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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 01.11.2022

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FAO(OS) (COMM) 316/2019 & CM Appls.47888-89/2019

MOON LIGHT PROPBUILD PVT LTD & ANR.Appellants

Through: Mr Krishnendu Datta, Sr. Advocate
with Ms Shivantika Sinha, Ms Nimita
Kaul and Mr Anurag Garg, Advs.

versus

HORIZON CREST INDIA REAL ESTATE & ORS.....Respondents

Through: Mr Saurav Agrawal, Mr Saurajay
Nanda and Mr Ribhu Garg, Advs. for
R-1 to 6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is directed against the order dated 05.09.2019 passed by the learned Single Judge.

1.1 The two appellants before us are Moon Light Propbuild Pvt. Ltd [appellant no.1], and Mr Amarjit Singh Chatha [appellant no.2].

2. Insofar as appellant no.1[hereafter referred to as “appellant no.1 company”] is concerned, it is aggrieved by the following directions contained in the impugned order:

“...The Directors of other respondent companies (other than those noted above including respondent Nos. 12, 16, 22, 23, 24 and 38) shall also file their affidavits of assets of both moveable and immoveable including the bank accounts, their statements,

bonds, and investments etc....”

3. To be noted, there is no dispute, that the appellant no.2 i.e., Mr Amarjit Singh Chatha is one of the directors of appellant no.1 company.

4. It is Mr Krishnendu Datta's contention, who appears on behalf of the appellants, that the directors of appellant no.1 company, including appellant no.2 were not parties to the arbitration agreement, and hence were not arrayed as parties in the statement of claim filed by the contesting respondents i.e., respondent nos.1 to 6.

5. It is, therefore, Mr Datta's submission, that the award dated 02.07.2019, which is the subject matter of the Section 34 petition filed under Arbitration and Conciliation Act, 1996, before the learned Single Judge, logically, could not have any impact on the directors of the appellant no.1 company, including appellant no.2.

6. Mr Saurabh Agarwal, who appears on behalf of the contesting respondents i.e., respondent nos.1 to 6, on the other hand, says that the said respondents had no clue as regards either the change in the shareholding pattern or the composition of the board of directors.

7. According to Mr Agarwal, the filings referred to by the appellants had been uploaded only in 2018, by which time the arbitration proceedings had almost reached culmination.

8. Be that as it may, Mr Agarwal does concede, that since the change in the shareholding pattern and the composition of the board of directors of appellant no.1 company, got revealed only by way of the instant appeal, the contesting respondents i.e., respondent nos.1 to 6 will, for the moment, rest with the redaction of the directions contained in the impugned order [as noticed in paragraph 2 above] with leave to amend the Section 9 petition, so

that necessary foundation is laid to demonstrate that there has been defalcation of funds by the directors of the appellant no.1 company, which includes appellant no.2.

9. Mr Datta, on the other hand, refutes the allegation made by Mr Agarwal in this behalf.

9.1 It is Mr Datta's submission, that as and when amendment is sought, the appellants and those impacted would take steps to have their say in the matter, before the learned Single Judge.

10. We may also note, that it has been brought to our notice by Mr Agarwal, that after the impugned order was passed, at the behest of appellant no.1 company, which is arrayed as respondent no.21 in Section 9 petition, *inter alia*, the following directions were passed on 5.11.2019:

"...The Directors of the respondent no.21 Company are given liberty to file affidavit(s) in a sealed cover on or before 12th November, 2019..."

11. As is evident, the direction issued on 05.11.2019 was passed on the back of the impugned order dated 05.09.2019. Therefore, if the impugned directions, which are extracted in paragraph 2 above, are excised, logically, the direction issued on 05.11.2019, for the moment, would collapse.

12. This position is not disputed by the counsel for the parties.

13. Accordingly, the appeal is disposed of with the following directions:

- (i) The impugned directions contained in order dated 05.09.2019, which are extracted in paragraph 2 above, shall stand excised.
- (ii) Liberty is, however, given to the contesting respondents i.e., respondent nos.1 to 6 to seek amendment of the pending Section 9 petition.

- (iii) If such an opportunity is availed, the learned Single Judge will pass an order, after giving due opportunity to those, who are impacted by the amendment, if any, sought in the Section 9 petition.
- (iv) The logical consequence would be, that the affidavits filed, *albeit*, in a sealed cover by appellant no.1 company on behalf of its directors, including appellant no.2, with the Registry of the Court, will be returned to their authorized counsel.
14. Consequently, pending applications shall stand closed.

(RAJIV SHAKDHER)

JUDGE

(TARA VITASTA GANJU)

JUDGE

NOVEMBER 1, 2022/pmc