

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 24305 OF 2024

Iosis Capital Pvt Ltd

...Petitioner

Versus

Goodwill Dwellings LLP

...Respondent

Mr Tushad Cooper, Senior Advocate, with Rishabh Agrawal, Prateek Katewa, Saurabh Gupta, Ashwin Poojari, Shailesh Korpe & Vidhi Sharma, i/b Cygnos Legal, for the Petitioner.

Mr Janak Dwarkadas, Senior Advocate, with Ankit Lohia, Vikram Trivedi, Sunil Tilokchandani & Priya Diwadkar, i/b Manilal Kher Ambalal & Co, for the Respondent.

CORAM: ARIF S. DOCTOR, J

DATED: 28th August 2024

PC:-

SHEPHALI
SANJAY
MORMARE

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1. This Commercial Arbitration Petition has been filed under Section 9 of the Arbitration and Conciliation Act 1996 seeking certain interim measures or protection. The disputes and differences between the parties arise out a Memorandum of Understanding ("**MoU**") dated 25th September 2022.

2. After hearing both Learned Senior counsel at some length and since neither party has disputed the existence of the MoU or the Agreement or arbitration clause contained therein, it was put to both

Learned Senior Counsel as to whether their respective clients were willing to submit their disputes and differences to arbitration, both Learned Senior Counsel, on instructions, submitted that their respective clients were willing to submit their disputes and differences to arbitration and had also agreed upon the name of Hon'ble Mr Justice SJ Vazifdar, former Chief Justice of Punjab & Haryana High Court to act as the Sole Arbitrator to decide the disputes and differences between the parties. Both Learned Senior Counsel also agreed that the present Petition under Section 9 be converted as the Application under Section 17 of the Arbitration and Conciliation Act 1996 and disposed of as such.

3. Mr Cooper Learned Senior Counsel appearing on behalf of the Petitioner, however, submitted that some interim order was required to be passed to secure the Petitioner. He submitted that it was the Petitioner's case that the Petitioner was entitled to 12% of the FSI which translated to approximately 51,000 sq.ft of built up area in the building constructed by the Respondent. Thus, the units which comprise of this 51,000 sq.ft built up area as mentioned in Annexure-A of the Application ought not be dealt with till such time that the Tribunal hears and disposes of the Section 17 Application. He also submitted that under the MoU, the land in question was to be mortgaged in favour of the Petitioner which had also not been done. It was thus he submitted that the Respondent ought to be restrained from in any manner dealing with the said and till the order is passed in the Section 17 Application.

4. Mr Dwarkadas, Learned Senior Counsel appearing on behalf of the Respondent submitted that the units find mentioned in Annexure-A

of the Application, which reflects 51,000 sq.ft shall not be dealt with was pending the hearing and final disposal of the Section 17 Application. Mr Dwarkadas has also submitted that the land shall not be encumbered, alienated or dealt with in any manner until the disposal of the Section 17 Application.

5. Mr Cooper, Learned Senior Counsel appearing on behalf of the Petitioner, at this stage, pointed out that an additional FSI had been applied for and the same had today not been granted. He submits that in the even the additional FSI is granted, the Petitioners would have a claim of 12% of the built up area of such FSI. Mr Dwarkadas submits that even assuming the additional FSI is granted, the Petitioner's claim (without admitting it) would be only to the extent of approximately 4,000 sq.ft. He makes a statement that an area of 4,000 sq.ft would not be dealt with in the event such FSI is granted pending the disposal of Section 17 Application. He submits that the Respondent shall be abide by the order in Section 17 Application.

6. In view of the consent of the parties and on the above understanding, I dispose of the present Petition by appointing the Hon'ble Mr Justice SJ Vazifdar, former Chief Justice of Punjab & Haryana High Court, to act as the Sole Arbitrator to decide the disputes and differences between the parties on the following Terms and Conditions:

TERMS OF APPOINTMENT

- (a) **Appointment of Arbitrator:** By consent, the Hon'ble Mr Justice SJ Vazifdar, former Chief Justice of Punjab &

Haryana High Court, is hereby nominated to act as a Sole Arbitrator to decide the disputes and differences between the parties.

(b) Communication to Arbitrator of this order:

- (i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the Petitioner within one week from the date this order is uploaded.
- (ii) The Advocates for the Petitioner will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal and email addresses:

Arbitrator	The Hon'ble Mr Justice SJ Vazifdar, Former Chief Justice of the Punjab & Haryana High Court.
<i>Address</i>	2nd Floor Readymoney Mansion, 43 Veer Nariman Road Mumbai 400001
<i>Mobile</i>	+91 98201 02088
<i>Email</i>	shiavaxvazifdar@gmail.com

- (c) **Disclosure:** The learned Sole Arbitrator is requested to forward, in hard copy or soft copy (or both), the necessary statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to Advocates for the parties as soon as possible. The Advocates for the Petitioners will arrange to file the original statement in the

Registry. If the statement is forwarded in soft copy, a print out of the covering email is also to be filed in the registry.

- (d) **Appearance before the Arbitrator:** Parties will appear before the learned Sole Arbitrator on such date and at such place as the learned Sole Arbitrator nominates to obtain appropriate directions in regard to fixing a schedule for completing pleadings, etc.
- (e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. The information is to include functional email addresses and mobile numbers.
- (f) **Interim Application/s:**
 - (i) Liberty to the parties to make an interim application or interim applications including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator. Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.
 - (ii) The present Petition under Section 9 of the Arbitration Act will be treated, heard, and disposed of as an application under Section 17 of the Act. All affidavits filed in the Section 9 petition will be treated as affidavits filed in the

Section 17 application. Liberty to apply to the learned Sole Arbitrator for leave to file further affidavits.

- (iii) The learned Sole Arbitrator is requested to dispose of all interim applications at the earliest and subject to the exigency as made before the Learned Arbitrator.
- (g) **Fees.** Since, the appointment of the Sole Arbitrator is by consent of the parties, the arbitral tribunal's fees shall not be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.
- (h) **Sharing of costs and fees.** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by the two sides in equal shares in the first instance.
- (i) **Consent to an extension if thought necessary.** Parties immediately consent to a further extension of up to six months to complete the arbitration should the learned Sole Arbitrator find it necessary.
- (j) **Venue and seat of arbitration.** Parties agree that the venue and seat of the arbitration will be in Mumbai.

7. Needless to state that this order is passed without prejudice to the rights and contentions of the parties to be urged before the Tribunal.

(ARIF S. DOCTOR, J)