

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

O.P.No.305 of 2019

M/s.Dugar Housing Ltd.
Rep. by its Legal Manager,
123, Marshalls Road, Egmore,
Chennai-600 008. ... Petitioner

Vs.

M/s.Kanchanjanga Securities Company Pvt. Ltd.
Rep. by its Authorized Representative,
Door No.144, N.S.C. Bose Road,
Chennai-600 079. .. Respondent

* * *

Prayer : Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996, praying to (a) appoint an arbitrator and refer all the disputes arising out of Joint Development Agreement dated 16.03.2012 and Supplemental Agreement dated 27.03.2012 ; (b) direct the respondent to pay the cost of the petition.

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For Petitioner : Mr.K.V.Bashyam Chari

For Respondent : Mr.Pawan Jhabakh

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ORDER

The petitioner has filed this Original Petition seeking for the appointment of an arbitrator and refer all the disputes arising out of

Joint Development Agreement dated 16.03.2012 and Supplemental Agreement dated 27.03.2012.

2. The petitioner is into the real estate industry, *inter alia*, developing immovable properties through Joint Venture with land owners by taking care of all aspects of the development. Accordingly, the petitioner entered into a Joint Development Agreement (in short, "JDA") with the respondent and four others, who are all landowners with certain terms and conditions. Subsequently, a Supplementary Agreement for Revenue share for JDA was entered into on 17.03.2012. The petitioner followed all the agreed terms and also furnished the statement of accounts to the respondent. When it sought for execution of the Power of Attorney (POA) by sending a draft vide their email dated 05.08.2015, the respondent did not come forward to execute the same till date. Since the project is nearing completion, the petitioner repeatedly sent so many e-mails and other communications seeking execution of POA in vain. Hence, the petitioner sent a letter on 29.09.2018 reiterating to give Power within 15 days and also stated that upon failure of the same, the respondent has to refund the revenue share paid by them with interest and Security Deposit (SD). According to the petitioner, the respondent instead of complying with the said letter, sent a letter dated 07.11.2018 raising malicious

allegations and hence, the petitioner invoked the arbitration clause via the legal notice dated 07.02.2019 suggesting the name of the Arbitrator, for which, the respondent has chosen to send Form-3 notice under the Insolvency and Bankruptcy Code, 2016 (IBC). The petitioner replied to the said notice immediately. The petitioner claimed that as an afterthought, the respondent sent a reply notice dated 22.02.2019 seeking the petitioner to withdraw the arbitration notice. Under such circumstances, the petitioner is before this Court with this petition.

3. Resisting the prayer and denying the allegations, the respondent filed a counter-affidavit dated 25.10.2019. It is its case that the petitioner failed to whisper any allegation against the respondent excepting the non-execution of the POA, which is also false, as the respondent executed the POA dated 16.03.2012 in terms of the contractual obligation and no other POA needs to be executed by it. The respondent alleged that it is the petitioner who committed so many breaches in the joint venture, as it failed to give the copies of the agreements with the prospective purchasers to enable the respondent to calculate the revenue share. In fact, the supplementary agreement provides for opening a separate bank account, which also the petitioner failed to comply with and they were providing only vague account sheets thereby not disclosing the real accounts. Since the

petitioner is liable to make payments, the respondent invoked and instituted the proceedings under the Insolvency and Bankruptcy Code, 2016.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent, who are agreeable for the appointment of a Senior Advocate of this Court as the sole Arbitrator.

5. Considering the submissions of the learned counsels on either side, Mr.R.Sankara Narayanan, Senior Advocate, having office at No.103, New Additional Law Chambers, High Court Buildings, Chennai-600 104, (Phone No.90032 99952), is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The appointment of the Arbitrator will be subject to the disclosure and

declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

6. The Original Petition is ordered accordingly. The parties shall bear their own costs.

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Index : Yes / No
Internet : Yes
Speaking Order/Non-Speaking Order
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PUSHPA SATHYANARAYANA, J.

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