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

Judgment Reserved on : January 17, 2017
% *Judgment Delivered on : January 23, 2017*

+ **EFA (OS) 4/2017**

C&C CONSTRUCTIONS LTD. ..... Appellant
Represented by: Mr.P.V.Kapoor, Sr.Advocate instructed by Ms.Manalisha Chaudhary, Advocate for A-1

versus

IL&FS TRUST COMPANY LIMITED & ORS. ..... Respondents
Represented by: Mr.Sandeep Sethi, Sr.Advocate instructed by Mr.Moazzam Khan, Mr.Alipak Banerjee and Mr.Brijesh Kumar, Advocates

EFA (OS) 5/2017

G.S.JOHAR & ORS. ..... Appellants
Represented by: Mr.Rakesh Tikkoo, Sr.Advocate instructed by Ms.Rashmeet Kaur, Advocate for A-1 and A-2
Mr.Anil Airi, Sr.Advocate instructed by Ms.Romila Joshi, Advocate for A-3 and A-4
Mr.Navin Kumar, Advocate for A-5

versus

IL&FS TRUST COMPANY LIMITED & ORS. ..... Respondents
Represented by: Mr.Sandeep Sethi, Sr.Advocate instructed by Mr.Moazzam Khan, Mr.Alipak Banerjee and Mr.Brijesh Kumar, Advocates

Judgment Reserved on : January 18, 2017
Judgment Delivered on : January 23, 2017

EFA (OS) 6/2017

M/S S J LEASING & INVESTMENT PVT. LTD. & ORS. ..... Appellants

Represented by: Mr.Anil Airi, Sr.Advocate instructed by Mr.Navin Kumar and Ms.Rashmeet Kaur, Advocates

versus

IL&FS TRUST COMPANY LIMITED & ORS. ..... Respondents

Represented by: Mr.Sandeep Sethi, Sr.Advocate instructed by Mr.Alipak Banerjee and Mr.Brijesh Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J.

1. On June 01, 2010 a CCPS Subscription and Investors Rights Agreement (hereinafter referred to as CCPS Agreement) was executed. The signatories thereto were : C&C Construction Ltd., persons referred to in Annexure 1 to the agreement comprising 5 groups of individuals, HUFs and companies referred to in Annexure 1 as promoters and India Venture Trust through its sole trustee IL&FS Trust Company Ltd., referred to as the investor. The agreement contains the terms on which compulsorily convertible preference share of C&C Construction Ltd. were to be issued to the investor. The agreement has an arbitration clause.

2. The recitals to the agreement record that the investor i.e. India Venture Trust is a fund established and is being managed by India Venture Advisers Pvt. Ltd. As noted above, while setting out the parties to the agreement it is recorded that IL&FS Trust Company Ltd. is the sole trustee of India Venture Trust. The promoters referred to in the agreement whose names are set out in Annexure 1 have signed the agreement through the head of the group, being Gurjeet Singh, Charanbir Singh, Rajbir Singh, Sanjay Gupta and Amritpal Singh. The origin of the technical and legal points decided by the learned Single Judge vide impugned order dated November 03, 2016, and which were re-argued in appeals arise in aforesaid backdrop of the signatories to the CCPS Subscription and Investors Rights Agreement.

3. Disputes having arisen, on November 07, 2012, India Venture Advisors Pvt. Ltd. issued a notice invoking the Arbitration Clause 21.7.2 in the CCPS Agreement clearly stating : *'we act as the Investment Manager to the investor and write on behalf of the investor'*. It was suggested that instead of the Arbitral Tribunal comprising three members as per the Arbitration Agreement the dispute may be referred to a Sole Arbitrator and suggested names of persons with a request that anyone may be accepted as the Sole Arbitrator. The notice was sent to the promoters and was served upon the five persons who had signed the agreement as heads of the five groups who were described as the promoters, besides the company in which the investment was made. After some deliberations it was agreed that Mr.Ciccu Mukhopadhaya would act as the sole arbitrator. An e-mail dated December 24, 2012 clinches this aspect of the matter. It reads:-

> *"Reference: Letter dated December 17, 2012*
> *O.M.P. 1119 of 2012*

Dear Sir,

We refer to the discussions on 14-12-2-12 between you with Mr.G.S.Johar for and on behalf of C&C Constructions Ltd., Mr.Gurjeet Singh Johar, Mr.Charanbir Singh Sethi, Mr.Rajbir Singh, Mr.Sanjay Gupta and Mr.Amritpal Singh Chadha in respect of the captioned matter.

We note that you are in agreement with the revised schedule of payments, set out in Annexure A hereof. You have in addition agreed to withdraw forthwith the O.M.P. 1119 of 2012.

Based on such agreement we agree to the nomination of Mr.Ciccu Mukhopadhyay, Apartment 5-D, No.10, Bhagwandas Road, New Delhi, 110001 as the Sole Arbitrator to record terms of the revised schedule of payments as mentioned in Annexure A."

