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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 21.03.2022

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FAO(OS) (COMM) 113/2020, CM Nos.22864-66/2020 & 23295/2020

LALIT KUMAR JAIN & ANR.

..... Appellants

Through : Mr Arvind Nigam, Mr Rajshekhar Rao and Mr Jayant Mehta, Senior Advocates with Mr Raghavendra Mohan Bajaj, Mr Kumar Karan, Ms Smriti Verma and Mr Agnish Aditya, Advs.

versus

VISTRA ITCL INDIA LIMITED & ORS.

..... Respondents

Through : Mr Arun Kathpalia and Mr Krishnendu Datta, Senior Advocates with Mr Hardeep Sachdeva, Mr Kamal Shankar, Ms Priyamvada Shenoy, Mr Pradyumna Sharma and Mr Parth Chopra, Advocates for R-1 and R-2.

CORAM:**HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE JASMEET SINGH**

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

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is directed against the order dated 11.06.2020, passed by the learned Single Judge in I.A.No.4155/2020 in CS(COMM)No.288/2019.

1.1 Concededly, this application was moved by the appellants i.e., the original defendant nos.1 and 3 as representatives of respondent no.3/defendant no.4 in the backdrop of the order of the Supreme Court dated 11.05.2020, passed in M.A. No.927/2020 in SLP(C.) No.25412/2019.

2. The substantive prayers made in the application [i.e., I.A.



No.4155/2020], in which, the impugned order has been passed reads as follows :

“(a) grant a mandatory injunction and pass such necessary orders and directions against the Plaintiffs to enable Defendant No. 4 to undertake its business and affairs, including by raising finances to meet the deposit amount of Rs 4,00,00,000/- (Rupees Four Crores) in terms of the SC Order by creating an appropriate security in respect of such number of the Unsold Units in Towers C1 and C2 in Defendant No. 4’s Project and/or by creating a hypothecation on the future receivables of sold units in Towers C1 and C2 in Defendant No. 4’s Project as detailed in Paragraph 65 above without the requirement of any consent from the Plaintiffs in that regard ;

(b) grant a mandatory injunction and pass such necessary orders and directions against Plaintiff No.2 to enable Defendant No. 4 to undertake its business and affairs including by raising finance for re-commencing and completing the development of the Project including Towers C1 and C2 by creating appropriate security in respect of Defendant No. 4’s Project including the Land and the development of Towers C1 and C2 thereon and future receivables of units in Towers C1 and C2 in Defendant No. 4’s Project as detailed in Paragraph 65 above, without requirement of any consent from the Plaintiffs in that regard;

(c) pass such prohibitory orders and injunction restraining the Plaintiffs and/or their employees, servants, affiliates, associates from interfering and/or obstructing in the business of Defendant No.4 including undertaking development and construction of the Project 45 Nirvana Hills;

(d) pass such necessary orders and directions appointing person(s) / committee of by this Hon`ble Court to oversee and monitor the due implementation and execution of Defendant No.4’s Project by these Defendants under the aegis of this Hon`ble Court.”

3. Mr Arvind Nigam, learned senior counsel, who appears on behalf of the appellants, says that insofar as the relief sought in prayer clause (a) is concerned, the same has lost its efficacy in view of the fact that the appellants



have now deposited the balance amount of Rs. 4/- crores with the Bombay High Court in Notice of Motion (NOM) No.368/2019, preferred in Commercial Arbitration Petition (CAP) No.238/2019.

3.1 To be noted, the aforesaid petition i.e., CAP No.238/2019, has been preferred by respondent no.3/defendant no.4 under Section 34 of the Arbitration and Conciliation Act, 1996 [in short, "1996 Act"], to assail the arbitral award dated 13.06.2018 rendered in favour of the contractor i.e., POSCO (Engineering & Construction) India Pvt. Ltd.

3.2. Insofar as the other prayers are concerned, it is Mr Nigam's contention that the remaining prayers have not been dealt with by the learned Single Judge while passing the impugned order.

4. On the other hand, Mr Arun Kathpalia, learned senior counsel, who appears on behalf of respondent nos.1 and 2, says that since the suit filed by respondent nos.1 and 2 is a suit for recovery of monies invested in respondent no.3/defendant no.4 by way of debentures, the learned Single Judge has held that the remaining prayers had no connection with the final relief sought in the suit.

4.1 It is in this context that Mr Kathpalia says that the learned Single Judge has declined to issue any directions in the form of a mandatory injunction, albeit at the interlocutory stage.

