



(1<sup>st</sup> case)

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M No.47760 of 2021 (O&M)**

**Date of decision: 27.08.2024**

Yogesh Kandhari

... Petitioner

*Versus*

State of Haryana and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Akshay Kumar Jindal, Advocate for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana  
for respondent No.1 assisted by Inspector Karamjeet Singh &  
ASI Rampal, Police Station Kherki Daula, Gurugram.

Mr. Varun Deswal & Mr. Vipul Sachdeva, Advocates  
for respondent No.2.

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**MAHABIR SINGH SINDHU, J.**

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) for quashing of FIR No.0062 dated 27.02.2020 (P-1), under Sections 120-B, 406, 420 & 180 of the Indian Penal Code, 1860 (*for short 'IPC'*), registered at Police Station Khedki Daula, District Gurugram along with all consequential proceedings,

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including final report dated 24.06.2020 (P-2), arising therefrom qua the petitioner.

(2) Above FIR was registered on the basis of statement made by *de facto* complainant/respondent No.2-Vinod Kumar with the following allegations:-

*“Subject: Complaint Against Vivek Seth S/O Anant Krishna Seth R/O E-38, 2nd Floor Sun City, Sector-54, Gurgaon-HR, Vijesh Goel, S/O Jagan Nath Goel, AT: 120, First Floor, JMD Megapolis, Sector 48, Sohna Road, Gurgaon, HR, Both Directors of M/s Venetian Developers Ventures Private Limited, REGD. OFFICE AT 3- E/6, Basement, Jhandewalan Extension, New Delhi-110055, Somnath Munjal, Sanjay Chaudhary And Yogesh Kandhari of M/s LDF Infrastructures PVT.LTD., D-37, Tulsi Apartments, Sector-14, Rohini, Delhi-85, And Their Other Associates, For Committing Offences Punishable U/S 420/465/467/468/471 IPC, Dear Sir, I am a Law Abiding And Peace Loving Citizen Of this Country And Am Permanent Resident Of Village Chakkarpur, Delhi. I knew Vivek Seth and Vijesh Goel through common friends and occasionally happened to meet them at social gatherings where they always passed themselves as fair businessmen. In the first week of February 2012, Vivek Seth and Vijesh Goyal approached me and introduced themselves as Directors of M/s Venetian Developers And Ventures Pvt. Ltd. They induced me to believe that they were pioneers in their respective fields and had handled many big projects successfully. Vivek Seth represented that he had been in the field of sales and marketing for the last around 20 yrs and claimed to have worked with Sahara Group, while as Vijesh Goyal portrayed himself to be an expert in the field of Civil engineering and to have*

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*successfully handled various projects for Bestech Group in Delhi as well as Gurgaon. As I fell prey to the false representations made by Vivek Seth and Vijesh Goyal, they induced me to invest Rs.2.11 Crores approximately in their company i.e. Venetian Developers And Ventures Private Ltd. and deceived me to believe that they were going to embark upon a big real estate project which would yield very good returns. Had I not been deceived to believe the above said false representations I would never have been induced to invest my hard earned money in the said company. Thus deceived I was induced to invest Rs. 4100000 in the company through RTGS on 23.2.2012 and Rs.40 lacs on 29.3.2012. I was further induced to pay Rs.50 lacs on 18.12.2012, Rs.50 lacs on 28.12.2012 and Rs.30 lacs on 24.1.2013. (subsequently on 19.10.2012 a share subscription cum common share holders agreement was entered into between Vivek Seth, Mr. Vijesh Goel, Vostok Infrastructures LLP, Venetian Developers And Ventures Private Limited and myself. Vide this agreement I was allotted 40% shareholding of the company while adjusting the amount invested by me in the company in Feb and March, 2012. A copy of the above said agreement is annexed hereto as annexure A. Thereafter Vivek Seth and Vijesh Goyal represented to me that as they were unable to undertake the project on their own, they need to include some other partner in the project thus the company joined hands with M/s.LDF Infrastructure Pvt.Ltd. through Som Nath Munjal, Sanjay Chaudhary And Yogesh Kandhari as directors, and Venetian LDF Projects LLP (VLPL) came into existence on 25.4.2012 both the companies had equal stakes in the project. The agreement dated 25.4.2012 is annexed hereto as Annexure B. Somnath Munjal, Sanjay Chaudhary And Yogesh Kandhari also assured me that the upcoming real estate project was very*

