

(2023) 01 DEL CK 0053

In the Delhi High Court

Case No : Civil Writ Petition No. 10365 Of 2022, Civil Miscellaneous Application No. 29873 Of 2022

Atul Bhalla

APPELLANT

Vs

Ansal Properties Infrastructure Ltd. & Anr.

RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Citation : (2023) 01 DEL CK 0053

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Shashi Kiran, Arjun Sain

Final Decision : Dismissed

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. Mr. Atul Bhalla, the Petitioner has filed the present writ petition challenging the arbitration award dated 7th September, 2018 and the arbitral proceedings between the Respondents - M/s Ansal Properties Infrastructure Ltd. (hereinafter 'APIL') and M/s. Land Mark Properties Development and Co. Ltd.
3. The case of the Petitioner is that he along with his wife are shareholders and were having 9.16 lakhs shares in M/s Ansal Properties Infrastructure Ltd., 16, Barakhamba Road, New Delhi - 110001. According to the Petitioner, he learnt about the award, which was passed by the Ld. Sole Arbitrator, attached to the notes of accounts dated 31st March, 2022, which were published on 28th May, 2022. As per the said notes of accounts, the company had disclosed that the Hon'ble High Court of Delhi had, in OMP (ENF)(COMM) 159/2019 titled Landmark Property Development and Company Ltd. & Ors. v. Ansal Properties & Infrastructure Ltd. & Ors. vide order dated 5th January, 2022 directed APIL to deposit a sum of Rs.66 crores with the High Court and to maintain Rs.120 crores in the book of accounts. The prayers in the writ petition are as under:

“(i) to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing both the respondent to appoint an arbitral tribunal of three members as provided I clause 10 (12) of the Business Transfer Agreement dated 02.04.2012 signed by both the respondents to adjudicate the dispute between the respondents and/or

(ii) direct the Respondent No.1 & 2 to pay the litigation expenses and impose heavy costs upon the Respondent No.1 & 2; and

(iii) pass such other and further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

4. Ms. Shashi Kiran, Id. Counsel appearing for the Petitioner submits that the arbitration clause in the business transfer agreement dated 2nd April, 2012 contemplates the appointment of three arbitrators. However, the matter was referred to a Sole Arbitrator. Thus, the arbitration proceedings are null and void and are completely contrary to the agreement. She further submits that the manner in which the APIL has agreed for appointment of the Sole Arbitrator, reveals that the same is a fraud which has been played on the shareholders including the Petitioner. She finally submits that the Petitioner ought to be given liberty to approach the High Court in the pending proceedings where the award is challenged being OMP (ENF) (COMM) 159/2019 and EFA (OS) (COMM) 1/2022.

5. A perusal of the business transfer agreement dated 2nd April, 2012 between M/s. Ansal Landmark Townships Private Limited, M/s. Ansal Landmark (Karnal) Township Private Limited and M/s Ansal Properties and Infrastructure Ltd. shows that there was an arbitration clause in the said agreement. Further, share purchase agreement dated 2nd April, 2012 has also been entered into between the parties M/s. Ansal Landmark Townships Private Limited, M/s. Ansal Landmark (Karnal) Township Private Limited and M/s Ansal Urban Condominiums Private Limited.

6. The Id. Sole Arbitrator, was Late Justice R. C. Lahoti, Former CJI, who has rendered the final award dated 7th September, 2018. None of the facts in respect of how the said Sole Arbitrator came to be appointed, have been revealed in the present petition.

7. Moreover, a perusal of the award, which has been placed before the Court, also shows that detailed hearings have taken place before the Id. Arbitrator, the Company of which the Petitioner is the shareholder, has fully participated in the arbitral proceedings and thereafter, the final award has been pronounced by the Id. Arbitrator.

8. The Petitioner is clearly not a party to the arbitral proceedings or to the arbitration agreement. The award is already stated to be under challenge in OMP (ENF) (COMM) 159/2019 and EFA (OS) (COMM) 1/2022. This Court cannot, in a completely tangential manner, upon the petition of shareholders of one of the parties, interfere in the arbitral proceedings and set aside the award on the

grounds alleged.

9. Under these circumstances, this Court does not find any merit in the present writ petition and the same is, accordingly, dismissed. All pending applications are also disposed of.

10. The Petitioner is permitted to avail of his remedies, if any, available in accordance with law.