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

+ **O.M.P.(I) (COMM.) 15/2019**

**FUTURE GAMING HOTEL AND SERVICES PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Ayush Agrawal, Mr. Vikrant
Singh, Mr. Mangesh Krishna, Mr.
Aditya Shukla and Mr. Siddhant,
Advs

versus

MANI KUMAR SUBBA & ORS.

..... Respondents

Through: Mr. Akhil Sibal, Senior Advocate
with Mr. Kunal Sabharwal, Ms.
Shriya Misra, Mr. Parinay Vasandani
and Mr. Nikhil Pratap, Advs for
respondent no. 1 to 5

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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25.01.2019

I.A. Nos. 1017/2019 & 1018/2019 (Exemptions)

1. Allowed, subject to just exceptions.

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2. Issue notice.

3. Mr. Kunal Sabharwal accepts notice on behalf of respondent
nos.1 to 5.

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4. Since, respondent no. 6 is not represented, Mr. Sethi, learned Senior Counsel, says that insofar as respondent no. 6 is concerned, the petitioner will move the Arbitral Tribunal, if required, for necessary relief.

5. Mr. Akhil Sibal, learned Senior Counsel, who, appears on behalf of the respondent nos.1 to 5, on instructions of Mr. Kunal Sabharwal, says having regard to the facts and circumstances obtaining in this case, in particular, the conduct of respondent no. 1 in executing the Gift deed dated 19.02.2018, even while Arbitration Petition No. 73/2018 was pending adjudication in this Court, he would like this Court to dispose of the petition, without awaiting a reply, based on the following directions:-

(i) Respondent nos. 3 to 5, who, are the wife, son and daughter of respondent no. 1 will stand impleaded as parties in the arbitration proceedings pending before a three member Arbitral Tribunal presided over by Hon'ble Mr. Justice Kurian Joseph, Former Judge, Supreme Court of India.

(ii) Respondent no. 3, 4 and 5, who are shown as donees in the Gift deed dated 19.02.2018, will not transfer, convey or create third party interest in any manner whatsoever in the subject property without seeking permission of the Arbitral Tribunal.

(iii) The preliminary objections raised by respondent nos. 1 to 5, *albeit* orally, to the maintainability of the captioned petition which relate to the following aspects shall stand withdrawn:-

(a) That the petitioner has an equally efficacious remedy available before the Arbitral Tribunal.

(b) The two Agreements to Sell dated 24.12.2013 and 02.04.2015 being inadequately stamped cannot form the basis of this petition. (To be noted, this objection is taken in the context of the amendments made to the West Bengal Stamp Act.)

(iv) That OMP(I)(COMM.) 202/2018 should be placed before the Arbitral Tribunal. The Arbitral Tribunal should treat the same as an application under Section 17 of the 1996 Act and that pending the disposal of the application by the Arbitral Tribunal, the order passed on 04.05.2018 shall continue to operate. The Arbitral Tribunal will, however, have the liberty after hearing both the parties to either confirm, vacate or even modify the order dated 04.05.2018.

(v) Lastly, the petitioner would have the liberty to seek reliefs apart from those relating to the Gift deed dated 19.02.2018 which have been articulated in the captioned petition from the Arbitral Tribunal.

6. Mr. Sethi having heard the statement made by Mr. Sibal on behalf of respondent nos. 1 to 5, says that the petitioner would have no objection if this Court were to pass an order in terms of the statement made by Mr. Sibal.

7. Having regard to what has been stated before me by counsel for the parties, the petition is disposed of in terms of the statement made by Mr. Sibal which stands recorded in paragraph 5.

8. At this stage, Mr. Sibal says that since respondent nos. 3 to 5 are not parties to the subject Agreements to Sell, they should be free to contend before the Arbitral Tribunal that no substantive claim can be raised against them.

9. Mr. Sethi contends to the contrary, especially, in view of the concession made on behalf of respondent no. 3 to 5 which has resulted in the said parties being arrayed as parties before the Arbitral Tribunal.

10. To my mind, this is an issue which the Arbitral Tribunal will dwell upon after hearing counsel for the parties.

11. In view of what is recorded hereinabove, the Registry is directed to list the connected Section 9 petition i.e. O.M.P. (I) (COMM) 202/2018, in Court today, for appropriate orders.

RAJIV SHAKDHER, J

JANUARY 25, 2019/c
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