IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM:

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Original Application No.625 of 2021

M/s.Proptech Advisors Pvt. Ltd.,
Rep. by its Managing Director
Adarsh Narahari
Having office at
No.22, Hara Chambers, 5th Floor,
KH Road, Bangalore – 560 027. ... Applicant

Vs.

1.Granite Realty Private Limited,
Rep. by its Authorized Signatory
Mr.Azad Singh,
Having Registered office at
Ground Floor, Vinay Bhavya Complex,
A Wing, 195A, GST Road,
Kalina, Santacruz (East),
Mumbai – 400 098,
Maharashtra.

2.White Board Realty Private Limited,
Rep. by its Authorized Signatory
Mr.Azad Singh,
Having Registered office at
No.49, Plot -128A, Eastern Chamber,
Poona Street, Dana Bunder,
Chinchbunder, Mumbai – 400 009.
Maharashtra. ... Respondents

Original Application is filed under Order XIV Rule 8 of Original Side Rules r/w. Section 9 of the Arbitration and Conciliation Act,1996 r/w Section 151 of the CPC to grant ad interim injunction restraining the Respondents, their men, agents, employees, representatives, any other person claiming under or through the Respondents from and in any manner dealing or encumbering the Application property pending disposal of the Arbitration Proceedings, more fully described in the Schedule.

For Applicant : Mr.Satish Parasaran S.C.
for Mr.G.Vivekanand

For Respondents : Mr.AR.L. Sundaresan S.C.
for Mr.T.K.Bhaskar for R-1

Mr.Jeevesh Nagrath
for Mr.T.K.Bhaskar for R-2

ORDER

The Applicant is the purchaser under Memorandum of Understanding (MoU) dated 06.02.2020 as also under Agreement of Sale dated 11.03.2020 (the Sale Agreement) between the Applicant and the Respondents.

2. Under the above mentioned MoU, the Applicant agreed to pay a sum not exceeding Rs.65 lakhs per acre for a total extent ad-measuring about 73-74 acres and described in the schedule to the MoU. The MoU envisaged the

execution of either a registered sale deed in respect of the schedule property or a share purchase agreement to acquire the share capital of the company owning the schedule property. The MoU also stipulated conditions to be fulfilled before the execution of a registered sale deed or share purchase agreement, as the case may be. Out of the three conditions specified therein, the condition relating to obtaining of a NOC from SIPCOT in respect of the schedule property is material for the purposes of the present application. Pursuant to the MoU, the Sale Agreement was executed. The Sale Agreement recorded that the Applicant–Purchaser paid a sum of Rs.2.5 crores as advance. The Sale Agreement also made reference to the MoU under Clause 18 thereof. Clause 21 of the Sale Agreement provided for part performance of the contract in the circumstances specified therein.

3. The admitted position is that the Respondents were unable to obtain a NOC from SIPCOT in respect of the schedule property. The Applicant approached the jurisdictional Sub Registrar and sought for information under the Right to Information Act, 2005, as to whether a NOC from SIPCOT is required in respect of the schedule property by specifying the survey numbers of such property under two items in Attakurukki Village and one item in

Nallakanakothapalli Village. In response thereto, the jurisdictional Sub Registrar specified the survey numbers in the two relevant villages in respect whereof NOC from SIPCOT is necessary. Thereafter, by a communication dated 07.09.2021, the Respondents purported to terminate the MoU and the Sale Agreement by referring to the refusal of the Applicant to purchase the schedule property without a NOC, and the refusal of SIPCOT to grant such NOC. It also appears that a letter of intent in respect of a built-to-suit warehouse was issued by one DRS Warehousing (North) Private Limited to the first Respondent. The present application seeking to restrain the Respondents from dealing with or encumbering the properties described in the schedule to the judge's summons is filed in the above facts and circumstances.

4. The Applicant does not deny that the MoU specifies a condition in relation to obtaining the NOC for the schedule property from SIPCOT. However, the Applicant relies heavily on Clause 21 of the Sale Agreement to contend that it is entitled to purchase specific parcels of the schedule property in respect of which NOC is not required at its discretion. The Applicant also relies upon the communication from the Sub Registrar dated 16.09.2021. By comparing and contrasting the request dated 15.09.2021 to the sub-registrar

and the response dated 16.09.2021, the Applicant contends that the Sub Registrar had impliedly conveyed that NOC is not required in respect of about 9 survey numbers in the Attakurukki Village. According to the Applicant, the said survey numbers pertain to an aggregate extent of about 11 acres from and out of the total extent of about 73-74 acres. As regards the alleged acceptance of the purported termination, the Applicant disowns the communication dated 16.09.2021, which was signed on behalf of the Applicant by V.Sivaraju, and contends that such communication was issued without authorization and is not binding on the Applicant.

5. The Applicant further contends that unless interim protection is granted, the Respondents would deal with and encumber the schedule mentioned property and that the Applicant would not be in a position to enjoy the benefits of the award, if obtained in the arbitration proceeding. The Applicant also points out that it is ready and willing to comply with any conditions that may be imposed by keeping in mind its readiness and willingness to purchase the 11 acres for which NOC from SIPCOT is not required.

