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

\+ O.M.P.(I) (COMM.) 307/2024

SWAMIH INVESTMENT FUND I .....Petitioner

Through: Mr. Jayant Mehta, Senior Advocate with Mr. R. Sudhinder, Mr. Ashish Mukhi, Ms. Aastha Trivedi, Mr. Kanishk Pandey & Mr. Rajat Sinha, Advocates.

versus

MODEST INFRA LIMITED AND ORS. .....Respondents

Through: Mr. Anupam Lal Das, Senior Advocate with Mr. Prakul Khurana & Mr. Yash Tandon, Advocates for R-1 to 7.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% 13.09.2024

1. The petitioner has approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996 ["the Act"], for interim measures of protection in anticipation of arbitration proceedings under an agreement dated 03.12.2020 entitled "*Debenture Trustee Agreement*" ["DTA"].

2. In terms of the DTA, the petitioner subscribed to debentures issued by respondent No. 1-company in the sum of ₹65 crores. Respondent Nos. 2 and 7 are shareholders of respondent No.1. Respondent Nos. 2 to 4 are additionally the guarantors of the amounts due to the petitioner under the

DTA. Respondent No. 8 is the debenture trustee under the DTA.

3. The DTA contains an arbitration clause [Clause 15.4B]. It provides for resolution of disputes by a three-member arbitral tribunal. New Delhi has been designated as the venue and seat of arbitration and courts in New Delhi have also been vested with exclusive jurisdiction under Clause 15.4A.

4. I have heard Mr. Jayant Mehta, learned Senior Counsel for the petitioner, and Mr. Anupam Lal Das, learned Senior Counsel for respondent Nos. 1 to 7.

5. As noted in the order dated 11.09.2024, the contention of the petitioner is that the respondents have failed to pay the maturity amount in terms of the debentures on the due date in June, 2024. Clause 9.1 of the DTA provided for security in terms of an equitable mortgage on the project land of respondent No. 1 and development rights in respect thereof as set out in Schedule 4, hypothecation of movable assets and pledge of the shares held by the shareholders of respondent No. 1-company in the company. It also provided for an undertaking by respondent Nos. 2 to 4 with regard routing of sales proceeds and cash flows and personal guarantees furnished by them, and a demand promissory note was also issued by respondent No. 1. In addition to the DTA, a Deed of Hypothecation, Memorandum of entry of charges and a Share Pledge Agreement have also been placed on record.

6. My attention has additionally been drawn to two communications addressed on behalf of the respondents to the petitioner after the alleged defaults commenced. The first is an email dated 23.04.2024 which *inter alia* states as follows:

"To secure Debenture Holder interest under the Transaction Documents pertaining to the present Project, we propose to infuse quasi equity (unsecured Loan from promoter) in the Company ***to remedy the defaults committed under the Transaction Document*** *as under:-.*

*1. **Up to June, 2024 we will infuse Rs.15 Crores as promoters unsecured Loan (quasi equity)** for the Repayment/redemption of Debentures issued by the Company.*

*2. Further **in addition to above we will pay Rs.S Crores up to June, 2024** from the outstanding sales receivables & New Customers Collection from the new sales of ready units in the two towers. **Thus upto June, 24 we will pay total Rs.20 Crores**.*

*3. Further the **balance outstanding Debentures redemption with Redemption Premium will be repaid in next 18 months in the equal Monthly installments** from new sales of ready units & promoters unsecured Loan for any amount short fall in monthly installments.*

*4. For the above promoters unsecured Loan infusion, it is to mention that **our Group plotting scheme got approval from Local Authority "JDA" & will be launched soon after RERA Registration shortly**.*

*5. **Even we will receive Rs.5 Crores from the registry of Land situated at Jagatpura sold by Sale Deed in a short period time**.*

Therefore we Promoters of the Company humbly request your good self to consider our above repayment/ redemption plan of Debentures with new time lines by making start infusion as mentioned above & oblige us."

[Emphasis supplied.]

The second is an email dated 04.06.2024. Although the correctness of the contents of the said communication are disputed, it is clear that the respondent sought time until 14.06.2024 to pay "*the balance upfront repayment of ₹2 crores which remained from proposed upfront repayment of ₹5 crores*".

7. It is *prima facie* evident from the aforesaid communications, particularly the email dated 23.04.2024, that the respondents' default and liability are uncontested. Mr. Das also submits that respondents proposed to repay the petitioner in the manner outlined in the said communications and in other correspondence exchange between the parties.

8. By way of the order dated 11.09.2024, an *ad interim* order was passed, directing respondent Nos. 1 to 7 to maintain *status quo* as to title and possession with regard to the assets mentioned in Clause 9.1 of the DTA and Schedule 4 thereof. They were also directed to apprise the Court as to the status of the "Group Plotting scheme" and sale of land situated at Jagatpura mentioned at serial Nos. 4 and 5 extracted above.

9. At the very outset, Mr. Mehta and Mr. Gupta are both agreeable to reference to arbitration in these proceedings itself, and submit that an arbitral tribunal of a sole arbitrator may be constituted by this Court under the aegis of Delhi International Arbitration and Conciliation Centre, Shershah Road, New Delhi-110003. They are also agreeable to the present petition being treated as an application under Section 17 of the Act before the learned arbitrator for further adjudication.

10. The question then arises as to the interim measures of protection which would hold the field until the learned arbitrator has had an opportunity to consider the application. In this regard, it is agreed by learned counsel for the parties as follows:

A. As far as the project land [*Blocks A, B, C and D, Khasra Nos. 87/298, 90, 92 and 129, Village Hema Ki Nangal (Nanakpura), Shivdaspura, Tonk Road, Tehsil Sanganer, District Jaipur, Rajasthan*] is concerned, the order of *status quo* dated 11.09.2024 is vacated, but the proceeds of any sale of units in the project would follow the mechanism of the transaction documents, including deposit of the sale proceeds in an escrow account.

B. The plotted development and Jagatpura land referred to in serial Nos. 4 and 5 of the communications dated 23.04.2024, according to Mr. Das, remain in the possession of group companies/individuals associated with respondent Nos. 1 to 7 and have not yet been sold. As the said companies are not parties to the present litigation, it is directed that the present respondents will not be take any steps for sale of the said properties or creation of third-party interest thereunder without permission of the learned arbitrator.

11. In view of the above submissions, the petition is disposed of with the following directions:

a. The disputes between the parties under the DTA are referred to arbitration of Hon'ble Mr. Justice S. Ravindra Bhat, former Judge, Supreme Court of India [Tel: +91-9818000160].

b. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

c. The arbitration proceedings will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

d. The present petition will be treated as an application under Section 17 of the Act before the learned Arbitrator. The respondent may file its reply to the application within 10 days from today or immediately upon the learned Arbitrator entering upon the reference, whichever is later. The petitioner may file a rejoinder within one week thereafter.

e. Subject to the further orders to be passed by the learned Arbitrator, *ad interim* measures recorded in paragraph 10 hereinabove, will bind the respondents.

f. The learned arbitrator may be requested to take up the proceedings under Section 17 of the Act as expeditiously as possible. The parties will be at liberty to seek continuation, modification, variation or vacation of the interim orders passed by this Court by the learned Arbitrator.

12. All rights and contentions of the parties, including on the application under Section 17 of the Act, are left for consideration by the learned Arbitrator.

13. The petition stands disposed of with these directions.

PRATEEK JALAN, J

SEPTEMBER 13, 2024
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