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

***Date of Decision: 17th August, 2018***

\+ **O.M.P. 88/2014**

\+ **O.M.P. 89/2014**

SAINIK WELFARE ORG – INDIA ..... Petitioner

Through: Mr. P. D. Prasad Rao, Mr. Satyavan Kudalwal and Mr. Atul Pandey, Advocates. (M:9920093284)

versus

NEHRA INFRASTRUCTURES & ORS. ..... Respondents

Through: Mr. Kamal Nijhawan and Mr. Chirag Mudgal, Advocates. (M:9958571011)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

**I.A. 2307/2018 & O.M.P. 88/2014**
**I.A. 2308/2018 & O.M.P. 89/2014**

1. The present applications have been filed by the Petitioner with the prayer that the Settlement Agreements dated 6th August, 2014, entered into between the Petitioner and the Respondents, in both matters, should be taken on record.

2. The present Section 9 petitions were filed by the Petitioner, which is a registered public trust (NGO) created under the provisions of the Charitable and Religious Trusts Act, 1920. The NGO has been established for the welfare of the defence and paramilitary forces' personnel. Respondent No.1, Nehra Infrastructure is a local builder working in the field of construction. Respondent No.2 Mr. Naveen Nehra and Respondent No.3 Mr. Mohinder Singh Nehra are persons controlling the affairs of Respondent No.1. The

said Respondents were engaged in the construction of the various group housing projects at Dwarka, New Delhi. The Respondents had assured the Petitioners that they are legally owners of two plots i.e. Plot No.167, Sector 26, Dwarka, Lal Dora, Village Bhartal, New Delhi (*hereinafter, 'Veer Sadan'*) and Plot No.353, Sector-26, Dwarka Lal Dora Village Bhartal, New Delhi (*hereinafter, 'Soldier Square'*).

3. The Petitioner was interested in building fully developed flats in order to provide group housing to soldiers, both serving and retired. Memoranda of Understanding ('*MoU*') were entered into on 8th October, 2010 and 27th August, 2011 for construction of flats in *Veer Sadan* and *Soldier Square*. In respect of the Soldier Square project, MoU dated 27th August, 2012 stood cancelled, and a fresh MoU was entered into on 2nd March, 2012.

4. There were delays in the execution of the projects. Substantial amounts of money were already paid to the Respondents. However, after receiving the substantial sums from the Petitioner, the Respondents demanded service tax and escalation charges vide letter dated 27th April, 2013, which led to disputes between the parties. Various criminal complaints came to be filed between the parties. The present section 9 petitions were filed on 9th January, 2014 seeking various interim orders to secure the flats.

5. Vide order dated 22nd January, 2014 *status quo* was directed to be maintained in respect of the flats in Soldier Square and Veer Sadan. During the pendency of these two section 9 petitions, a Settlement Agreement has been entered into between the parties before the Mediation Centre, Tis Hazari, where the bail applications of the Respondents 2 & 3 were pending. The Settlement Agreements dated 6th August, 2014 were duly entered into

and signed between the parties. The Settlement Agreements were taken on record by the Court and the Respondents were even granted bail. Pursuant to the Settlement Agreement, parties performed their respective obligations. All the payments were made. Possessions of the flats were handed over. The Respondents appointed a Power of Attorney holder and Sale deed were executed. However, one issue in respect of service tax remained outstanding. The clause, in the Settlement Agreement dated 6th August 2014, relating to service tax reads as under:

> "…….
> *8. The total service tax of : **Rs 85,77, 146/-** shall be equally divide in six installments of **Rs. 14,29,524/-** each and paid along with the balance payments of soldier square ,however proof of the service tax challan deposited to govt. department shall be submitted to the first party by the second party before due date of release of next scheduled payment. In case proof of service tax payment is not produced, the next due installment of the service tax shall be held by the first party till it is produced but not later than 30 Dec 2014. In case the Service Tax Department grants any rebate or refund on the service tax deposited by the second party against the two complexes, it shall be returned back to the first party by the second party on its own without any reservations or reasons on the issue. However, if there is any demand of more /additional service tax from the service department for the above mentioned projects, then it would be the responsibly of the first party to satisfy the claims of the service tax.*
>
> *9. Further balance payments shall commence only after the second party hand over to the first party, the sale deeds of veer sadan, already executed till date in favour of the applicants or in favour of the first party.*