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*promising and would fetch very good profits, thus lent credence to the false representations already made by Vivek Seth And Vijesh Goyal. On 03.05.2012, a resolution was passed by VLPL whereby it was resolved that the company would avail the 'Corporate Iconnect' services for the account to be opened with Axis Bank, Sector-54, Gurgaon. Mr.G. Kannan (Senior Executive) and Mr. Vijesh Goel (Designated Partner) were authorized to operate the said account. Accordingly an account bearing no.912020027452170 was opened with the axis bank. Copy of the above said resolution dated 03.05.2012 is annexed herewith as Annexure C. It is worthwhile to note that though I had made initial investments in the company in the month of February 2012, yet I was kept unaware by Vivek Seth and Vijesh Goyal in relation to the opening of the above said account. After VLPL came into existence, accused persons identified 2.35 acres of land in village Sihi, Sector-83, Gurgaon as the site for development of the above said real estate project under the name style of '83 Avenue'. On 12.7.2013 VLPL entered into a collaboration agreement with M/s. Realtown Properties Pvt. Ltd. for the above said land measuring 2.35 acres. in terms of the collaboration agreement 35% of the built up area was to be given to Real town Properties Pvt. Ltd. and 65% share was to be given to VLPL. The agreement dated 12.7.2013 is annexed herewith as Annexure D. On 19.10.2012 a share subscription cum common share holders agreement was entered into between Vivek Seth, Mr. Vijesh Goel, Vostok Infrastructures LLP, Venetian Developers And Ventures Private Limited and Myself. Vide this agreement I was allotted 40% shareholding of the company while adjusting the amount invested by me in the company in Feb and March, 2012. (Agreement dated 19.10.12 is already annexed as Annexure A). In view of the above arrangement vide minutes of the meeting*

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*held on 27.12.2012, it was resolved that a new account would be opened in Axis bank in the name of M/s.LDF Infrastructures Pvt. Ltd. which was to be operated by Mr. Yogesh Kandhari and either Somnath Munjal or Sanjay Chaudhry on behalf of the LDF Infrastructures Pvt. Ltd. Mr. Vivek Seth or Mr. Ajay Upadhyay and myself were to operate the same on behalf of venetian developers ventures pvt. ltd. A copy of the above said resolution/minutes is annexed herewith as Annexure E. It was also agreed vide the above minutes that the account was to be opened in order to: "route all contributions by the partners, collections and other project receipts through this designated bank account from which all project payments would be released to the existing project operational account no.912020027452170 being maintained with Axis bank, time centre, Sector 54 Gurgaon." It was further agreed "the partners also desired that the designated partners shall ensure that all receipts viz., capital contributors, collections and other project incomes be deposited only in the aforesaid new account." Therefore, the purpose for getting the above said account opened with Axis bank, as is evident from a bare reading of the minutes dated 27.12.2012, was to use it as an income/deposit account from which funds qua the legitimate expenses incurred in the project were to be transferred to the already existing account i.e. 912020027452170. Thus, account no.912020027449084 was opened with Axis bank as an income account. It is worthwhile to bring to your notice that the accused persons right from the very beginning deliberately kept me out of the transactions which were undertaken in relation to their real estate projects on the pretext that as I did not have the technical know-how about the same, I would not be able to understand the matters and take part in the said transactions. Though Vivek Seth, Vijesh Goyal and other accused persons*

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*assured me that the project would fetch good profit no money was being paid to me. As I voiced my apprehensions to Vivek Seth and others, the accused persons, in order to ensure that I did not escape from their trap, held a meeting of general partners on 21.11.2014 at 205, 2nd floor, Time Centre, Gurgaon and in the said meeting, apart from other discussions, Mr. Vivek Seth specifically acknowledged and undertaken that the VLPL'S profitability would be in the range of Rs.50 crores to Rs.80 crores. Thus the accused persons further tightened the noose round my neck. The document reflecting the above said meeting is annexed herewith as Annexure F. Around August 2015, when I still had not got anything even after investing a huge amount, I required Vivek Seth and Vijay Goel to clear my dues. Towards the settlement of my dues settlement dated 22.08.15 was arrived at. In terms of the said settlement, a sum of Rs.5,45,60000/- was to be given to me by the accused persons towards clearance of my lawful dues including my claim qua the projected profits of VLPL as vouchsafed in the meeting held on 21.11.2014. Copy of the settlement dated 22.8.15 is annexed hereto as Annexure G. However instead of abiding by the above settlement they came forth with yet another settlement in the month of September 2015. Vide this settlement a Share Purchase Agreement dated 24.09.15 was entered into between myself, M/s. Venetian Developers And Ventures Private Limited, and M/s. Vostok Infrastructure LLP, whereby I agreed to sell my 40% shareholding in the company to M/s. Vostok Infrastructures LLP against a total sum of Rs.1,75,00,000/-. Towards the consideration, I received 50 lacs on 24.8.15 and 32 lacs on 21.9.15. Towards the balance 93 lacs I was to be given unit no.87, ground floor, measuring 970.91 sq. ft., in project 83, Avenue, Sector-83, Gurgaon. Agreement Dated 24.9.15 is annexed herewith as Annexure G. On*