4. The sole arbitrator entered upon reference. Parties agreed for a consent award and to execute the agreement embodying the terms of the consent, the promoters executed a power of attorney in favour of Gurjeet Singh Johar authorizing him to perform all acts and execute all documents concerning the arbitration dispute and relevant would it be to highlight that in recital C of each power of attorney executed it was mentioned :-

> *"IL & FS Trust Company Ltd., in its capacity as trustee to India Venture Trust – Fund 1, a scheme of India Venture Trust (hereinafter referred to as Investor) currently holds 2,056,005 equity shares..... the investor has agreed to sell and promoters had agreed to purchase the investors' shares in accordance with the agreed terms and conditions of the proposed consent terms arising out of the arbitration by and between the investor, the promoter and the company with sole arbitrator Mr.Ciccu Mukhopadhyay."*

5. The award ensued in terms of the consent.

6. Put into execution by IL&FS Trust Company Ltd. objections were filed to the enforcement of the consent award. Each has been negated by the learned Single Judge. We propose to note the objection and deal with the same immediately thereafter.

7. The first objection was that the notice invoking the arbitration was served upon the company and the five persons names whereof have been noted in paragraph 2 above.

8. The learned Single Judge has held that in view of the agreement wherein said five persons were acting as the head of the five groups, members whereof were set out in Annexure 1, the notice would be deemed to serve on all the persons named in Annexure 1.

9. The same contention has been urged in the appeal.

10. Suffice it to state that the CCPS Agreement has been signed by the five persons on behalf of their respective groups. The persons on whose behalf these five persons were executing the CCPS Agreement have been referred to as Promoter 1-5 group. As noted above all the members of the group were aware of the arbitration proceedings evidenced by the power of attorney they executed when during arbitration terms of the consent were agreed. We reject the contention and uphold the view taken by the learned Single Judge.

11. Second contention advanced was that the arbitration agreement contemplated an Arbitral Tribunal comprising three members and the agreement was never amended.

12. The learned Single Judge has negated the said contention, and so do we. E-mail dated December 24, 2012 contents whereof have been noted

hereinabove is the consent of the parties for arbitration to be conducted before a sole arbitrator.

13. Execution Petition being filed by IL & FS Trust Company Ltd., the third objection raised was that it is a stranger to the CCPS Agreement and the award was not in its favour.

14. The claimant before the Arbitrator has been described as :-

> *"**INDIA VENTURE ADVISORS PVT. LTD**. THROUGH IL&FS TRUST COMPANY LTD. IN ITS CAPACITY AS A TRUSTEE TO INDIA VENTRUE TRUST – FUND I, A SCHEME OF INDIA VENTRUE TRUST, A COMPANY INCORPORATED UNDER THE LAWS OF INDIA AND HAVING ITS REGISTERED OFFICE AT IL & FS FINANCIAL CENTRE, PLOT C-22G BLOCK BANDRA KURLA COMPLEX, BANDRA (EAST) MUMBAI – 400051 (THE "**INVESTOR**")."*

15. As noted above the recitals to the CCPS Agreement records that the investor is India Venture Trust, a fund which is being managed by India Venture Advisors Pvt. Ltd. and that IL&FS Trust Company is the sole trustee of India Venture Trust. Meaning thereby the agreement was with India Venture Trust acting through its sole trustee. As noted above the notice invoking arbitration was issued by India Venture Advisors Pvt. Ltd. and it was clearly stated that it was acting as the Investment Manager to the Investor. Admittedly there was no dispute between India Venture Advisors Pvt. Ltd. and the promoters. The mis-description in the title of the claim petition has rightly been held as not capable of giving birth to the argument. The learned Single Judge has rightly highlighted that the consent award has been rendered upon a dispute connected with the CCPS Agreement and undisputedly the agreement was with India Venture Trust acting through its

sole trustee, which sought the execution of the award.

16. The contention advanced before the learned Single Judge concerning mitigation of the loss was not urged in appeal and thus we do not deal with the same.

17. EFA 5/2017 and 6/2017 are without any merit and are dismissed.

18. As regards EFA 4/2017, we find that no liability has been fastened upon the company either under the agreement or the consent award. It was made a party to the agreement because the agreement related to the shares of the company. No asset of the company is proposed to be attached or sold in execution of the award and we take on record statement made by Sh.Sandeep Sethi learned senior counsel for the decree holder to said effect. Thus, cost imposed in sum of ₹50,000/- upon the company vide impugned order is liable to be set aside and the said appeal to be disposed of noting as above in the present paragraph.

19. Parties shall bear their own costs in the three appeals.

(PRADEEP NANDRAJOG)
JUDGE

(YOGESH KHANNA)
JUDGE

JANUARY 23, 2017
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