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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 28.02.2020

Pronounced on: 27.07.2020

+ O.M.P. (I) (COMM.) 280/2019

NEERU JAIN

.....Petitioner

Through

Mr. Akhil Sibal, Senior Advocate
with Mr. Vipul Wadhwa,
Mr. Swarna Kashyap and
Mr. Deboshree Mukherjee,
Advocates.

versus

JASMINE BUILDMART PVT. LTD.

.....Respondent

Through

Ms. Bina Gupta and Ms. Sheena
Taqui, Advocates.

+ O.M.P. (I) (COMM.) 281/2019

M.K. JAIN

.....Petitioner

Through

Mr. Akhil Sibal, Senior Advocate
with Mr. Vipul Wadhwa,
Mr. Swarna Kashyap and
Mr. Deboshree Mukherjee,
Advocates.

versus

JASMINE BUILDMART PVT. LTD.

.....Respondent

Through

Ms. Bina Gupta and Ms. Sheena
Taqui, Advocates.

+ O.M.P (I) (COMM.) 282/2019

M.K. JAIN

.....Petitioner

Through

Mr. Akhil Sibal, Senior Advocate
with Mr. Vipul Wadhwa,

Mr. Swarna Kashyap and
Mr. Deboshree Mukherjee,
Advocates.

versus

JASMINE BUILDMART PVT. LTD.Respondent
Through Ms. Bina Gupta and Ms. Sheena
Taqui, Advocates.

+ O.M.P. (I) (COMM.) 283/2019

M.K. JAINPetitioner
Through Mr. Akhil Sibal, Senior Advocate
with Mr. Vipul Wadhwa,
Mr. Swarna Kashyap and
Mr. Deboshree Mukherjee,
Advocates.

versus

JASMINE BUILDMART PVT. LTD.Respondent
Through Ms. Bina Gupta and Ms. Sheena
Taqui, Advocates.

+ O.M.P. (I) (COMM.) 284/2019

RISHABH JAINPetitioner
Through Mr. Akhil Sibal, Senior Advocate
with Mr. Vipul Wadhwa,
Mr. Swarna Kashyap and
Mr. Deboshree Mukherjee,
Advocates.

versus

JASMINE BUILDMART PVT. LTD.Respondent
Through Ms. Bina Gupta and Ms. Sheena
Taqui, Advocates.

+ O.M.P. (I) (COMM.) 285/2019

M.K. JAIN (HUF) THROUGH MR. M.K.
JAIN, KARTA

.....Petitioner

Through Mr. Akhil Sibal, Senior Advocate
with Mr. Vipul Wadhwa,
Mr. Swarna Kashyap and
Mr. Deboshree Mukherjee,
Advocates.

versus

JASMINE BUILDMART PVT. LTD.

.....Respondent

Through Ms. Bina Gupta and Ms. Sheena
Taqui, Advocates.

+ O.M.P (I) (COMM.) 286/2019

M.K. JAIN

.....Petitioner

Through Mr. Akhil Sibal, Senior Advocate
with Mr. Vipul Wadhwa,
Mr. Swarna Kashyap and
Mr. Deboshree Mukherjee,
Advocates.

versus

JASMINE BUILDMART PVT. LTD.

.....Respondent

Through Ms. Bina Gupta and Ms. Sheena
Taqui, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

I.A. 721/2020 in O.M.P.(I) (COMM.) 280/2019

I.A. 715/2020 in O.M.P.(I) (COMM.) 281/2019

I.A. 716/2020 in O.M.P.(I) (COMM.) 282/2019

I.A. 717/2020 in O.M.P.(I) (COMM.) 283/2019

I.A. 718/2020 in O.M.P.(I) (COMM.) 284/2019

I.A. 719/2020 in O.M.P.(I) (COMM.) 285/2019

I.A. 720/2020 in O.M.P.(I) (COMM.) 286/2019

1. All the above applications are being decided by this common order since the original Petitions were decided by a common judgement by this Court.
2. Present Applications have been filed by the Petitioners seeking clarification / modification of Order dated 21.10.2019 passed by this Court restraining the Respondents from executing sale deeds in respect of the apartments in question as well as from parting with possession, to the extent the Court directed that the interim order shall remain in operation only for the period prescribed under Section 9 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act').
3. At the outset, it needs to be noted that judgement in the present Petitions was pronounced by the Court on 21.10.2019. Prior to the said date neither party herein made any effort to bring to the notice of this Court that steps had been taken for commencement of the Arbitral Proceedings. It is only by way of the present Applications that the said fact has been brought to the notice of this Court by the Petitioners.
4. In the present Applications Petitioners aver that prior to the pronouncement of the judgement, parties had taken steps to commence the Arbitral Proceedings. The chronology, as averred, is that vide email dated 15.10.2019, Respondent had appointed a Sole Arbitrator to adjudicate the disputes between the parties and vide emails dated 19.10.2019 and 29.10.2019, Learned Arbitrator apprised the Petitioners about his appointment. Petitioners responded, by letter dated 31.10.2019,

