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

\+ ARB.P. 181/2019

SPARK ELECTRODES PVT LTD ..... Petitioner

Through: Mr.Vikas Sharma, Adv.

versus

SARE SAAMAG REALITY PVT LTD & ANR. ..... Respondents

Through: Mr.Saurabh Batra, Adv. for R-1

Mr.Anurag Sharma, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% **07.11.2019**

1. On 9th August, 2019, this Court has passed the following order:-

> *"**<u>I.A. 9086/2019 (delay)</u>***
>
> *1. For the reasons stated in the application, the delay in filing the application is condoned and the application is disposed of.*
>
> ***<u>ARB.P. 181/2019</u>***
>
> *2. Learned counsel for the Petitioner refers to Clause 4 of the Agreement and contends that though principal amount due under the agreement stands paid, the interest component of Rs. 38 Lakhs (approximately) is outstanding and is due and payable by the Respondents. Learned counsel for Respondent No. 1 does not dispute the existence of the arbitration agreement or the invocation thereof, however he disputes the liability by relying upon Clause 4 of the Agreement. Learned counsel argues that agreement provides for a remedy /security*

for any alleged default. Petitioner has not exercised such option and thus there is no live and subsisting dispute between the parties.

3. Learned counsel for Respondent No. 1 states that they are willing to comply with Clause No. 4 and offer a flat proportionate to the outstanding amount. Learned counsel for the Petitioner states that he will take instructions from his client.

4. List on 10th October 2019."

2. From the reading of the above order, it is noted that a reference is made to clause 4 of the Tripartite Agreement, which read as under:-

> *"4. BCON herein agrees and acknowledges that BCON shall make the payment of Total Outstanding Amount within 3 months from date of execution of this Agreement or within such time as may be agreed between the Parties in writing. If payment of Total Outstanding Amount is not made by BCON within aforesaid 3 months or the extended period as may be agreed between the Parties, then SARE at its sole discretion shall have right to make payment of Total Outstanding Amount, on behalf of BCON, directly to SPARK, within next 15 days of expiry of the period allowed to BCON for payment of Total Outstanding Amount. If BCON fails to make payment of Total Outstanding Amount or SARE fails to make payment within the agreed period between the Parties, as the case may be, then SPARK shall have right to take over the Flats. In such situation, with prior written consent of SARE and at sale price as agreed by SARE, SPARK may either sell the Flats and recover the due Total Outstanding Amount, or may get the Flats registered in its name in records of SARE. and in such situation i.e. payment of Total Outstanding Amount by SARE to SPARK or allotment/transfer of Flats by SARE to SPARK, as the case may be, the outstanding dues (payable by SARE to BCON) shall stand reduced by such adjusted/paid Total Outstanding Amount and shall be set off against outstanding*

dues payable by SARE to BCON, to which BCON shall have no objection. The right of the SPARK to sell or to seek allotment of the said Flats is subject to other terms and conditions of this Agreement.

Further, in case of allotment of Flats to SPARK, SPARK shall execute all the documents including Flat Buyer's Agreements, Maintenance Agreements etc. as per the instructions of the SARE, and SPARK shall pay to SARE the differential allotment amount (if any) i.e. the difference between the value of the Flats as per Schedule A and Total Outstanding Amount, within 15 days from the date of allotment or vise versa, as the case may be. In case SARE makes any pro-rata payment to SPARK, the pro-rata number of Flats shall automatically stands reduces/released from the security Flats. Subject to terms and conditions of this Agreement, in case of sale of Flats by SPARK with consent of the SARE, if the sale price received from the third party purchaser/s of the said Flats is less than the Total Outstanding Amount, the balance of the Total Outstanding Amount shall be paid by the SARE, within 30 days of sale of such Flats; and if the sale price received from the third party purchaser/s of the Flats is more than the Total Outstanding Amount, SPARK shall refund such excess amount to SARE, within 30 days of sale of such Flats."

3. After the last order was passed by this Court, I have been informed that that respondent no.l has made an offer for allotment of one flat commensurating the outstanding amount.

4. The offer has been considered by the petitioner. The learned counsel for the petitioner states that the petitioner has decided to take over the flat being Ebony Green S+ 8 Unit no.C010401 admeasuring 1033.49 sq. feet.

5. If that be so, the petitioner is at liberty to take action in accordance with clause 4. If there is any further amount due and payable to the petitioner from the respondents, the petitioner shall be at liberty to seek such

remedy as available in accordance with the tripartite agreement.

6. The petition is disposed of.

V. KAMESWAR RAO, J

NOVEMBER 07, 2019/*bh*