



2024:DHC:10018



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

Reserved on: 18 September 2024

Pronounced on: 23 December 2024

+ O.M.P.(I) (COMM.) 401/2023, I.As. 4358/2024 & 34878/2024

INDIABULLS COMMERCIAL CREDIT LTD.Petitioner

Through: Mr. Anirudh Bakhru, Mr. Ankit Banati, Mr. Adith Nair, Mr. Naman Gowda, Mr. Nikhil Rathi and Ms. Mallika Kamal, Adv.

versus

AMBIENCE PRIVATE LTD.Respondent

Through: Mr. Rajeeve Mehra, Sr. Adv. with Mr. Anush Raajan, Mr. Madhusudan, Mr. Pradyumn Yadav and Mr. G.S. Sachdeva, Adv.

+ O.M.P.(I) (COMM.) 405/2023, I.A. 34882/2024

INDIABULLS HOUSING FINANCE LIMITEDPetitioner

Through: Mr. Karan Bharihoke, Mr. Ankit Banati, Mr. Adith Nair, Mr. Naman Gowda, Mr. Nikhil Rathi and Ms. Mallika Kamal, Adv.

versus

SURABHI GEHLOTRespondent

Through: Mr. Rajeeve Mehra, Sr. Adv. with Mr. Anush Raajan, Mr. Madhusudan, Mr. Pradyumn Yadav and Mr. G.S. Sachdeva, Adv.

+ O.M.P.(I) (COMM.) 406/2023, I.As. 30160/2024 & 34867/2024



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INDIABULLS COMMERCIAL CREDIT LTD.Petitioner
Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Ankit Banati, Mr. Adith Nair, Mr.
Saurabh Seth, Mr. Naman Gowda, Mr.
Nikhil Rathi and Ms. Mallika Kamal, Advs.

versus

AMBIENCE PROJECTS AND INFRASTRUCTURE PVT.
LTD.Respondent
Through: Mr. Rajeeve Mehra, Sr. Adv.
with Mr. Anush Raajan, Mr. Madhusudan,
Mr. Pradyumn Yadav and Mr. G.S.
Sachdeva, Advs.

+ O.M.P.(I) (COMM.) 407/2023, I.A. 34872/2024

INDIABULLS HOUSING FINANCE LIMITEDPetitioner
Through: Mr. Karan Bharihoke, Mr.
Ankit Banati, Mr. Adith Nair, Mr. Naman
Gowda, Mr. Nikhil Rathi and Ms. Mallika
Kamal, Advs.

versus

SARA ESTATES PRIVATE LIMITED & ANR ...Respondents
Through: Mr. Rajeeve Mehra, Sr. Adv.
with Mr. Anush Raajan, Mr. Madhusudan,
Mr. Pradyumn Yadav and Mr. G.S.
Sachdeva, Advs.

+ O.M.P.(I) (COMM.) 408/2023, I.As. 30159/2024 &
34883/2024

INDIABULLS HOUSING FINANCE LTD.Petitioner
Through: Mr. Dayan Krishnan, Sr. Adv.
with Mr. Ankit Banati, Mr. Adith Nair, Mr.
Naman Gowda, Mr. Nikhil Rathi and Ms.
Mallika Kamal, Advs.

versus



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**AMBIENCE PROJECTS AND INFRASTRUCTURE
PVT. LTD.**

.....Respondent

Through: Mr. Rajeev Mehra, Sr. Adv.
with Mr. Anush Raajan, Mr. Madhusudan,
Mr. Pradyumn Yadav and Mr. G.S.
Sachdeva, Advs.

**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR**

JUDGMENT

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1. The petitioner Indiabulls Housing Finance Ltd¹ is a financier. Against monies lent by the petitioner to the respondent Ambience Projects and Infrastructure Pvt Ltd², Ambience agreed to sell housing units, in various housing projects of theirs, to Indiabulls. The projects in question are Ambience Tiverton³, Caitriona Residential Apartment Complex⁴ and Ambience Creacion⁵, of which Tiverton is located at NOIDA and Caitriona and Creacion are located in Gurugram. Subsequently, by different Cancellation Deeds, the ATSs, in respect of some of the units, were cancelled. A total of 17 Agreements to Sell⁶ were, therefore, executed between Indiabulls and Ambience, the basic details of which, petition-wise, may be provided thus:

Sr. No	Date of ATS	No. of housing units	Sale Consideration -n (₹)*	Amount paid (₹)*	No of units cancelled *	Amount payable by Ambience against cancelled units**	Amount paid by Ambience towards cancellation **	OMP (I) (Comm)
1	18 November 2022	20	484120000/-	484120000/-	14	338884000/-	126824000/	401/2023

¹ "Indiabulls" hereinafter

² "Ambience" hereinafter

³ "Tiverton" hereinafter

⁴ "Caitriona" hereinafter

⁵ "Creacion" hereinafter

⁶ "ATSs" hereinafter



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2	12 October 2021	1	79327528/-	75361152/-	-	-	-	405/2023
3	12 October 2021	1	93271076/-	88607522/-	-	-	-	
4	27 April 2022	37	959385457/-	70.68 crores	3	2120541462/-	-	
5	20 July 2022	38	960034045/-	70.70 crores	-	-	-	
6	20 July 2022	22	626347171/-	44.42 crores	1	17987690/-	-	406/2023
7	29 July 2022	8	202206932/-	14.89 crores	-	-	-	
8	28 October 2022	13	329825378/-	18.95 crores	2	15386027/-	-	
9	28 October 2022	132	3681581974/-	242.28 crores	9	191889397/-	-	
10	4 October 2021	1	78330972/-	74414423/-	-	-	-	
11	4 October 2021	1	81443948/-	77371750/-	-	-	-	
12	4 October 2021	1	78327492/-	74411117/-	-	-	-	407/2023
13	4 October 2021	1	81475152/-	77401394/-	-	-	-	
14	4 October 2021	1	81475152/-	77401394/-	-	-	-	
15	4 October 2021	1	81475152/-	77401394/-	-	-	-	
16	30 September 2020	51	1277081863/-	84.52 crores	3	80275048/-	-	408/2023
17	12 April 2021	10	253987746/-	15.05 crores	1	25323940/-	-	

* The figures in the above chart have been collated from the pleadings, the ATSs and the cancellation deeds.

§ In respect of cancellations, as the figures pertaining to the cancellations which took place after the OMPs were filed are not forthcoming, they are not reflected in the table.

Resultantly, the ATS, which were in respect of a total 306 housing units, out of which Cancellation Deeds were executed in respect of 33 units, thereby resulting in 273 surviving units.

2. Also, out of a total sale consideration of ₹ 8935445055/-, covering all the ATSs, an amount of ₹ 6380775728/- stands paid by Indiabulls to Ambience. Letters from Indiabulls, acknowledging receipt of the entire said payment, have been placed on record by Indiabulls in the relevant OMP files. As such, there is no dispute regarding the factum of the said payments having been made.



