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

+ **CS(COMM) 338/2024**

DESIGNARCH INFRASTRUCTURE PRIVATE LIMITED

..... Plaintiff

Through: Mr. Rajiv Nayar, Sr. Adv with Mr.
Srinivasan Ramaswamy, Mr. Harshit
Agarwal, Advs.

versus

**LOTUS GREENS CONSTRUCTIONS PRIVATE LIMITED &
ANR.**

..... Defendant

Through: Mr. Akshay Makhija, Sr. Adv with
Mr. PS Singhal, Mr. Sunil Kumar,
Advs. for D1-2

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

ORDER

% **26.04.2024**

I.A. 9303/2024-EX.

1. Exemption is granted subject to all just exceptions.
2. The plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.
3. The application is disposed of.

CS(COMM) 338/2024

4. The substantial prayers made in the present plaint reads as under:-
i. Pass a decree of specific performance of the MOU dated



20.01.2022 entered into by and among the Plaintiff, the Defendant No. 1 and the Defendant No. 2 against the Defendant No. 1 directing it to irrevocably comply with the terms of the MOU dated 20.01.2022 entered into by it with the plaintiff;

ii. Pass a decree of permanent/mandatory injunction against the Defendant Nos. 1 & 2 permanently restraining them from acting contrary to the provisions and terms of the MOU dated 20.01.2022 entered into by the Defendants with the Plaintiff;

iii. Pass a decree of declaration declaring that any and all actions and deeds performed by the Defendants, contrary to the provisions of the MOU dated 20.01.2022 entered into by them with the Plaintiff as null and void ab initio and non-est;

5. In the present case, the plaintiff is the buyer, the defendant No.1 is the seller and the defendant No.2 is the SPV in the MoU dated 20.01.2022.
6. The important features of the MoU dated 20.01.2022 reads as under:-

“Background:

BUYER is engaged in the business of developing real estate projects in Delhi NCR.

SELLER is the sole and absolute seller, allottee, absolute rights, title and interest holder of 100% shares of the SPV. The said 100% shares of the SPV are currently pledged with Punjab National Bank Housing Finance Limited ("PNBHFL") which shall be released as agreed hereunder. The SPV has been allotted a parcel of land by NOIDA (described in detail hereinafter). Lease Deed of the land in favour of SPV is to be



executed by NOIDA.

The SELLER and BUYER have reached an agreement to sell and purchase, in terms of this MOU, the shareholding of the SPV including the allotment, absolute rights, title and interest in land parcel admeasuring approx. 37,231 sq. m. located at Plot No. SC-02/M, Sector 150, Noida, Distt. Gautam Budh Nagar (U.P.) on which the SPV has the leasehold rights with development potential as detailed hereunder.

This MOU outlines certain indicative objectives and next steps (and does not purport to summarize all of the commercial terms to be finalized between the Parties) with respect to the Proposed Transaction (as outlined herein). This MOU does not contain the final understanding to be arrived between the Parties as also the terms, conditions, representations, warranties, covenants and other provisions that may be contained in the Definitive Agreement(s) to be executed between the Parties in relation to the Proposed Transaction. This MOU outlines the commercial terms finalized between the Parties with respect to the Proposed Transaction. More detailed and exhaustive Definitive Agreement(s) shall be executed between the Parties in relation to the Proposed Transaction. However, the Parties agree that, to the extent permitted under Applicable Laws, and notwithstanding any other right or remedy available under this MOU, the rights and obligations of the Parties under this MOU, including those related to exclusivity, shall be binding obligations of the Parties, subject to the right of specific performance and may be specifically enforced against a defaulting party, in the jurisdiction of Delhi.

KEY FACTS	
SALE CONSIDERATION	<ul style="list-style-type: none">• <i>The SPV shall assume liability of lease premium, lease rent and interest as stated hereinabove which shall be payable to NOIDA as per the lease deed for Subject</i>



	<p><i>Land to be executed in favour of the SPV.</i></p> <ul style="list-style-type: none">• <i>The SPV shall pay an amount of Rs. 40.00 crores to PNBHFL within a period of 48 months from the date of execution of the lease deed as per terms agreed with PNBHFL.</i>• <i>The BUYER/SPV shall be liable to pay the Stamp Duty and Registration Charges, if any, as may be applicable in relation to the Proposed Transaction.</i>• <i>The BUYER shall not be required to pay any additional sale consideration other than the above.</i>• <i>Both parties shall find a mutually acceptable structure for transfer SPV having leasehold rights of Subject Land as per law.</i>
PROPOSED TRANSACTION	<ul style="list-style-type: none">• <i>Transfer of 100% shareholding in the SPV to the BUYER.</i>• <i>Execution of lease deed for Subject Land in favour of the SPV in accordance with this MOU.</i>• <i>Procurement of approval of NOIDA for change of land use and rescheduling of land payments for the Subject Land under escrow mechanism and fulfillment of all associated compliance requirements by the SPV.</i>• <i>Obtaining all clearances from NOIDA regarding development of integrated Sports City on the Total Land.</i>• <i>Obtaining all statutory permissions from NOIDA/ any competent authority/ agency /</i>



