

**SUPREME COURT OF INDIA**

Shakti Nath

Vs.

Alpha Tiger Cyprus Investment No.3 Ltd.

C.A.No.1674 of 2020

(Uday U.Lalit and Indu Malhotra,JJ.,)

18.02.2020

**ORDER**

SLP(C)No.22038/2017

1. Leave Granted .The present Appeal has been filed to challenge an award passed in an ICC arbitration with its seat in New Delhi. The Appellant has challenged the judgment dated 08.05.2017 passed under Section 37 of the Arbitration and Conciliation Act, 1996 ("Act"), whereby a division bench of the Delhi High Court rejected the Appeal.

2.The factual background in which the present Appeal has been filed is as follows : -

2.1. The Appellant-Promoters entered into a Shareholders Agreement ("SHA") and a Share Subscription and Purchase Agreement ("SSPA") with Respondents No.1 and 2 both dated 21.03.2008 to acquire 50% shareholding in Respondent No. 3 for the development of a Special Economic Zone for Information Technology and Information Technology Enabled Services. The project was to be developed on a plot of land admeasuring approx. 45,202 sq. mts. in NOIDA ("Project Land") which was allotted to one M/s Sarv Mangal Real Tech Pvt. Ltd. ("M/s Sarv Mangal"). The Project Land was sub-leased by M/s Sarv Mangal to Respondent No. 3.

2.2. The SHA and SSPA were terminated. The parties entered into a Restated Shareholders Agreement ("RSHA") and a Restated Share Subscription and *Purchase* Agreement ("RSSPA") both dated 02.07.2009. As per Clause 3.3 and 3.4 of the RSSPA, Respondents No. 1 and 2 were required to contribute Rs.45 crore to purchase and subscribe the shares in Respondent No.3, which was brought in by 17.12.2009.

2.3 The Appellants terminated both the agreements on 17.12.2009. The Respondents No. 1 and 2 invoked arbitration, and submitted the Request for Arbitration to the ICC Court under the RSHA and RSSPA.

2.4. The Tribunal vide its award (2:1) dated 20.01.2015 allowed the claim of Respondents No. 1 and 2, and awarded the following : -

a) payment of Rs.45,00,27,747/- together with Simple Interest @ 18% p.a. from 31.10.2011 to the date of the award;

b) payment of Simple Interest @ 15% p.a. on all sums awarded to the claimants in the award, till the date of payment;

c) the Appellants were not entitled to repayment of lease rental paid to NOIDA from Respondents No. 1 and 2, ad) the Appellant-Promoters were directed to pay costs of the arbitration comprising of:

i. fees and expenses of the arbitral tribunal and the ICC administrative expenses fixed by the ICC Court for the total amount of USD 900,000;

ii. Rs.2,39,08,082/- towards the legal fees of the Respondent-Claimants;

iii. Rs.4,931/- in respect of other costs and expenses of the Respondent - Claimants.

2.5. The Appellants filed objections under S. 34 of the 1996 Act before the Delhi High Court. The learned Single Judge vide Order dated 09.02.2017 rejected the challenge on merits, and held that it was an undisputed fact that Respondents No. 1 and 2 had brought in a sum of Rs.45,00,27,747/- for the project. The Appellants had terminated the RSHA and RSPA soon after the funds were brought in by Respondents No. 1 and 2. The Court found the findings of the arbitral tribunal to be consistent with the terms of the agreement.

2.6. Aggrieved, the Appellants preferred an Appeal under S. 37 of the Act before the Division Bench of the Delhi High Court. The Division Bench vide judgment and order dated 08.05.2017 rejected the Appeal as being devoid of any merit.

3. The Appellants have challenged the Order passed under S. 37 of the 1996 Act by way of the present Special Leave Petition.

3.1. This Court vide interim Order dated 15.09.2017 directed the Appellants to deposit an amount of Rs.20,00,00,000/- (rupees twenty crore) in the Registry of this Court, which was directed to be invested in a short-term fixed deposit account with a nationalised bank. The Appellants were enjoined from alienating the Project Land, so that in the ultimate eventuality, if the award was sustained by this Court, it could be realised from the sale of the Project Land.

