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

\+ O.M.P.(I) (COMM.) 302/2017

AKASH CHANDER & ORS. ..... Petitioner

Through Mr.Rajiv Bansal, Sr.Adv. with Mr.Naveen Sharma and Ms.Vasudha Trivedi, Advs.

versus

SHINING SUN POWER LTD & ANR. ..... Respondent

Through Mr.Udayan Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 17.08.2017

IA No.9224/2017

Exemption allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 302/2017

1. This petition is filed under section 9 of the Arbitration and Conciliation Act, 1996. The brief facts are that the petitioners entered into a Sale Agreement with the respondents on 7.1.2016 whereby the petitioners agreed to sell to the respondents 5 MW Telangana Power Plant Project for a sale consideration of Rs.3,72,96,800/- which included Rs.2,70,000/- equity shares. Other terms and conditions as per the agreement have also been agreed upon. Out of the agreed consideration the respondents paid Rs.1,48,66,800/- to the petitioners. The admitted fact is that a balance of above Rs.2 crores is payable by the respondents to the petitioners.

2. I have heard arguments of learned counsel for the parties. After some

arguments, learned counsel for the respondents submits that the essential term of the agreement between the parties was that the balance would be paid out from the loan disbursement. He submits that the loan is being finalised with Power Finance Corporation Limited (PFC) and the moment loan is disbursed the balance consideration shall be paid to the petitioners. He further submits that the petitioners are needlessly putting spokes in the disbursement of the loan by PFC which is needlessly delaying disbursement of the loan. He further submits that till disbursement of the loan and payment of the balance sale consideration to the petitioners the respondents shall not sell, alienate or transfer the immoveable properties of the company M/s.International Solar Corporation Private Limited or its shareholding other than by way of charge etc. to PFC.

3. Learned senior counsel appearing for the petitioners objects to the shares being pledged and vehemently submits that the respondents cannot pledge the shares. He relies upon clause 7.4 of the Agreement which provides that on termination of the Agreement the shares transfer shall be treated as null and void and the agreement shall become null and void. He further submits that the petitioners have terminated the agreement between the parties by notice dated 15.10.2016 as the respondent has delayed payment of balance consideration which had to be paid by 31.03.2016. Hence, he is entitled to return of the shareholding. Learned senior counsel also points out that there are certain bank guarantees which were given by the company M/s. International Solar Corporation Private Limited to certain government entities. The terms of the bank guarantees have expired. He submits that there is retention money of upto Rs.2 crores lying with the banks and the respondents cannot utilise it as they will use this fund to pay

the consideration payable to the petitioners.

4. Learned counsel for the respondents has refuted the contentions of the petitioner. He submits that as per Article 2 Clause 1.3 of the Agreement the balance sum of Rs.2,72,96,800/- was to be paid from loan disbursement. He submits that the petitioners have been creating all kinds of hurdles in loan disbursement to the respondents and are only trying to take advantage of their own acts by terminating the agreement and trying to put spokes in the loan disbursement. He relies upon the reply dated 8.12.2016 sent to the petitioners whereby it was pointed out to the petitioners that the pledge of shares is necessary for fund arrangement. In the absence of any pledge the loan disbursement may not follow and the terms of the agreement may not fructify inasmuch as the respondents have to pay the balance consideration only upon loan disbursement.

5. Learned counsel on the issue of bank guarantees clarified that prior to loan disbursement by PFC all bank accounts of the company were to be closed and transferred to a Trust Retention Account operated under the guidance of PFC. He further submits that this is as per the loan agreement.

6. Keeping in view the above, the respondents are bound by their undertakings to the court as above. This issue as to who is guilty of breach of Agreement is a highly disputed fact. Petitioner have received more than 1/3rd of the consideration and the respondent admits its liability for the balance. It is directed that the pledge of shares by the respondents shall be only for loan disbursement by PFC and shall not be otherwise sold or pledged. On receipt of the loan the respondents shall immediately deposit the balance sale consideration payable to the petitioners in this court through the Registrar General. The Registrar General shall keep the money in a fixed

deposit with a nationalised bank. This order shall be subject to further modifications/clarifications/vacation by the learned Arbitral Tribunal which I am informed is likely to be constituted soon. It has been pointed out that in terms of the arbitration clause, both the parties have nominated their respective arbitrators. The respective arbitrators have now to nominate a third arbitrator to complete the constitution of the arbitral tribunal.

7. I may note that the learned senior counsel for the petitioners has clarified that other than communicating this order of the court to PFC, the petitioners shall not interfere with the procedure regarding disbursement of the loan by PFC to the respondents.

8. With the above clarifications, the present petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

AUGUST 17, 2017

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