5. We may note that it is not disputed by the learned counsel for the parties that the learned Single Judge, is presently, hearing arguments in the application [i.e., I.A. No.5978/2020], filed by respondent nos.1 and 2 [i.e., the original plaintiffs] under Order XIII A of the Code of Civil Procedure, 1908 [in short "CPC"]. .

5.1. We are told by Mr Kathpalia that arguments have been addressed in the



said application on behalf of respondent nos.1 and 2/original plaintiffs, and that the appellants have commenced their reply to the same.

6. It has been brought to our notice by Mr Nigam that there are other applications, which are also pending adjudication before the learned Single Judge.

6.1 In this context, Mr Nigam has referred to I.A.No.12859/2019 (filed under Order VII Rule 10 of CPC); I.A.No.15720/2019 (preferred under Section 10 of C.P.C.); I.A.No.8030/2020 (for discovery of documents); I.A.No.16498/2019 (whereby the relief sought is for the dismissal of the suit on the alleged ground of suppression) and I.A.No.9162/2020 (for offering the alternate security).

6.2. Besides this, Mr Nigam says that the application preferred by respondent nos.1 and 2/original plaintiffs under Order XXXIX Rules 1 & 2 of the CPC i.e., I.A.No.8023/2019 is also pending final disposal before the learned Single Judge.

6.3. The contention of Mr Nigam, therefore, is that these applications also need the attention of the learned Single Judge.

7. Furthermore, Mr Nigam contends that the appellants will be quite satisfied, if this court were to recognize the fact that the appellants could move application(s) to seek reliefs, which, according to the appellants, were not addressed by the learned Single Judge [i.e., prayer clause (b) to (d)], while passing the impugned order.

8. We must record that Mr Kathpalia has expressed an apprehension, which, to our minds, is something to be taken note of, that the appellants' endeavour to have the other applications heard, should not derail the adjudication of I.A. No.5978/2020.



9. Having heard learned counsel for the parties, in our view, this appeal can be disposed of with the following directions, in view of the fact that the application i.e., I.A. No. 4155/2020, in which the impugned order has been passed by the learned Single Judge, had an element of immediacy, as monies had to be deposited, at that point in time, on behalf of respondent no.3/defendant no. 4 in the Bombay High Court, to enable respondent no.3/defendant no. 4 to prosecute its petition under Section 34 of the 1996 Act. The appellants having filled the gap by depositing Rs. 4 crores with the Bombay High Court; the immediacy has been taken care of.

(i) As to whether the appellants should be given permission to raise finances to work the project-is an aspect which the learned Single Judge can examine only if an appropriate application is filed, which details out the contours of how the finances for the project will be raised and what would be offered as security.

(ii) This application, if moved, will have to take into account the concerns of respondent nos.1 and 2/original plaintiffs, who, as claimed by Mr Kathpalia, are secured creditors. The learned Single Judge may have to, at this juncture, ascertain, *inter alia*, as to whether enough security is available both *qua* existing assets as well as future receivables to accommodate the requests, if any, made by the appellants *via* such an application.

(iii) The legal rights of respondent nos.1 and 2/original plaintiffs, which even according to Mr Nigam, are available to them i.e., to nix any proposal for raising finances, will have to be factored in by the learned Single Judge while ruling on the said application, in case such an application is preferred by the appellants/original plaintiffs.

(iv) However, at this juncture, we would not like to second guess as to



which way the learned Single Judge will rule, if such an application is moved by the appellants.

(v) In order to allay the apprehensions of respondent nos.1 and 2, we request the learned Single Judge to complete the hearing in I.A.No.5978/2020. However, before rendering a decision in I.A. No.5978/2020, the learned Single Judge will deliberate as to which of the pending applications he should hear and decide simultaneously, having regard to the fact that the decision in those applications could have an impact on the decision that he may render in I.A.No.5978/2020.

(vi) We may also add that if a fresh application is moved by the appellants for raising finances, the respondent nos.1 and 2/original plaintiffs will have their rights intact, to object to the same as per law.

(vii) Needless to add, the observations made in the impugned order can only be related to the application which came up for consideration before the learned Single Judge i.e., I.A. No. 4155/2020. The observations made therein will not impact the merits of the case.

9.1. It is ordered accordingly.

10. Consequently, pending applications shall stand closed.

RAJIV SHAKDHER, J

JASMEET SINGH, J

MARCH 21, 2022/aj

[Click here to check corrigendum, if any](#)