3.2. By a subsequent Order dated 01.05.2018, Respondent No.1 was permitted to withdraw an amount of Rs.10 crore unconditionally, from the amount lying deposited in this Court.

3.3. By a further Order dated 14.11.2019, the Senior Counsel for the Appellants requested for time to find a suitable buyer for the Project Land. It was made clear that the sale would be under the auspices of a public authority or a court officer, and the entire sale consideration would be deposited in the Registry of this Court. It was further directed that the balance amount of Rs.10 crore along with the accrued interest, which was lying been deposited in the Registry of this Court, would be released to Respondent No.1. The counsel for the Appellants made a request to join NOIDA as a party to the present proceedings since the Project Land was leased out by NOIDA. Consequently, Notice was issued to implead NOIDA in the proceedings.

3.4. The Appellants filed an affidavit dated 05.12.2019 stating that the Project Land was free from any and all encumbrances, and was not subject to any pre-existing mortgage or charge. It was further submitted that the Appellants were able to identify a party which was interested to acquire the sub-lease of the Project Land, viz. M/s. Good Living Infrastructure Pvt. Ltd. ("Bhutani group"). The Bhutani group had submitted their Expression of Interest to acquire the sub-lease of the Project Land from NOIDA by acquisition of shares of Respondent No. 3 for a total consideration of Rs. 99,44,55,000/-, to be deposited in the Registry of this Court, after deducting the dues payable to NOIDA. A copy of the Expression of Interest dated 26.11.2019 was placed on the record of this Court. The Appellants further submitted that the balance amount would be raised by mortgaging the property situated at Industrial Plots No. 4 and 5, Block A, Sector 16, NOIDA, owned by Appellant No. 4, which is being used as the Corporate Office. The CEO of M/s Good Living Infrastructure Pvt. Ltd. who was present in Court confirmed that his Company stands by the offer of Rs 99,44,55,000/- made by him before the Court. M/s Good Living Infrastructure Pvt. Ltd. was directed to file a Board Resolution along with an affidavit to confirm the offer before the next date of hearing.

3.5. M/s Good Living Infrastructure Pvt. Ltd. through its CEO/ Additional Director, duly authorized by a Board Resolution dated 20.12.2019, filed an Affidavit dated 06.01.2020 before this Court to place on record its Interest to acquire the sub-lease of the property bearing Plot No.001B situated Sector 140A in NODIA district Guatam Budh Nagar, U.P. measuring 45,202.50 sq. mts. held by M/s IT Infrastructure Park Ltd. (Respondent No.3) for a consideration of Rs. 99,44,55,000/-. This would be effectuated by acquisition of shares of Respondent No.3 which holds the aforesaid property under a sub-lease executed between NOIDA-the Lessor, M/s Sarv Mangal Real Tech Pvt. Ltd.-the Lessee, and Respondent No.3-the sub-lessee under Sub Lease dated 21.10.2009. In the said Affidavit, Bhutani Group stated that it is aware of the pending litigation before this Court, and is willing to deposit the entire sale consideration with the Registry of this Court, including the dues payable to NOIDA.

3.6. With respect to the dues of NODIA, we requested the Counsel for NOIDA to

ascertain whether penal interest on land rent and interest could be waived.

3.7. During the course of hearing on 22.1.2020, the dues payable to NOIDA were crystallised as follows :-

(i) Pending Instalment amounts with Simple Interest @ 14% p.a.	Rs.23,21,00,000
(ii) Lease Rent dues with Simple Interest @ 14% p.a.	Rs.11,93,00,000
(iii) Time Extension charges	Rs.6,57,38,900
(iv) Additional amount payable to land – owners as compensation @ 64.7%	Rs.93,36,577
	<u>TOTAL Rs.42,64,75,477</u>

4. After having heard the Counsel appearing for all the parties, the challenge to the ICC award is hereby rejected. With respect to the amount awarded towards Interest and Penal Interest under the award, the same has been modified by consent of parties, as a prudent commercial decision, in the following terms:-

i) The Appellants agree to make a total payment of Rs.107.50 Crores (Rupees One Hundred and Seven Crores and Fifty Lacs) to Respondents No. 1 and 2 as full and final settlement of their dues under the award dated 20.01.2005.

