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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO.149 OF 2018

L & T Housing Finance Ltd.	..Petitioner
Vs.	
JSM Devcons Private Limited & Ors.	..Respondents

**WITH
CHAMEBR SUMMONS NO.698 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.149 OF 2018**

Pinnacle Sangarsh Samitee	..Applicant
In the matter between	
L & T Housing Finance Ltd.	..Petitioner
Vs.	
JSM Devcons Private Limited & Ors.	..Respondents

**WITH
CHAMBER SUMMONS NO.1174 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.149 OF 2018**

M/s.Gold Terrace Apartment	..Intervener/Applicant
In the matter between	
L & T Housing Finance Ltd.	..Petitioner
Vs.	
JSM Devcons Private Limited & Ors.	..Respondents

**WITH
NOTICE OF MOTION (L.) NO.2267 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.149 OF 2018**

IIFL Home Finance Limited	..Applicant
In the matter between	
L & T Housing Finance Ltd.	..Petitioner
Vs.	
JSM Devcons Private Limited & Ors.	..Respondents

Mr.Ranjeev Carvalho with Mr.Sachin Chandarana and Mr.Ujwal Trivedi i/b. M/s.Manilal Kher Ambalal & Co. for Petitioner.

Harsha Vaid i/b. Mr.Monish Prem for Respondent No.2.

Mr.Atul Singh i/b. Mr.Nitin Potdar for Respondent No.4.

Mr.Dinesh Indore for Respondent in CHS No.698/18.

Mr.Shashank Fadia with Ms.Priyanka Fadia for Respondent in NMCDL No.2267/18.

Mr.D.R. Shetty, Court Receiver, High Court, Bombay.

Mr.D.N. Kher, OSD, Court Receiver, High Court, Bombay.

CORAM : G.S. KULKARNI, J.

DATE : 24th NOVEMBER, 2018

P.C.:

On a perusal of the record, it appears that in this petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”), the Court has already passed interim orders sufficiently protecting interest of the petitioner which is clear from the orders dated 6 March 2018, 12 June 2018, 19 June 2018, 25 July 2018, 3 September 2018 and 6 October 2018.

2. On a query as made to learned Counsel for the petitioner, he fairly submits that so far no steps have been taken for appointment of an Arbitrator. The praecipe as moved on behalf of the petitioner today is that the petitioner still has outstanding dues approximately of Rs.45 Crores and to recover the same the petitioner seeks a further order from this Court, for sale of the vacant plot of land. Such relief on a praecipe

surely cannot be granted. If the petitioner so feels, an appropriate application in that regard can be moved and the same can be considered on its merits after hearing all the parties.

3. As regards the non-appointment of an Arbitrator considering the provisions of section 9 (2) of the Act, it is necessary that the Arbitrator was required to be appointed within 90 days after the interim protection was granted to the petitioner in March 2018. In fact, for any further reliefs which would be substantive in nature, it would be appropriate that the petitioner is permitted to move the learned Arbitrator in an application under Section 17 of the Act where appropriate further orders can be passed and the protection which is already granted in the orders passed in this proceedings can be continued to remain in operation.

4. With the above observations, it is appropriate that the hearing of this petition is adjourned to enable the learned Counsel for the petitioner to seek appropriate instructions on the further course of action.

5. There are certain intervention applications which are filed in these proceedings. Admittedly, these applicants are not parties to the principal agreement which is subject matter of the present proceedings.

Eventually all the rights and contentions of the parties to redress their grievances and/or assert their rights remain open to be agitated in appropriate legal proceedings. These applicants also cannot be made parties to the arbitration proceedings which the petitioner would initiate.

6. Learned Counsel appearing for the intervener in chamber summons No.698 of 2018 submits that there are independent proceedings which are already initiated before the civil court at Indore, Madhya Pradesh and the Madhya Pradesh Real Estate Regulatory Authority. It is submitted that the said proceedings are not being proceeded with due to the pendency of the present petition.

7. In the facts and circumstances of the case, it is clarified that there is no embargo whatsoever for the said civil court and the RERA Authority from exercising their respective jurisdiction under law and such Court/RERA Authority are certainly free to proceed in the matters pending before them.

8. If necessary the applicants in chamber summons would be at liberty to move this Court by an appropriate application in this proceeding in the event of favourable orders being granted by the Civil

Court or the RERA Authority, in case any orders passed in this proceedings are affecting their rights.

9. Needless to observe that it would be open for the petitioner if so permissible in law to intervene in the proceedings which are filed before the Civil Court at Indore and the Madhya Pradesh RERA Authority.

10. In view of the above observations, Chamber Summons No.698 of 2018 and Chamber Summons No.1174 of 2018 stand disposed of.

11. Accordingly, this arbitration application is adjourned to 29 November, 2018.

12. Notice of Motion (L.) No.2267 of 2018 would be required to be separately heard on the adjourned date of hearing. In the meantime, if the petitioner chooses to oppose the notice of motion, it shall file a reply affidavit well in advance and a copy of the same be furnished to other side.

[G.S. KULKARNI, J.]