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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 1386 OF 2019
IN
COMM ARBITRATION PETITION NO. 301 OF 2017
WITH
INTERIM APPLICATION NO. 1149 OF 2020
IN
INTERIM APPLICATION NO. 1386 OF 2019
IN
COMM ARBITRATION PETITION NO. 301 OF 2017
AND
COURT RECEIVER'S REPORT NO. 40 OF 2021
IN
COMM ARBITRATION PETITION NO. 301 OF 2017**

Kamal K Thavrani	...Petitioner
<i>Versus</i>	
Kamla Landmarc Corporation & Anr	...Respondent
<i>And</i>	
Avalon Investment Pvt Ltd	...Applicant

**INTERIM APPLICATION NO. 1393 OF 2019
IN
COMM ARBITRATION PETITION NO. 302 OF 2017**

Harish K Thavrani

...Petitioner

Versus

Kamla Landmarc Corporation & Anr

...Respondents

Mr Zubin Behramkamdin, *with Nitya Shah Parikh & Jimish Shah, i/b Divya Shah Associates and PC Shah, for the Applicant in IA/ 1386/19.*

Mr Prayag Joshi, *i/b Bipin Joshi, for Respondent No. 2.*

Mr Deepak Singh, *with Sneha Agicha, i/b Solicis Lex, for the Intervenor.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)

DATED: 25th June 2021

PC:-

INTERIM APPLICATION NO. 1149 OF 2020:

1. Heard through video conferencing.
2. There are two Interim Applications. Interim Application No. 1149 of 2020 is filed by one Avalon Investments Pvt Ltd (“**Avalon**”). It seeks to intervene. The Interim Application is thoroughly misconceived.
3. Avalon filed Suit No. 1020 of 2018 for specific performance of a Letter of Allotment dated 20th April 2011 issued by the original Respondents (Kamla Landmarc Corporation and Jitendra Jain) in

respect of flats on four floors of a development project, originally known as *Hem Kunj* and proposed to be renamed *Kamla Vista*. The Petitioner (“**Thavrani**”) had an independent claim against Kamla Landmarc. That dispute went to arbitration after some arbitration proceedings in this Court. There is an Award of 28th June 2018 against Kamla Landmarc in the amount of Rs. 13,62,59,507/- with interest. There is also an Award dated 18th January 2019 directing the Respondents (Kamla Landmarc/Jain) to pay Thavrani an amount of Rs. 7,13,64,328/- with interest. Thavrani has moved separately for satisfaction of that Award.

4. Avalon now seeks that the Court Receiver be appointed with directions to appoint a developer to complete the construction of Kamla Vista, to appoint a Project Management Consultant for the completion of the project and for a direction against Kamla Landmarc for disclosure.

5. Avalon is a complete outsider to the contract between Thavrani and Kamla Landmarc. It cannot possibly seek these substantive final reliefs in any arbitration between Thavrani and Kamla Landmarc/Jain. Indeed, if it only has letters of allotment without an arbitration agreement, it cannot seek arbitration at all, at least not as a matter of law. This intervention application would effectively decree its pending suit for specific performance.

6. Interim Application No. 1149 of 2020 is dismissed. There will be no order as to costs.

7. It is clarified that all contentions between Avalon and Kamla Landmarc/Jain in Avalon's suit remain unaffected by this order. All contentions are expressly kept open. The suit will proceed without this order being taken into account except for the purposes of, at most, a factual narrative. I have not assessed Avalon's claims on merits at all.

INTERIM APPLICATION NO. 1386 OF 2019:

8. Interim Application No. 1386 of 2019 is by Thavrani. It has filed an Interim Application in a disposed of Commercial Arbitration Petition. That may be an error in form. Mr Behramkamdin seeks leave to amend to re-lodge the same Interim Application as a post-Award Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996.

9. Leave granted. Amendments to be carried out without leave of reverification on or before 2nd July 2021.

10. I will proceed on a footing that the Interim Application has been converted and what I have now before me is a post-Award Section 9 Petition.

11. There is no doubt, and the law is not contentious, that after an Award is made, at any time before it is enforced in accordance with Section 26, the Court may make a suitable order under Section 9.

12. Thavrani seeks a direction to the Court Receiver to sell Kamla Landmarc's and Jain's interest in a plot of land CTS No. 195/147 admeasuring 392.96 sq mtrs at Gulmohar Road No. 2, JVPD Scheme, Mumbai 400 049, in the Mumbai Suburban District. I am told that the Hem Kunj bungalow has indeed been demolished.

13. The property is described in Exhibit 'A' to the Petition. The prayer is that this be allowed to be sold on as is where is basis by the Court Receiver by public auction which necessarily involves a public advertisement inviting bids.

14. The next prayer is to allow Thavrani and his brother Harish to participate in the auction. Prayer (c) seeks a dispensation from depositing any purchase money, on the basis that this can be adjusted against the Award debt. Finally, there is a prayer is for leave to set off Thavrani's claim against the sale price, should Thavrani be the successful bidder.

15. I am prepared to grant the prayer for appointment of a Receiver and direct him to sell the property by public auction on as-is-where-is basis but subject to some conditions.

16. The Court Receiver is directed to sell the property in Exhibit 'A' by public auction. The Court Receiver will issue an appropriate advertisement. The Petitioner Thavrani will deposit an amount sufficient to cover these expenses as required by the Court Receiver. These costs are recoverable during the sale process. This means that if Thavrani is the successful bidder, the sale price demanded from

him will stand reduced by the amount of costs. If Thavrani is not the successful bidder, then this amount (paid in advance by Thavrani) is recoverable from the sale proceeds before any other payments are made.

17. Thavrani and his brother Harish are at liberty to participate in the auction. Kamla Landmarc/Jain and Avalon are also permitted to participate in the auction.

18. The prayer that Thavrani be exempted from paying the earnest money deposit is specifically rejected.

19. However, should Thavrani/his brother (or both) be the successful bidders then they will be at liberty to adjust against the successful bid or sale price (i) the entire amount of the arbitral debt, (ii) all accumulated interest as awarded, and (iii) the amount deposited with the Court Receiver towards expenses of the sale.

20. Should there be a surplus amount after set-off (i.e., Thavrani's successful bid is higher than the set-off), Thavrani (or he and his brother as the case may be) will undoubtedly have to pay the difference. The Court Receiver will invest the surplus, if any, in accordance with the usual practices of his office until further orders of the Court. If there is a deficit on the other hand (i.e. the amount set-off exceeds the amount of Thavrani's successful bid), Thavrani will be at liberty to file an appropriate execution application for the balance.

21. The Petition is disposed of in these terms. There will be no order as to costs.

22. The Petition is to be got finally numbered as an Arbitration Petition under Section 9 within two weeks from today.

23. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)