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

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O.M.P. 895/2014

Reserved on: June 29, 2015

Date of decision: July 15, 2015

IP SUPPORT SERVICES (INDIA) PVT LTD. Petitioner

Through: Mr. Sudhir Chandra
Agarwal, Senior Advocate with Mr.
Amol Dixit and Mr. Gaurav Mukerjee,
Advocates.

versus

MILLENNIUM PLAZA LIMITED & ANR. Respondents

Through: Mr. Atul Sharma with Mr.
Milanka Chaudhury and Mr.
Sarojanand Jha, Advocates.

And

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O.M.P. 896/2014

LECOANET HEMANT INDIA PVT LTD. Petitioner

Through: Mr. Sudhir Chandra
Agarwal, Senior Advocate with Mr.
Amol Dixit and Mr. Gaurav Mukerjee,
Advocates.

versus

MILLENNIUM PLAZA LIMITED & ANR. Respondents
Through: Mr. Atul Sharma with Mr.
Milanka Chaudhury and Mr.
Sarojanand Jha, Advocates.

CORAM: JUSTICE S. MURALIDHAR

1. These are petitions under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') filed by IP Support Services (India) Private Limited (IPSSIPL) and Lecoanet Hemant India Private Limited (LHIPL) seeking interim reliefs in relation to the 6th to 10th Floors of Millennium Plaza Complex ('MPC') which are under their occupation. The full sale consideration for the said space has been paid by the Petitioners IPSSIPL and LHIPL to the Respondents - Millennium Plaza Ltd. (MPL) and Unitech Ltd. (UL) - pursuant to the agreements to sell dated 2nd July 1997 and 12th November 1999 respectively.

2. The disputes between the parties, including one concerning the refusal by MPL and UL to execute in favour of IPSSIPL and LHIPL sale deeds in respect of the floors under the respective occupation and another with regard to providing two lifts for the exclusive use of IPSSIPL and LHIPL-were referred to arbitration.

The learned Sole Arbitrator by Awards dated 5th September 2012 allowed the claims of the Petitioners herein on both the said issues.

3. Earlier, the learned Arbitrator, by a separate order dated 26th March 2011 dismissed the application of the Respondents herein under Section 23 (3) of the Act seeking to amend their statement of defence to include counter claims for past, current and future maintenance charges. The learned Arbitrator thus upheld the contention of the Petitioners herein that the said question of payment of maintenance charges did not arise with reference to the agreements to sell and was therefore was beyond the scope of his reference. The said order dated 26th March 2011 was not challenged by the Respondents and thus attained finality.

4. O.M.P. Nos. 314 and 315 of 2013 filed by the Respondents under Section 34 of the Act challenging the aforementioned Awards dated 5th September 2012 have been today dismissed by the Court by a separate common order. During the pendency of the said petitions, certain interim orders were passed by the Court

in the present petitions whereunder an ad hoc amount was to be paid by the Petitioners to the Respondents towards arrears of maintenance charges.

5. However, the Court by the order dismissing the Section 34 petitions, has upheld the view of the learned Arbitrator that the issue of maintenance charges is outside the scope of the agreements to sell containing the arbitration clause. In other words, the said issue has been held to be not arbitrable.

6. Consequently, as a logical corollary, the present petitions under Section 9 of the Act which pre-suppose the existence of an arbitration agreement qua the relief being sought, are not maintainable.

7. The petitions are, accordingly dismissed. The interim orders passed by this Court stand vacated. However, it is clarified that the amount already paid by the Petitioners to the Respondents pursuant to the said orders shall stand adjusted against any claims that may be raised and found payable by one party to the other. The dismissal of these petitions will not preclude the

Petitioners from seeking other appropriate remedies, in relation to the reliefs sought in these petitions, in accordance with law.

S. MURALIDHAR, J.

JULY 15, 2015

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