*Physical possessions of such flats shall be handed over latest by 14 Aug 2014 before release of second installment. The schedule of further payments including total service tax for both the projects shall be as under:*

*08.8.2014 Rs. 8,00,000/- + Rs.13,97,137/- as service tax*
*15.8.2010 Rs.20.00,000/- + Rs 13,97,137/- as service tax*
*30.8.2014 Rs.28,00,000/- + Rs 13,97.137/- as service tax*
*15.9.2014 Rs.28,00,000/- + Rs 13,97,137/- as service tax*
*30.9.2014 Rs.28,00,000/- + Rs 13,97,137/- as service tax*
*15.10.2014 Rs.28,00,000/- + Rs 13,97,137/- as service tax*"

6. As per the above clause, the Petitioner was to pay the first instalment of the service tax. The next instalment was to be paid when the Respondents showed proof that the first amount was duly deposited. If the challan of deposit was not shown, the second instalment could be held back. The Petitioner paid the first instalment of the service tax to the Respondents, however since the challan depositing the service tax was not produced, the remaining instalments were not paid. It is alleged that the Respondents, thereafter took forcible possession of Flat Nos. 105, 201, 202, 204, 303, 304, 309, 311, 312, 401, 402, 403, 404, 407 & 412 as also 409 & 111. The Respondents also took possession of the ground floor of office premises in Soldier Square and Flat No.208, Ground Floor, Veer Sadan. In view of this, further criminal cases came to be filed by the Petitioner against the Respondents.

7. Submissions were heard yesterday in the matter. The following directions were passed.

"......
*4. Before proceeding further in these matters, it is directed that in order to safeguard the various flats,*

*which were constructed by the Respondent-Builder for the members of the Petitioner organization i.e. soldiers and servicemen, the keys of Flat Nos.105, 201, 202, 204, 207, 303, 304, 309, 311, 312, 401, 402, 403, 404 & 412 , as also the Ground floor office premises, Soldier Square, Delhi shall be deposited by the Respondents in this Court tomorrow i.e. on 17th August, 2018. In addition, the keys of Flat No.208, Ground Floor, Veer Sadan shall also be deposited.*

*5. Mr. Nijhawan further submits that the settlement agreement is admitted and binding between the parties, however, the said Settlement Agreement has reciprocal obligations, which have been breached by the Petitioner. According to learned counsel for Respondents, service tax payments, which were to be made by the Petitioner, have not been made.*

*6. On the other hand, learned counsel for Petitioner submits that the first instalment of the service tax has been paid to the Respondent and upon production of the challan, showing that the said service tax has been deposited by the Respondents with the government, the next instalment was to be paid. This is as per clause 7 of the Settlement Agreement. Learned counsel for Petitioner further submits that his client is willing to deposit the entire service tax amount upon receiving the challans showing the payment, which has already been made by them.*

*7. Mr. Nijhawan submits that the payment of the first instalment of service tax has been made. He hands across the challans showing the payments of Rs.30,12,000/- and Rs.1,01,500/-.*

*8. The issue in respect of service tax is not seriously contested. Petitioner is willing to pay the entire service tax, which they have to pay, subject to the undertaking, that the same would be deposited by the Respondents with the government. Out of the service tax liability of sum total of Rs.85,77,146/-, learned counsel for Petitioner submits that they have paid to*

> *the Respondents approximately a sum of Rs.30 Lakhs. Copies of the challans have been handed over to learned counsel for Petitioner. Petitioner shall carry the cheque for the outstanding instalments of service tax tomorrow in Court.*
> *........"*

8. Today, Mr. Kamal Nijhawan Ld. Counsel under instructions from Mr. Mohinder Singh Nehra who is present in Court submits that his client has brought the keys of Flat Nos.105, 201, 202, 204, 303, 304, 309, 311, 312, 401, 402, 403, 404, 407 & 412 of the Soldier Square Complex, Delhi. It has been assured that all the other remaining keys shall be brought on the next date before the Registrar General.

