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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ARB.P. 309/2015**

RAVINDRA DEOL ..... Petitioner
Through: Mr. R.M. Sinha with Mr. P.M. Sinha and Ms. Namita Sinha, Advocates.

versus

ZESTHA PROJECT PVT LTD & ANR .... Respondents
Through: Mr. Ashish Dholakia with Mr. Gautam Bajaj, Advocates for R-1.
Mr. Shiv Khorana, Advocate for R-2.

CORAM: JUSTICE S.MURALIDHAR

<u>O R D E R</u>
% **04.10.2016**

1. This is a petition filed by the Petitioner, Ravindra Deol, under Section 11 of the Arbitration and Conciliation Act, 1996 (Act) seeking reference of the disputes between the Petitioner and the Respondent No. 1, Zestha Project Private Limited, and Respondent No. 2, Vardhman Estate and Developers Private Limited.

2. The background to this petition is that Respondent No. 1 was allotted a piece of land measuring 40470 sq.m. by an allotment letter dated 7th November 2003 by the Greater Noida Industrial and Development Authority (GNIDA) at Rs. 750 per sq.mtr. for a total provisional premium of Rs. 3,03,52,500. The allotment was for a period of 90 years and on a "as is where is" basis. The Respondent No. 1 had to pay the sale consideration at 10% of the total provisional as registration money before 6th December 2003 and 20% of the total provisional premium before 5th January 2004. The rest of the amount

was to be paid according to the payment plan provided by the GNIDA. It is stated that Plot No. 18, K.P. III, Greater Noida (the property in question) was allotted in favour of Respondent No. 1.

3. The Petitioner states that by a Memorandum of Understanding (MoU) dated 12th March 2007, the Respondent No. 1 agreed to transfer its share to the Petitioner and his nominee along with the property of Respondent No. 1 for a total consideration of Rs. 18,21,15,000 and reduced by the amount owed to GNIDA for future instalment towards the land allotted. The Petitioner further states that it had paid a sum of Rs. 2 crores by three cheques dated 2nd March and 10th March 2007 with the understanding that the balance payment would be made within 120 days of the agreement.

4. It is stated that para 6 of the MoU dated 12th March 2007 contains an arbitration clause, i.e., the dispute between the parties was to be referred to the sole Arbitrator to be appointed by mutual consent. The Petitioner then states that it had made several payments by cheques to Respondent No. 1 from 12th March 2007 till 29th August 2007 for a total sum of Rs. 6.70 crores and Rs. 8.30 crores by cash. It is further stated that since the Petitioner had to pay a huge amount towards the sale consideration, it agreed to transfer the property in question (not the shares of Respondent No. 1) to Respondent No. 2 by the MoU dated "Nil March 2007" for a total consideration of Rs. 26,71,02,000 at the rate of Rs. 6,660 per sq.mtr.

5. It is stated that despite making the full payments owed to the GNIDA, it had not handed over the allotted land to Respondent No. 1 for the reasons best known to the authorities. As a result both the

deals were bound to be kept in abeyance. According to the Petitioner, in January 2014, the director of Respondent No. 2 requested the Petitioner to exchange the payment entries of Rs. 30 lakhs which was paid on account of Respondent No. 2 by M/s Vardhman Estate Limited since the Managing Director of both M/s Vardhman Estate Limited and the Respondent No. 2 was the same. A legal notice was sent on 4th April 2014 by Respondent No. 2 for initiating action under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) against the Petitioner for dishonouring of cheque of Rs. 10 lakhs and for recovery of Rs. 10 lakhs followed by a petition under Section 138 of the NI Act.

6. On 15th October 2014, the Petitioner sent separate notices to the Respondents for the appointment of an Arbitrator.

7. From the above narration it is noticed that the petition is completely silent on what transpired between the last date of payment by the Petitioner to Respondent No. 1, i.e., 30th August 2007 and the request made by Respondent No. 2 to the Petitioner in January 2014 to exchange the payment entries of Rs. 30 lakhs on account of Respondent No. 2. Mr. R.M. Sinha, learned counsel for the Petitioner seeks to urge that the Petitioner was constantly in touch with the authorities. However, there is no explanation for the delay in invoking the arbitration clause.

8. Mr Sinha then urged that he should be given time to file an affidavit to explain the intermediate events. The Court is not inclined to accept this request since the petition has been pending in this Court for quite some time and there were sufficient opportunities available

to the Petitioner to come forward with the complete facts. It is obvious on a reading of the petition, that the Petitioner's claims are time barred.

9. In that view of the matter, the Court does not want to discuss all the objections that the Respondents may have since in any event their objections are being sustained on the issue of maintainability of the petition itself.

10. For the aforesaid reasons, this Court is not inclined to entertain the present petition and it is dismissed as such.

S.MURALIDHAR, J

OCTOBER 04, 2016
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