

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 17th DAY OF NOVEMBER 2017

THE HON'BLE DR.JUSTICE ANITA SUMANTH

O.A. Nos.211 & 212 of 2017

and

A. Nos.1428 & 1429 of 2017

and

A. Nos.5787 & 5785 of 2017

O.A. Nos.211 & 212 of 2017 and
A. Nos.1428 & 1429 of 2017

In the matter of Section 9 of
the Arbitration and
Conciliation Act, 1996.

&

Disputes arising under Loan
Agreement dated 24.10.2011
between M/s.Indus Finance
Limited and M/s.TYPRO INDIA &
others

M/s.Indus Finance Limited,
formerly known as Indus Finance Corporation Ltd.,
having its registered office at "Kothari Buildings",
4th Floor, No.114, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

... Applicant

-Versus-

1. M/s. TYRO INDIA, (*)
Rep.by its Partners,
No.5, New Ambika Apartment
Road No.2, Jawahar Nagar,
Goregaon(W), Mumbai 400 062
2. Mr.Virendra Ajaykumar Sarvaiya, (*)
S/o.Mr.Ajaykumar Sarvaiya,
No.178/8, Gajanan Building
No.8, Jawahar Nagar,
Road No.2, Goregaon(W),
Mumbai 400 062
3. Mrs.Shilpa N.Banka, (*)
D/o.Niranjan Banks,
No.703, Daffodil, Vasant Valley
Film City Road, Malad(East)
Mumbai 400 097

... Respondents

4. DIVYAPURI CO-OPERATIVE HOUSING SOCIETY LTD, (*)
Plot No.4, Shreenagar Colony
M.G.Road, Goregaon(W)
Mumbai 400 062
- 5(a) Mr.Sanjay Virendra Chaudhan & (*)
No.610/C, Versova Akasheep,
S.V.P.Nagar, MHADA,
Anderi West, Mumbai 400 053
- 5.(b) Mrs.Meena Sanjay Chauhan, (*)
No.610/C, Versova Akasheep,
S.V.P.Nagar, MHADA,
Anderi West, Mumbai 400 053
- 6.(a) Mr.Bharat Raichand Gosrani, (*)
No.A-4, Jagat Mahal Building
Shri Nagar, M.G.Road, Goregaon West,
Mumbai 400 104
- 6(b) Mrs.Chetana Bharat Gosrani, (*)
No.A-4, Jagat Mahal Building
Shri Nagar, M.G.Road, Goregaon West,
Mumbai 400 104
- 7.(a) Mr.Mohanlal Bhomraj Jain, (*)
Flat No.11, on 3rd Floor, in
Divyapuri, Co-op, Hs.Soc.Ltd.,
Shree Nagar Colony,
Off.M.G.Road, Goregaon West,
Mumbai 400 104.
- 7.(b) Mrs.Pushpadevi Mohanlal Jain, (*)
Flat No.11, on 3rd Floor, in
Divyapuri, Co-op, Hs.Soc.Ltd.,
Shree Nagar Colony,
Off.M.G.Road, Goregaon West,
Mumbai 400 104.
- 8.(a) Mr.Ashok Kamaraj Patel, (*)
No.401-402, Om Gurukripa Bhavan,
Sri Nagar Society, M.G.Road,
Goregaon West, Mumbai 400 062.
- 8.(b) Mrs.Madhu Ashok Patel, (*)
No.401-402, Om Gurukripa Bhavan,
Sri Nagar Society, M.G.Road,
Goregaon West, Mumbai 400 062.

9(a) Mrs.Chetna Manoj Dagha &(*)
 No.504, Purnima, Plot No.36-37
 Shri Nagar Colony, off M.G.Road,
 Goregaon, West Mumbai 400 104.

9.(b)Mr.Manoj Manilal Dagha, (*)
 No.504, Purnima, Plot No.36-37
 Shri Nagar, Colony, Off. M.G.Road,
 Goregaon, West Mumbai 400 062.