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22.10.2015 further comprehensive settlement was arrived at between us distinctly specifying the settlement qua the shareholding consideration as well as the above said property. In terms of the settlement, Vostok agreed to pay me six EMIs w.e.f 20.10.15 of Rs.33.40 lacs each (subject to realization, failing which interest shall be chargeable as agreed) out of the amount which I had invested in the company Rs.1,08,00,000/- was treated as paid towards the consideration of the above said unit no.87 and I had to pay a total amount of Rs. 68,41,434.70 towards the said unit after possession VLPL was to give me cheques of assured return of Rs.1,08,000/- for every month starting from Aug. 2015 as per company's policy after deducting TDS @ 10% on Rs.1,08,000- and TDS was to be duly deducted and deposited by VLPL in the name of Mr. Vinod Kumar and TDS certificates were to be furnished as stipulated by the Income Tax Act Rs.25 lacs were to be paid to me by VLPL in April, 2016 towards car finance which was also in terms of the purchase of the above said property. Copy of the settlement dated 22.10.15 is annexed hereto as Annexure H. I soon realized that the above settlement was nothing but a lullaby to keep me induced and deceived, as out of the above I only received Rs.1,15,40,000 Rs.82 lacs in terms of agreement dated 24.9.15 Rs.33.40 lacs towards the clearance of one of the five EMIs which were to be paid by Vostok and Rs.15 lacs through RTGS. The dishonest intentions on the part of the accused persons is further evident from the fact that when on April 22, 2016, cheque number 207869 for Rs.33,40,000/- (Rupees thirty three lakhs and forty thousand only) towards share purchase consideration was presented for encashment the same was dishonoured, despite the fact that at the time of the above issuance of the above said five cheques the accused had induced me to believe that the same would be honoured as

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*and when presented for encashment. Copy of the above dishonoured cheque no.207869 is annexed herewith as Annexure I. As in furtherance of the criminal conspiracy hatched by the accused persons they had already usurped my hard earned money, they wanted to get rid of me without paying my lawful dues. The accused persons in conspiracy with each other fabricated courier receipt, for the purpose of cheating, wherein my signature was forged to portray that vide the said receipt I had received the notice whereby I was given an option, in terms of Section 169 of the Companies Act, to make representation against my removal from the directorship of the company in the EGM to be held on 18.8.2017. By virtue of the said forged receipt, it was recorded in the extracts of the minutes of the meeting held on 18.8.2017, "the matter of removal of Mr. Vinod Kumar in the EGM was already intimated/informed to him by the company and since no representation was received by the company from Mr. Vinod Kumar as required under the Act..." and I was illegally removed from the directorship of the company even without clearing my lawful dues including the consideration for the shareholding. Thus the accused persons forged the above said receipt for the purpose of cheating and used the same as genuine in the proceedings held on 18.8.17, whereby I was deprived of my lawful right qua the directorship in the company. A copy of the above said courier receipt is annexed herewith as Annexure J. In furtherance of the conspiracy, the accused persons instead of receiving the deposits/incomes in the a/c maintained with the Axis bank wherein I was also one of the signatories as was resolved vide the minutes of meeting held on 27.12.2012, received the same directly in account no.912020027452170, without my knowledge and consent, wherein I was never made one of the authorized signatories.*

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*Opening of account no.912020027449084 and my appointment as one of the signatories of the account was just another instance of inducing and deceiving me to believe that since all the incomes/deposits would be received in the said account I would be having a say in operation thereof and no money could be withdrawn from there without my consent. Having deceived me in the manner elucidated above, Vivek Seth And Vijesh Goyal in furtherance of the conspiracy entered into with other accused persons started routing out the money which they illegally received in a/c no.....2170 (wherein I was deliberately not made joint signatory) to their other companies where either both of them were directors/shareholders or had stakes. Though being deceived by the false misrepresentations extended by Vivek Seth and Vijesh Goyal which was later on cemented by other accused persons I started investing in their company from Feb.2012, yet I was always kept in dark in relation to the dealings of the company and the transactions the company entered into were dishonestly concealed from me. M/s. V Square development a private limited company was made development and management consultant of VLPL vide agreement dated 3.5.2012. In fact the M/s. V Square Development Pvt. Ltd. was brought into picture by the accused persons with the sole intention to siphon off the money which they illegally received into account no.....2170. Subsequently it came to my knowledge that at the relevant point of time Vivek Seth and Mr.Vijesh Goyal were the directors of M/s. V Square Development Pvt. Ltd. Huge sums of money from time to time were illegally transferred by the accused persons from a/c. no.....2170 to M/s V Square. The accused persons also siphoned off the money from the above account to various other companies. Whenever I demanded the clearance of my lawful dues, the accused persons threatened me of dire consequences.*

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*In the circumstances I was constraint to lodge a written complaint with the Dy. Commissioner of Police Gurgaon against the accused persons however as proper facts could not be narrated in the said complaint no action was taken on the same. The custodial interrogation of the accused persons is required to unearth the conspiracy hatched by the accused persons ascertain the quantum of money siphoned off by them and to nab the persons involved in the forgery of the above said courier receipt including the persons from the concerned courier agency. That whenever the complainant approach the police then the accused persons threaten that they are business partner of Vipul Goyal, Ex MLA of BJP and threaten that nobody can touch him and if complainant makes a complaint against him then he will be eliminated. The facts narrated above are a brief version of the illegal acts of commission and omission committed by the accused persons if the need be I would be lodging further complaints/representations to elaborate the circumstances under which I was constrained to approach your goodself.....”*

(3) The Coordinate Bench, while issuing notice of motion on 15.11.2021, passed the following order:-

