

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

MISC. APPLICATION NO. 929 OF 2020

IN

CIVIL APPEAL NO. 1674 OF 2020

Shakti Nath & Ors.

... Appellant/Applicant

Vs.

**Alpha Tiger Cyprus Investment
No.3 Ltd. & Ors.**

... Respondents

ORDER

1. The present Misc. Application No. 929 of 2020 was earlier listed before this Court on 19.05.2020, when the Appellants were permitted to deposit Rs. 26,00,00,000/- (Rupees Twenty-Six Crores only) with the Registry of this Court by 21.05.2020.

With respect to the balance payment of Rs. 3,17,20,477/- (Rupees Three Crores Seventeen Lacs Twenty Thousand Four Hundred and Seventy-Seven only), an extension of two months' was granted to deposit the said amount in the Registry of this Court.

With respect to prayer (iv) of the Application, Notice

was issued to the other parties.

2. In compliance with the Order dated 19.05.2020, the Appellants deposited Rs. 26,00,00,000 (Rupees Twenty-Six Crores only) on 20.05.2020 in the Registry of this Court.

3. The matter has now come up for hearing with respect to prayer (iv) which reads as under:

“(iv) Direct the Respondent Nos. 1 and 2 to sign and execute an appropriate share purchase agreement to effectuate the acquisition of M/s Good Living Infrastructure Pvt. Ltd. of the shares held by the Respondent Nos. 1 and 2 in the Respondent No. 3.”

4. Mr. Dhruv Mehta, Senior Advocate appearing for the Appellants submitted that as per the Order dated 18.02.2020 passed by this Court, M/s. Good Living Infrastructure Pvt. Ltd. (“**GLI**”) of the Bhutani Group had agreed to purchase the entire shareholding of the Appellants and Respondent Nos. 1 and 2 in I.T. Infrastructure Park Pvt. Ltd. - Respondent No. 3 Company for a total sale consideration of Rs. 99,44,55,000 (Rupees Ninety-Nine Crores Forty-Four Lacs only).

The relevant extract from the said Order is set out herein below for ready reference:

“4...

(iii) *M/s. Good Living Infrastructure 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 - I.T. Infrastructure Park Pvt. Ltd. from the Appellants and Respondents No. 1 and 2.*

5. GLI *vide* Order dated 16.12.2019 was directed to file an Affidavit of Undertaking that it would be bound by the commitments made before this Court. The Undertaking was filed by GLI on 10.02.2020, the contents of which are recorded in the Order dated 18.02.2020 as : -

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.99,44,55000/-. 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 reschedulement of payment of the above mentioned sum. GLI undertakes to make the appropriate representation/ application to NOIDA for such reschedulement 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:

Rs. 10,00,00,000/-	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.”

In para 9 of the Order dated 18.02.2020, it was recorded that GLI was bound by the unconditional Undertaking submitted on Affidavit. Para 9 of the Order reads as under:

“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”

6. Mr. Dhruv Mehta, Senior Advocate appearing for the Appellants submitted that it was imperative that the Share Purchase Agreement (“SPA”) be executed by Respondent Nos. 1 and 2, to enable GLI to raise funds for the transaction, and comply with its obligations under the Order dated 18.02.2020.
7. It was further submitted that after the Order dated 18.02.2020 was passed, there were various emails exchanged between the parties for the execution of the SPA. The emails have been annexed to the present Application. The Counsel referred to an email dated 19.02.2020 addressed by DGM, Legal of the Logix Group to Mr. George Jacob of Alpha Real Capital, enclosing the draft SPA for approval.

In response, Mr. George Jacob *vide* his email dated 20.02.2020 stated that he had forwarded the draft SPA to their lawyers for review and comments. Mr. George Jacob requested Appellant No. 1 to share the final draft of the SPA after further modalities of the sale, both operational and legal were discussed with the lawyers of GLI. Further emails were exchanged between the parties on 27.02.2020 and 28.02.2020, which reveal that the parties were in the process of executing the SPA expeditiously.

8. The Appellants submit that two months later, Respondent Nos. 1 and 2 resiled from their commitment to execute the SPA, and *vide* email dated 17.04.2020, stated that as on date, they were holding : (a) 1,00,000 Class A Shares; (b) 10,00,000 Class C Shares; and (c) 10,00,000 Compulsorily Convertible Preference Shares of Respondent No. 3 Company. It was further stated that the Original Share Certificates, Share Transfer Forms, and Resignation of existing Directors would be handed over after the deposit of Rs 56,79,79,623 in the Registry of this Court.

