

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.884 OF 2014

Dynamic Realtors Private Limited)....Petitioner
V/s.

Sunflex Builders Private Limited)....Respondent

Mr.Pramod N.Patil for petitioner.

Mr.Devashis Jagirdar i/by Jayakar and Partners for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 21.12.2017

P.C.:-

1 By this petition, petitioner is seeking winding up of the respondent-Sunflex Builders Private Limited (the company) under Companies Act 1956. The petition was admitted on 12.1.2015, at which time respondent did not appear before the court though served.

2 According to petitioner, by an agreement dated 2.12.2005 executed by and between petitioner and the company, the company had agreed to purchase for petitioner or facilitate purchase by petitioner approximately 1200 acres of land spread over 35 villages in Raigad district. Petitioner paid amount of Rs.3,43,25,000/- to the company but the company failed and neglected to facilitate purchase of any land and also failed to return the amount of Rs.3,43,25,000/-. Therefore, petitioner by a letter dated 8.7.2013 terminated the

agreement dated 2.12.2005. Petitioner also called upon the company to refund the amount of Rs.3,43,25,000/-. In reply, the company asked petitioner to provide a certified true copy of the agreement dated 2.12.2005, schedule of payment of sum of Rs.3,43,25,000/- and other documents. Petitioner provided the break up of the payments made and also gave a copy of the agreement.

3 As company did not make any payment, petitioner caused statutory notice to be issued to the company through their advocate.

4 Though interim holding reply was sent by the company, no substantial reply was sent to the statutory notice. Therefore, allegations in the statutory notice were not controverted. Hence the petition.

5 The company has filed an affidavit in reply dated 11.2.2015 of one Shekhar Mehta. Though various defences have been taken, the primary defence is the claim is grossly barred by limitation.

6 In my view also, the claim is grossly barred by limitation for the reasons mentioned below. Therefore, I do not think it necessary to deal with the other points of defence.

7 The relevant clauses for this issue of limitation are clauses 4(v), clause-8 and clause-11 which read as under :-

“4(v) TARGET SCHEDULE :

(a) The Target Schedule for purchase of the said lands shall be as follows :

** **Phase I** – 3000 acres to be purchased by 31st January 2006 in Village Viindhane ;*

** **Phase II** - additional 3000 acres making in the aggregate 6000 acres to be purchased by 28th February 2006 in village as may be specified by Dynamic to Sunflex on completion of Phase I.*

** **Phase III** - additional 3000 acres making in the aggregate 9000 acres to be purchased by 31st March 2006 in villages as may be specified by Dynamic to Sunflex on completion of Phase II.*

** **Phase IV** – additional 3000 acres making in the aggregate 12000 acres to be purchased by 30th April 2006 in villages as may be specified by Dynamic to Sunflex on completion of Phase III.*

(b) Sunflex/Sunflex farmers shall be entitled to commence purchase of lands in each phase only after obtaining prior approval of Dynamic in writing and Budget approval for expenses to be incurred in that behalf.

(c) Dynamic is engaging the services of Sunflex for the purchase of the land in the Relevant Land as per the terms and conditions set out below.

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8. Sunflex shall complete the entire process of purchase of the said lands and handover physical possession to Dynamic as per the Target Schedule provided in this agreement or within such extended period as may be mutually agreed upon. In case Sunflex fails to complete the work within such stipulated or extended time period, this understanding shall be subject to termination at the option of Dynamic and in that event, the outstanding advance paid to Sunflex shall be

refunded by Sunflex to Dynamic.

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11. TERMINATION :

Dynamic shall have the right to terminate this Agreement by giving 30 days notice to Sunflex upon which this Agreement will come to an end and in that event :

(a) Sunflex shall complete all the transactions under progress with respect to Land Acquisition Activity ;

(b) Sunflex shall prepare a proper Statement of Account in consultation/approval of Dynamic ;

(c) Sunflex shall refund to Dynamic all outstanding advances/payments as per the Statement of Account prepared pursuant to above.”

8 Therefore, under the agreement the company was to purchase 3000 acres of land by 31.1.2006, additional 3000 acres by 28.2.2006, another 3000 acres by 31.3.2006 and the 4th 3000 acres by 30.4.2006. Under clause-8 if the company was unable to complete the entire process of purchase and hand over physical possession to petitioner as per the target schedule provided in the agreement, petitioner had the right to terminate the agreement. Under clause-11 of the agreement petitioner may exercise its right to terminate by giving 30 days notice and in such an event, the company shall refund to petitioner all outstanding advance/payment. Reading all the three clauses together, it is quite obvious that if by 30.4.2006 the company

did not complete the process of purchase of 12000 acres and hand over possession to petitioner, petitioner had right to terminate the agreement unless an extension to the period was mutually agreed. Though Mr.Patil for petitioner stated that time was mutually extended, there is nothing in writing. In fact, it is not even so stated in the limitation clause in paragraph-24 of the petition that the time was mutually extended. Shri Patil also submitted that petitioner decided to terminate the agreement vide letter dated 8.7.2013 and therefore, cause of action arose on 8.7.2013. I am afraid I cannot agree with petitioner because clause 4(v), 8 & 11 read together expressly provided that petitioner can terminate the agreement immediately after 30.4.2006 if the entire purchase and handover did not take place by that date, unless the target schedule was extended upon mutually agreed terms. The cause of action therefore, would have arisen soon after 30.4.2006. Petition has been lodged on 29.11.2014. Therefore, ex facie, petition is barred by limitation. Petition dismissed with no order as to costs.

9 Respondent to advertise in 'Free Press Journal' (in English) and 'Navshakti' (in Marathi) that the petition has been dismissed pursuant to an order passed today. Advertisement has to be released within 3 weeks from today.

(K.R.SHRIRAM,J)