ii) Out of the total amount of Rs.107.50 crores, Respondents No.1 and 2 have already received an amount of Rs.21,53,00,000/- (Rupees Twenty One Crore Fifty Three Lacs) pursuant to the Interim Orders dated 01.05.2018 and 14.11.2019 passed by this Court. The balance amount payable to Respondents No.1 and 2 would be Rs.85,97,00,000/- (Rupees Eighty Five Crore Ninety Seven Lacs).

iii) M/s. Good Living Infrastructure Private Ltd. of the Bhutani Group agreed and undertook to pay Rs.99,44,55,000/- for the purchase of the entire shareholding of Respondent No.3 - IT Infrastructure Park Pvt. Ltd. from the Appellants and Respondents No.1 and 2. Out of this amount, Rs. 42,64,75,477/- would be paid directly towards the dues of NOIDA. The Bhutani Group would be at liberty to make a representation to NOIDA within one week for re-schedulement as per its prevailing policy, which would be decided within a further period of one week.

iv) The balance sale consideration of Rs.56,79,79,523/- (99,44,55,000 minus 42,64,75,477) would be deposited by M/s Good Living Infrastructure in the Registry of this Court. The deposit by M/s Good Living Infrastructure would be made in 2 tranches :-

Rs.10,00,00,000/- Upfront payment to be deposited within 10 days of the passing of this Order. Rs.56,79,79,523/- To be deposited within 6 months from the date of this Order.

The aforesaid amounts would be made over to Respondent Nos. 1 and 2 towards

payment of the balance sale consideration.

v) The balance amount of Rs.29,17,20,477/- payable by the Appellants to Respondents Nos.1 and 2 would be carried out within a period of 3 months from the passing of this Order.

vi) The orders of injunction dated 24.03.2017 and 17.08.2017 passed by the Delhi High Court restraining the Appellants from alienating Industrial Plots No.4 and 5, Block A, Sector-16, NOIDA is hereby lifted, to enable the Appellants to raise funds for payment of the balance amount as stated in para (ii) hereinabove.

5. The Appellants were directed to file an Affidavit of Undertaking before this Court, with respect to the obligations to be discharged as per the Consent Terms set out hereinabove.

6. The Appellant No.1- Mr. Shakti Nath has filed an Affidavit of Undertaking dated 10.02.2020 on behalf of all the Appellants, stating that:

"1. I am the Petitioner No.1 in the above mentioned Petition and am filling this affidavit on behalf of all Petitioners. Petitioners No.2 and 3 are my wife and son, respectively, and the Petitioner No.4 is a private limited company of which I am the Managing Director and 96.26% shareholder while the remaining shareholding is held by the Petitioners No.2 and 3, respectively.

2. Under the kind supervision of this Hon'ble Court, the parties have agreed to settle the dispute forming part of the present Petition at a total settlement amount of Rs.107,50,00,000/- (Rupees One Hundred Seven Crore Fifty Lakhs Only). It has further been agreed that the Respondent No.3 will be purchased by way of purchase of its entire shareholding from the Petitioners and the Respondents No. 1 & 2 by Good Living Infrastructure Pvt. Ltd. ("GLI"), for Rs.99,44,55,000/- (Rupees Ninety Nine Crore Forty Four Lakhs Fifty Five Thousand only), out of which an amount of Rs.42,64,75,477/- (Rupees Forty Two Crore Sixty Four Lakhs Seventy Five Thousand Four Hundred Seventy Seven Only) or thereabouts shall be paid to NOIDA directly by GLI towards payments of dues to NOIDA as determined by this Hon'ble Court. The balance amount of Rs.56,79,79,523/- (Rupees Fifty Six Crore Seventy Nine Lakhs Seventy Nine Thousand Five Hundred Twenty Three only) shall be deposited by GLI with this Hon'ble Court for payment to the Respondents No. 1 & 2.

