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

+ **O.M.P. 1204/2013**

DD GLOBAL CAPITAL LIMITED & ANR. Petitioners
Through: Mr. Diggaj Pathak, Advocate.

versus

PIVOTAL INFRASTRUCTURE PVT LTD & ORS..... Respondents
Through: Mr. Divjyot Singh & Mr. Avsi M.
Sharma, Advocates for R-2.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **30.11.2016**

Crl. M.A. No.2320/2015

1. The genesis of the present application is the copy of the Memorandum of Understanding dated 6th February, 2008 produced by the Petitioners which the Respondents throughout have been maintaining to be a forged and fabricated document. Even before the final order could be passed by this court in the main petition, that is OMP No.1204/2013, the present application was filed.

2. In its order dated 12th February, 2015, the court noted that the Petitioners were unable to produce the original of the said MOU dated 6th February, 2008 that was being relied upon by them. In the circumstances, the Court drew an adverse inference and concluded that the Petitioners have failed to come to the court with clean hands and make a full and candid disclosure of

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all material facts and documents in their possession. The petition was accordingly dismissed with cost of Rs.10,000/-.

3. The applicant/Respondent submits that this is a case where proceedings have to be initiated under Section 340 Cr.P.C. since the Petitioners have made clearly false averments before this Court about there being the said MOU dated 6th February, 2008.

4. In the reply filed to the present application, it is pointed out by the Petitioners that prior to the above order, in the Petitioner's statement of claim before the learned Arbitrator it was stated that the originals of all the documents sought to be relied upon by the Petitioners were available with the Respondent.

5. In the present application the Court has to examine if a reference is required to be made of the matter to the learned Magistrate for an inquiry under Section 340 Cr.P.C?

6. The Court is of the view that in the light of the fact that even before the order dated 12th February, 2015 passed by this Court, the Petitioners had averred in their statement of claim before the Arbitrator that the originals were not available with them, it is not possible to come to the conclusion that the photocopy of the MOU dated 6th February, 2008 produced by the Petitioners was a copy of the forged and fabricated document. When the original of the said document is not available, an inquiry into whether such document is forged or fabricated will be a futile exercise. In any event it is

pointed out that at the instance of the Respondent an FIR has been registered against the Petitioners in respect of that very document.

7. Therefore, the Court declines to express any opinion on whether the copy of the above MoU dated 6th February 2008 as produced by the Petitioners before this Court was the copy of a forged and fabricated MoU. An independent view shall be taken by the concerned criminal court on the issue.

8. The application is disposed of in the above terms.

S. MURALIDHAR, J.

NOVEMBER 30, 2016
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