*“The petitioner herein seeks quashing of the FIR No.0062, dated 27.02.2020, registered under Sections 120-B, 406, 420 and 180 of IPC at Police Station Khedki Daula, District Gurugram (Annexure P-1) along with all consequential proceedings including final report dated 24.06.2020 (Annexure P-2).*

*It is inter alia contended that the complainant Shri Vinod Kumar had purchased shares by virtue of Annexure P-5 to the extent of 40% shareholding in M/s Venetian Developers and*

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*Ventures Private Limited, subsequent to which, the shareholding pattern came to be reflected as Mr. Vivek Seth 0.1%, Mr. Vijesh Goel 0.1%, Vostok Infrastructures LLP 59.8% and Mr. Vinod, Nambardar (complainant) 40%. Thereafter by virtue of an agreement Annexure P-6, the said complainant sold his holding to M/s Vostok Infrastructures LLP who became a 99.8% shareholder in M/s Venetian Developers and Ventures Private Limited. The final settlement was effected on 22.10.2015. It is contended that after having walked out of M/s Venetian Developers and Ventures Private Limited in the year 2015, the instant FIR has been registered after a period of 5 years claiming that an amount of Rs.5,40,65,000/- is still due and payable and that a fraud has been committed. In one of the enquiry reports appended, it has been noticed that 5 cheques issued stand dishonoured and the petitioner herein has no connection in the said M/s Venetian Developers and Ventures Private Limited or in M/s Vostok Infrastructures, the purchaser of shares of the complainant. It is argued that the petitioner herein had 10% shareholding in LDF Infrastructure Private Limited which joined hands with M/s Venetian Developers and Ventures Private Limited to form an LLP agreement. At best the liability would arise in any agreement that had not been fulfilled by LLP Agreement, whereas all allegations pertain to a fraud having been committed by M/s Venetian Developers and Ventures Private Limited.*

*Notice of motion for 23.03.2022.*

*At this stage, Mr. Kuldeep Tiwari, Additional Advocate General, Haryana, has put in appearance and accepts notice on behalf of the respondent-State. He seeks time to file reply.*

*Let notice be issued to respondent No.2 for the date so fixed.*



*In the meantime, let charges be not framed qua the petitioner herein limited till the next date of hearing. However, the trial Court may continue the proceedings regarding rest of the nominated accused.”*

**(4) CONTENTIONS ON BEHALF OF THE PETITIONER**

- (i)** *that de facto* complainant/respondent No.2 made several complaints before the police authorities, which were examined; but found to be baseless;
- (ii)** respondent No.2 availed remedy before the National Company Law Tribunal, Chandigarh Bench, Chandigarh (*for short* ‘NCLT, Chandigarh’); but remained unsuccessful. Now again, he has taken recourse before the NCLT, New Delhi under Sections 59, 241, 242 & 244 of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016 and matter is still pending;
- (iii)** the allegations have been leveled by respondent No.2 against the Directors of two Companies i.e. M/s Venetian Developers & Ventures Private Limited (*for short* ‘M/s Venetian’) and M/s LDF Infrastructure Private Limited (*for short* ‘M/s LDF’); but petitioner has been falsely implicated, as he has no concern with M/s Venetian;
- (iv)** the petitioner is only 10% shareholder in M/s LDF and having no relations with M/s Venetian; thus, he has no role in the alleged transaction(s) with respondent No.2;



- (v) respondent No.2 was the 40% shareholder of M/s Venetian; which he sold out in 2015 to M/s Vostok Infrastructure LLP. Therefore, respondent No.2 was removed as Director of M/s Venetian on the basis of Extraordinary General Meeting (EGM), held on 18.08.2017 and the same has not been set aside till date; thus, there is no occasion to initiate criminal proceedings against the petitioner;
- (vi) that co-accused Somnath Munjal & Sanjay Chaudhary, who are having 70% & 20% shares, respectively, in M/s LDF have been found innocent during investigation by the police;
- (vii) at best, there may be a breach of contract between respondent No.2 viz-a-viz other shareholders of M/s Venetian; therefore, it is purely a civil dispute, but has been given the colour of criminal action;
- (viii) as per Agreement dated 24.09.2015, in case of any dispute, there is an arbitration Clause No.8.2.3; but respondent No.2 did not avail the remedy under the Arbitration and Conciliation Act, 1996 (*for short 'the Act of 1996'*) till date for the reasons best known to him.

(5) *Per contra*, learned State Counsel, while opposing the prayer, submits that petitioner in conspiracy with other co-accused cheated the complainant to the tune of more than ₹ 2 crores; thus, he has rightly been arrayed as an accused.

