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

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Date of Decision : 20.11.2024

+ **ARB.P. 1581/2024**

(17) M/S SOMA NEW TOWNS PVT LTD.

.....Petitioner

Through: Mr. Vivek Singh and Ms. Kirti Mehwar, Advocates.

versus

M/S VIKAS BUILDMART PRIVATE LIMITED AND ORS.

.....Respondents

Through: Mr. Parveen Kumar Aggarwal, Mr. Abhishek Grover, Mr. Mohak, Advs. for (R-1 to 3)

+ **O.M.P.(I) (COMM.) 349/2024, I.A. 45676/2024**

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CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

ARB.P. 1581/2024

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in relation to a Share



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purchase cum Shareholder's Agreement dated 03.03.2023 executed between the petitioner and the respondents.

3. In terms of the said agreement, respondent nos. 2 & 3 acquired 26,10,000 shares of the respondent no.1 company from the petitioner.

4. The ongoing projects of the respondent no.1 company were taken over by the respondent nos. 2 & 3 on "As Is Where Is Basis".

5. The said respondents took over the responsibility to complete remaining development work so as to ensure issuance of completion certificate and release of certain bank guarantees mentioned in Schedule-V of the agreement. Schedule-V of the agreement is reproduced here as under:-

"Schedule V

i) Expired Bank Guarantees issued to DTCP, Haryana by Head Office of the "Seller"

Category	Bank	BG No.	Amount (in Rs.)	Valid From	Valid Till
EDC	SBI	1303911BG1011944	11,31,79,300	19.02.2011	18.05.2021
IDW	SBI	1303911BG1011944	2,91,60,500	19.02.2011	18.08.2022
TOTAL BG AMOUNT			14,23,39,800		

ii) Bank Guarantees issued to DTCP, Haryana against FDRs by the "Company"

Category	Bank	BG No.	Amount (in Rs.)	Valid From	Valid Till
EDC	HDFC Bank	003GT01183540003	5,65,90,000/-	20.12.2018	19.09.2024



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IDW	HDFC Bank	1303911BG1011944	1,84,31,000/-	26.06.2019	25.10.2024
TOTAL BG AMOUNT			7,50,21,000/-		

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6. The purchase consideration for the transaction has been mentioned in Clause-3 of the Agreement. The petitioner is stated to have performed its obligations under the agreement. However, it is alleged that the respondents have failed to get the above bank guarantees discharged and return to the petitioner.

7. Consequently, disputes have arisen between the parties. The petitioner is aggrieved by the fact that one of the bank guarantees in Schedule-V has been invoked by DTCP, Haryana and extension has also been sought by the DTCP, Haryana in respect of Bank Guarantee bearing No. 003GT01183540003.

8. It is the case of the petitioner that pursuant to the share purchase cum shareholders agreement, it cannot be fastened with any obligations/liabilities qua the bank guarantees referred to in Schedule-V of the Agreement.

9. Disputes having arisen between the parties, the petitioner issued a legal notice dated 15.03.2024 followed by a reminder notice dated 22.04.2024 *inter alia* calling upon the respondents to complete their obligations under the agreement. A reply dated 08.05.2024 was sent by the respondents whereby the respondents sought to refute assertions made by the petitioner.

10. Finally, the petitioner invoked the arbitration vide notice dated 29.08.2024. The said notice was replied to by the respondents, whereby while not denying the existence of the arbitration agreement, the respondent



stated as under:-

“None the less, that now on behalf of your client have initiated to invoke the Arbitration through your notice under reply and have sought our consent within three days to the appointment of Arbitrator on the two names suggested by you, which names are not acceptable to us being Arbitrary, completely illegal, high handed and without following the principles of natural justice.”

“We once again reiterate our desire to resolve the issues mutually and amicably in the best mutual interest of all. We trust that good sense will prevail upon your client and your client will response in a positive manner by acceding to our aforesaid illingness to participate in the right earnest to settle the accounts and differences in mutual and amicable manner. You are requested to kindly convey the same to your client and seek appropriate instructions from them and inform the undersigned, the convenient date, time and place so as to discuss and resolve the disputes and amicably settle the disputes by mutual negotiations so as to enable the Parties to collectively deal with the purported disputes as addressed by your goodself in the best mutual interest of all. However, in the meantime, if you and/or your client precipitate to take any action against us, the same will be suitably dealt with at your risk, cost, peril and consequence.”

11. Consequently, the present petition has been filed by the petitioner. Admittedly, the share purchase cum shareholders agreement contains the following clause:-

“6. **GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be governed in all respects by the laws of Republic of India (without reference to its conflict of law's provisions). In the event of arbitration, the arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996/Act. The seat and venue of the arbitration shall be New Delhi, India.”

12. It can be seen that the said agreement contemplates resolution of disputes through arbitration. It has also been mentioned that the seat and venue of the Arbitration shall be New Delhi, India.

13. During the course of hearing, learned counsel for the respondents does not dispute the existence of the Arbitration Agreement between the parties.



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He accedes that an independent Sole Arbitrator be appointed to adjudicate the disputes between the parties.

14. Accordingly, Justice (Retd.) Jayant Nath, (Mob. No.: +91 8527959494) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondents shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

17. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

18. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

20. The present petition is disposed of in the above terms.

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21. Since an Arbitral Tribunal stands constituted in ARB.P. 1581/2024, it would be apposite if the present petition is directed to be treated as an application under Section 17 of the Arbitration and Conciliation Act, 1996 and dealt with by the learned Sole Arbitrator in accordance with law. It is directed accordingly.



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22. The subsisting interim order/s shall continue to operate till the matter is considered by the learned Sole Arbitrator.

23. Learned counsel for the petitioner emphasises that the respondents have not fully complied with the subsisting interim orders as a result of which some further directions are warranted against the respondents. This aspect shall be duly considered by the learned Sole Arbitrator.

24. The respondents' application/s for modification of subsisting interim orders shall also be duly considered by the learned Sole Arbitrator in accordance with law.

25. The present petition is disposed of in the above terms. Pending application is also disposed of.

SACHIN DATTA, J

NOVEMBER 20, 2024/uk