

Kamal Sharma & Ors vs.m/s Blue Coast Infrastructure Development Pvt Ltd & Ors

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SooperKanoon Citation : sooperkanoon.com/1218381

Court : Delhi

Decided On : Oct-03-2018

Appellant : Kamal Sharma & Ors

Respondent : M/S Blue Coast Infrastructure Development Pvt Ltd & Ors

Judgement :

\$~ * + #9, 12, 13 IN THE HIGH COURT OF DELHI AT NEW DELHI CS(OS) 176/2015 KAMAL SHARMA & ORS Plaintiffs Through Mr. T.K. Ganju, Senior Advocate with Mr. Aquib Ali, Advocates versus M/S BLUE COAST INFRASTRUCTURE DEVELOPMENT PVT LTD & ORS Defendants Through Mr. Rushil Deshpande, Advocate for D-1. Mr. Kirti Uppal, Senior Advocate with Mr. Naman Joshi, Mr. Pranvir Sethi, Ms. Avshreya P.S. Rudy and Mr. Abhishek Chhabra, Advocates for D-2. Mr. Ankur Chawla with Mr. Sangram Singh, Ms. Megha Gupta and Mr. Mohit Gupta, Advocates for D-3 Mr. Vijay Aggarwal with Mr. Vishal Bhardwaj and Mr. Abhishek Chhabra, Advocates for D-5 to D-8. Mr. Manu Nair with Mr. Tanuj Bhushan and Mr. Manik Sachdeva, Advocates for D- 9/DIAL. CS(OS) 176/2015, 87/2018 & 88/2018 Page 1 of 15 + Dr. Sarbjit Sharma with Ms. Leeza Taneja, Advocates for D-147 to 149. Mr. Amanjeet Singh, Advocate for IFCI. Mr. Dheeraj Gupta, Advocate for Applicants/Mr. Pradeep Jaiswal, Mr. Amit Garg and Mr. Rahul Garg. Mr. Manoj Arora with Mr. Siddharth Shankar, Advocates for Applicant/ Investor in IA249092015. Mr. Nikhil Borwankar with Mr. Vikram

Singh Kushwaha, Mr. Kaushik Barua, Mr. Roopensav Pratap Singh and Mr. David Thomas, Advocates for Applicant in IA41942017. Mr. Chetan Lokur with Mr. Tarun J.

Hinjaria, Advocates for Applicant in IA134622018 and 15031/2017. WITH CS(OS) 87/2018 MS. PREETI CHHABRA Plaintiff Through Mr. S.S. Sobti with Ms. Bhumika, Advocates versus CS(OS) 176/2015, 87/2018 & 88/2018 Page 2 of 15 + M/S. BLUE COAST INFRASTRUCTURE DEVELOPMENT PVT. LTD. & ANR Defendants Through Mr. Abhishek Chhabra, Advocate for D-1 AND CS(OS) 88/2018 MS. SURJEET KAUR REKHI Plaintiff Through Mr. S.S. Sobti with Ms. Bhumika, versus Advocates M/S. BLUE COAST INFRASTRUCTURE DEVELOPMENT PVT. LTD. & ANR Defendants Through Mr. Abhishek Chhabra, Advocate for D-1 Date of Decision:

03. d October, 2018 % CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral) I.A. 1338/2015, I.A. 17272/2015, 17273/2015, 9867/2017, 12556/2018, 13462/2018, 13630-13631/018 in CS (OS) 176/2015 With consent of parties, present applications are allowed. Let an amended memo of parties be filed by the plaintiff within one week. Accordingly, present applications stand disposed of. CS(OS) 176/2015, 87/2018, 88/2018 Today parties have handed over a draft consensual order along with schedule of payments to be paid to the creditors of the defendant No.1, CS(OS) 176/2015, 87/2018 & 88/2018 Page 3 of 15 pursuant to directions of this Court dated 20th August, 2018 and 25th September, 2018, which is taken on record. The draft consensual order and List of investors to be repaid are reproduced hereinbelow:-

"The present matter has been pending before this Honble Court as a representative suit. Without adverting to the merits of the matter, it may be noted that approximately Rs. 80.25 Crores (inclusive of interest) are lying with the Registry of this Honble Court pursuant to a consent order dated 6.11.2017 whereby DIAL/Defendant No.9 had been ordered to deposit the amounts as per the arbitral award dated 27.06.2017 with this Honble Court instead of paying the same to Defendant No.2. Since then, this Honble Court has considered various