(6) Learned Counsel for the *de facto* complainant/respondent No.2 vehemently opposed the prayer while submitting that petitioner in



connivance with other co-accused induced the complainant to invest more than ₹ 2 Crores in their Company i.e. M/s Venetian on the pretext of getting high returns. Also contends that co-accused in connivance with each other joined hands with M/s LDF and thereafter, a new Company i.e. M/s Venetian-LDF Projects LLP (*for short 'M/s VLPL'*) came into existence on 03.05.2012. Further contends that petitioner along with other co-accused got opened a new bank account in Axis Bank without informing the complainant and transferred ₹ 2.11 Crores in the said account. Again contends that petitioner along with other co-accused fabricated courier receipt(s) while using the same as genuine in the Extraordinary General Meeting (EGM) held on 18.08.2017 and ousted the complainant from Directorship of the Company i.e. M/s Venetian. Lastly contends that another FIR of similar nature is also pending against the petitioner for siphoning off money in connivance with co-accused through various companies; thus, his complicity is well apparent. Learned Counsel for respondent No.2 has also placed reliance upon “**Emperor Versus Shankaraya Gurushiddayya Hiremath, Accused No.2**”, decided on 19.06.1940 as well as “**State through Superintendent of Police, CBI/SIT Versus Nalini and others**” (1999) 5 **Supreme Court Cases 253**, to the effect that Section 120-B of IPC, makes criminal conspiracy a substantive offence and which differs from other offences.

(7) Heard learned Counsel for the parties and perused the records.



(8) Paper-book reveals that FIR in question was registered by *de facto* complainant-Vinod Kumar, Numbardar (respondent No.2) against five persons viz. (i) Vivek Seth, (ii) Vijesh Goel, (iii) Somnath Munjal, (iv) Sanjay Chaudhary & (v) Yogesh Kandhari (petitioner).

(9) Precisely, the allegations are that in first week of February, 2012, Vivek Seth & Vijesh Goel, being Directors of M/s Venetian approached respondent No.2 and induced him for investment in their Company. Believing the offer as genuine, respondent No.2 invested an amount of ₹ 2.11 Crores with M/s Venetian and he was allotted 40% shares of the said Company on 19.10.2012 (P-5).

(10) On 24.02.2012, M/s Venetian through Vivek Seth and M/s LDF through Yogesh Kandhari entered into a Memorandum of Understanding (MoU) for formation of Special Purpose Vehicle with an aim of developing some Real Estate Project. While showing their inability to undertake the project, they joined hands and new joint venture, namely, M/s VLPL came into existence.

(11) Thereafter, on 22.08.2015, a settlement arrived at between shareholders of M/s Venetian as well as the complainant, for his (complainant's) exit from the Company. For reference, the relevant part of the settlement reads as under:-

***FINAL SETTLEMENT FOR THE SHAREHOLDING /  
DUES OF MR. VN IN VDPL AS ON 22.08.2015 AT 6.10 P.M.  
AT GURGAON:***

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| <i><b>PARTICULARS</b></i>                                                                                                                      | <i><b>AMOUNT<br/>(RS.)</b></i> |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| <i>(1) Commercial Area to be allotted to Mr. VN in the project Of VLPL in 83 Avenue (at the rates specified in sheet provided by M/s VLPL)</i> | <i>1,75,00,000/-</i>           |
| <i>(2) Ch. No. 207857 dt. 24.08.15 by Vostok Infrastructures LLP</i>                                                                           | <i>50,00,000/-</i>             |
| <i>(3) Amount payable to VN (PDC) by 20.09.15</i>                                                                                              | <i>1,00,00,000/-</i>           |
| <i>(4) Six EMIs (PDCs) payable to VN starting from 20.10.15 till 20.03.16 (payable by Vostok Infrastructures LLP)</i>                          | <i>32,60,000/-</i>             |
| <i>(5) Car Finance to be provided by VDPL to VN in April 2016</i>                                                                              | <i>25,00,000/-</i>             |

*Signed by all the parties to this MoU intending to fulfill the conditions in their entirety and exercising full control of their senses, abilities and capacities*

*For Venetian Developers & Ventures Pvt. Ltd.*

*Sd/-*  
*Mr. Vijesh Goel*

*Sd/-*  
*Mr. Vivek Seth*

*Sd/-*  
*Mr. Ajay Upadhyay*

*Sd/-*  
*Mr. Vinod Nambardar (VN)*

*Witness:*  
*Sd/-*  
*CA Manoj Kumar Gupta,*  
*C.W.-66, Malibu Towne,*  
*Sohna Road, Gurgaon”*

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(12) In continuation of the aforesaid MoU, a Share-Purchase Agreement dated 24.09.2015 was also entered into between respondent No.2 (“Seller”); M/s Venetian (“Company”) and M/s Vostok Infrastructure LLP (“Purchaser”); whereby respondent No.2/Seller agreed to sell his 40% shares from the “Company” in favour of Purchaser-M/s Vostok Infrastructure LLP. After execution of the above Agreement, shareholding pattern of the Company was set out in Part A (Schedule 1) of the Agreement and for reference, the relevant part of same reads as under:-