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3. It is also not in dispute that no Sale Deeds, in respect of a single unit, in any of the projects forming subject matter of these petitions, has been executed between the parties. As such, the uncontested position that results is that a total amount of ₹ 6380775728/- stands paid by Indiabulls to Ambience, but not a single unit has been transferred by Ambience to Indiabulls against the said payment.

4. The terms of the ATSs are, to all intents and purposes, identical. For ready reference, the terms of the ATS dated 30 September 2020 executed in respect of the Creacion project, forming subject matter of OMP (I) (Comm) 408/2023, may be reproduced thus, eschewing those that are of no consequence:

“AGREEMENT TO SELL

THIS AGREEMENT TO SELL alongwith its Annexures is made and executed at New Delhi, Haryana on this 30th Day of September, 2020 ("AGREEMENT");

BETWEEN

M/s. Ambience Projects and Infrastructure Private Limited, a company as defined in the Companies Act, 2013. having its registered office at L - 4, Green Park Extension New Delhi DI-110016 & having the Corporate Identity Number U7010IDL2010PTC209128 and having PAN AAICA8660R & GSTIN 06AAICA8660R2ZW through its authorized signatory, Mr. Raj Singh Gehlot, authorized vide board resolution dated 29.09.2020 (hereinafter referred to as the “Seller”, which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors- in- interest and assigns) of the FIRST PART;

AND

M/s Indiabulls Housing Finance Limited, a company as defined in the Companies Act, 2013, and having its registered office at M - 62 & 63, 1st Floor, Connaught Place, New Delhi 110001, and having Corporate Identity Number L65922DL2005PLCI36029(hereinafter



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referred to as the “Purchaser”), which expression shall un less repugnant to the context or meaning thereof be deemed to mean and include its successor(s) and permitted assign(s) through its authorized signatory, Mr. Jitesh Mor, authorized vide board resolution dated 15th September, 2020 being the party of the SECOND PART;

The Seller and the Purchaser shall, hereinafter be jointly referred to as the “Parties” and individually as a “Party”.

WHEREAS:

B. The Director General, Town & Country Planning, Haryana, Chandigarh has granted the approval/ sanction to develop the Residential Group Housing Colony Project on the said Plot vide license bearing dated 48 of 2012.

C. The Seller has obtained approval on the layout plan/ demarcation/ zoning/ site plan/ building plan for the Project from Directorate of Town & Country Planning, Haryana, Chandigarh.

E. The Seller has represented that the Group Housing Colony project on the Plot currently named as “Ambience Creacions” construction and development is in process in accordance of the sanctioned building plans issued by the relevant competent authorities ("Project").

G. The Seller is desirous to sell and the Purchaser has agreed to purchase total 51 (Fifty One) number of apartment(s)/flat(s)/unit(s) (along-with the specifications and lay out of Property as per Annexure-B) admeasuring 161461 square feet super built-up area (53,622.70 sq. ft. carpet area along with 16,283.91 sq. ft. of Balcony Area) in the aggregate along with 1 (one) car parking for each apartment(s)/flat(s)/unit(s) along with the proportionate share, rights, title and interests in the common area , amenities, facilities and car parking space etc. described more particularly in Schedule-I attached hereunder (hereinafter referred to as the 'Property'), free from all encumbrances, easements, privileges and charges, subject to the Seller getting all the required permissions/ approvals/no-objection certificates from the existing lender(s)/charge holders, if any, connected with the Property and completion of all the condition precedents as



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mentioned hereunder and to the satisfaction of the Purchaser for transfer of Property in favor of Purchaser, for a total sale consideration of INR 1,27,70,81,863/- (Indian Rupees One Hundred Twenty Seven Crore Seventy Lakh Eighty One Thousand Eight Hundred Sixty Three Only) alongwith applicable Goods and Services Taxes subject to deduction of TDS under applicable laws and on the terms and conditions hereinafter appearing.

“NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

All the recitals as stated above, the annexures annexed hereto and the schedules appearing hereunder shall form integral part of this Agreement as if the same were set out herein verbatim.

1. In pursuance of the foregoing and in pursuance of the total agreed consideration as mentioned hereinbefore, the Seller hereby agrees to sell, transfer and convey to the Purchaser and the Purchaser (i) based on the representations and warranties of the Seller contained herein including those in the recitals above; and (ii) after having completed and concluded the due diligence of total 51 (Fifty One) number of apartment(s)/flat(s)/unit(s) (alongwith the specifications and lay out of Property as per Annexure B) admeasuring 161461 square feet super built-up area (53,622.70 sq. ft. carpet area along with 16,283.91 sq. ft. of Balcony Area) in the aggregate along with 1 (one) car parking for each apartment(s)/flat(s)/unit(s) (said Property), agrees to purchase and acquire from the Seller the said Property together with proportionate share, rights, title and interests in the common area, amenities, facilities and car parking space etc. more particularly described in Schedule I along with the common area, amenities, facilities etc. in the Group housing project currently named as "Ambience Creacions" constructed/to be constructed on plot admeasuring 14.82 acres forming part of khasras more specifically mentioned in Annexure A attached herewith situated at the revenue estate of Village Mullahera, Tehsil & District Gurgaon, Haryana, free from all encumbrances (except in favour of existing lenders) and with a clear and marketable title, for the total sale consideration of INR 1,27,70,81,863/(Indian Rupees One Hundred Twenty Seven Crore Seventy Lakh Eighty One Thousand Eight Hundred Sixty Three Only) as per the break-up enclosed herewith as Annexure C ["Sale Consideration"] on the terms and conditions recorded herein which shall be subject to deduction of applicable taxes.



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3. Subject to the terms and conditions of the Agreement, the Balance Sale Consideration of INR 38,15,29,853/- (Indian Rupees Thirty Eight Crore Fifteen Lakh Twenty Nine Thousand Eight Hundred Fifty Three Only) (after deduction of tax deducted at source) shall be paid by the Purchaser to the Seller by or before Eighteen (18) months from the date of this Agreement. Proof of payment of the TDS with Form 16-B of Income Tax Act, 1961 will be made available by the Purchaser to the Seller.

4. The Sale Consideration is an all-inclusive price for the Property including all applicable taxes, e.g. goods and services taxes (GST), security deposits etc. under this Agreement (other than stamp duty etc. to be borne and paid by the Purchaser as per Law) and will not be subject to any variation. The Sale Consideration will be inclusive of all taxes payable under Applicable Laws and all other charges, costs and payments, except the payment and expenses towards Stamp Duty and registration of the Conveyance Deed for the Property. The First Transfer of the Units under consideration / Property by the Purchaser in favour of its nominee/assigns shall be free of all Costs and Charges.

