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

\+ FAO(OS) 295/2015

VLS FINANCE LTD. ..... Appellant

Represented by: Mr.Jayant K.Mehta, Advocate with Mr.Ashok Kumar Sharma and Mr.Shaurya Kuthiala, Advocates

versus

BMS IT INSTITUTE PVT.LTD. & ORS ..... Respondents

Represented by: Mr.Kapil Gupta, Advocate for R-1 to R-3
Mr.Harish Malhotra, Sr.Advocate instructed by Mr.Ashish Aggarwal, Advocate for R-4 to R-9

**CORAM:**
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**O R D E R**

% **30.09.2016**

CM No.28208/2016

For the reasons stated in the application 153 days' delay in filing R.P.No.345/2016 is condoned.

Application is allowed.

Review Pet.345/2016

1. As per the impugned order dated May 05, 2013 the petition filed by VLS Finance Ltd. under Section 9 of the Arbitration and Conciliation Act, 1996 was disposed of restraining respondents No.2 to 10 from selling,

encumbering or alienating the properties and equity shares of various companies disclosed by said respondents in their respective affidavits filed on March 27, 2015 as also to maintain status quo with respect to title and possession of property C-20, 1A/10, Block-C, Sector-62, Noida, UP. Respondents No.2 to 10 were also directed not to deal with the shares of respondent No.1, 11 and 12 and also with respect to shares of respondent No.2 to 10, no transfer to be permitted by respondents No.1, 11 and 12.

2. Three appeals came to be filed. All the appeals were dismissed.

3. The grievance of VLS Finance Ltd. in its appeal was that the interim order passed by the learned Single Judge was inadequate to secure the sum awarded.

4. There is an award in sum of ₹84.28 crores in favour of VLS Finance Ltd.

5. VLS Finance Pvt. Ltd. was aggrieved by injunction not being passed concerning property bearing No.B-315, Okhla Industrial Phase-1 which was encumbered by respondent No.12 in favour of one M/s.Wonder Space Properties Ltd.

6. The grievance of the Gupta Group, comprising R-2 and R-3 and the Jain Group, comprising R-4 to R-9 was of being restrained from encumbering the properties disclosed in the affidavit. Additional grievance of the Gupta Group was to the entirety of the impugned order.

7. While dismissing the three appeals we had noted that the learned Single Judge had pen-profiled various interim orders earlier passed to bring home the point that the Gupta Group and the Jain Group had siphoned off the money from the first respondent. We had noted that VLS had pursuant to an agreement invested ₹24.92 crores with the first respondent by way of

equity capital with a right to exit casting obligation on the Gupta Group and the Jain Group to purchase the shares at a price determinable by a predetermined formula. The equity was to be utilized by respondent No.1 to construct a building on land bearing No.C-20, 1A/10, Block-C, Sector-62, Noida, UP.

8. The Arbitral Tribunal found that rather than using the money for constructing a building the first respondent had advanced a loan without security to respondent No.11 in which respondent No.2 held 4600 shares. Another unsecured loan was advanced by respondent No.1 to a company M/s.Axiom Buildwell Pvt. Ltd. controlled by Dinesh Kumar Gupta. ₹42.47 lacs had been advanced to one Sushma Mittal, wife of Mangal Singh Mittal a shareholder of respondent No.1. The Division Bench had noted the fluctuating shareholding of the Gupta Group and the Jain Group in respondent No.12.

9. To put it pithily the Division Bench had noted the money being circulated by respondent No.1 inter-se companies controlled by the Jain Group and the Gupta Group to justify the interim injunction granted by the learned Single Judge because money advanced by the appellant to respondent No.1 was to be used to construct a building on C-20, 1A/10, Block-C, Sector-62, Noida, UP and was the equity contribution in the share capital of respondent No.1 with a buy back option obliging the Jain Group and the Gupta Group to pay the agreed sum to the appellant.

10. Seeking review it is pointed out that the respondents had misled the Court and for which assertion in the review petition it is pointed out that the second and third floor of property A-19 in Kailash Colony of which respondents No.2 and 3 were owners had been transferred by empowering a

third person as the general attorney and coupled with an agreement to sell. The power of attorney is in favour of a member of the Jain Group. Similarly the second and rear third floor portion of property No.A-2/5, Safdarjung Enclave New Delhi has been transferred by way of a general power of attorney to one Vikrant Puri. There was a concealment of a collaboration agreement with M/s.Prema Structures Ltd. and a dispute subsequent thereto concerning property bearing No.C-20, 1A/10, Block-C, Sector-62, Noida, UP.

11. The respondents admit aforesaid transactions but claimed that mere agreements to sell and execution of general power of attorneys does not creat any right title or interest in third parties.

12. The documents are for consideration and thus we are satisfied that the respondents No.2 and 3 with the connivance of respondent No.1 is trying to play hide and seek with the Court.

13. Undisputedly ₹24.92 crores were invested by the appellant in respondent No.1 which is controlled by the Jain Group and the Gupta Group. Award in favour of the appellant is in sum of ₹84.28 crores with simple interest @ 15% on the equity amount deposited from October 01, 2012 till date of payment.

14. We are of the opinion that under the circumstances case is made out to direct respondent No.1 to secure at least ₹84.28 crores to the appellant by way of a bank guarantee.

15. The review petition is accordingly disposed of modifying the order dated February 01, 2016 disposing of the appeal directing respondent No.1 to furnish a bank guarantee in the name of the Registrar General of this court in sum of ₹84.28 crores and the bank guarantee to be kept valid till

objections to the award filed are decided by the learned Single Judge.

16. The bank guarantee shall be furnished within 6 weeks from today.

17. No costs.

CM No.28206/2016

Dismissed as infructuous.

**PRADEEP NANDRAJOG, J.**

**MUKTA GUPTA, J.**

**SEPTEMBER 30, 2016**
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