9. The keys handed over by the Respondents are retained in the Court and shall remain in the custody of the Registrar General/Deputy Registrar. The main objection raised by Mr. Nijhawan qua the applications is that the Settlement Agreement entered into between the parties does not constitute an award under the provisions of Arbitration and Conciliation Act, 1996. He places reliance on ***Angel Infrastructure Pvt. Ltd. v. Ashok Manchanda & Ors., 2016 (5) R.A.J. 103 (Del)*** wherein the Division Bench of this Court held that the Settlement Agreement dated 30th October, 2013 entered into in the said matter, did not constitute an award. He submits that an application under Section 30 of the Arbitration Act is not maintainable, as the present agreement was not entered into in front of the Arbitral Tribunal but was entered into in collateral criminal proceedings, which were pending before the Tis Hazari Courts.

10. Learned counsel for the Petitioner, on the other hand, relies upon paragraphs 112, 113, 114 & 115 of the said judgement to the effect that the

agreement entered into under these circumstances would constitute a Settlement Agreement.

11. Insofar the applications for taking on record the settlement agreement are concerned, there is no doubt that the settlement has already been given effect to by the parties. The Settlement Agreements are not being disputed by either party. Parties have, by conduct, accepted the Settlement Agreement, except the outstanding issues of service tax payments and forcible possession of some of the flats, which was taken over by the Respondents. Thus, there can be no impediment in taking the settlement agreement on record. Though the settlement agreement dated 6th August 2014, does not constitute an award under section 30 of the Arbitration and Conciliation Act, 1996, it cannot however be said that once mediation has been effected between the parties, the Settlement Agreement can be resiled from. The Settlement Agreement being an agreement between the parties, duly accepted, signed and given effect to, cannot be set at naught just because it was entered into during mediation proceedings and not in front of an Arbitral Tribunal. The parties have to be held to be bound by the Settlement Agreement and any violation thereof would be liable to be dealt with in accordance with law. Further, the order dated 2nd July, 2015 passed by the Additional Sessions Judge, recording the settlement reads as under:

> "*It is submitted on behalf of parties that this matter was referred to Mediation Center, where an amicable settlement has arrived at between the parties. Order of Mediation Center dated 06.08.2014 is filed on record.*
>
> *It is further submitted by Ld. counsel for accused that the accused is ready to co-operate in execution of Sale Deeds of both the projects, as detailed in the settlement, in favour of· complainant organization.*

*Accused is further ready not to revoke the two GPA both dated 29.06.2015, in this regard, provided the complainant organization pays him the balance installments of service tax. He further stated that accused will not claim the second installment of service tax till he executes GPA (for remaining portion of plot no.353, Soldier Square situated at village Bharthal, Sec 26, Dwarka, New Delhi) either himself or through Sh. Rajinder Singh Sehwag in favour of complainant organization. It is further submitted that accused have no objection if the original documents lying in the judicial file are released to the complainant.*

*It is submitted by Ld. Counsel for complainant that complainant is ready to pay the balance installments of service tax of both the projects, as detailed in the settlement, provided Sh. Naveen Nehra executes GPA for remaining portion of plot no.356, Soldier Square situated at village Bharthal, Sec 26, Dwarka, New Delhi either himself or through Sh. Rajinder Singh Sehwag in favour of complainant organization.*

*Statements of Sh. Devender Kumar Sain (complainant) and Sh. Naveen Nehra (applicant no.1) in this regard recorded separately and they will be read in both the cases.*

*Complainant has received all original parental title deeds alongwith all connected documents of both the projects, today in court itself.*

*Keeping in view the facts and circumstances of the case particularly the fact that an amicable settlement has arrived at between the parties before the Mediation Center, applicants have roots in the society and they are ready to abide by the condition imposed upon them while granting the bail and in view of the terms and conditions settled between the parties before the Mediation Cell and the statements of Sh. Devender Kumar Saini (complainant) and Sh. Naveen Nehra (applicant no.1) recorded in the court today, applications of applicants for anticipatory bail are* *allowed and they are directed to join investigation (in case necessity arises) as and when asked for by IO by the written notice U/s 160 Cr.P.C and in the event IO feels the necessity of arrest of applicants, then he will release the applicants (in both the cases) on bail subject to their furnishing personal bond separately in both the cases in the sum of Rs.30,000/- by each with one surety of the like amount for each separately in both the cases to the satisfaction of IO/SHO concerned with further condition that applicants will not misuse the liberty of bail in any manner and in case the accused/applicants violates any conditions of the terms of settlement arrived at before the Mediation Centre and the statements recorded today in the court, IO/Prosecution shall be at liberty to move the application for cancellation of bail.*