5. The Seller, in addition to the representations and warranties made in the recitals above, hereby represents, warrants, undertakes and assures the Purchaser as follows:

i. That Seller has authority to sell and in possession of the Plot/Property and has a valid and marketable title to the Plot/Property and none other than the Seller has any right, title or interest in respect of the Property and that there are no easement rights over the property in favour of any other person.

ii. That other than the charge in favour of the existing lender(s), the Property is free from all encumbrances, attachments, liens, charges, prior sale, mortgage, acquisition or notification etc. and is not a financial asset of any Bank or Institution and no proceedings whatsoever in respect of the Property are pending before any Debt Recovery Tribunal or any other Court or other Tribunal or statutory authority and the Seller confirms that it has also not received any notice from any Bank or



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Institution under the Securitisation and Reconstruction of Financial Assets and Enforcement Act. The Seller further undertakes not to create any encumbrances, mortgages, charges, liens or liability of any kind whatsoever in respect of the Property subsequent to execution of this Agreement.

viii. The Seller shall, within a period of 30 days from the date of this agreement and at its own cost, get all the required approvals from the concerned entities for transfer of Property in favor of Purchaser and make out a clear and marketable title to the satisfaction of the Purchaser. The aforesaid permissions / approvals/ consents shall include but not be limited to the following:

- a. Shareholders' approval u/s 180 of the Indian Companies Act, 2013, if applicable;
- b. NOC from existing lender(s)/creditor(s)/ chargeholder(s), duly supported with proof of discharge/ release of the Property;
- c. Any other permission/approval/ consent/certificate etc., if any.

8. Simultaneously with the execution of this Agreement, the Seller has delivered to the Purchaser copies of all the title deeds and all the relevant documents in respect of the Property. The Seller shall forthwith furnish copies of all necessary permissions and consents obtained from concerned authorities for transfer of the Property by the Seller to the Purchaser. In addition to the aforesaid, the Seller shall provide to the Purchaser all other documents, information, records, sanction plans, certificates, agreements etc. pertaining to the Property for carrying out necessary due diligence of the Property. The Seller shall co-operate with the Purchaser in the course of investigation of title in respect of the Property and shall clear all encumbrances, if any.

9. On fulfillments of terms and conditions of this Agreement, both the Parties mutually agree to complete the transaction in its entirety on or before Eighteen (18) months from the date of the



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agreement and the time is the essence of this Agreement. On receipt of balance Sale Consideration by the Seller from the Purchaser, the Seller shall execute and cause the execution of all documents, deeds and any other document including the registration of Conveyance Deed/s in respect of the Property in favour of the Purchaser on or before Eighteen (18) months from the date of this agreement and simultaneously hand over the vacant peaceful and unencumbered possession of the Property to the Purchaser. However, in the event of the Purchaser not being satisfied with title and possession of the said Property of the Seller or noncompliance of conditions mentioned herein, the Purchaser at its sole discretion shall be entitled to terminate this Agreement and the Seller shall without any further delay or demur refund the payment made under this Agreement with an interest @2% (Two Percent) per annum from the date of this Agreement till the date of refund.

16. The Purchaser hereby agrees that in case it commits the breach of any of the terms and conditions of this agreement hereby agreed to be sold or it acts prejudicial to the interest of the Complex and the neighborhood, then the same shall be rectified at the cost and expense of the Purchaser.

21. The parties hereto agree that if any dispute and/or difference arise between the parties in respect of the present Agreement then the same shall be settled and resolved through arbitration by sole arbitrator to be jointly appointed by the Party. The seat/place and venue of arbitration shall be New Delhi and the language used shall be English. It is also agreed between the parties that the arbitration process shall be in accordance to the Arbitration and Conciliation Act, 1996 (as amended). The award so made by the sole arbitrator shall be final and binding on the parties.

24. This Agreement is binding upon the Parties herein and shall be governed by, and construed in accordance with the laws of India and further all disputes arising out of this Agreement to sell are subject to the Jurisdiction of Courts at Delhi only.

25. The Parties to this Agreement agree that, to the extent permitted under applicable laws, and notwithstanding any other right or remedy available under this Agreement, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced



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against a defaulting party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected party for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the affected party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a competent court in the event of any such breach or threatened breach by any other party. The Parties agree and covenant unequivocally and unconditionally that the affected party shall be entitled to such injunctive relief specific performance or other equitable relief without the necessity of proving actual damages. The affected party shall, notwithstanding the above rights, also be entitled to the right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting party.

26. This Agreement together with all documents executed contemporaneously with it or referred to in it constitutes the entire Agreement between the Parties in relation to its subject matter.

27. This Agreement and the annexures together constitute a complete and exclusive understanding of the terms of this Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

28. No variation of this Agreement shall be binding on any Party unless such variation is in writing and signed by each Party.

29. The Seller shall not be entitled to at any point of time to assign / transfer any of its rights and obligations contained herein to any person, without prior written consent of the Purchaser. The Purchaser shall also be entitled to assign / transfer any of its rights and obligations contained herein to any of its associates and/or group company(ies) without payment of any transfer/administrative charges to the Seller and without prior written consent of the Seller and same shall not be treated as First transfer.

33. The Parties shall sign and execute the Apartment Buyers Agreement in the standard format of the Seller.”

5. On 18 November 2022, Indiabulls and Ambience entered into a Settlement Deed, of which the following covenants are relevant:



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THIS SETTLEMENT DEED is signed and executed on this 18th day of November, 2022 at New Delhi between M/s Indiabulls Housing Finance Limited, having its registered office at 5th floor, 27, KG Marg, New Delhi-110 001 and M/s Indiabulls Commercial Credit Ltd., having its registered office at 5th Floor, Building No. 27, K G Marg, Connaught Place, New Delhi-110001 (hereinafter jointly referred to as the 'Lenders') being the Party of the First Part.

AND

M/s Ambience Projects and Infrastructure Pvt. Ltd., M/s Ambience Pvt. Ltd., M/s Ambience Commercial Developers Pvt. Ltd. and other associated and group companies of Ambience, duly mentioned in Annexure-A to this Settlement Deed, all having their registered office at L-4, Green Park Extension, New Delhi (hereinafter jointly referred to as the 'Borrowers') being the Party of Second Part.