10.(a) Mr.HITESH CHANDMAL JODHAWAT &(*)
 B 404, Madhav Apartment
 Shri Nagar, M.G.Road, Goregaon West
 Mumbai 400 104

10(b) Mrs.ASHWINI HITESH JODHAWAT(*)
 B 404, Madhav Apartment
 Shri Nagar, M.G.Road, Goregaon West
 Mumbai 400 104

... Garnishees

(*) (Amended as per order dated 30.08.2017
 in A. Nos.5118 to 5121 of 2017)

O.A. No.211 of 2017

Original Application praying that this Hon'ble Court be pleased to grant an interim injunction restraining the Respondents 1 to 3, their men, agents, or any person/s claiming through them, from in any manner alienating the unsold flat in the apartment complex at Divyapuri Co-operative Housing Society at C.T.S. No.284 & 284/1, Village Pahadi, M.G.Road, Shree Nagar, Goregaon (West), Mumbai.

O.A. No.212 of 2017

Original Application praying that this Hon'ble Court be pleased to grant an Interim injunction restraining the 4th respondent/Garnishee, their men, agents, or any person/s acting on their behalf, from making any mutations in the registers of the Society recording any rights of the newly constructed apartments in favour of the Respondents 5 to 10/Garnishees, or such other third parties.

A. No.1428 of 2017

Application praying that this Hon'ble Court be pleased to grant a prohibitory order against the respondents 5 to 10/garnishees from making any payments to the respondents 1 to 3 pursuant to the agreements of sale for purchase of the residential apartments of Divyapuri Co-operative Housing Society at C.T.S. No.284 & 284/1, Village Pahadi, M.G.Road, Shree Nagar, Goregaon (West), Mumbai.

A. No.1429 of 2017

Application praying that this Hon'ble Court be pleased to direct the respondents 1 to 3 to furnish security to the applicant to the extent of Rs.9,00,00,000/- (Rupees nine crores only) plus further interest from 01.02.2017 within a period to be specified by this Hon'ble Court and on failure to pass an order of attachment of the amounts due and payable by the respondents 5 to 10/Garnishees to Respondents 1 to 3, by directing them to deposit the said amounts before this Hon'ble Court to the credit of the above application.

A. Nos.5787 & 5785 of 2017:-

M/s.TYRO INDIA, (through its Partners),
a registered partnership firm,
having its office at No.5,
New Ambika Apartment, Road, No.2,
Jawahar Nagar, Goregaon(W),
Mumbai 400 062.

... Applicant/1st Respondent

-Versus-

1. M/s.Indus Finance Limited,
formerly known as Indus Finance Corporation Ltd.,
Kothari Building, 4th Floor,
114, M.G.Road, Nungambakkam,
Chennai 600 034. ... Respondent/Applicant
2. M/s.Bekae Properties Private Limited,
3. Mr.Kutti Venekat Bala,
Director, M/s.Bekae Properties
Private Limited,

2 & 3 are having its registered office at No.603, Keshava, Bandra Kurla Complex, Bandra (East), Mumbai-400 051. ... Proposed Respondents/Third Parties

A. No.5787 of 2017:-

Application praying that this Hon'ble Court be pleased to direct the respondent/applicant M/s.Indus Finance Limited to implead M/s.Bekae Properties Private Limited and Mr.Kutti Venekat Bala, Director of M/s.Bekae Properties Private Limited, both having office at No.603, Keshava, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051 as respondents by amending the cause title in the O.A. Nos.211 & 212 of 2017.

A. No.5785 of 2017:-

Application praying that this Hon'ble Court be pleased to direct the respondent/applicant M/s.Indus Finance Limited to implead M/s.Bekae Properties Private Limited and Mr.Kutti Venekat Bala, Director of M/s.Bekae Properties Private Limited, both having office at No.603, Keshava, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051 as respondents by amending the cause title in the O.A. Nos.211 & 212 of 2017.

These applications coming on this day before this court for hearing the court made the following order:-

O.A.No.211 of 2017 has been filed seeking (a) interim injunction restraining the respondents 1 to 3, their men, agents, or any person/s claiming through them from in any manner alienating the unsold flat in the apartment complex at Divyapuri Co-operative Housing Society at C.T.S.No.284 and 284/1, Village Pahadi, M.G.Road, Shree Nagar, Goregaon (West), Mumbai;

O.A.No.212 of 2017 is filed seeking an interim injunction

restraining the 4th respondent/Garnishee, their men, agents, or any person/acting on their behalf, from making any mutations in the registers of the society recording any rights of the newly constructed apartments in favour of the respondents 5 to 10/Garnishees, or such other third parties;