methods and mechanisms for disbursal of the amount lying with it. After much deliberation, the Defendant Nos. 1 and 2, the Plaintiffs, and the other investors who were not arrayed as parties before this Honble Court in Kamal Sharma and Ors. Vs. Blue Coast Infrastructure Development Pvt. Ltd. And Ors., CS (OS) 176 of 2015, have arrived at a mechanism to disburse the monies lying with this Honble Court in the manner agreed as per the List dated 1.10.2018 supplied by the defendant No.1 (appended herewith). The Defendant Nos. 3 - 8 have no objection to the aforesaid. The disbursal of the monies is being undertaken on a formula without prejudice to the rights and contention of the parties wherein all parties are receiving certain monies in partial satisfaction of their claims whereas the remainder of their claims will remain alive. It may be noted that in cases where there is no settlement agreement, the monies are being received by the investors without prejudice to their eventual claims. However, many of the Plaintiffs as well as parties not arrayed before this Honble Court in Kamal Sharma and Ors. Vs. Blue Coast Infrastructure Development Pvt. Ltd. And Ors., CS (OS) 176 of 2015 have entered into settlements with the Defendant Nos. 1 and 2 whereby certain sums are payable on a monthly basis to each of them against their settled CS(OS) 176/2015, 87/2018 & 88/2018 Page 4 of 15 amounts. All such parties are receiving monies/instalments till 31.3.2019, including any instalments in default as of date. It may be noted that the existing settlements are not being novated or modified in any manner and will remain in force as agreed between the parties. All parties have agreed to receiving monies in the manner and amount as specified in the List and have no objection to the immediate disbursal of the monies lying with the Registry of this Honble Court. In all cases where there is a settlement agreement, upon passing for disbursement of money there shall be no coercive action against the Defendants till 31.3.2019. the order It is made clear that this order shall not affect the the defendants under various settlement obligation of agreements whether the same be out of court or pursuant to mediation proceedings before various courts. The Defendants shall discharge the settlement agreements after 31.3.2019. Further, in case of default in payments of monthly instalments in terms of settlement agreement, the plaintiffs and other investors shall be at liberty to pursue the case on merit and other legal recourses for the balance amount in terms of settlement agreement after 31.03.2019. their obligations under The third

class of investors are those who have not entered into any settlement agreements with the Defendant No.1. The said third class is accepting the money without prejudice to their rights and contentions in terms of their individual agreements with the Defendants or the list annexed hereto. However, the amounts stated as balance due to them in the List shall not be construed as an admission of the total claim amount due and payable to the said class of investors. However, the said third class of investors through their counsels tender their statement that they will not assail the present order or upset the present disbursal mechanism in any manner. The said statement is accepted. The rights and contentions of the said third class and the Defendants are left open. It is clarified that the stay on coercive action till CS(OS) 176/2015, 87/2018 & 88/2018 Page 5 of 15 31.3.2019 does not apply in the cases of the parties with whom no settlement agreements have been entered with. The above compromise formula has been agreed through the good offices of Mr. Kirti Uppal, Senior Advocate and Mr. T.K. Ganju, Senior Advocate as well as with the assistance of the various other advocates appearing before this Honble Court. CS(OS) 176/2015, 87/2018 & 88/2018 Page 6 of 15 CS(OS) 176/2015, 87/2018 & 88/2018 Page 7 of 15 CS(OS) 176/2015, 87/2018 & 88/2018 Page 8 of 15 CS(OS) 176/2015, 87/2018 & 88/2018 Page 9 of 15 CS(OS) 176/2015, 87/2018 & 88/2018 Page 10 of 15 CS(OS) 176/2015, 87/2018 & 88/2018 Page 11 of 15 CS(OS) 176/2015, 87/2018 & 88/2018 Page 12 of 15 It is pertinent to mention that no winding up order has been passed against the defendant No.1-company till date. Moreover, most of its creditors have settlement agreement and by releasing payments in accordance with the aforesaid consensual order, the plaintiff as well as other applicants/defendants who have filed impleadment applications will receive, in advance, payments till 31st March, 2019 and reminder of their claims and rights will remain alive and the defendants will also be complying with consensual settlement agreements. Even those creditors who have no settlement agreement will receive some succour without jeopardizing their rights to file appropriate proceedings. Consequently, the oral prayer for passing an order in terms of the aforesaid draft consensual order is accepted and it is directed that the draft consensual order reproduced hereinabove shall be read as an order of this Court. It is also clarified that in the event the Division Bench of this Court directs the defendant No.9-DIAL to make any

payment to defendant No.2, then the defendant No.9 shall deposit the said amount in CS (OS) 176/2015 with the Registry of this Court. With the aforesaid directions, defendant No.9 is deleted from the array of parties. The Registrar General is directed to release payments in accordance with the consensual order passed today as well as the schedule annexed thereto. CS(OS) 176/2015, 87/2018 & 88/2018 Page 13 of 15 List before Registrar General on 15th December, 2018 for handing over of cheques to the counsel for the creditors. List before Court on 31st January, 2019. I.A. 1337/2015, 12805/2015, 12973/2015, 10221/2017 in CS (OS) 176/2015 Learned counsel for the applicants/plaintiffs wishes to withdraw the present applications with liberty to re-file the same after 31st March, 2019. With the aforesaid liberty, present applications stand disposed of as withdrawn. I.As. 17272/2015 & 17273/2015 in CS (OS) 176/2015 Learned counsel for the applicants/plaintiffs wishes to withdraw the present applications. Accordingly, the same are dismissed as withdrawn. I.As. 1338/2015, 5001/2015, 20062/2015, 1503-1504/2016, 6234/2018 in CS (OS) 176/2015 Present applications have become infructuous and they accordingly stand disposed of. I.A. 14310/2015, 23235/2015, 23236/2015 in CS (OS) 176/2015 In view of the order passed today and with the consent of the parties, no further orders are called for in the present applications. Accordingly, the present applications stand disposed of. I.A. 9444-9447/2016, 10961/2016 in CS (OS) 176/2015 I.A. 11405/2018 in CS (OS) 87/2018 I.A. 11404/2018 in CS (OS) 88/2018 In view of the consensual order passed today, the delay in filing the written statements is condoned and the same are taken on record. CS(OS) 176/2015, 87/2018 & 88/2018 Page 14 of 15 Accordingly, the applications stand disposed of. Order dasti. OCTOBER03 2018 rn MANMOHAN, J CS(OS) 176/2015, 87/2018 & 88/2018 Page 15 of 15