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

+ **O.M.P. (COMM) No. 197/2019**

Date of decision: 14th May, 2019

M/S. GLM INFRATECH PVT. LTD. & ORS. Petitioners
Through Mr. Jayant Mehta, Mr. Aman Nandrajog,
Mr. Siddharth Sharma & Mr. Arjun Nanda,
Advocates.

versus

VIRENDER GANDHI Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, '1996 Act') to assail the award dated 26 December 2018.

2. In order to adjudicate upon the instant petition, the following broad facts are required to be noticed.

2.1 The petitioner No. 1 company i.e. GLM Infratech Private Limited was in its earlier avatar a partnership firm going by the name Bhoomi

Infrastructure Company. At some point in time, Bhoomi Infrastructure Company (hereafter referred to as 'firm') morphed into a private limited company i.e. GLM Infratech Private Limited (hereafter referred to as 'GLM').

2.2 At the point in time, when GLM donned the robes of a partnership firm, that is, on the date of its registration which was 12 September 2006, it had ten (10) partners. It appears that, thereafter, the firm was reconstituted on 27 June 2011 when five (5) partners retired. Apparently, the remaining partners could not get along which led to the respondent, i.e. Virender Gandhi (hereafter referred to as 'VG') along with three other partners, namely, Ashok Gandhi, Vijay Raj Gajra and Dinesh Keshav Ji Patel retiring from the firm. Simultaneously, though, petitioner No. 3 i.e. Abhimanyu Deswal (hereafter referred to as 'AD') was inducted as a partner in the firm.

2.3 The reconstitution of the firm brought about by virtue of the aforementioned events is reflected in the Deed of Retirement-cum-Admission (hereafter referred to as 'DoRA') dated 30 November 2013.

2.4 Pertinently, VG, who held 16% of the firm's share capital, entered into a Memorandum of Understanding (in short, 'MoU') with the firm on the same date i.e. 30 November 2013. The MoU, *inter alia*, provided for the

manner in which VG would be repaid the share capital held by him in the firm.

2.5 As is evident, DoRA and MoU were executed on the same date i.e. 30 November 2013.

2.6 At this stage, it may be relevant to note that the signatories to DoRA were the then five partners in the firm i.e. Ashok Gandhi, Vijay Raj Gajra, Dinesh Keshav Ji Patel, VG, petitioner No.2 i.e. Lt. Col. Surender Singh Deswal (in short, 'SSD'), and the incoming partner i.e. AD/petitioner No. 3.

2.7 In sum, the two partners who remained in the firm i.e. SSD and AD agreed to compensate VG, on his agreeing to retire from the firm, by allotting him 41 flats, valued at Rs.20.30 crores out of those which were being constructed by the firm at the relevant point in time (and now by GLM) under a housing project going by the name "Amazon- the Defence County" (hereafter referred to as the 'project'). This project is located at Sector 30, Panchkula, Chandigarh. The firm (and now GLM) is apparently tasked with construction of the flats.

2.8 Therefore, in a nutshell, VG against 16% share in the firm was to get upon his retirement, area/flats admeasuring 92235 square feet which consisted of 41 flats and, as indicated hereinabove, were valued at Rs.20.30

crores. The MoU, which was signed on the same date as the DoRA, factored in a possibility that if the 41 flats were not handed over to VG, then he would be entitled to payment of a sum equivalent to Rs. 20.30 crores as per the schedule set out in clause 4 of the MOU.

3. The record shows that VG was not allotted the flats as they were not built within the timelines agreed to between the parties. This propelled VG to approach this Court by way of a petition under Section 11 of the 1996 Act. The petition was registered as Arbitration Petition No. 531/2015. This Court by an order dated 22 February 2017 appointed Mr. Justice R.C. Lahoti, a former judge of the Supreme Court, as the sole Arbitrator to adjudicate the disputes which were subject matter of the Arbitration Petition No. 531/2015. The order appointment, it appears, was received by the learned Arbitrator only on 17 December 2017, whereupon arbitration proceedings were commenced.

4. It is in this background that the impugned award came to be passed.

5. Mr. Mehta, who appears on behalf of the petitioners, assailed the award on the ground that the core understanding between the parties was that VG would be allotted towards his 16% share in the firm 41 flats and that there was no agreement to pay money amounting to Rs.20.30 crores as has been concluded by the learned Arbitrator.

5.1 The submission, in effect, is that, only the petitioners had the right to buy back the flats, *albeit*, at their sole discretion and if such a decision was taken, only then, money equivalent to Rs.20.30 crores have to be paid to VG.

5.2 Besides this, Mr. Mehta submitted that the learned Arbitrator failed to notice that the MoU was executed prior in point of time to DoRA, and therefore, the MoU stood superseded with the execution of DoRA.

5.3 In effect, what was sought to be contended was that VG would only be entitled to allotment of flats as and when they were constructed and that the learned Arbitrator could not have directed payment of money to VG.