A.No.1428 of 2017 has been filed praying for a prohibitory order against the respondents 5 to 10/Garnishees from making any payments to the respondents 1 to 3 pursuant to the Agreements of sale for purchase of the residential apartments of Divyapuri Co-operative Housing Society at C.T.S.No.284 and 284/1, Village Pahadi, M.G.Road, Shree Nagar, Goregaon (West), Mumbai;

A.No.1429 of 2017 is filed seeking a direction to the respondents 1 to 3 to furnish security to the applicant to the extent of Rs.9,00,00,000/- Rupees nine crores only) plus further interest from 01.02.2017 within a period to be specified by this Court and on failure, to pass an order of attachment of the amounts due and payable by the respondents 5 to 10/Garnishees to respondents 1 to 3, by directing them to deposit the said amounts before this Court to the credit of this application.

2. Facts in brief are that the applicant, a non banking finance company extended finance facilities to the 1st respondent, a partnership firm, in which the 2nd and 3rd respondents are partners. The firm is engaged in the business

of real estate development in Bombay and was re-developing the residential apartments of Divyapuri Cooperative Society located at Goregaon (West), Mumbai, arrayed as 4th respondent. A re-development agreement had been entered into on 21.3.2011 between the 1st and 4th respondent, as per which the 1st respondent was to re-develop the property by putting up construction of the ground, stilt and 10 floors and delivering new residential apartments with additional area to the existing owners of the flats. The remaining flats constructed anew were to be sold to prospective buyers. The sale consideration from the sale of the new flats were to be appropriated by the 1st respondent.

3. A loan of Rs.5 crores had been sanctioned by the applicant to be repaid along with interest at the rate of 21% per annum (cumulative). A loan agreement dated 24.10.2011 was executed that sets out the terms and conditions as between the parties.

4. The 1st respondent proceeded with the work of re-development and entered into agreements for sale with the proposed purchasers, arrayed as 5th respondent to 10th respondent, garnishees in the present applications. However, it is the case of the applicant that the loan has not been repaid, despite repeated requests and demands.

5. Mr.Om Prakash, learned Senior Counsel appearing for the applicant would refer to letter of confirmation and acknowledgment dated 14.3.2014 and confirmation of balance dated 23.7.2014 executed by 1st respondent. Since the amount has not been repaid within the contracted period of 24 months, proceedings for arbitration have been initiated in accordance with clause 11.4 of the agreement that are on going and are presently at the stage of framing issues. The proceedings are stated to be listed before the learned sole Arbitrator on 25.11.2017.

6. The present applications have been filed by the applicant in the interim, seeking relief by way of the prayers earlier extracted. This court, by order dated 3.3.2017 had granted an order of interim injunction in O.A.Nos.211 and 212 of 2017.

7. Mr.T.D.Selvan Babu appearing for respondents 1 to 3 would argue for the vacating of the interim injunction pointing out that the respondents have a counter claim against the applicants which is also under consideration in the arbitration proceedings. He would plead that the interim injunction granted on 3.3.2017 either be vacated or at the least modified by substituting an alternate property in place of the new flat attached to secure the interest of the applicant in O.A.No.211 of 2017.

8. Heard learned counsel. Section 9(3) of the Arbitration and Conciliation Act (in short, 'Act') provides that once the arbitral tribunal has been constituted, the Court shall not entertain an application under section 9(1) unless circumstances exist which may render the remedy provided under section 17 of the Act ineffective.

9. No case has been made out before me as to why the provisions of section 17, which empower the Arbitral Tribunal to consider and grant interim relief will not be either efficacious or effective.

10. On the contrary, in so far as the learned arbitrator is seized of all issues relating to the disputes interse the parties, the claims as well as counter claims, it seems to me that he would be the appropriate person to consider the continuance/variance/vacation of the interim orders granted by this Court and presently in force.

11. Order of this Court dated 3.3.2017 will continue for a period of four weeks. In the meantime, the parties are at liberty to seek such interim relief as they deem necessary before the learned Arbitrator who is requested to consider and decide the same on priority after hearing both sides.

12. A.Nos.5785 and 5787 of 2017 have been filed for the impleadment of 2 parties as respondents. In the light of my

order aforesaid, the applicant is at liberty to seek impleadment before the learned Arbitrator who is requested to decide the prayer in accordance with law.

13. All applications are closed in the above terms.

No costs.

Sd/-A.S.M.J
17.11.2017

//Certified to be a true copy//

Dated this the day of 2018
JJ 9/2/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.