2.1.1 *The purchaser, relying upon the Seller’ Warranties, undertakings, and covenants, shall purchase from the Seller, and the Seller shall sell, transfer, convey and deliver to the Purchasers, the Sale Shares, together with all benefits and rights, valid and legal title and interests attaching thereto, free and clear of all Encumbrances at the Execution Date, for the Purchase Consideration in the manner as set out below:*

| <i><b>Sr. No.</b></i> | <i><b>Name of the Seller</b></i> | <i><b>Name of the Purchaser</b></i> | <i><b>Number of equity shares</b></i> | <i><b>Purchase consideration paid by Purchaser</b></i> |
|-----------------------|----------------------------------|-------------------------------------|---------------------------------------|--------------------------------------------------------|
| <i>1.</i>             | <i>Mr. Vinod Kumar</i>           | <i>Vostok Infrastructures LLP</i>   | <i>40,00,000</i>                      | <i>Rs.1,75,00,000/-</i>                                |

2.1.2 *The parties hereby agree and acknowledge that the Purchase Consideration has been/will be paid to the Seller as under:-*

| <i><b>Sl. No.</b></i> | <i><b>Date</b></i> | <i><b>Particulars</b></i>                        | <i><b>Amount (Rs.)</b></i> |
|-----------------------|--------------------|--------------------------------------------------|----------------------------|
| <i>1.</i>             | <i>24-8-2015</i>   | <i>By RTGS vide UTR # INDBR22015090200833682</i> | <i>50,00,000/-</i>         |

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|    |            |                                                                                                                                                            |             |
|----|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 2. | 21-09-2015 | By NEFT vide UTR # 000036690928                                                                                                                            | 32,00,000/- |
| 3. | 21-09-2015 | By full and final payment towards commercial space in the Project 83 Avenue, Sector-83, Gurgaon admeasuring 970.91 Sqr. Ft. for Unit No.87 at Ground Floor | 93,00,000/- |

2.1.3            *The Seller shall be responsible for and shall pay any Taxes which are payable, suffered or incurred by the Seller in connection with the sale of the Sale Shares. The Purchaser shall have no responsibility or liability in respect of such Taxes.*

**8.2.            *Dispute Resolution***

8.2.1.           *In case of any dispute, controversy, claim or disagreement of any kind whatsoever between the Parties in connection with or arising out of this Agreement including but not limited to the existence, validity, breach, or termination hereof or (hereinafter referred to as the "Dispute") the Parties shall attempt to resolve such Dispute through good faith consultation and such consultation shall begin within 10 Business Days of a Party having given to the other Party/Parties a written request for such consultation.*

8.2.2.           *If the Dispute is not amicably resolved within a period of 10 Business Days of commencement of the consultations (the "Consultation Period") as provided above in Clause 8.2.1, then any Party to the Dispute may initiate arbitration to resolve the Dispute by issuing a notice in this*



*behalf to the other Party/ Parties (as the case may be) any time within a period of 10 Business Days after the expiration of the Consultation Period.*

- 8.2.3. *The Dispute shall be finally resolved by arbitration by a panel 3 (three) arbitrators, one to be appointed by each Party, and the third to be appointed by the two arbitrators so appointed. Each Party shall appoint their respective arbitrator within 20 Business Days from the expiry of the Consultation Period. If any Party fails to appoint their respective arbitrator in the manner set out above, then such an arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996.*
- 8.2.4. *All proceedings in any such arbitration shall be conducted in Hindi/English.*
- 8.2.5 *The venue of the arbitration proceedings shall be Gurgaon.*
- 8.2.6. *All arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996.*
- 8.2.7. *The arbitration award shall be final and binding on the each of the Party, and they agree to be bound thereby and to act accordingly. The cost of arbitration shall be borne in the manner and by the Party as determined by the arbitral tribunal.*
- 8.2.8. *Notwithstanding any provision to the contrary in this Agreement, a Party may apply only to the courts in New Delhi to seek protective orders, including injunctions and interim relief against any other Party.*

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- 8.2.9.        *Neither the existence of any Dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Parties of their respective obligations under this Agreement. The pendency of Dispute in any arbitration proceeding shall not affect the performance of the obligations under this Agreement.*
- 8.2.10.       *Subject to Clause 8.2 (Dispute Resolution), the courts at New Delhi, shall have the exclusive jurisdiction in respect of any matter or dispute connected with this Agreement.*

9.11            **No Agency or Partnership**

*This Agreement does not constitute a partnership or agency between the Parties or any of them.*

*[Signature page follows]*

*In witness whereof, the parties have entered into this Agreement the day and year first above written*

|                                                          |                                     |
|----------------------------------------------------------|-------------------------------------|
| By Seller                                                |                                     |
| Sd/-                                                     |                                     |
| Name                                                     | Mr. Vinod Kumar                     |
| Date                                                     |                                     |
| For M/s Venetian Developers and Ventures Private Limited |                                     |
| Sd/-                                                     |                                     |
| Name                                                     | Mr. Vivek Seth & Mr. Vijesh Goel    |
| Title                                                    | Directors                           |
| Date                                                     | 24/09/2015                          |
| By (Purchaser Vostok Infrastructures LLP                 |                                     |
| Sd/-                                                     |                                     |
| DESIGNATED PARTNER(S)                                    |                                     |
| Name                                                     | Mr. Vivek Seth    Mr. Ajay Upadhyay |
| Date                                                     | 24/09/2015                          |

