IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 26.09.2024	**PRONOUNCED ON** 19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

Arb.O.P.(Comm.Div.)No.384 of 2024
and O.A.No.491 of 2024

M/s.Lanco Horizon Properties Private Limited,
Represented by its Director,
having registered Office formerly at;
Plot No.4, Software Units Layout,
Hi tech city, Madhapur, Hyderabad 500 081
presently having office at;
2nd Floor, Naina Residency,
Plot No.344, Road No.7,
Kakatiya Hills, Madhapur,
Hyderabad – 500 081. ... Petitioner

Vs

1.Inderchand D Kochar
2.Sarala
3.Jinesh Kumar
4.Naveen Kumar
5.Ramesh Kumar D Kochar
6.Raptumari
7.Suresh Kumar D Kochar
8.Anita
9.Shanthi Bai
10.Dhanraj N Kochar ... Respondents

PRAYER:- Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking for the following reliefs:-

a) To appoint an Arbitrator to pass an award directing the respondents to fulfill their obligations in terms of the Agreement for Development dated 23.05.2007.

b) Direct the respondents to pay costs;

(c)To grant such further or other orders as this Court deem fit.

For Petitioner : Mr.V.Ramesh
for Mr.R.Ashwanth

For Respondents : Mr.Nithyesh Natraj
for Mr.Vaibhav R.Venkatesh

ORDER

This O.P. had been filed seeking for an appointment of an Arbitrator to resolve the dispute that had arisen between the parties pursuant to the Agreement for Development dated 23.05.2007.

2. Heard Mr.V.Ramesh, learned counsel for Mr.R.Ashwanth, learned counsel for the petitioner and Mr.Nithyesh Natraj, learned counsel for Mr.Vaibhav R.Venkatesh, learned counsel appearing on behalf of the respondents.

3. Mr.V.Ramesh, learned counsel for the petitioner would submit that the petitioner and the respondents herein have entered into an Agreement of Development on 23.05.2007 in respect of the property measuring an extent of 47 and odd acres at Siruseri Village, Chengalpattu Taluk. As per the said agreement, the petitioner had paid a sum of Rs.25,00,00,000/- to 13 people in the manner indicated in the agreement as well as the legal notice dated 06.05.2024. Since, the respondents were facing litigation with the third party in

respect of the property for which the agreement was entered, upon awaiting the results of the legal disputes, the performance of the development agreement was postponed. The said litigation came to an end with the disposal of the appeal suit by this Court in its judgment and decree dated 18.04.2022. In the interregnum, the property was also attached by the Enforcement Directorate under the PML Act which also came to an end by an order dated 04.03.2024 made in Crl.R.C.No.1577 of 2022, Crl.O.P.Nos.22880 of 2022 & 1159 of 2024. Only thereafter, the property became encumbrance free and immediately the petitioner had approached the respondents who were not co-operative and did not evince any interest even during their meeting on 15.03.2024. Hence, the petitioner had addressed a letter dated 19.04.2024 requesting the Enforcement Directorate not to release the property document. Since, the respondents did not envisage any interest, the petitioner invoking the arbitration clause available in the Development Agreement had sent a notice to the respondents invoking Section 21 of the Arbitration and Conciliation Act on 06.05.2024. As the said notice was not responded to by the respondents, the petitioner has approached this Court seeking to appoint an Arbitrator to resolve the dispute that had arisen out of the Agreement dated 23.05.2007 entered between the petitioner and the respondents. He had also submitted that he had taken out an application under Section 9 of the Act with a prayer to grant an injunction restraining the respondents from alienating and encumbering the property. In the said

application an interim injunction had been granted by this Court having found the applicant had a *prima facie* case and continues till date. Hence, he would pray this Court to appoint an Arbitrator to resolve the dispute and also with liberty to move the Arbitrator for continuation of the interim order.

4. Countering his arguments, Mr.Nithyesh Natraj, learned counsel appearing on behalf of the respondents would submit that the entire claim made by the petitioner is wholly time barred. He would submit that the Joint Development Agreement was entered into as early as in the year 2007 and submit that several litigation indicated by the petitioner was in no way a bar for performance of the agreement and since, the petitioner did not evince any interest in the performance in the agreement, by a communication dated 07.11.2011, the respondents had terminated the said agreement which has also been duly acknowledged by the petitioner. He would submit that the claim made by the petitioner would also be hit by Article 54 of the Schedule to the Limitation Act, 1963 which only mandates three years from the date of fixed performance, if any such date is fixed, whereas in the present case, when the respondents has issued termination notice dated 07.11.2011 and acknowledged by the petitioner, the time for initiating any legal proceedings would begin from the date of receipt of such notice of termination. Relying upon the acknowledgment card annexed to the typed set of papers, he would submit that the petitioner had also received such notice. He would also rely upon the communication issued by the petitioner in receipt of the letter dated 18.06.2007

