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

+ O.M.P.(I) 11/2016

COSMIC STRUCTURE LTD. & ORS.

..... Petitioners

Through: Ms Vandana Bhatnagar, Advocate.

Versus

SURYA JYOTI SOFTWARE PVT.

LTD. & ORS.

..... Respondents

Through: Mr Dinesh Garg and Ms Rachna
Agrawal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.12.2016**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

"It is, therefore, respectfully prayed that the respondents may please be restrained from handing over / parting with possession of Plot No. 1 situated at Sector 154, Noida to any third party as also from doing any act in furtherance of notice of termination dated 25.02.2016 till the commencement of Arbitral proceedings with any other or further orders, relief or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present petition."

2. The parties had entered into an agreement dated 16.04.2013 whereby it was agreed that the entire shareholding of the of the respondent company would be transferred to the petitioner at the stated consideration of ₹42,00,50,400/-. Admittedly, the entire consideration was not paid as agreed and the respondents terminated the said agreement on 25.02.2016.

3. The present petition was moved on 30.05.2013 and at that date the

learned counsel appearing for the respondent had stated that the respondent would consider and revive the agreement provided the petitioners show their *bonafides* and pay the balance amount on the next date of hearing and the matter was adjourned to 27.07.2016.

4. On 27.07.2016, the petitioner prayed for further time to make the balance payment in terms of the suggestion that was made by the learned counsel for the respondent on 30.05.2013; since the same was not objected to, the petition was adjourned to 02.12.2016 and thereafter for today.

5. Even today, the learned counsel for the petitioner is not in a position to state whether the petitioners' would be in a position to make the balance amount. It is apparent that the agreement dated 16.04.2013 was essentially for the effective transfer of the lease hold property - Plot No.1 situated at Sector 154, NOIDA - held by the respondent no.1; the consideration for the shares was also computed at the rate of ₹21,000/- per square meter.

6. Since the petitioner is unable to deposit the consideration as agreed, the relief as prayed for by the petitioner cannot be granted at this stage.

7. The petition is, accordingly, disposed of.

8. However, it is clarified that this would not preclude the petitioner from filing an appropriate application under Section 17 of the Act as and when the arbitral tribunal constituted.

VIBHU BAKHRU, J

DECEMBER 19, 2016
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