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SCHEDULE 1

SHAREHOLDING PATTERN OF THE COMPANY

Part A: Shareholding pattern of the Company as of the Execution Date

| Sr. No. | Name of the Shareholder        | Number of equity Shares | % of shareholding on Fully Diluted Basis |
|---------|--------------------------------|-------------------------|------------------------------------------|
| 1.      | Mr. Vivek Seth                 | 5000                    | 0.1%                                     |
| 2.      | Mr. Vijesh Goel                | 5,000                   | 0.1%                                     |
| 3.      | Mr. Vinod Kumar                | 20,00,000               | 40%                                      |
| 4.      | M/s Vostok Infrastructures LLP | 29,90,000               | 59.8%                                    |
| TOTAL   |                                | 50,00,000               | 100%                                     |

Part B: Shareholding pattern of the Company Immediately as of the Closing Date

| Sr. No. | Name of the Shareholder        | Number of equity Shares | % of shareholding on Fully Diluted Basis |
|---------|--------------------------------|-------------------------|------------------------------------------|
| 1.      | M/s Vostok Infrastructures LLP | 49,90,000               | 99.8%                                    |
| 2.      | Mr. Vivek Seth                 | 5,000                   | 0.10%                                    |
| 3.      | Mr. Vijesh Goel                | 5,000                   | 0.10%                                    |
| TOTAL   |                                | 50,00,000               | 100%                                     |

(13) Also discernible that on 22.10.2015, final settlement for the shareholding of M/s Venetian had taken place in the following manner:-

FINAL SETTLEMENT FOR THE SHAREHOLDING / DUES OF MR. VN IN VDPL AS ON 22.10.2015 AT 1.30 P.M. AT GURGAON:

| PARTICULARS                                                                                                                                                                                   | AMOUNT (RS.) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| (1) Six EMIs (PDCs) payable to VN starting from 20.10.15 till 20.03.16 (payable by Vostok Infrastructures LLP) (Subject to Realization, failing which interest shall be Chargeable as agreed) | 33,40,000/-  |

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|                                                                                                                                                |                       |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| <i>(2) Commercial Area to be allotted immediately to Mr. VN in the project of VLPL in 83 Avenue, Gurgaon on Assured Return Basis as below:</i> |                       |
| <i>Ground Floor Unit No.87 admeasuring 970.91 sqr. ft. @16,000/-</i>                                                                           |                       |
| <i>Total Area = 970.91 sqr. ft. @16,000/-</i>                                                                                                  | <i>1,55,34,560/-</i>  |
| <i>Other Payables after possession:</i>                                                                                                        |                       |
| <i>EDC/IDC @ 670/- per sqr. ft.</i>                                                                                                            | <i>6,50,509.70</i>    |
| <i>PLC for 970.91 sqr. ft. @ 1500/-</i>                                                                                                        | <i>14,56,365/-</i>    |
| <i>Total Payment to be made at possession</i>                                                                                                  | <i>1,76,41,434.70</i> |
| <i>Less: Amount already paid</i>                                                                                                               | <i>1,08,00,000/-</i>  |
| <i>Balance Payment to be made at possession</i>                                                                                                | <i>68,41,434.70</i>   |
| <i>Total Payables after possession (including all)</i>                                                                                         | <i>68,41,434,70</i>   |

*Note: VLPL shall provide cheques of Assured Return of Rs.1,08,000/- for every month starting from Aug. 2015 as per Company's policy after deducting TDS @10% on Rs.1,08,000/-. The TDS shall be duly deducted and deposited by VLPL in the name of Mr. Vinod Kumar and TDS certificates be furnished as stipulated by the Income Tax Act, 1961.*

*(3) Car Finance to be provided by VDPL to VN in April 2016 25,00,000/-*

*Signed by all the parties to this MOU intending to fulfill the conditions in their entirety and exercising full control of their senses, abilities and capacities.*

*For Venetian Developers & Ventures Pvt. Ltd.*

Sd/-

Mr Vijesh Goel

Sd/-

Mr. Vivek Seth

Sd/-

Mr. Ajay Upadhyay

Sd/-

Mr. Vinod Nambardar (VN)

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*Witness:*

*Sd/-*

*CA Manoj Kumar Gupta,  
C.W.-66, Malibu Towne,  
Sohna Road, Gurgaon*

(14) A bare perusal of the Share Purchase Agreement dated 24.09.2015 (*supra*) reveals that respondent No.2 had sold his entire 40% share to M/s Vostok Infrastructure LLP subject to certain terms and conditions. Also discernible that after Final Settlement dated 22.10.2015, M/s Vostok Infrastructure LLP became 99.8% shareholder of the Company; whereas Vivek Seth & Vijesh Goel retained nominal shareholding up to the extent of 0.1% each.