	<p><i>department required for consummation of the Proposed Transaction by the SPV.</i></p> <ul style="list-style-type: none">• <i>Release of all Debts and Encumbrances, Charges etc. on the Subject Land on the portion earmarked for Subject Land including PNBHFL as envisaged hereinabove.</i>• <i>Taking over by the SPV of the peaceful and vacant physical possession of Subject Land from NOIDA.</i>• <i>Fencing of Subject Land with proper access road to Subject Land at the costs and expenses of the BUYER.</i>• <i>Completion of legal, title and technical due diligence by BUYER to its satisfaction and satisfactory resolution of any issues raised by the BUYER consequent to such Due Diligence.</i>• <i>Obtaining Permission to Mortgage for the Subject Land from NOIDA by the BUYER at its own cost and expenses with facilitation by the SELLER.</i>
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7. Mr Nayar, learned senior counsel appearing for the plaintiff states that on 28.02.2024, by virtue of a newspaper article, the plaintiff got to know that the NOIDA Authorities have approved sports city. Further, the plaintiff is ready and willing to comply with all its obligations under the MoU and despite that the defendants are not ready and willing to transfer the shareholding of the defendant No. 2.
8. Mr. Makhija, learned senior counsel appearing for the defendants states that no specific performance can be passed against the MoU as the



MoU is not a valid and binding agreement. He draws my attention to the background which is reproduced above to state that as per the MoU, the parties contemplated entering into further terms and conditions that may be forming a definitive agreement. Hence, the MoU is only an understanding to enter into another agreement at a subsequent stage.

9. He further states that the terms of the agreement are contingent on Punjab National Bank Housing Finance Limited (“PNBHFL”) releasing the shares of the defendant No. 2. Also, PNBHFL has assigned the debt already to an ARC and have refused to release the shares of the defendant No.2.
10. I am of the view that the above factum of PNBHFL refusing to release the shares of defendant No.2 must be placed on record in the form of written statements. For the said reasons, let the plaint be registered.
11. Issue summons. Mr. Singhal, learned counsel accepts summons on behalf of the defendant Nos. 1 and 2.
12. The summons shall state that the written statement shall be filed by the defendant within thirty days from the date of the receipt of summons. Along with the written statement, the defendant shall also file an affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.
13. Liberty is given to the plaintiff to file replication, if any, within fifteen days from the receipt of the written statement. Along with the replication filed by the plaintiff, an affidavit of admission/denial of the documents of the defendant, be filed by the plaintiff.
14. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties



are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall be also filed with the pleadings.

15. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
16. Mr. Makhija, learned senior counsel states that even though he has 30 days to file written statement, in view of the urgency, the defendant shall do so within 2 weeks from today.
17. List for completion of pleadings before the Joint Registrar 20.05.2024.
18. List before this Court on 29.05.2024.

I.A. 9302/2024 - UNDER ORDER XXXIX RULE 1 & 2 OF CPC

19. This is an application seeking *ex-parte* order of injunction restraining the defendants.
20. It is stated by Mr. Nayar, learned senior counsel for the plaintiff that the MoU categorically states that a suit for specific performance can be filed against either parties which is not performing its obligations in terms of the MoU. Further, despite the plaintiff being ready and willing to perform its obligations in terms of the MoU, the defendants are trying to encumber/create third party rights in respect of the land in question.
21. In addition, he has also drawn my attention to the exclusivity clause in the MoU which reads as under:-

<i>EXCLUSIVITY</i>	<i>Upon execution of this MOU, the SELLER shall not deal, negotiate, solicit or initiate enquiry, engage in discussions regarding the Proposed Transaction or in any other manner</i>
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	<p><i>in relation to the Subject Land or SPV, with any other party, directly or indirectly and shall transact exclusively with BUYER with respect to the Proposed Transaction.</i></p> <p><i>This MOU shall be valid and binding unless terminated mutually except in case the BUYER fails to come forward for execution of lease deed upon written notice by SELLER on receipt of permission for execution of lease deed from NOIDA.</i></p>
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22. For the reasons noted above, I am of the view that the plaintiff has a *prima facie* case, balance of convenience lies in favour of the plaintiff and if ad interim ex-parte orders are not granted, the plaintiff may suffer irreparable loss and injury which cannot be compensated in terms of money.
23. For the said reasons, issue notice.
24. Mr. Singhal, learned counsel accepts notice on behalf of the defendant Nos. 1 and 2. Let a reply be filed.
25. Till the next date of hearing, the defendants shall maintain *status quo* with regard to the ownership/leasehold rights of the land being the subject matter of the MoU. In addition, the defendant No.1 will not sell or part with shares.
26. List for before the Joint Registrar 20.05.2024.
27. List before this Court on 29.05.2024.

I.A. 9301/2024- SEEKING EXTENSION OF TIME TO PAY COURT FEES

28. This is an application seeking extension of time to pay the requisite



court fees.

29. For the reasons stated in the application, the application is allowed and the requisite court fee is directed to be deposited within 1 week from today.
30. The application is disposed of.

JASMEET SINGH, J

APRIL 26, 2024 / (MS)

Click here to check corrigendum, if any