8.1 Mr. Nakul Dewan, Senior Advocate represented GLI, and placed reliance on the averments made in the Affidavit dated 02.06.2020. It was submitted that since GLI was investing almost Rs. 100 crores in the transaction, they would require legal documentation for the same. The execution of the SPA was necessary to enable them to raise funds with a commercial bank or NBFC. The draft of the SPA had already been forwarded to Respondent Nos.1 and 2 in February, 2020.

GLI fairly stated in its Affidavit that it is not insisting on the immediate transfer of shares in the Respondent No. 3 Company, but was merely requesting for the execution of the

SPA. The SPA is in the nature of an agreement to transfer shares at a future date.

8.2 GLI further submitted that they were entitled to obtain certain minimal warranties from both the Appellants and Respondent Nos. 1 and 2, viz. (i) warranty with respect to the absolute title of 50% shareholding in Respondent No. 3 Company of each of the parties; (ii) warranty stipulating that there were no existing encumbrances, or third party rights created on the said shares; (iii) warranty with respect to the absolute authority of the executants of the SPA (on behalf of the Appellants and Respondent Nos. 1 and 2) by a resolution of the Board of Directors of their respective companies.

9. Respondent Nos. 1 and 2 filed an Affidavit stating their objections to the present Application. Mr. Sanjeev Puri, Senior Advocate appeared on behalf of the Respondent Nos. 1 and 2, and submitted that the prayer for executing the SPA would amount to a modification of the terms of the Final Order dated 18.02.2020 passed by this Court. It would also be contrary to Clause 11.23 of the ICC Arbitral Award, which had observed that Respondent Nos. 1 and 2 return the shares held by them, upon payment of all sums awarded. It was submitted that they

were willing to undertake to return the shares of Respondent No. 3 Company to the Appellants after the entire payment was made in terms of the Order dated 18.02.2020.

Alternatively, Respondent Nos. 1 and 2 were willing to undertake to deposit the shares in this Court, which may be released to the Appellants/GLI in terms of the Order dated 18.02.2020.

The Counsel for Respondent Nos. 1 and 2 expressly stated before this Court that there is no encumbrance created by Respondent Nos. 1 and 2 on their shareholding. With respect to the land and Title Deeds of the property, the same were in the possession and control of the Appellants, and his clients could not be held liable for any act of the Appellants.

The Counsel for Respondent Nos. 1 and 2 made an oral prayer that the amounts lying deposited in the Registry of the Court, be released in favour of his clients.

10. Having heard the learned Counsel for the parties, we are of the view that prayer (iv) of the present Application for execution of the SPA is justified. We note that GLI has deposited an

amount of Rs. 10,00,00,000 (Rupees Ten Crores only) as down payment, pursuant to the Order dated 18.02.2020.

This Court *vide* Order dated 24.04.2020 directed the Registry to invest the amount in an interest-bearing deposit for 6 months on auto renewal basis.

11. We are of the view that the execution of the SPA would not prejudice the rights and interest of the Respondent Nos. 1 and 2 in any manner. The emails exchanged between the parties after the Order dated 18.2.2020, reveal that Respondent Nos. 1 and 2 were earlier agreeable to execute the SPA. However, there was a subsequent change of mind.

GLI is entitled to the execution of the SPA, as the legal documentation reflecting the agreement under which the acquisition of shares would take place.

12. Accordingly, we hereby order and direct that : -

- (a) To effectuate the directions given in para 4(iii) of the Order dated 18.02.2020, it is necessary that the Appellants and Respondent Nos. 1 and 2 execute the SPA with GLI within a period of 3 weeks from the date of this Order.

(b) We direct the Appellants and Respondent Nos. 1 and 2 to provide the necessary warranties, including the warranty that the parties have not created any encumbrance or third-party rights whatsoever on the land on which the Respondent No. 3 Company was to set up the IT Infrastructure Park.

A warranty must also be furnished by both the Appellants and Respondent Nos. 1 and 2 with respect to their respective shareholdings in Respondent No. 3 Company.

(c) The Appellants and Respondent Nos. 1 and 2 are also required to place a certified copy of the Board Resolution of their respective Companies, stating that the authorized signatories have been empowered to execute the SPA.

(d) We further direct that the amount of Rs. 26,00,00,000 (Rupees Twenty-Six Crores only) deposited by the Appellants on 19.05.2020, be released to Respondent Nos. 1 and 2 through their Power of Attorney holders/authorized representatives.

(e) We further direct the Registry of this Court to Retain the amount of Rs. 10,00,00,000 (Rupees Ten Crores only) deposited by GLI till further orders.

The present Miscellaneous Application is accordingly disposed of in the aforesaid terms.

.....**J.**
(UDAY UMESH LALIT)

.....**J.**
(INDU MALHOTRA)

New Delhi;
June 23 , 2020.