3. Of the total settlement amount of Rs.107.50 Crores, the Respondents have already received an amount of Rs.21.53 Crores from the Registry of this Hon'ble Court, which comprises the amount of Rs.20 Crores deposited by the Petitioners pursuant to the order dated 15.09.2017 of this Hon'ble Court, along with the interest accrued thereon. Thus, the total amount now payable to the Respondents No.1 & 2 comes to Rs.85.97 Crores. Since the Respondents No.1 & 2 will receive an amount of Rs.56,79,79,523/- from GLI, there will be a shortfall of Rs.29,17,20,477/- (Rupees

Twenty Nine Crore Seventeen Lakhs Twenty Thousand Four Hundred Seventy Seven only) approximately, which will be deposited by the Petitioners with this Hon'ble Court.

4. The Petitioners undertake to deposit the above mentioned shortfall of Rs.29,17,20,477/- or thereabouts within 3 months of the lifting of the status quo upon their immovable properties, which has been ordered by the Hon'ble Delhi High Court by its orders dated 24.03.2017 and 17.08.2017 passed in Execution Petition bearing OMP (ENF) (COMM) No.45 of 2017. The said status quo is required to be lifted in order to enable the Petitioners to raise loan against the said immovable properties so as to enable them to deposit the shortfall amount with this Hon'ble Court.

5. The Petitioners hereby undertake that till such time that the entire settlement amount is paid to the Respondents No.1 & 2, the Petitioners shall not create any third party rights or interest over the above mentioned immovable properties for the purpose of raising loans to deposit with this Hon'ble Court the amounts payable to the Respondents No. 1 & 2 as per the settlement reached between the parties. ”

7. M/s Good Living Infrastructure Pvt. Ltd. ("GLI") has also filed an Affidavit of Undertaking dated 10.02.2020 stating that:

"1. I am the CEO/Additional Director of M/s Good Living Infrastructure Pvt. Ltd. ("GLI") and have been duly authorized by GLI vide Resolution of Board of Directors dated 20.12.2019 to give the present undertaking on its behalf

2. That GLI undertakes to pay a sum of Rs.99,44,55,000/- towards the purchase of entire shareholding of IT infrastructure Park Pvt. Ltd. (Respondent No. 3) from the Petitioners and Alpha Tiger Cyprus Investment No.2 Ltd. and Alpha Tiger Cyprus Investment No.3 Ltd. in order to acquire the sub lease of the property bearing Plot No. 001B situated at Sector 140A in Noida, District Gautam Budh Nagar, Uttar Pradesh.

3. That out of total sum of Rs.99,44,55,000/-. GLI undertakes to pay the dues payable to NOIDA, amounting to Rs.42,64,75,477/-, directly to NOIDA. In this regard, GLI seeks liberty from this Hon'ble Court to approach NOIDA for rescheduling of payment of the above mentioned sum. GLI undertakes to make the appropriate representation/ application to NOIDA for such rescheduling within one week of the receipt of the order passed by this Hon'ble Court granting the liberty sought herein.

4. That GLI undertakes to deposit the balance purchase price after deducting the NOIDA dues therefrom with the Hon'ble Court i.e. an amount of Rs.56,79,79,523/-, in the following manner: Upfront deposit to be made with the Court within 10 days of the signing of the Share Purchase Agreement between all the Parties, which shall

also be deposited in the custody of the Hon'ble Court. Rs. 46,79,79,523/- To be deposited within a period of four months with an additional grace period of two months after the passing of the final order by the Hon'ble Court.

5. It is prayed that the balance amount of Rs.46,79,79,523/- be distributed to Alpha Tiger Cyprus Investment No.2 Ltd. and Alpha Tiger Cyprus Investment No.3 Ltd by this Hon'ble Court after the transfer of the entire shareholding of Respondent No.3 to GLI.

6. I say that the above mentioned undertaking is voluntary and unconditional. ”

8. In the event of any default in payment of the amounts by Appellants, the entire amount awarded as per the award dated 20.01.2015, would become enforceable. However, prior to enforcement, a window of 2 months would be granted to the Appellants to make provision for compliance. On the expiry of the aforesaid period of 2 months, the entire decree would become executable forthwith.

9. M/s Good Living Infrastructure Pvt. Ltd. is bound by the unconditional undertaking submitted on Affidavit before this Court. Any default by M/s Good Living Infrastructure Pvt. Ltd. would be treated as a breach of the undertaking submitted to this Court. The present Appeal is accordingly disposed of as per the aforesaid Consent Terms. Pending applications, if any, stand disposed.