WHEREAS the Lenders have extended various loan facilities to the Borrowers from time to time as per detail given in Annexure-A to this Settlement Deed, mainly/broadly summarized under four head/categories mentioned below at Sr. Nos. 1, 2 & 3. These loans are property/project loans which are secured against mortgage of various immovable properties as per details given in Annexure- B to this Settlement Deed and the Retained Security (defined later in this Settlement Deed) and loan accounts mentioned below at Sr. No.4 are lease rental discounting (LRD) loans which are secured against mortgage of receivables and property of Ambience Mall alongwith land underneath, admeasuring 8.25 acres situated at Plot No.2, Vasant Kunj Shopping Mall Complex, Vasant Kunj, Phase II, New Delhi. Details of the credit facilities and outstanding therein as on 30.09.2022 are given hereunder:

Table I

Sr. No.	Name of Principal Borrowers	Amount of loan O/s (Rs. In Crores)
1.	M/s Ambience Projects and Infrastructure Pvt. Ltd. & Others	1248.00
2.	M/s Ambience Pvt Ltd. & Others	923.00
3.	Sh. Raj Singh Gehlot & Smt. Sheela Gehlot	99.00
		2270.00



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	Add: Gross Interest till 30.09.2022	218.00
	Total 'A'	2488.00.
4.	Ambience Commercial Developers Pvt Ltd.	448.00
	Total 'B'	448.00

AND WEHREAS the Lenders and Borrowers have mutually agreed to settle their outstanding dues in the property/project loans mentioned at Sr. No.1, 2 & 3 of Table I in full and final at the amount worked out in the manner mentioned in Table-II hereinafter.

Table II

Sr. No.	Particulars		Amount (Rs. In Crores)
1.	Dues in property/project loans No.1, 2 & 3 as worked out in Table-I above Total 'A'		2488.00
	<u>Add:</u> - Amount payable by Borrowers in lieu of arrears in TDS dues of Lenders upto 31.03.2022 -EMI outstanding till the month of September, 2022 in loan account at Sr.No.4 above (net of TDS)	118.00 34.00	 152.00
	Total of all dues payable by Ambience		2640.00
	<u>Less:</u> -Rebate towards Settlement on the basis of mutual consensus and agreement between Borrowers and Lenders		296.00
	Net Settlement Amount payable/recoverable by Borrowers to/from the Lenders towards full and final payment of all dues of Lenders in relation to Property/Project Loan		



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	mentioned at Sr. No.1,2 & 3 of Table I and other claims/dues of Lenders and Borrowers against each other (other than and excluding the LRD loan account mentioned at Sr. No.4 of Table I)		2344.00
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AND WHEREAS in order to settle and pay the mutually agreed Net Settlement Amount of Rs. 2344 crore (inclusive of income tax to be deducted at source, which tax the Lenders have undertaken to deposit of its own), in the Lenders loan account at Sr. No.1, 2 & 3 in Table I above, the Borrowers have agreed to arrange the requisite amounts by way of selling/transferring/ monetizing various projects/properties/assets, listed in Table III below, owned by the Borrowers or their associated/group companies/concerns/individuals and utilize the amount realized therefrom after repayment of the dues against the properties concerned per se for settlement of all dues of the Lenders from the Borrowers in the property/project loan accounts mentioned at Sr. No.1, 2 & 3 of Table I above and other claims/dues of Lenders and Borrowers against each other as mentioned in Table-II above (excluding the dues in the LRD loan account mentioned at Sr. No.4 of Table I above). The Net Settlement Amount payable by the Borrowers to the Lenders is worked out at Rs.2344 crore as mentioned in Table-II above which amount includes an amount of Rs. 34 crore towards LRD loan account mentioned at Sr. No.4 of Table I above. Details of the properties proposed to be sold by the Borrowers and the corresponding realizable consideration thereof towards payment of Net Settlement Amount of Rs.2344 crore in full and other details are mentioned below in Table-III:

Sr. No	Particulars		Purchase value of Sale consideration (Net of Statutory and Other Dues/Charges/ Fees etc.) (Rs. in
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			Crore)
1.	Panipat Project (undertaking as a going concern) comprising of 314.808 acres of licenced land and 24.862 acres unlicensed land, owned by 18 companies/individual details of which are given in Annexure-C to this Settlement Deed and Licence No.6 of 2010 issued in the name of the Developer M/s Ambience Pvt. Ltd.	1325.00	
	Less: Deduction of TDS on Purchase of property (undertaking as a going concern)	1.51	
	Less: TDS to be deducted by 14 LOCs of Panipat Project on interest component charged to Ambience Pvt. Ltd. & other	35.75	1287.74
2.	28 acres of land at Sector-115, Noida allotted in the name of M/s Ambience Pvt. Ltd. by Noida Authority for residential with ancillary development by way of JDA	425.00	
	Less: Deduction of TDS on JDA	4.25	420.75
3.	Commercial Complex at Plot No.10, at Community Centre, Block-B, Shalimar Bagh, New Delhi developed and owned by M/s Ambience Towers Pvt. Ltd.	325.00	
	Less: Security Deposit received from tenants	2.47	
	Less: Deduction of TDS on Purchase of property	3.23	319.00
4.	Farm House at D-17, Pushpanjali Farms, New Delhi, developed and owned by M/s Indus Sor Urja Pvt. Ltd.	165.00	
	Less: Security Deposit received from tenants	2.78	162.22
5. (a)	Apartment at Residential Complex at Sector 22, Gurgaon developed and owned by M/s Ambience Projects and Infrastructure Pvt. Ltd.	264.62	



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	Less: Deduction of TDS on Purchase of property	2.65	261.97
5.(b)	Apartment at Residential Complex at Sector 50, NOIDA developed and owned by M/s Ambience Pvt. Ltd.	48.50	
	Less: Deduction of TDS on Purchase of property	0.48	48.02
	Total Sales Consideration		2500.00
	Less:		
	Existing Dues in the loan payable to banks in respect of Panipat Project, Shalimar Bagh and Farm House		156.00
	Net amount realizable by the Borrower from sale/transfer/monetization of the assets/properties/projects owned by the Borrowers or their associated/group companies / concerns / Individuals.		2344.00

“NOW THIS SETTLEMENT DEED WITNESSETH AS FOLLOWS:

1. The Lenders and Borrowers have mutually agreed to settle all their outstanding loan, dues, claims, counter claim, or disputes etc. of whatsoever nature against each other in respect of the Loans mentioned at Sr. No.1, 2 & 3 of Table I, only upon an amount of Rs.2344 crore (Rupees Two Thousand Three Hundred Forty Four Crore Only) inclusive of amount of TDS as worked out and mentioned in Table II above is remitted by the Borrowers to the Lenders and received by the Lenders from/on behalf of the Borrowers. The funds for such remittance are being arranged by the Borrowers by selling/transferring/monetizing the properties as mentioned in Table III in consultation with the Lenders. Out of the aforesaid amount of Rs. 2344 crore an amount of Rs. 260.18 crore has already been remitted by the Borrowers and received by the Lenders.

