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

+ O.M.P.(I) (COMM.) 95/2019, I.A. 6976/2019, I.A. 7645/2019, I.A. 7646/2019, I.A. 10674/2019, I.A. 10675/2019, I.A. 10676/2019

INDIABULLS HOUSING FINANCE LTD.

..... Petitioner

Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Rishi Agrawala, Mr. Karan
Luthra, Mr. Ankit Banati, Advs.

versus

DR. SUBHASH CHANDRA & ORS.

..... Respondents

Through: Mr. Joy Basu, Sr. Adv. with
Mr. Yashvir Kumar, Mr. Kanak Bose,
Advs. for R-1.
Mr. Sudhir Mishra, Ms. Riturika
Nanda and Ms. Petal Chandhok, Advs.
for R-18.
Mr. Sandeep Sethi, Sr. Adv. with Mr.
Gaichang Gangmei and Mr. Abhishek
Bose, Advs. for R-2 to 17.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **08.08.2019**

1. On 1st May 2019, on a statement made by Mr. Sethi, Learned Senior Counsel, the Court passed the following order:

"1. By way of the present petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, Petitioner seeks interim orders against the Respondents.

2. Issue notice. Ms. Ritwika Nanda learned counsel for the Respondents accepts notice. She seeks and is granted four

weeks time to file a reply to the present petition. Rejoinder, if any, be filed within a period of two weeks thereafter.

3. Mr. Sandeep Sethi learned senior counsel for the Respondents on instructions states that till the next date of hearing, the Respondents shall not sell, encumber, alienate, dispose of or in any way alter the nature of securities provided by Respondent Nos. 2, 4, 5 and 7 to 9 as mentioned in Schedule I-A to both the agreements dated 18th August 2018 and provided by Respondent Nos. 2 to 5 in respect of Schedule II properties to the undertaking dated 29th November 2018 and by Respondent No. 18 in respect of Schedule I-A to the agreement to the declaration dated 27th December 2018.

4. Mr. Sethi further states that Respondent Nos. 1 to 9 shall also file in a sealed cover, details of their personal assets encumbered and unencumbered in the form of an affidavit within a period of two weeks from today. Mr. Sethi, clarifies that the properties which are mentioned in Schedule I-A to both the agreements dated 18th August 2018 (at page 345 and 374 of the paper book) are under development. It is clarified that without obtaining the prior written permission/no objection certificate of the Petitioner, Respondents would not sell any property or create any third party interest in respect of any portion of the aforesaid property.

5. List on 6th August 2019.”

2. On 3rd June 2019, the Court recorded the statement of the Senior Counsel for Respondent Nos. 2 to 17 to the effect that Respondents would not dispose of the properties at Jhajjar and Hyderabad without the permission of the Court. The order inter-alia reads as under:

"1. Learned Senior Counsel for the parties, after some arguments, fairly agreed that the respondents shall file an affidavit disclosing the total value of the properties at Jhajjar and Hyderabad which are part of the security to secure the loan of the petitioner.

2. Learned Senior Counsel for the respondent Nos.2 to 17 submitted that the respondents shall not dispose of the aforesaid properties or encumber these properties without the permission of this Court. The respondents shall also disclose the names of the allottees of these properties, if any, in the affidavit. The affidavit shall be filed by the respondent Nos.2 to 17 within two weeks.

3. Learned Senior Counsel for the respondent No.1 submitted that the respondent No.1 has already filed an affidavit on record disclosing the personal assets of the respondent No.1.

4. Learned Senior Counsel for the petitioner submitted that whatever properties are disclosed in the affidavit of the respondent No.1, if sold or disposed of, by the respondent No.1, he shall disclose the details and the particulars thereof in the affidavit. Learned Senior Counsel for the respondent No.1 has agreed to file the affidavit, if any, within two weeks with advance copy of the same to the petitioner.

5. Renotify on 6.8.2019, i.e. the date already fixed, before the Regular Bench."

3. Mr. Sethi, on instruction also confirms that the title documents in respect of the property at Hyderabad are lying deposited with the Petitioner. However, he points out that after the interim order dated 1st May 2019, Petitioner has not taken any steps for commencement of the arbitration proceedings. Relying upon the judgment in *Firm Ashok Traders v.*

Gurumukh Das Saluja, AIR 2004 SCC 1433 and Satish Jha v Headstrong Consulting Worldwide Ltd., ILR 2008 I Delhi 697 it is contended that the since the Petitioner has not taken steps for commencement of the arbitral proceedings within the period stipulated under Section 9 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter ‘the Act’), the present proceedings cannot continue.

4. Mr. Nayar, on instructions submits that under the arbitration agreement, Petitioner has the right of appointment of the Arbitrator and within the period of 10 days from today, Petitioner would take appropriate steps for commencement of the Arbitral proceedings. The aforesaid statement is taken on record and it is clarified that the orders dated 1st May, 2019 and 3rd June, 2019 shall continue to bind the Respondents till such time the arbitral tribunal is constituted, whereafter both the parties shall be at liberty to approach the Arbitral Tribunal for modifications/ variations of the aforesaid order under Section 17 of the Act.

5. Pursuant to the order dated 1st May, 2019, the Respondents have filed in a sealed cover an affidavit, giving details of their personal assets encumbered and unencumbered. Registry is directed to make a copy thereof and transmit the same in the sealed cover to the Arbitral Tribunal, as and when constituted and an intimation to that effect is received from the Petitioner or the Arbitral tribunal. Petitioner shall also serve an advance a copy of such request on the Respondents.

6. The petition is disposed of in above terms.

7. Order *dasti*.

AUGUST 08, 2019

Pallavi

SANJEEV NARULA, J