objecting to the unilateral appointment by the Respondent with intimation of the objection to the learned Arbitrator. In the light of the objections raised by the Petitioners, learned Arbitrator withdrew his nomination and communicated the same vide email dated 01.11.2019. Subsequent thereto, Respondent nominated another Arbitrator on 05.11.2019, which was again objected to by the Petitioners and finally, Petitions were filed in this Court under Section 14 of the Act seeking termination of the mandate of the said Arbitrator.

5. Learned Senior Counsel for the Petitioners argues that chronology of facts and events indicates that parties took steps to commence Arbitral Proceedings on 15.10.2019, which is prior to the pronouncement of the judgement by this Court and therefore Section 9(2) of the Act will have no application to the present case.

6. Reply has been filed by the Interim Resolution Professional (IRP). It is not disputed in the reply that steps were taken for commencement of the Arbitral Proceedings. Rather, it is admitted in para 7 of the reply that the Sole Arbitrator initially appointed by the Respondent had withdrawn once his appointment was questioned by the Petitioners. Applications are contested on the ground that NCLT, vide its order dated 28.11.2019, in IB No.1722/ND/2018, titled *Mrs. Meera Ahuja & Ors. vs. Jasmine Buildmart Pvt. Ltd.* has admitted the Application under Section 7 of the IBC, 2016 and has issued a moratorium under Sections 13 and 14 of the Act. An IRP has been appointed to take over the management of the Respondent Company. On being aggrieved by the order of NCLT, one majority shareholder of the Corporate Debtor preferred an Appeal under

Section 61 of IBC before NCLAT. Vide order dated 29.11.2019, NCLAT has stayed the publication and formation of Committee of Creditors, however, the moratorium has not been stayed and the Appeal is pending consideration.

7. A plain reading of Section 9(2) makes it clear that when a Court passes an order for any interim measure of protection under sub-Section (1) of Section 9 of the Act, before the commencement of the Arbitral Proceedings, Arbitral Proceedings shall be commenced within a period of 90 days from the date of such order or within such further time as the Court may determine. Section 21 of the Act deals with commencement of Arbitral Proceedings and reads as under :-

“Section 21 - Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

8. The phrase “*Arbitral Proceedings shall be commenced*” in Section 9(2) has to be understood in light of Section 21 of the Act and when so read it is evident that the Arbitral Proceedings would commence when the opposite party receives a request for the dispute to be referred to Arbitration. This is clearly fortified from a reading of the judgement of the Supreme Court in ***Sundaram Finance Ltd. v. NEPC India Ltd. (1999) 2 SCC 479***. The relevant para of which reads as under :-

“11. The reading of Section 21 clearly shows that the arbitral proceedings commence on the date on which a request for a dispute to be referred to arbitration is received by the respondent. It is in this context that we have to examine and

interpret the expression “before or during arbitral proceedings” occurring in Section 9 of the 1996 Act. We may here observe that though Section 17 gives the arbitral tribunal the power to pass orders the same cannot be enforced as orders of a Court. It is for this reason that Section 9 admittedly gives the Court power to pass interim orders during the arbitration proceedings.”

9. Reading Section 9(2) conjointly with Section 21 can lead only to one inevitable conclusion that when the proceedings commence prior to the Court passing an order granting interim relief to a party under Section 9(1) of the Act, provisions of Section 9(2) would have no application. In view of this settled position of law Applications seeking modification deserve to be allowed.

10. Direction of the Court in para 52 of the judgement dated 21.10.2019, whose modification is sought, is as follows :-

“52. Petitioners must take steps for constitution of the Arbitral Tribunal as the present interim order shall remain in operation only for the period as prescribed in Section 9(2) of the Act.....”

11. This direction is deleted and the Judgement dated 21.10.2019 stands modified to this limited extent. Applications are disposed of accordingly.

JYOTI SINGH, J

JULY 27th, 2020

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