3. That the Borrowers undertake that all amounts aggregating Rs. 2344 crore (including Rs. 25 crore by way of cheque dated 25.12.2022) to be received by the Lenders from/on behalf of the Borrowers under the loans mentioned at Sr. No.1, 2 & 3 of Table I



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above shall be received within 5 (five) working days from the date of this Settlement Deed subject to payment of total sale consideration by the respective buyers to the respective owners of the respective property, as mentioned at Sr. No.1 to 5 in Table-III above failing which this Settlement Deed shall be null and void unless otherwise extended with mutual consent of both the parties in writing and on this Settlement Deed becoming null and void the amounts received till such date shall automatically stand appropriated towards the outstanding and continuing loans (towards principal and/or interest) referred to at Sr. No.1, 2 & 3 of Table I above.

4. That upon the Lenders receiving the net amount of Rs.2344 crore (Rupees Two Thousand Three Hundred Forty Four Crore Only) inclusive of TDS in accordance with this Settlement Deed under the loans as mentioned under Sr. Nos.1, 2 & 3 of Table I above, the Lenders shall not lay any further claim of any nature or demand or any interest, penalty or compensation in lieu from the Borrowers in respect of various loans/facilities extended by it as mentioned under Sr. Nos. 1, 2 & 3 of Table I above and the amount of Rs.2344 crore (Rupees Two Thousand Three Hundred Forty Four Crore Only) is full and final payment, which includes TDS on interest, all interest, charges and penalty or other amounts or claims etc. by whatever name it may be called and shall never be called in question and reviewed on any ground whatsoever.

6. That upon receipt of net amount of Rs.2344 crore (Rupees Two Thousand Three Hundred Forty Four Crore Only) inclusive of TDS by the Lenders from/on behalf of the Borrowers in accordance with this Settlement Deed all dues, charges, mortgages, liens and encumbrances etc. of whatsoever nature of the Lenders against the properties mortgaged in respect of the Loans mentioned at Sr. No.1, 2 & 3 of Table I above along with personal/corporate guarantees of the companies/concerns/individuals in the abovementioned three loan accounts at mentioned in the Annexure-B to this Settlement shall stand paid and satisfied and the Lenders will release all the title deeds of the properties mortgaged in respect of the Loans mentioned at Sr. No.1, 2 & 3 of Table I above along with personal /corporate guarantees of the companies/concerns/individuals in the abovementioned three loan accounts as mentioned in the Annexure-B to this Settlement Deed immediately and the respective owners shall collect the envelop of title deeds etc. in relation to their respective property and the Borrowers shall collect the No Dues Certificates/NOCs/letters for release of charge/mortgage, original Share Certificates, PDCs, letters to trustee/agent to release original title deeds/share



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certificates etc. as per list given hereinabove and the Lenders shall collect the bank drafts aggregating Rs.147.87 crore from the custodian Mr. Mukul Rohtagi. The Lenders shall thereafter facilitate the Borrower in obtaining the original title deeds of the properties mortgaged/share certificates (that are deposited with the trustee/agent IDBI Trusteeship) in respect of the Loans mentioned at Sr. No.1, 2 & 3 of Table I and also for filing satisfaction of charge with ROC, New Delhi.

11. That in relation to the inventories at Sector 22, Gurgaon being purchased by the Lenders as part of this Settlement Deed and inventories purchased on earlier occasions in the project being developed by the Borrowers at Sector 22 Gurgaon, ("Sec-22 Inventories"), the Borrowers shall be entitled to buy-back the Sec-22 Inventories over the said period of 14 months i.e. w.e.f. November, 2022 to December, 2023 on the Borrower remitting and the Lender receiving buy-back consideration of not less than the price paid by the Lenders to the Borrowers (without any interest) as given in Annexure G. In the event the Borrowers require transfer of any part of the Sec-22 Inventories directly in favour of any third party buyer, the same shall be done on receipt of actual consideration, being an amount not less than the price paid by the Lenders to the Borrowers, being received by the Lenders directly from such third party buyer.

12. That in case of failure of Borrower to buy-back the projected sale of Sec-22 Inventories in a particular month the Lenders shall be at liberty to sell the inventory so left from the buy-back for that particular month at its free will. This will be applicable for each month independent of the previous month performance. Further, the Sec-22 Inventory sold in excess in a particular month will be counted as buy-back of the Sec-22 Inventory to be purchased in the following month and amount of that inventory to be brought-back in the following months will stand reduced by the amount of excess sale of Sec-22 Inventory in the preceding months.

13. That in the event the Borrowers defaults in its buy-back obligations for three consecutive months and/or delays/defaults in remittance of buy-back consideration and/or fails to record transfer of any inventory within 7 (seven) working days from its resale by the Lender in terms of this Settlement Deed, then the right to buy-back on and from the date of such default shall automatically stand terminated and extinguished.



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19. That this Settlement Deed supersedes all previous negotiations and understandings on the subject matters dealt with herein. Any amendment to this Settlement Deed shall be valid only if mutually agreed in writing between the parties to this Settlement Deed.”

6. An Addendum, to the aforesaid Settlement Agreement dated 18 November 2022, was executed between Ambience and Indiabulls on 6 December 2022. Clause 2(c) of the Addendum read thus:

“On or before March 31, 2023, the Borrowers will procure the NOC’s from their bankers (Punjab National Bank) for the 20 units in ‘Ambience Tiverton’ a residential complex situated at Sector-50, Noida, for which ATS has already been executed in favour of the Lenders and execute and register the lease deeds for such units in accordance with such ATS;”

Trajectory of these proceedings

7. Relevant petitions/applications filed, and orders passed, during the course of proceedings in the present five OMPs, to the extent relevant, may be noted thus:

(i) OMP (I) (Comm) 401/2023 was filed on 7 December 2023.

(ii) On 8 December 2023, while issuing notice in OMP (I) (Comm) 401/2023, Ambience was restrained from creating any third party interest in respect of the 12 units forming part of the said OMP.



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(iii) On 14 December 2023, notice was issued in the remaining OMP (I) (Comm) 405/2023, OMP (I) (Comm) 406/2023, OMP (I) (Comm) 407/2023 and OMP (I) (Comm) 408/2023, while declining to pass any interim orders.

(iv) On 19 February 2024, Ambience filed IA 4358/2024, for vacation of the interim order dated 8 December 2023 passed in OMP (I) (Comm) 401/2023. This application is pending.

(v) On 23 February 2024, Ambience submitted that the disputed units in OMP (I) (Comm) 401/2023 were subject matters of a settlement between the parties which had not been placed on record.

(vi) On 22 April 2024, Ambience undertook not to create any third party interest in respect of the 6 surviving units in OA (I) (Comm) 401/2023.