5.4 In addition thereto, Mr. Mehta, vigorously submitted that the execution of the MoU was a product of coercion exercised upon the petitioners.

5.5 I may also indicate that in order to buttress his submission that the MoU had lost significance with the execution of DoRA, Mr. Mehta submitted that the MoU had not been signed by all the partners in the firm.

6. Having heard the learned counsel for the petitioners and perused the record, in my view, none of the submissions advanced before me by Mr. Mehta have any substance.

6.1 As noted above, VG upon retirement from the firm along with three others, whose names I have indicated hereinabove, were party to two documents. The first document was the DoRA. The signatories to this document were the then five partners in the firm, which included VG and the incoming partner i.e. AD. The second document to which VG was a party was the MoU. The MoU was signed not only by one of the partners to the firm i.e. SSD but was also signed by the incoming partner i.e. AD.

6.2 Quite logically since SSD and AD were continuing with the business of the firm and therefore, were in control of its assets, the compensation towards retirement dues of VG had to be encapsulated in a document, in this case, the MoU, to which SSD and AD including VG were parties. Insofar as the other three partners were concerned, they had nothing to do with the compensation to be paid to VG upon his agreeing to retire from the firm.

6.3 Thus, the argument advanced on behalf of the petitioners that the MoU was not signed by other partners, to my mind, is completely untenable.

6.4 The other submission made before me that the MoU was executed prior in point of time, and thus, upon execution of the DoRA, the MoU was superseded is also a submission which has no merit. The learned Arbitrator has found, as a matter of fact, that the DoRA, the MoU and the Apartment

Buyers Agreement were all executed on the same date and that each of these documents were cross referenced in the other documents. According to the learned Arbitrator, these documents were part of one transaction and, therefore, had to be read together. Furthermore, the learned Arbitrator upon examining the contents of these documents and the material placed before him came to the conclusion and, to my mind, quite rightly that the purpose behind execution of the aforementioned documents was to ensure that VG's retirement dues were quantified and a fail-safe mechanism was put in place for their payment.

6.5 The observations made in the award, to this effect, by the learned Arbitrator, are contained in paragraph 25, which for the sake of convenience are extracted hereafter: -

“25. During the course of final hearing it was contended by one side that the MOU superseded the Retirement Deed and vice versa was contended by the other side. It is not necessary to go in-depth and examine the worth of the contending versions. The Retirement Deed and the MOU, and the Apartment Buyer Agreement were all executed, on the same date and there are cross references to the Retirement Deed and the MOU in the two documents. The Tribunal is satisfied and holds that all these documents form part of one transaction and have to be read together. The purpose of the deal was to ensure retirement of the Claimant, quantify his retirement dues and also satisfy his claim without fail. All the deeds have therefore to

be read together and the rights and obligations of the parties have to be worked out accordingly.”

6.6 Furthermore, the learned Arbitrator has also found, as a matter of fact, that the suggestion given to one Mr. Dipak Pasrija, the attesting witness qua both DoRA and MoU, specifically, denied the fact that the MoU was executed prior to DoRA.

6.7 Given this state of the evidence and the findings returned by the learned Arbitrator, in my view, the argument advanced that the DoRA had superseded the MoU is without substance and hence is rejected. For the very same reason, I am unable to accept the submission of Mr. Mehta that what was intended by the parties was that the retirement dues of VG would be paid only in kind i.e. via allotment of 41 flats of a stipulated area and not in terms of money.

6.8 A conjoint reading of the DoRA and the MoU makes it crystal clear that failure to allot 41 flats of stipulated area to VG would trigger the payment schedule encapsulated in clause 4 of the MoU. As to the argument advanced by Mr. Mehta that MoU was a product of coercion, is a submission, which is also without merit in view of the findings returned by the learned Arbitrator in paragraphs 27 and 28 of the award. For the sake of convenience, the relevant extracts are set forth below:-

“27. So far as the plea as the coercion and economic duress is concerned, the plea is without any merit. The particulars of the plea are not fully set out in the pleadings. So also the singular testimony of the Respondent No. 2 and the cross-examination on the Claimant’s witness do not provide any such material as can sustain the plea.

28. In the cross-examination of Virender Gandhi (CW-1) as also Mr. Deepak Pasrija (CW-2) nothing has been brought out to show that any of the deeds was executed by the Respondents with any unwillingness or reservation. It is pertinent to note that this witness Mr. Deepak Pasrija is an attesting witness to the Retirement Deed and the MOU, both dt. 30.11.2013, which according to this witness, were simultaneously signed on the same day. This witness had remained involved throughout in the discussion and finalization of terms and conditions of these deeds.....”

7. Ergo, for the foregoing reasons, I find that there is no good reason as to why I should interdict the award. Accordingly, the petition being without merit is dismissed.

8. The Registry will dispatch a copy of the judgment rendered today to VG at the address given in the petition.

RAJIV SHAKDHER, J.

MAY 14, 2019
VKR