(15) It is noteworthy that as per Agreement dated 24.09.2015, in case of any dispute, an arbitration clause was stipulated before the parties; but respondent No.2 failed to avail the remedy under the Act of 1996 for the reasons best known to him; rather made various complaints to the police authorities. Again discernible from the report dated 06.06.2019 (P-10) submitted by Inspector Vikas Kumar, Incharge, Economic Offences Wing, O/o Commissioner of Police, Gurugram that after inquiring into the complaints, all were closed. For reference, the details of these complaints, as provided by learned State Counsel upon instructions from officials concerned, are as under:-

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| <i>Sr. No.</i> | <i>Complaint No.</i>                     | <i>Conclusion</i>                                                                | <i>Date of disposal</i> |
|----------------|------------------------------------------|----------------------------------------------------------------------------------|-------------------------|
| <i>1.</i>      | <i>343-P dated 12.05.2016</i>            | <i>Complaint closed as matter was found civil in nature</i>                      | <i>13.09.2017</i>       |
| <i>2.</i>      | <i>1931-P dated 17.04.2017</i>           | <i>Complaint closed with the remarks as no cognizable offence was made out</i>   | <i>13.09.2017</i>       |
| <i>3.</i>      | <i>872-P dated 30.07.2017</i>            | <i>Complaint closed as matter was found civil in nature</i>                      | <i>13.09.2017</i>       |
| <i>4.</i>      | <i>5795/CP/2018 dated 03.05.2018</i>     | <i>Complaint closed as matter was found civil in nature</i>                      | <i>2018</i>             |
| <i>5.</i>      | <i>3909/CP/2019/ARP of 2019</i>          | <i>Complaint(s) closed with the remarks as no cognizable offence is made out</i> | <i>01.06.2019</i>       |
| <i>6.</i>      | <i>232-P/DCP HQ dated 02.04.2019</i>     | <i>Same as above</i>                                                             | <i>01.06.2019</i>       |
| <i>7.</i>      | <i>4755/CP/2019/BPT dated 18.05.2019</i> | <i>Same as above</i>                                                             | <i>01.06.2019</i>       |
| <i>8.</i>      | <i>6272/CP/2019/BPT dated 18.05.2019</i> | <i>Same as above</i>                                                             | <i>01.06.2019</i>       |
| <i>9.</i>      | <i>805-P/DCP HQ dated 21.05.2019</i>     | <i>Same as above</i>                                                             | <i>01.06.2019</i>       |

(16) Curiously, in all the above complaints, main grievance of the *de facto* complainant was for “recovery of the money” and for reference, the operative part of first complaint No.343-P dated 12.05.2016 (P-4 in CRM-M-53267-2021) is recapitulated as under:-

*“It is therefore requested to you to kindly lodged an FIR against all the accused persons and my money may kindly be recovered and the whole nexus of the accused be unearthed. It is also prayed that the accused be*



*arrested at the earliest and be punished severely as per law.”*

(17) It is also matter of record that respondent No.2 approached National Company Law Tribunal, Chandigarh Bench, Chandigarh (*for short ‘NCLT, Chandigarh’*) by way of petition bearing Case No.C.P.(IB)-377/2018 dated 17.10.2018, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (*for short ‘IBC’*) against M/s VLPL and others on the basis of similar allegations; but could not succeed.

(18) Apart that, respondent No.2 has also filed a petition under Sections 59, 241, 242 & 244 of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016 before the NCLT, New Delhi Bench and which is stated to be still pending.

(19) Thus, when nine (09) complaints with similar allegations have already been closed by the different police officials; then there was no occasion to register the present FIR; especially for the reason that police authorities are not the “recovery agents” in such like matters.

(20) There is no quarrel that police force was reorganized in our country under the Indian Police Act, 1861, with the object of prevention and detection of crime; and not for “recovery of money” in case of dispute between two individuals in contractual matters. As recovery of money is not in the domain of State Police; rather it is the arena, covered under various



other laws; therefore, the police officer, who has initiated criminal action in such a factual situation, be sensitized accordingly.

(21) Although, learned Counsel for respondent No.2 vehemently raised the plea of criminal conspiracy, while citing judicial precedents i.e. **Emperor's** case (*supra*) as well as in case of **State through Superintendent of Police, CBI/SIT's** (*supra*); but the same are not helpful for the reason that "no offence at all" is made out against the petitioner.

In view of the above, allegation of conspiracy shall lose its significance.

(22) *A fortiori*, this is purely a civil dispute, between complainant viz-a-viz co-accused Vivek Seth, Vijesh Goel and M/s Vostok Infrastructure LLP; but petitioner has no concern with the same.

(23) As a result of the above discussions, this Court is also of the considered opinion, that impugned FIR as well as the resultant proceedings, arising therefrom against the petitioner, would be complete misuse of the legal process and wastage of valuable judicial time; thus, the same deserve to be quashed.

(24) Consequently, present petition is allowed; aforesaid FIR along with all consequential proceedings resulting therefrom qua the petitioner are quashed and set aside.

(25) However, it is clarified that this order be not construed as an expression of opinion on the merits of proceedings pending before NCLT, New Delhi.

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Pending application(s), if any, shall also stand disposed off.

27 August, 2024  
Gagan

( MAHABIR SINGH SINDHU )  
JUDGE

|                           |     |
|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |