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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ O.M.P.(I) (COMM.) 282/2020 & I.As. 1652/2021, 1655/2021, 5369/2022

RR BUILDTOWN PVT. LTD. .....Petitioner

Through: Mr. Vaibhav Sethi, Ms. Priya Pathania, Mr. Aditya Khanna, Ms. Roma Bedi, Advocates.

versus

AJNARA INDIA LTD. & ORS. .....Respondents

Through: Mr. Anuj Chandan, Mr. Abhay Arora, Advocates for R-1/IRP.
Ms. Gurkamal Hora Arora, Mr. Jaisal Baath, Mr. Subodh Pandey, Advocates for R-2.
Mr. V.D'Costa, Ms. Astha Ojha, Ms. Gauri Goel, Advocates for R-3 [8527996461].

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **02.08.2024**

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], was instituted in anticipation of arbitration proceedings under two Memorandums of Understanding ["MoU"/ "MoUs"], to which the petitioner is a party. It has been pending since September 2020.

2. The first MoU, dated 23.08.2013, is between the petitioner and respondent No. 1. It contemplated an investment for acquisition of 45%

of the shares of respondent No. 2 by the petitioner. Respondent No.2 was, at that time, a 100% subsidiary of respondent No. 1, and the prospective allottee and holder of lease rights of a plot of land at *C3-E2, Sector 129, Noida, Uttar Pradesh – 201304*, for an integrated real estate project.

3. The second MoU, dated 15.09.2018, was executed between the petitioner and respondent No. 2 with regard to the terms upon which the petitioner was to exit the project.

4. Both the MoUs contain arbitration clauses.

5. Disputes having arisen between the parties, the petitioner instituted this petition for the following reliefs:

> "*A. Restrain the Respondents from creating any further third-party interests on the commercial plot admeasuring 7486 sq. mts. (approx.) at C3-E2, Sector 129, Noida, Gautam Budh Nagar – 201304 during the pendency of the arbitration proceedings;*
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> *B. Direct the Respondent Nos. 1 and 2 to secure an amount of Rs. Rs.50,51,99,792/- (Fifty Crore Fifty One lakhs Ninety Nine thousand seven hundred ninety two) by way of deposit with the Registry of this Hon'ble Court or issue a bank guarantee for the said amount in favour of the Petitioner subject to the final outcome of the arbitration proceedings;*
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> *C. Direct the Respondent No. 3 to not disburse any further amounts to the Respondent Nos. 1 and 2 in terms of Sanction Letter dated 16.8.2018 or any other sanction letters as well as freeze existing credit limits/drawing limits during the pendency of the arbitration proceedings;*
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> *D. Direct the Respondent No. 1 to disclose its encumbered and unencumbered assets, including but not limited to unsold flats, along with details of monies received qua them and to maintain status quo qua the same, including by restraining it from collecting any further monies from the flat buyers/commercial buyers;*
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> *E. Grant ad-interim reliefs in terms of Prayers A – D above;*
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> *F. Order costs of the present proceedings in favour of the Petitioner;*
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> *G. Pass any such other or further orders as may be deemed fit by this Hon'ble Court in the facts and circumstances of the present case.*"

6. By an *ad interim* order dated 16.09.2020, the Court recorded as follows:

> "*10. Mr. Saubhagya Aggarwal, learned counsel appearing for the Respondent No. 2, points out that the loan was availed by Respondent No. 1, on 18th August, 2018, whereas MOU-II was executed, thereafter, only on 15th September, 2018. Nonetheless, he submits that, after availing the loan, the aforesaid land admeasuring 7486 sq. mts. (approx.), located at C3-E2, Sector 129, Noida, Gautam Budh Nagar-201304, has not been encumbered or alienated any further, and also undertakes that, pending disposal of this petition, and without the permission of this Court, the said land would not be encumbered/alienated.*
>
> *11. Respondent Nos. 1 and 2 shall remain bound by the said undertaking, which shall not be varied or modified except with permission of this Court, and shall be obeyed, in substance and spirit, by Respondent Nos. 1 and 2.*"

7. This interim order has held the field since.

8. In the meanwhile, certain developments have occurred. According to learned counsel for the parties, it is by reason of these developments that the arbitral proceedings have not yet been commenced.

9. The first significant fact is that corporate insolvency resolution process ["CIRP"] has been instituted in the National Company Law Tribunal ["NCLT"] against respondent No. 1. An Insolvency Resolution Professional ["IRP"] has been appointed, who is representing the said company before the Court today. Learned counsel for the parties join issue as to the exact effect of the orders that have been passed by the NCLT and the National Company Law Appellate Tribunal in those proceedings, but this question need not detain us at this stage.

10. The second significant development is that respondent No. 3, which was a creditor of respondent Nos. 1 and 2, is apparently on the anvil of entering into a one-time settlement with respondent No. 2.

Learned counsel for respondent No. 3 states that the one-time settlement proposal of respondent No. 2 has been accepted in principle by the Board of respondent No. 3, subject to legal advice and necessary proceedings arising out of the CIRP. Learned counsel state that in the event the one-time settlement proposal fructifies, it may well be that disputes between the petitioner and respondent No. 1/2 would also stand resolved.

11. The question before the Court, at this stage, is whether any further orders under Section 9 of the Act are required. In the event the disputes between the parties all resolve as a result of the OTS, there would evidently be no need for an arbitration. Even if that is not so, however, the parties' remedy will lie elsewhere, whether in arbitration or otherwise. There does not appear to me to be any need for these proceedings to remain pending indefinitely.

12. The appropriate course in these circumstances, in my view, is to modify the interim order dated 16.09.2020 to a limited extent, and leave the parties to take appropriate remedies in the event their disputes are not settled.

13. The modification proposed by learned counsel for respondent No. 2, and accepted by learned counsel for the petitioner, is that respondent No. 2 shall remain bound by its undertaking not to encumber or alienate the subject property, but may do so with the consent of the petitioner. It is so directed. Respondent No. 2, which is the allottee of the subject property, is directed to file an affidavit of undertaking to this effect, within one week from today. This order will remain in operation for a period of three months from today, during which time the parties may either resolve their disputes or take the remedies available to them in law.

14. It is made clear that, in the event the disputes are not resolved, parties will be entitled to seek interim orders from the appropriate forum, including orders to continue, vacate, modify or vary the undertaking recorded today.

15. The petition, alongwith pending applications, is disposed of with these directions.

PRATEEK JALAN, J

AUGUST 2, 2024
'Bhupi'/