security amount and took the plea that there was no such term or the condition in the agreement that the petitioner was required to submit its financial credentials to the respondent and also invoked the arbitration clause. Thereafter, the petitioner had moved this Court under Section 9 of the Act with the prayer that so long their dispute is resolved by the Arbitrator, the situs of the dispute, i.e., the property should be protected and the respondent be restrained from selling, transferring, or parting with the possession of the disputed property.

2. This Court vide order dated 15.07.2014 by way of *ad interim* injunction, restrained the respondent from creating any third party interest in the disputed property.

3. The respondent filed an application under Order 39 Rule 4 of CPC praying for the vacation of the stay. It has also been requested by the respondent that the said application be considered as their reply to the petition of the petitioner under Section 9 of the Act. In their application, the respondent has submitted that since the petitioners are not financially sound

and also have no experience to develop the building, they are not capable of raising the construction on the said property and, therefore, the respondent does not want that the property be developed by them. It is also submitted that the respondent is ready to return the security amount of Rs. 50 lakh to the petitioner.

4. During the course of arguments on the previous date before this Court, the respondent offered to deposit the security amount of Rs. 50 lakh with the Registrar General of this Court and accordingly, the respondent was allowed to do so and pursuant to that, the respondent had deposited a sum of Rs. 50 lakh as a security with the Registrar General of this Court. The money has been kept in FDR.

5. Arguments have been heard.

6. There is no doubt that there exists a dispute between the parties relating to the Collaboration Agreement entered into by the parties voluntarily. There is no dispute to the fact that the Collaboration Agreement was not conditional to the petitioner disclosing his financial status or his experiences. It is also not in dispute that under the agreement, it was for the respondent to obtain the sanctioned plan and all the other requisite permissions from the concerned departments, before the obligation of the

petitioner to make the payment of Rs 1 crore 50 lakh would have arisen. There is also no dispute to the fact that the respondent has nowhere contended that he took any steps pursuant to the terms and conditions of the Collaboration Agreement, to get the plan sanctioned. The only plea taken is that the petitioner is not capable to fulfil the conditions of the Collaboration Agreement. All these facts clearly show that *prima facie* it is the respondent who has failed to comply with the terms and conditions of the Collaboration Agreement and that there exists an arbitrable dispute between the parties. It is also clear that despite the petitioner invoking the arbitration clause vide his letter dated 02.07.2014, asking the respondent to nominate the three Arbitrators, the respondent has not moved any further in this direction.

7. In view of this, I am satisfied that the property, which is the situs of the dispute between the parties, needs to be protected.

8. At this stage, the learned counsel for the respondent has argued that there is no need to pass a separate order and the property is protected under Section 52 of Transfer of Property Act. However, Section 52 of Transfer of Property Act deals with entirely different situation. Section 9 of the Arbitration and Conciliation Act, despite the existence of Section 52 of the Transfer of Property Act, confers right and jurisdiction upon the Court to

pass appropriate order in order to protect the subject matter of arbitration.

9. In view of this, the petitioner has a *prima facie* case in his favour and he would suffer an irreparable loss and injury. It is apparent that if the stay is not granted and the respondents are permitted to create third party interest pending arbitral proceedings, it may create multiplicity of litigations. The balance of convenience thus also lies in favour of the petitioner. I hereby confirm my order dated 15.07.2014 and restrain the respondent, its agents and employees from, in any manner, dealing, selling, transferring or parting with possession of the plot of land admeasuring 1148 square yards in Khasra No. 260, situated in the revenue estate of village Bahapur, Tehsil Kalkaji, New Delhi.

10. The order shall remain effective till the termination of the arbitration proceedings or till the same is modified by the Arbitrator.

11. At this stage, learned counsel for the respondent makes a request that in view of this order, he may be permitted to withdraw the amount of Rs.50 lakhs which he had deposited with the Registrar General of this Court. He is

permitted to do so. The amount of Rs. 50 lakh be returned to the respondent.

12. The petition stands disposed of.

**DEEPA SHARMA
(JUDGE)**

**NOVEMBER 18, 2014
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