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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) 442/2015

BMS IT INSTITUTE PVT LTD

..... Petitioner

Through: Mr. K. Datta with Mr. Kapil Gupta and
Mr. Shantanu, Advocates.

versus

PREMIA STRUCTURES LIMITED

..... Respondent

Through: Mr. Jivesh Nagrath with Mr. Jaspreet
Singh, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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11.11.2016

IA No. 3714/2016 (amendment of cause title)

1. For the reasons stated therein, this application is allowed. The amended memo of parties is taken on record.

IA No. 5371/2016 (u/S 151 CPC)

2. This application is misconceived and it is dismissed as such.

IA No. 1254/2016 (vacation of orders dated 9th September 2015 & 6th January 2016) & OMP (I) 442/2015

3. This is an application filed by the Respondent seeking vacation of orders passed by this Court, i.e., dated 9th September 2015 and 6th January 2016.

4. The grievance of the Respondent against the order dated 9th September

2015 is that the Court directed the Respondent filing an affidavit in terms of the order dated 17th August 2015. That order dated 17th August 2015 directed the Respondent to file an affidavit stating monies collected from the general public apropos such bookings that have been booked for the development of property under the Memorandum of Understanding ('MoU') dated 3rd March 2013 between the parties.

5. By the subsequent order dated 6th January 2016 which has also been assailed in the present application, a direction was issued to the Respondent to file an affidavit "giving details of the money collected by them against the purported allotment of commercial and other space in the proposed project." It was directed that the said affidavit would also "specifically state the terms on which the monies were collected and as to how they have been utilizing the money for the purposes of the project."

6. The said orders dated 17th August 2015, 9th September 2015, 6th January 2016 as well as the subsequent order dated 27th January 2016 (which merely requires the affidavit to be filed in terms of the order dated 6th January 2016) were all challenged by the Respondent in FAO (OS) No. 93 of 2016. The order passed by the Division Bench (DB) in the said appeal reads as under:

"FAO (OS) 93/2016 & CM 10281/2016 (stay)"

We have heard the learned counsel for the parties. The Appellant is aggrieved by the order dated 17th August 2015, whereby the Appellant has been directed to file an affidavit giving details of the monies from the general public apropos such bookings as may have been made by it for the development of the property bearing No. C-20, 1-A/10, Block-C, Sector-62, Noida, Gautam Budh Nagar, U.P. admeasuring 34,437 sq.mtrs. in respect of which the collaboration agreement

dated 1st March 2013 had been entered into between the parties.

The appeal is disposed of with the direction that the affidavit along with the details, as required by the learned Single Judge, shall be placed in a sealed cover and the same would be dealt with by the learned Single Judge after deciding the IA No. 1254 of 2016 as also the OMP 442 of 2015.

The appeal stands disposed of.”

7. The DB has directed that the affidavit filed in a sealed cover would be dealt with by this Court after deciding the IA No. 1254 of 2016 as also OMP (I) No. 442 of 2015. The question that now arises is whether the affidavit filed in a sealed cover is in terms of this Court's orders dated 17th August 2015, 9th September 2015, 6th January 2016 and 27th January 2016 and secondly whether a copy thereof can be provided to the Petitioner.

8. When the sealed cover containing the affidavit was opened, the Court was surprised to note that the affidavit was of three paragraphs and in one page. In fact the only relevant portion of the said affidavit is para 2 which reads as under:

“2. That the company has collected a sum of Rs. 49 crores approximately from the bookings made by the investors/customers in the project. The amount so collected was on the basis of the Memorandum of Understanding and on the assured return which vary from @ 12.5% - 11.5% basis.”

9. The Court is constrained to note that the above affidavit is not in compliance with the Court's specific directions issued on 17th August 2015 and reiterated on 6th January 2016. In particular in the order dated 6th January 2016 the Respondent was directed to “specifically state the terms on which

the monies were collected and as to how they have been utilizing the money for the purposes of the project.” Further the affidavit had to give “details of the money collected by them against the purported allotment of commercial and other space in the proposed project.” This meant that they had give the name and addresses of the persons who made bookings, the amounts given by such persons, what the booking was for viz., whether for a residential or commercial space and how the money was utilised by the Respondent.

10. Counsel for the Respondent submitted that a copy of the affidavit should not be provided to the Petitioner. Apart from the fact that there is absolutely nothing in the said affidavit which requires any confidentiality to be maintained, the fact remains that the Petitioner is the lessee of the land on which the development is to take place. There is no reason why the Petitioner should not be informed as to who has made the bookings for spaces and the amounts given and utilised.

11. The Court accordingly directs that a copy of the said affidavit be furnished to the Petitioner forthwith by the counsel for the Respondent.

12. In view of the fact that the Respondent has not complied with Court's orders 17th August 2015, 9th September 2015, 6th January 2016 and 27th January 2016, the Court is constrained to again direct that the Respondent should in compliance with the above orders file a further affidavit giving full particulars of all the bookings made. The said affidavit will be filed within a period of four weeks from today with advance copy to learned counsel for the Petitioner and submitted to the learned Arbitrator appointed by this

Court by the order passed today in Arbitration Petition No. 121 of 2016.

13. It is stated by counsel for the Petitioner that since the lease of the land in question has been cancelled by the Noida Authority, the Petitioner filed Civil Writ No. 43166 of 2016 in the High Court of Allahabad. That petition has been disposed of by the Allahabad High Court by its order dated 14th September 2016 directing the Noida Authority to consider the Petitioner's representation. Till date the said lease has not revived. In the circumstances, the Court directs that the Respondent shall not accept any further bookings of space till such time the lease is revived, if at all, by the Noida Authority on the representation made by the Petitioner.

14. It will be open to the parties to seek further interim reliefs before the learned Arbitrator under Section 17 of the Act.

15. The applications and the main petition are disposed of in the above terms. Order be given *dasti*.

S.MURALIDHAR, J

NOVEMBER 11, 2016

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