6. On the contrary, the first Respondent points out that the grant of NOC by SIPCOT is a condition precedent for the consummation of the transaction. The first Respondent points out that the proposed transaction was for the purchase of the shares of the company, which owned the schedule property, so as to acquire control of the immovable properties. Although the Applicant originally remitted a sum of Rs.2.5 crores as advance, the first Respondent submits that the said amount was refunded to the Applicant. Consequently, it is stated that, as on date, the Applicant has not paid even a small portion of the total agreed consideration of Rs.65 lakhs per acre. The first Respondent points out that Clause 21 of the Sale Agreement is attracted only if the vendors failed to establish clear title to the schedule mentioned property. The refusal of SIPCOT to provide a NOC does not in any manner impact the title to the schedule mentioned property especially in the context of the relevant property not being acquired. Therefore, the first Respondent submits that Clause 21 cannot be relied upon to justify a request for part performance. The first Respondent also points out that such request for part performance was not made by the Applicant before the present application was filed as evidenced by the correspondence that preceded the filing of the application. In fact, the first Respondent adverts to the affidavit in support of

the application and points out that such affidavit also does not contain any indication that the Applicant is ready and willing to purchase the 11 acres of land.

7. In any event, the first Respondent contends that the balance of convenience is not in favour of granting interim relief to the Applicant inasmuch as the Applicant has categorically indicated that it is not willing to purchase the entire extent of the schedule property in the absence of a NOC from SIPCOT. By drawing reference to the map of the relevant property, the first Respondent points out that the 11 acres which the Applicant says it intends to purchase is the portion of the property opening on to and just off NH-44, and, therefore, if the Respondents are restrained from dealing with the said extent, the Respondents would not be in a position to put the entire property to use. According to the first Respondent, especially when viewed in the factual context of no consideration having been retained by the Respondents, the Applicant is not entitled to interim relief in these facts and circumstances.

8. The second Respondent made brief submissions. The second Respondent referred to Sections 31 and 32 of the Indian Contract Act, 1872 and contended that the MoU and Sale Agreement are contingent contracts. Consequently, on account of the refusal of SIPCOT to provide the NOC, the said contracts become void. In addition, the second Respondent referred to Clause 21 of the Sale Agreement and contended that it is clear from the text thereof that it is attracted only in case the vendors are unable to provide clear title.

9. Upon consideration of the above submissions, the limited question that arises for consideration is whether the Applicant is entitled to any form of interim protection. For such purpose, the factual context should be borne in mind. Both the MoU and the Sale Agreement deal with a company and its assets. The total extent of the relevant assets is about 73-74 acres. The sale consideration specified in the above contracts is Rs.65 lakhs per acre. As against the said specified consideration, the admitted position is that a sum of Rs.2.5 crores was remitted by the Applicant. The Respondents contend that such sum was refunded and this contention is not refuted by the Applicant. The second aspect that should be taken into consideration is whether the Applicant has *prima facie* indicated its readiness and willingness to perform

the relevant contract either in full or in part. On this issue, even as on date, the categorical stand of the Applicant is that unless the NOC is obtained from SIPCOT, it is not ready and willing to purchase the lands for which such NOC is necessary. In the same breath, the Applicant contends that it is ready and willing to purchase about 11 acres of land in respect of which the jurisdictional Sub Registrar did not indicate that NOC is required. Upon perusal of the documents filed in support of the application, I am unable to find any document wherein the Applicant has put the Respondents on notice that it is ready and willing to purchase the land in respect of which NOC is not required from SIPCOT. Indeed, learned Senior Counsel for the Applicant is also unable to point out any document to such effect although an endeavour is made to refer to a meeting and the reference thereto in the rejoinder. The reliance on such rejoinder was contested by the Respondents on the ground that it introduces new facts and, therefore, the Applicant agreed to proceed with arguments in the application without reference to the rejoinder.

10. As regards the interpretation of Clause 21 of the Sale Agreement, the Applicant contends that the said clause is attracted even with regard to non-fulfillment of the NOC condition in the MoU, whereas the

Respondents contend that such clause is confined to title issues relating to the schedule property. For purposes of the present application, it is neither necessary nor desirable to record definitive conclusions on the interpretation of Clause 21 as it could prejudice the parties in course of arbitration proceedings.

11. The Respondents have also raised the contention that the MoU is a contingent contract and was, therefore, rendered void by the refusal of the Applicant to purchase without a NOC coupled with the refusal of SIPCOT to provide a NOC. The letter of termination and the acceptance thereof by the Applicant is relied upon in such regard. The Applicant disowns the purported acceptance of such termination. Once again, the nature of the MoU - including whether it imposes conditions or is a contingent contract, and the implications thereof - should be determined by the arbitral tribunal and it is not necessary or desirable to record findings in respect thereof in this proceeding.

12. Thus, in effect, the Applicant seeks to prevent the Respondents from dealing with the schedule mentioned property, which extends to about 73-74 acres, after remitting a sum of Rs.2.5 crores as advance, which sum also appears to have been refunded. As indicated earlier, the admitted position is that the Applicant is not ready and willing to purchase

the entire extent. Indeed, even as regards the 11 acres, there is no correspondence on record indicating that the Applicant sought part performance in terms of Clause 21 of the Sale Agreement. Upon taking all these elements into consideration, I am of the view that the balance of convenience is not in favour of granting interim relief to the Applicant at this juncture. If the Respondents are restrained from dealing with the property in the manner prayed for, the injury that may be incurred by the Respondents would far outweigh the risk to the Applicant by refusing interim relief. Consequently, O.A.No.625 of 2021 is dismissed without any order as to costs. It is, however, made clear that the findings recorded in this order are tentative and exclusively for purposes of the present interlocutory application. It is needless to say that any transactions that are entered into by the Respondents in respect of the schedule property would be subject to the out come of the arbitral proceeding.

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Index : Yes / No
Internet : Yes / No

SENTHILKUMAR RAMAMOORTHY J.,

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