(vii) On 27 July 2024, Indiabulls filed

(a) IA 34878/2024, for a direction to Ambience to deposit, pending arbitration, the amount of ₹ 19,87,44,000/- paid by Indiabulls towards the 6 surviving units in OMP (I) (Comm) 401/2023,

(b) IA 34882/2024, for a direction to Ambience to deposit, pending arbitration, the amount of ₹ 24,55,06,635/- paid by Indiabulls towards the 2 surviving units in OMP (I) (Comm) 405/2023,



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- (c) IA 34867/2024, for a direction to Ambience to deposit, pending arbitration, the amount of ₹ 1,119,87,12,000/- paid by Indiabulls towards the 235 surviving units in OMP (I) (Comm) 406/2023,
- (d) IA 34872/2024, for a direction to Ambience to deposit, pending arbitration, the amount of ₹ 68,63,54,295/- paid by Indiabulls towards the 6 surviving units in OMP (I) (Comm) 407/2023 and
- (e) IA 34883/2024, for a direction to Ambience to deposit, pending arbitration, the amount of ₹ 25,088,98,000/- paid by Indiabulls towards the 57 surviving units in OMP (I) (Comm) 408/2023.

(viii) On 17 May 2024, Ambience filed IA 30160/2024 in OMP (I) (Comm) 406/2023 and IA 30159/2024 in OMP (I) (Comm) 408/2024 for dismissal of the OMPs.

(ix) On 30 July 2024, OMP (I) (Comm) 401/2024 was tagged with OMP (I) (Comm) 405/2023, OMP (I) (Comm) 406/2023, OMP (I) (Comm) 407/2023 and OMP (I) (Comm) 408/2023. Thereafter, all five OMPs were always listed together.

(x) On 12 August 2024, apropos the Settlement Deed dated 18 November 2022, the rival contentions were noted thus:

“4. ... Mr Nayar’s contention is that, if one peruses the Settlement Agreement, there is breach by the respondents of Clauses 11 to 13 of the Settlement Agreement which,



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therefore, disentitles the respondents to rely on the Settlement Agreement as a defence to the petitions.

5. Mr Mehra, learned Senior Counsel for the respondents emphatically disputes this contention and submits that, in fact, the petitioner cannot, by relying on the Settlement Agreement, seek to change the cause of action set up in the OMPs.”

Nonetheless, Ambience undertook not to create any third party interest in respect of any of the surviving units in OMP (I) (Comm) 405/2023, OMP (I) (Comm) 406/2023, OMP (I) (Comm) 407/2023 and OMP (I) (Comm) 408/2023.

(xi) Judgment was reserved, in all OMPs and pending applications, on 18 September 2024. The pending applications, I may note, are`

(a) IA 4358/2024 filed by Ambience in OMP (I) (Comm) 401/2023, for vacation of the stay granted by this court in the said OMP on 8 December 2023,

(b) IA 30160/2024 in OMP (I) (Comm) 406/2023 and IA 30159/2024 in OMP (I) (Comm) 408/2023, seeking dismissal of the Section 9 petitions, and

(c) IA 34878/2024 in OMP (I) (Comm) 401/2023, IA 34882/2024 in OMP (I) (Comm) 405/2023, IA 34867/2024 in OMP (I) (Comm) 406/2023, IA 34872/2024 in OMP (I) (Comm) 407/2023 and IA 34883/2024 in OMP (I) (Comm) 408/2023, whereby Indiabulls has sought a direction for Ambience to deposit, with this Court, the sale consideration paid by Indiabulls



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to Ambience in respect of the surviving units forming subject matter of the said OMPs, which have not been cancelled and of which no Sale Deeds, transferring the units to Indiabulls, have been executed by Ambience.

8. The surviving units, covered by the ATSS and not cancelled, and of which no Sale Deeds have been executed, or any steps taken by Ambience in terms of the ATSS, would, for the sake of convenience, be collectively referred to, hereinafter, as “the disputed units”.

Rival Stands

9. I have heard Mr. Rajiv Nayar and Mr. Dayan Krishnan, learned Senior Counsel for Indiabulls and Mr. Rajeeve Mehra, learned Senior Counsel for Ambience, at length over several days. Post reserving of judgment, written submissions have also been filed, by Indiabulls and Ambience, under cover of Indexes dated 25 September 2024.

Submissions of Mr. Nayar and Mr. Dayan Krishnan

10. The case of the petitioner Indiabulls, in these petitions under Section 9(1)⁷ of the Arbitration and Conciliation Act, 1996, is

⁷ 9. **Interim measures, etc. by Court. –**

- (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a Court:—
- (i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
 - (ii) for an interim measure of protection in respect of any of the following matters, namely:—
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;



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predicated on the arbitration clause, which is contained in all the ATs, and the fact that, despite substantial payments having been made by Indiabulls to Ambience towards the ATs, no Sale Deed, in respect of any unit, has been executed by Ambience in favour of Indiabulls. Interlocutory protective orders have, therefore, been sought. By way of example, the prayer clause in OMP (I) (Comm) 401/2023 may be reproduced:

“In the circumstances stated herein above, it is humbly prayed that this Hon’ble Court may be pleased to:

- (a) Restrain the Respondents from transferring, selling, alienating, encumbering or creating any third party rights or interest in the following 12 Units, more particularly defined in Schedule 1 of the Agreement to Sell dated 18.11.2022:

S. No.	Apartment No.	Block	Super Area (sq. ft)
1.	G-101	G	2547.95
2.	G-201	G	2547.95
3.	G-202	G	2547.95
4.	G-301	G	2547.95
5.	G-302	G	2547.95
6	G-401	G	2547.95
7	G-501	G	2547.95
8	G-502	G	2547.95

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.

(3) Once the arbitral tribunal has been constituted, the court shall not entertain an application under sub-section (1), unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.

Signature Not Verified

Digitally Signed By: AJIT KUMAR
Signing Date: 24.12.2024
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OMP (I) (COMM.) 401/2023 and other connected matters

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Signature Not Verified

Digitally Signed By: CHANDRASEKHARAN HARI SHANKAR
Signing Date: 24.12.2024
16:01:54



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9	G-601	G	2547.95
10	F-102	F	2547.95
11	F-201	F	2547.95
12	A-201	A	2547.95

b) Restrain the Respondents from transferring, selling, alienating, encumbering or creating any third party rights or interest in Unit Nos. A-301, G-1801, G-1201, G-702, G-901, G-1301, G-801 and G-402 in the Group Housing Complex known as “Ambience Tiverton Residential Apartment Complex” situated at Plot No. F-033, Sector 50, Noida, Gautam Budh Nagar, Uttar Pradesh, till such time the Respondent pays the balance amount of Rs. 6,68,24,000/- to the Petitioner due under Cancellation Deeds;

(c) In the alternative to prayer (b), direct the Respondent to deposit a sum of Rs. 6,68,24,000/- with the Registrar General of this Hon'ble Court;

(d) Pass ad-interim ex-parte Order(s) in terms of prayer (a) and (b) above;

(e) Pass such other further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

The prayers in other OMPs are similar, except that, in OMP (I) (Comm) 405/2023 and OMP (I) (Comm) 407/2023, as there is no cancellation deed involved, no prayer for deposit of the amounts payable by Ambience to Indiabulls under the Cancellation Deeds is made. In OMP (I) (Comm) 406/2023 and OMP (I) (Comm) 408/2023, there are prayers for directing deposit, by Ambience, of the entire amounts payable under the Cancellation Deeds, of ₹ 5.82 crores and ₹ 13,26,21,945/-, pending the decision in the arbitral proceedings to follow.



