

Shri Satinder Kumar Gupta vs Divine Infracon Private Limited & Ors on 10 December, 2021

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P.(I) (COMM.) 291/2021

SHRI SATINDER KUMAR GUPTA

Through: Mr. Deepankar Yadav

versus

DIVINE INFRACON PRIVATE LIMITED & ORS. Respondents

Through: Mr. Vijay Kasana and Mr. Ketki

Chaudhary, Advocates

Respondent No. 1.

Mr. Shrey Chathly, Advocate for

Respondents No. 3 & 4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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10.12.2021

[VIA HYBRID MODE]

1. The Petitioner has filed the instant petition under Section 9 of the Arbitration and Conciliation Act, 1996 [hereinafter "the Act"] seeking interim measures pending constitution of the Arbitral Tribunal, as under: -

"a) Restrain the Respondents from Transferring, Disposing-off, Alienating, Encumbering either directly or indirectly, or otherwise parting with the possession of their Properties, Assets as well as Interests in any Companies and / or Businesses;

b) Direct the Respondents to secure the amount in dispute in the Arbitration Proceedings (to be commenced) by furnishing a Monetary Security to the tune of Rs.6,50,00,000 as envisaged under Section 9 of the Arbitration and Conciliation Act, 1996;

c) Restrain the Respondents from taking any coercive and / or Pass Ad-Interim Ex-parte Orders in terms of the above prayers, and confirm the same after notice to the Respondents;

d) Pass Ad-Interim Ex-parte Orders in terms of the above prayers, and confirm the same after notice to the Respondents;

e) Pass such other and / or further order(s) granting Interim Measures of Protection in favour of the Petitioner and against the Respondents, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. On the first instance, this Court vide Order dated 25th August, 2021 passed an interim order in favour of the Petitioner, wherein Respondent No. 1 was directed to maintain status quo with respect to Serviced Apartment Nos. 1032, 1005 & 1034 situated at Plot No. 4, Sector -13 Dwarka, New Delhi - 110075 [hereinafter "Serviced Apartments"]].

3. The said aforesaid interim order is still in force.

4. The Respondents have filed a reply to the instant petition refuting all the allegations made in the petition. Further, Mr. Vijay Kasana, counsel for Respondent No. 1, contends that there was no embargo on Respondent No. 1 to execute any of the Hotelier Buyer Agreements - with on the date of its execution and relies upon the NOC(s) issued by the banks in this regard, copies whereof have been handed over across the board.

5. Further, without prejudice to his rights and contentions Mr. Kasana states that Respondent No. 1 is willing to execute the necessary sale documents for the Apartments that are subject matter of the afore-noted agreement - in favour of the Petitioner.

6. At the same time, Mr. Shrey Chathly, counsel for Respondents No. 3 & 4, states that there is no privity of contract between the Petitioner and Respondents No. 3 & 4 and the petition is not maintainable qua them .

7. Mr. Deepank Yadav, counsel for the Petitioner, on the other hand, states that Petitioner is no longer interested in purchasing the aforesaid Serviced Apartments and wants a refund of the money paid to the Respondent.

8. The Court has considered the submissions advanced by the counsel for the parties. Having regard to the facts noted above, since the claims of the Petitioner are in the nature of recovery of monies, at this stage, the interim Order directing to Respondents to maintain status quo with respect to the Serviced Apartments would suffice and protect the Petitioner, pending constitution of the Arbitral Tribunal.

9. Mr. Kasana states that a petition under Section 11 of the Act has been filed by Respondent No. 1 before this court. As and when the Arbitral Tribunal is constituted, the Petitioner would be at liberty to approach the Tribunal for seeking interim measure(s) under Section 17 of the Act; for extension/modification; for such further relief(s) as sought in the present petition. Till such time, the Order dated 25th August, 2021 shall continue to operate. It is made clear in the event, the Arbitral Tribunal is constituted and the Petitioner does not within a period of four weeks file an application

under Section 17 of the Act, the Order passed by this Court shall stand vacated automatically.

10. It is clarified that all the rights and contentions of the parties are left open. The observations made by this Court herein and vide Order dated 25th August, 2021 are only a prima facie view of this Court and shall not influence the Arbitral Tribunal in adjudicating the application under Section 17 of the Act or the disputes between the parties.

11. With the above directions, the present petition stands disposed of.

SANJEEV NARULA, J DECEMBER 10, 2021 as