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

COMMERCIAL ARBITRATION PETITION NO.51 OF 2019

Sunil Puri	..Petitioner
Vs.	
HBS Realtors Private Limited & Ors.	..Respondents

Mr.Shiraz Rustomjee with Mr.Hrushish Narvekar, Mr.Vivek Vashi, Ms.Shaheda Madraswala and Ms.Aishwarya Singh i/b. Vashi and Vashi for Petitioner.

Dr.Birendra Saraf, Mr.Ashwin Shete, Ms.Uma Acharya, Mr.Rehmat Lokhandwala i/b. Jayakar And Partners for Respondent Nos.1 to 3.

CORAM : G.S. KULKARNI, J.

DATE : 22nd JANUARY, 2019

P.C.:

Heard Mr.Rustomji, learned Senior Counsel for the petitioner and Dr.Saraf, learned Counsel for respondent Nos.1 to 3. Respondent Nos.4 and 5 though served, are not appearing.

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the ACA") whereby the petitioner has prayed for the following interim reliefs pending the arbitration proceedings:-

- a. Pending the hearing and final disposal of the arbitration proceedings, this Hon'ble Court be pleased to direct and order Respondent Nos.1 to 3 to deposit the agreed amount for purchase of the Petitioner's Shares (i.e. Rs. 33,81,59,589/- as on June 18, 2018 in terms of the agreed payment schedule at Annexure R hereto) with the Prothonotary and Senior Master of this Hon'ble Court;
- b. Pending the hearing and final disposal of the

arbitration proceedings, this Hon'ble Court be pleased to direct Respondent No.1 to disclose on oath particulars of any and all assets and properties (including but not limited to all real estate projects, whether completed or under construction or works in progress or approved) of whatsoever nature and whatsoever situate, whether movable or immovable, whether held or owned directly or indirectly and whether through its subsidiaries or otherwise, including bank accounts, whether held singly and/or jointly, in which the Respondent No.1 and / or its Directors have any right, title and interest;

c. Pending the hearing and final disposal of the arbitration proceedings, this Hon'ble Court be pleased to direct Respondent No.1 to disclose on oath particulars of any and all third party rights created in and/or any transfer of whatsoever nature and/or alienation and/or any encumbrance and/or charge and/or sale in respect of its assets (including but not limited to inter-corporate loans given to third parties, subsidiaries, affiliates and/or any other company or entity wherein Respondent No.1 has more than 1% shareholding);

d. Pending the hearing and final disposal of the arbitration proceedings, this Hon'ble Court be pleased to direct Respondent Nos.2 and 3, to disclose on oath particulars of any and all of their respective properties, projects and assets, including bank accounts, of whatsoever nature and wheresoever situate, whether movable or immovable, held or owned directly or indirectly, jointly and/or singly, in which Respondent Nos.2 or 3, have any right, title or interest;

e. pending the hearing and final disposal of the arbitration proceedings and any Award that may be made therein and for a period of 12 (twelve) weeks thereafter:

i. direct attachment of the properties, projects and assets of Respondent Nos.1 to 3, of whatsoever nature or wheresoever situate, movable and immovable, held or owned directly or indirectly, jointly or singly, respectively, to the extent of the agreed amount for purchase of the Petitioner's Shares (i.e. Rs.33,81,59,589/- as on June 18, 2018);

ii. pass an order and injunction restraining the Respondent Nos.1 to 3 from giving further effect to or acting upon the Resolutions purportedly passed on January 29, 2018 [Annexure II hereto];

iii. Pass an order and injunction restraining Respondent No.1 from issuing any further CCDs to any other individual or persons or entities pursuant to the purported Resolutions [Annexure II hereto] or otherwise howsoever without the affirmative vote of the Petitioner;

- iv. pass an order and injunction restraining Respondent No.1 from passing any resolution(s) without giving notice of the same to the Petitioner and receiving his affirmative vote in relation to the same;
- v. stay the operation, implementation and effect of the purported Resolutions dated January 29, 2018 [Annexure II hereto];
- vi. direct Respondent Nos.4 and 5 to maintain status-quo in relation to the CCDs issued to them by the Respondent No.1; and
- vii. Direct Respondent Nos.4 and 5 to deposit with the Prothonotary and Senior Master of this Hon'ble Court the original CCD certificates issued to them by the Respondent No.1”

3. On 21 December 2018, the Court had passed the following order:-

“1 By consent of the parties stand over to 7th January 2019. The learned counsel for the respondent Nos.1 to 3 submits that in case the respondent No.1 intends to issue Fresh Convertible Debentures (for short, “CCD”) then in that case the respondent No.1 shall issue 30 days notice to the petitioner with a copy of the same to be forwarded to the Advocate for the petitioner. As regards CCDs which are already issued, a statement is being made that there is no possibility of the CCDs to be converted into shares for a further period of four years. The statement made on behalf of the respondent No.1 is accepted.

2 Considering the nature of the dispute and what has transpired before the Court on last occasion, it appears to me that the parties can avoid litigation and the issues can be resolved. Both the learned counsel fairly stated that settlement has already taken place and some minor issues are required to be discussed and tried to be resolved. In my opinion, this would be the correct approach on the part of the parties. Stand over till 7th January 2019, high upon board.”

4. In the intervening period it was informed that the parties have taken steps for constituting an arbitral tribunal. The arbitrator as nominated on behalf of the petitioner and on behalf of the respondent

No.1 are in the process of appointing a presiding arbitrator.

5. Having heard learned Counsel for the parties and also considering the amended provisions of Sub-section (3) of Section 9 of the ACA, in my opinion, it would be appropriate that the parties are left to agitate their pleas before the arbitral tribunal, however, by confirming the order dated 21 December 2018 passed by this Court which shall continue to operate till the interim application to be made by the petitioner under Section 17 of the ACA is adjudicated by the arbitral tribunal.

6. Dr.Saraf, learned Counsel for respondent Nos.1 to 3 on instructions makes a further statement that as regards the CCDs which are already issued in favour of the respondent Nos.4 and 5, in case any request for transfer of CCDs is received by respondent No.1 then in that event a 30 days notice shall be issued to the Advocate for the petitioner, informing of the receipt of such request for transfer of the CCDs. Dr.Saraf states that for the said period of 30 days, the request for transfer would not be acted upon. Statement is accepted.

7. The petition is accordingly disposed of keeping open all rights and contentions of the parties on merits of the matter to be agitated before the arbitral tribunal.

8. Needless to observe that the statements which are made on behalf of the respondent Nos.1 to 3 and as recorded hereinabove and in the order dated 21 December 2018 are without prejudice to the rights and contentions of the respondent Nos.1 to 3.

9. Within 6 weeks of the constitution of the arbitral tribunal, the petitioner shall file a statement of claim as also an application under Section 17 of the ACA.

10. After hearing the learned Counsel for the parties, this Court has already observed in the order dated 21 December 2018 that the parties can avoid litigation and that the disputes can be resolved. Moreover this court also recorded that a settlement between the parties has already taken place and some minor issues are required to be discussed and tried to be resolved. If that be the position, and as pointed out by Mr.Rustomjee, learned Senior Counsel for the petitioner, the disputes can certainly be resolved. In the circumstances the parties in the intervening period explore a settlement.

[G.S. KULKARNI, J.]