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11. Mr. Nayar contends that Ambience is clearly in breach of the ATs, which required Ambience to obtain all necessary permissions, approvals and No Objection Certificates from the statutory authorities and from existing lenders, to execute a Deed of Conveyance and sub-lease deed in favour of Indiabulls and to issue an allotment letter in respect of the disputed units in favour of Indiabulls. No steps, in this regard, have been taken by Ambience. Rather, Ambience has retained, with itself, the entire amount, towards the consideration under the ATs, paid by Indiabulls, as well as the units, for the conveyance of which the amounts were so paid. The *prima facie* merits of the case, therefore, he submits, are entirely in favour of Indiabulls.

12. He further submits that Indiabulls has come to learn that Ambience is creating third party rights in respect of the disputed units. In the facts of the present case, Mr. Nayar's contention is that a mere undertaking not to alienate the disputed properties would not afford adequate protection, and a case stands made out for a direction to Ambience to deposit, with this Court, the entire amount of sale consideration paid by Indiabulls to Ambience under the ATs, in respect of units which have neither been cancelled, nor of which conveyance has been made to Indiabulls.

13. Mr. Nayar submits that the reliance, by Ambience, on the Settlement Deed dated 18 November 2022 is merely intended to cast a smokescreen. In actual fact, the Settlement Deed has no impact on the present proceedings. There is nothing, in the ATs, which indicates that they are intended merely to provide security for satisfaction of the



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obligations under the Settlement Deed. Ambience is, therefore, needlessly invoking the Settlement Deed, so as to conflate unconnected issues and create confusion.

14. Besides, submits Mr. Nayar, it is also not open to Ambience to rely on the Settlement Deed in view of Clause 13 thereof, which extinguishes the right of buy back, envisaged in Clause 11. Mr. Nayar submits that three months' default, on the part of Ambience, in exercising the buyback option *ipso facto* extinguishes its right to exercise the option. He submits that Indiabulls wrote to Ambience on 23 January 2023, 21 February 2023 and 22 March 2023, calling on Ambience to exercise the buy back option. Ambience, however, did not respond on any of the said occasions, thereby surrendering its right to avail of the buy back option.

15. Mr. Nayar submits that Ambience itself acknowledges this position, as is apparent from the fact that, having defaulted in exercising its buy back option for three months and having, consequently, extinguished its right to exercise the said option, Ambience itself wrote to Indiabulls on 29 March 2023, calling on Indiabulls to pay the balance consideration under the ATSS. He also places reliance on para 11 of the reply filed by Ambience to OMP (I) (Comm) 406/2023 , in which it is thus averred:

“In this context, it may be noted that the Respondent has itself issued a Notice of Default on 29.03.2023 upon the Petitioner seeking the balance of advances agreed upon under the ATSS to be released, failing which the Respondent will exercise its right to cancel the ATSS and return the advances paid. Even till date the



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Petitioner has not released the balance advances under the ATSS which were subsumed in the Settlement Deed.”

Mr. Nayar also places reliance, in this context, on Clause 2(c) of the Addendum Agreement dated 6 December 2022, which specifically required Ambience to procure NOCs from the Punjab National Bank for the 20 units in Tiverton, for which the ATS already stood executed in favour of Indiabulls. He further draws attention to Clause 27 of the ATSS in OMP (I) (Comm) 408/2023, which clearly stated that the ATSS, and the Annexures thereto, constituted “a complete and exclusive understanding of the terms of this Agreement between the parties on the subject here of”, further clarified that “no amendment or modification here to shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing”.

16. In the circumstances, Mr. Nayar’s contention is that it would be just and convenient, in the interests of justice, for Ambience to be directed to deposit, with this Court, the entire amount paid by Indiabulls under the ATSS, pending resolution of the disputes between the parties to arbitration. He relies, for this purpose, on the judgment of this Court in *Honasa Consumer Ltd v RSM General Trading LLC*⁸.

Submissions of Mr. Rajeev Mehra in reply

17. Responding to the submissions of Mr. Nayar, Mr. Mehra submits that the ATSS were in fact not intended to be instruments of

⁸ 2024 SCC OnLine Del 5631



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sale, whereunder housing units were to be sold and purchased. According to Mr. Mehra, the loans of ₹ 2344 Crores, earlier availed from Indiabulls, have been repaid by Ambience, out of amounts advanced by Indiabulls under the ATSs. The ATSs were, therefore, according to Mr. Mehra, merely instruments whereunder advances were extended by Indiabulls to Ambience, secured against the housing units forming subject matter of the ATSs. Inasmuch as the loan amount of ₹ 2344 Crores has been paid back to Indiabulls, Mr. Mehra's contention is that the ATSs have worked themselves out, and Indiabulls could no longer seek to enforce the security in the form of the housing units forming subject matter of the ATSs.

18. Mr. Mehra submits that Mr. Nayar's plea that Indiabulls could seek specific performance of the ATSs stands negated by Clause 10 of the Settlement Deed dated 18 November 2022, which permits Ambience to sell the disputed units, once the advances extended by Indiabulls under the ATSs, against security of the said units, is repaid by Ambience to Indiabulls. It was for this reason that, from time to time, units have been removed from the scope of the ATSs by executing cancellation deeds.

19. Mr. Mehra also sought to place reliance on the buy back provision, in respect of the units situated at Sector 22 Gurugram, as contained in Clause 11 of the Settlement Deed. He refutes Mr. Nayar's contention that the right of buy back stood novated by clause 2(c) of the Addendum dated 6 December 2022. He emphasises that the respondent is willing to complete its obligations under Clause 11



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and avail the facility of buy back, in respect of which e-mail dated 5 July 2024 stands addressed by Ambience to Indiabulls.

20. For all these reasons, Mr. Mehra submits that the prayers in the OMPs, as well as the prayer that Ambience should be directed to deposit the amounts paid by Indiabulls under the ATSS. relating to the units which are yet to be cancelled, has no merits and cannot sustain.

21. Apart from merits, Mr. Mehra has also contested the OMPs and the prayers in the IAs filed by Indiabulls on other grounds. He submits that Indiabulls has not provided any material to substantiate its allegation that Ambience was alienating the housing units forming subject matter of the ATSS. In the absence of any such legitimate apprehension, Mr. Mehra's contention is that Indiabulls cannot be entitled to any interlocutory protection under Section 9 of the 1996 Act.

