

\$~27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 484/2017 & IA No. 1910/2018**

L & T FINANCE LIMITED Petitioner
Through Mr Runit K. Bhalla, Advocat with
Mrs Chetna Bhalla, Mr Kashish Narang,
Advocates.

versus

VIKAS MULTIPLEX DEVELOPERS
PRIVATE LIMITED & ORS. Respondents
Through Mr Seddharth Sharma, Ms shruti Arora,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.02.2018**

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying for appointment of a Court Receiver to take over the possession of the property bearing no. Multiplex Plot No.1, Indira Nagar, Dehradun, Uttrakhand.
2. Admittedly, there is no arbitration agreement between the petitioner and respondent nos. 2 to 8.
3. The learned counsel appearing for the petitioner has drawn the attention of this Court to a Deed of Guarantee executed by respondent no.1. Clause 9.3 of the said Deed indicates that the venue of the arbitration shall be Mumbai. Clause 9.5 of the said deed further provides that the Guarantee is governed by Indian Law and subject to the non-exclusive jurisdiction of the Courts at Mumbai.
4. The learned counsel has also referred to a Letter of Guarantee

executed by respondent no.1 which expressly provides that the venue of the Arbitration shall be Mumbai or such other place that the Lender may in its sole discretion determine. It further provides that the Agreement is governed by Indian Law and subject to the *exclusive* jurisdiction of the Courts at Mumbai.

5. There is yet another deed of guarantee stated to have been executed by respondent no. 1 on 02.12.2016. That Deed also provides that “the venue of the arbitration shall be in Mumbai” [Clause 23(iii)] and the same would be “subject to non-exclusive jurisdiction of the Courts at Mumbai” [Clause 23(v)].

6. It is clear from the above that the arbitration would be held in Mumbai. This Court in ***Bygging India Ltd. v. Lanco Infratech Ltd.: Arb.P. 479/2016, decided on 07.10.2016*** had held that in such cases, the Court having jurisdiction over the place of arbitration would have the jurisdiction under part-I of the Act. Paragraph 14 of the said decision is set out below:

“14. It is also well settled that an arbitration agreement is an independent agreement and in terms of Section 20(1) of the Act, the parties are free to agree on the place of arbitration. In one sense, the place of arbitration is where the arbitration agreement is to be performed. Thus, clearly the Court having jurisdiction over the place of arbitration would indisputably have jurisdiction under Part-I of the Act.”

7. The controversy as to which Court would have the jurisdiction where the parties have decided that the arbitration be conducted at a specified place has been authoritatively put to rest by the Supreme Court in its decision in ***Indus Mobile Distribution Private Limited v. Datawind Innovations Private Limited and Ors.: (2017) 7 SCC 678***. In that case, the parties had

agreed that the arbitration shall be conducted at Mumbai. After considering the rival contentions, the Supreme Court observed as under:-

“19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction – that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.”

8. In view of the above, it is apparent that the Courts at Mumbai (where the arbitration is to be conducted) would be the appropriate Courts for entertaining the application under Section 9 of the Act.

9. Accordingly, the *ad interim* orders stand vacated and the present petition alongwith the pending application is disposed of leaving it open to the petitioner to move the appropriate Court.

10. Order *dasti*.

VIBHU BAKHRU, J

FEBRUARY 21, 2018

pkv