*With this both the applications stand disposed off.*

*Copy of the order be given dasti to the parties/IO.*"

12. The parties do not dispute the fact that the Settlement Agreement dated 6th August, 2014 has been entered into. It is also not disputed that pursuant to the Settlement Agreement, both the Respondents Mr. Naveen Nehra and Mr. Mohinder Singh Nehra were granted anticipatory bail. Clearly all the parties have taken advantage of the Settlement Agreement and all the terms of the Settlement Agreement have already been given effect to and the payments have been made. Title deeds have been executed. The possession of the flats were also handed over except some of the flats, whose keys have been deposited in the Court today. A settlement has been given effect to and the parties having abided by the same and it being clear that neither of the party wishes to resile from the Settlement Agreement, no useful purpose would be served by allowing the Settlement Agreement to become a mere piece of paper as if it was entered into without the force of law. A perusal of the above order reveals that bail applications of the

Respondent Nos.2 & 3 were disposed of in terms of the settlement. Thus, a Court of law had taken cognizance of the settlement and terms and conditions therein and had extended the benefit of bail to the Respondents.

13. In the present case, the Court is yet to constitute an Arbitral Tribunal and both the petitions are under Section 9 of the Arbitration and Conciliation Act, 1996. Since, with the execution of the settlement, there are no disputes pending, which are referrable to arbitration, the arbitration clause itself abates. The Court, under such circumstances, is not powerless to accept the settlement and to pass a decree in terms thereof, inasmuch as, once the Respondents themselves have agreed to abide by the settlement and having given effect to the settlement, the Court, thereafter, is empowered, in the absence of an arbitration clause, to take cognizance of the Settlement Agreement and convert the same into a decree. Under Section 89 of the CPC, the mediation centre, which recorded the settlement between the parties, would be nothing but an authority under the Legal Services Authority Act, 1987 and the Settlement Agreement would be a judicial settlement under the said Act. Under such circumstances, the Court is empowered to pass a decree in terms of the Settlement Agreement. It is directed accordingly.

14. The only outstanding issue is in respect of the service tax as recorded yesterday. The Petitioner has brought before this Court, five cheques i.e. bearing Nos.609091, 609092, 609093, 609094 & 609095 all for the amount of Rs.13,97,137/- each (totalling Rs.69,85,685/-), all undated and all drawn on Karnataka Bank Ltd., Chandni Chowk, Delhi. The same have been deposited in the Court. The said cheques are in favour of M/s Nehra Infrastructures. The keys and cheques handed over today shall lie in the

custody of the Deputy Registrar (Original Side) of this Court.

15. The matter will be listed before the Registrar General on 19th September, 2018. On the said date, the Registrar General shall obtain the proof of deposit of service tax of the entire amount, from the Respondents and hand over the cheques to the Respondents. Simultaneously, the keys of flats, which have been deposited in Court today, shall be handed over to the Petitioner. In addition to the keys already deposited, the keys of 409, 111 and the Ground Floor office at the Soldier Square Office Complex as also the keys of Flat No.208, Veer Sadan, would be brought on the next date before the Registrar General. Mr. Nehra shall hand over the keys of any other flats, which are in their possession.

16. After the proceedings before the Registrar General are concluded, the Petitioner shall withdraw any criminal complaints in respect of Soldier Square and Veer Sadan project, which they have filed against Mr. Naveen Nehra and Mr. Mohinder Singh Nehra. If a petition seeking quashing of the said criminal complaints is required to be filed, the Petitioner shall render complete cooperation in the same. Both the Settlement Agreements are final and binding between the parties. No further applications shall be entertained challenging the Settlement Agreement.

17. I.A.s are allowed and the Settlement agreement is taken on record. Nothing further survives in the Petitions under Section 9 of the 1996 Act. The said OMPs are also disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**AUGUST 17, 2018/***dk*