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

% Judgment delivered on: 19.09.2017

+ O.M.P.(I) (COMM.) 267/2017

M/S HOMELAND BUILDWELL PRIVATE LTD. Petitioner

versus

SHRI SUNIL SOOD

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Akhil Sachar, Advocate.

For the Respondents : Mr. Akhil Sibal, Sr. Advocate with Mr. Vaibhav Srivastava, Mr. Pradeep Chhindra and Mr. Aditya Bakshi, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking a restraint on the respondent from selling, alienating, transferring, parting with possession or creating any third party rights in the unsold stock of shops/showrooms/office spaces in 37 Bighas in village Kalyanpur, Baddi.

2. As per the petitioner, respondent had approached the petitioner

seeking finance for purchase of land in Baddi in the State of Himachal Pradesh for the purposes of development and construction of Multiplex Commercial Complex Project.

3. As per the petitioner, petitioner invested Rs.4,32,59,600/- (Rupees Four Crores Thirty Two Lacs Fifty Nine Thousand and Six Hundred Only) towards his share towards the re-development of the said property. The parties also entered into a Collaboration Agreement dated 11.08.2006.

4. It is the case of the petitioner that though respondent was initially to hand over 90% of the built-up area to the petitioner, the respondent unilaterally sold a substantial portion thereof. Subsequently, it was agreed that respondent shall pay to the petitioner the investment made by the petitioner along with interest at the rate of 7% per annum. The respondent even issued a cheque in the sum of Rs.7,89,92,685/- to the petitioner for the said amount, however, the cheque has been dishonoured.

5. By order dated 21.07.2017, this Court had restraint the respondent from selling, alienating, transferring, parting with possession or creating any third party interest in the 19 showrooms and 8 office spaces mentioned in the said order.

6. Learned Senior Counsel for the respondent submits that the petitioner has concealed material facts and made several

misrepresentations and mislead the court into passing the said order.

7. It is contended that it is not the respondent who is in breach but the petitioner and petitioner is not entitled to any order of protection.

8. Learned counsel for the petitioner disputes the same.

9. By an order of today's date in ARB. P. 468/2017 a Sole Arbitrator has been appointed to adjudicate the claims and counter claims, if any, of the respondent arising out of collaboration agreement dated 11.08.2006.

10. Learned Counsel for the parties agree that this petition under section 9 of the Act be treated as an application under section 17 of the Act to the Arbitrator and the arbitrator be requested to expeditiously dispose of the same.

11. In view of the above, with the consent of the parties, this petition is disposed of in the following terms:

- 11.1 This petition shall be treated as an application under section 17 of the Act;
- 11.2 The reply filed by the respondent to this petition shall be treated as the reply to the section 17 application;
- 11.3 The parties shall appear before the arbitrator on 26.09.2017 at 4:00 p.m. for directions;
- 11.4 Copy of the petition and reply filed by the respondents before this court shall be filed before the arbitrator on 26.09.2017;

- 11.5 The petitioner shall file his rejoinder to the reply filed by the respondent, before the arbitrator on 26.09.2017;
- 11.6 The interim order dated 21.07.2017 shall continue till the Arbitrator modifies, varies, vacates or confirms the same;
- 11.7 The arbitrator is requested to dispose of the application under Section 17 of the Act within a period of 30 days of entering into reference.

12. It is clarified that the Arbitrator shall be at liberty to vacate, modify, vary or confirm the interim order dated 21.07.2017 without being influenced by anything stated either in this order or in the said order dated 21.07.2017.

13. It is further clarified that this court has neither examined nor commented upon the allegation of the respondent of misrepresentation by the petitioner and the denial thereof by the petitioner. The said issue is left open.

14. The petition is, accordingly, disposed of.

15. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 19, 2017

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