from the respondents wherein the petitioner himself had indicated that it would be impossible for completing the project and therefore, called upon the respondents to pay a sum of Rs.64.45 Crores along with interest which the petitioner claims to have paid to the respondents. When the petitioner himself had wriggled out of the agreement as early as in the year 2010, he cannot now claim performance of the same. The petitioner now cannot turn around and claim that the cause of action to implement the agreement for development dated 23.05.2007 had arisen in view of the disposal of the appeal suit and raising of attachment of the immovable property. He would submit that the conduct of the petitioner even as early as in the year 2010 would impliedly mean that the petitioner had abandoned the agreement and therefore the issue would be hit by limitation and the issuance of notice under Section 21 of the Act on an abandoned agreement would be of no help to the petitioner. He would submit that in view of the injunction granted, the respondents are to be sufferance. He would further submit that neither in his affidavit filed in support of the application nor in the petition, the petitioner had disclosed about the letter dated 10.03.2010 issued by him evidencing his abandonment agreement nor the letter of termination duly acknowledged by him and therefore, the petitioner had come to this Court with unclean hands by suppressing the material facts and would pray this Court to dismiss the petition. He had also relied upon the decision of the Hon'ble Apex Court in the case of ***Bharath Sanchar Nigam Limited & Another Vs Nortel Networks India Private Limited*** reported in ***2021***

(5) SCC 738; the judgment made in ***Arbitration Petition (Civil) No.10 of 2023*** and the judgment made in ***Arbitration Petition (Civil) No.13 of 2023.***

5. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

6. It is undisputed that the parties have entered into an agreement as early as on 23.05.2007 to develop the property belonging to the respondents by the petitioner. The said agreement had been entered upon between the parties 17 years ago. It is the case of the petitioner that due to the pending litigations in respect of the property, the performance of the agreement had been put on hold awaiting conclusion on the said dispute. The civil disputes between the respondents and the third parties came to rest with the disposal of the appeal suit in the year 2022. Even though the civil disputes were laid to rest, the Enforcement Directorate under the provisions of PMLA had attached the property arising out of the complaint of money laundering of the petitioner's Company Lanco Horizon Properties Private Limited and the said attachment was also raised at the instances of the respondents in the month of March 2024 and therefore, the petitioner's claim to have approached the respondents for performance of the development agreement, as there was no legal embargo to proceed with the same. On the contrary it is the claim of the respondents that

even as early as in the year 2010, the petitioner itself had reconciled from the agreement for development, as there were disputes over the property and hence, it was impossible to perform the agreement and had in fact called upon the respondents to repay for a sum of Rs.64.45 Crores along with interest. The respondents also have terminated the said agreement by issuance of a letter dated 07.11.2011 and 23.04.2012 and had also produced a copy of the acknowledgment card indicating the delivery of the same to the petitioner's Company at Hyderabad. The receipt of such notice had not been disputed by the petitioner. The petitioner had also not disputed the issuance of the letter dated 10.03.2010 by either filing a rejoinder to the counter in the application where the respondents had claimed that the application ought not to be entertained as it is time bared claim for performance of the agreement.

7. It is to be noted that the Hon'ble Apex Court in a judgment made in ***Arbitration Petition (Civil) No.13 of 2023*** had in detail held that the limitation Act would be applicable even for invocation of the provisions of Section 11(6) of the Arbitration and Conciliation Act. Applying the principles laid down by the Hon'ble Apex Court in the aforesaid judgment, this Court would have to find out the breaking point when the dispute had arisen between the parties to calculate the time period for invoking provisions of Sections 21 & 11 of the Arbitration and Conciliation Act. According to the petitioner, the breaking point began after the disposal of the litigations over the property in the month of

March 2024 when the respondents did not respond positively to the claim made by the petitioner for performance of the agreement for development. However, the respondents had relied upon a communication sent by the petitioner himself on 10.03.2010 and also the letters of termination issued by the respondents on 07.11.2011 & 23.04.2012. The un-refuted letter issued by the petitioner to the respondent clearly indicates that the petitioner did not want to proceed with the development agreement due to the legal tangle in which the property was involved and the petitioner had called upon the respondents to refund the amount that had to be paid to the respondents. When such a letter had been issued by the petitioner itself, then the breaking point would begin on the said date. It is to be noted that in the year 2011 & 2012, the respondents had addressed a letter terminating the agreement which has also been substantiated to be delivered to the petitioner based on the acknowledgment card.

8. Hence the breaking point would not be said to begin in 2024, when the litigations over the property had come to an end on the date when the petitioner had sent a letter on 10.03.2010, clearly indicating that he do not want to proceed with the development agreement and called upon the respondent to refund the amount or at least pursuant to the letters dated 07.11.2011 and 24.03.2012, when the respondent issued letters of termination of development agreement. In view of the same, this Court is of the view that the petitioner seeks to review a deadwood which cannot be permitted.

9. In fine, the O.P. is dismissed. In view of the dismissal of the O.P., the application filed under Section 9 of the Act would also have to be dismissed and accordingly, the same is also dismissed. However, there shall be no order as to costs.

Gba **19.12.2024**
Index :Yes/No
Speaking Order/Non Speaking Order

K.KUMARESH BABU, J.

Gba

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