22. Insofar as the prayer for a direction to Ambience to deposit, with the Court, the amounts paid by Indiabulls to Ambience under the ATSS, is concerned, Mr. Mehra submits that the said prayer travels beyond the prayers contained in the OMPs and cannot, therefore, be introduced in interlocutory applications. IAs cannot, submits Mr. Mehra, contain prayers which are beyond the scope of the OMPs.

23. Mr. Mehra also disputes the applicability of the judgment of this Court in *Honasa Consumer*, to the facts of the present case, as it is distinguishable.



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24. Regarding the plea of Mr. Mehra that the prayer for direction to Ambience to deposit the amounts paid by Indiabulls under the ATs is concerned, Mr. Nayar, in rejoinder, submits that while the plea may be technically attractive, a prayer for a direction to Indiabulls to deposit, pending arbitration, the amounts paid by Indiabulls under the ATs, is maintainable under Section 9 of the 1996 Act. It would always have been open to Indiabulls to amend the OMPs and introduced the said prayer. Irrespective of whether the Court would or would not, be inclined to grant the prayer, Mr. Nayar's contention is that the maintainability of the prayer cannot be questioned. Inasmuch as Ambience has responded, on merits, to the said prayer, and the parties have been heard at length, Mr. Nayar submits that the prayer ought not to be rejected solely on the ground that it was not contained in the OMPs.

Analysis

The nature of the consideration by the Court

25. Having heard Mr. Nayar and Mr. Mehra at great length, the Court has to be conscious of the fact that it is dealing with applications under Section 9 of the 1996 Act. Section 9 is a provision which can be invoked either before, during, or after arbitration. However, the considerations which apply, would vary, depending on the stage at which the provision is invoked.



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26. Where an arbitral tribunal is already in place while there is no absolute embargo on a Court granting interlocutory protection under Section 9, the approach ordinarily would be to relegate the parties to remedies under Section 17 of the 1996 Act, the scope of which is co-equal with the scope of Section 9. Expressed otherwise, the arbitral tribunal, under Section 17, has the same power to grant relief as a Court has, under Section 9. Where an arbitral tribunal is already in place, therefore, the Court would pass orders under Section 9 only in the rarest of circumstances, where exigencies are such that the matter cannot await a decision by the tribunal.

27. I, however, am dealing with the situation in which no arbitral tribunal is yet in place to decide the disputes between Indiabulls and Ambience. The consideration before the Court is, therefore, whether the facts make out a case for grant of interlocutory protection to Indiabulls.

28. While adjudicating on the issue, the Court has to be conscious of the fact that the examination by it is only *prima facie*. A Court cannot, by returning detailed findings on merits in a Section 9 petition, prejudice the arbitral proceeding which has yet to commence. Ergo, while considering an application under Section 9 of the 1996 Act, the scope of examination by the Court is limited to two aspects. The Court has first to consider whether, in the facts of the case, the Section 9 applicant is deserving of, and is entitled to, interim protection; in other words, whether a case for grant of interim protection is made out, pending the constitution of the arbitral



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tribunal. The second aspect, which arises only if the answer to the first aspect is in the affirmative, is the scope and extent of interim protection, which ought to be granted.

Scope of power to direct deposit by way of security, under Section 9

29. Section 9 is wide and compendious in its scope. The Court is empowered, under Section 9, to preserve the property or goods forming subject matter of the arbitral dispute, as also to, for which purpose, a Receiver may also be appointed; to secure the amount in dispute in the arbitration; to grant interim injunction and, under Clause 9(1)(ii)(e), to grant any such other interim measure of protection as may appear to the Court to be just and convenient.

30. There is, therefore, no statutory or precedential embargo on the extent of relief which a Court can grant under Section 9. Even on the aspect of whether the provisions of Order XXXVIII Rule 5⁹ of the CPC would apply, where the relief sought is under Section 9

⁹ 5. Where defendant may be called upon to furnish security for production of property. –

(1) Where at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

- (a) is about to dispose of the whole or any part of his property, or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.



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(1)(ii)(b), to secure the amount in dispute there is a cleavage of opinion. The ultimate eventuate appears to be that while the Court may be guided by the principles that govern Order XXXVIII Rule 5, while considering a prayer for directing the respondent to secure the amount in dispute, the interest of justice and the overall facts of the case must ultimately pre-dominate, and the strict tests laid down by the Supreme Court in the judgments rendered in the context of Order XXXVIII Rule 5 may not always apply.

31. The question of whether the power of the Court, in a pre-arbitral Section 9 petition, to direct deposit of the amount involved in the dispute, or “attachment before judgement”, has been subject matter of considerable debate, and, perhaps, the last word on the issue is yet to be said. There appears, however, with greatest respect, to be some cleavage of opinion in the decisions of the Supreme Court on the issue, between the view expressed in *Essar House Pvt. Ltd. v Arcellor Mittal Nippon Steel India Ltd.*¹⁰ and *Sepco Electric Power Construction Corporation v Power Mech Projects Ltd*¹¹ on the one hand, and *Sanghi Industries Ltd v Ravin Cables Ltd*¹², which was rendered between *Essar House* and *Sepco*, on the other, in each case by a Bench of two learned Judges. While, in *Sanghi Industries*, the Supreme Court has held unequivocally, that a prayer for securing the amount in dispute, can be passed under Section 9(1)(ii)(e) of the 1996 Act only if the pre-requisites of Order XXXVIII Rule 5 CPC are met, *Essar House* opines that a possibility of diminution of assets would

¹⁰ 2022 SCC OnLine SC 1219

¹¹ 2022 SCC OnLine SC 1243

¹² 2022 SCC OnLine SC 1329



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suffice and that relief, by way of direction for deposit, should not be refused only because requisite averments, incorporating ground for attachment before judgment under Order XXXVIII Rule 5, are not forthcoming in the pleadings. *Essar House* and *Sepco* affirm and approve, in this context, the following passage from the judgement of a Division Bench of this Court in *Ajay Singh v Kal Airways Pvt Ltd*¹³, as enunciating the correct law. The following passages from *Essar House*, which also figure in *Sepco*, merit reproduction in this context:

“37. Mr. Shyam Divan argued that while deciding a Section 9 application filed under the provisions of the Arbitration Act, the principles of the CPC are to be strictly followed. The principles enunciated by this Court in *Raman Tech. & Process Engg. Co.*¹⁴ were required to be followed in letter and spirit.

38. In this case, however, the High Court has taken note of the pleadings for invoking the principles of Order 38 Rule 5 CPC and observed :-

“31. In our view, the paragraphs of the aforesaid pleadings of the respondent in arbitration petition filed under section 9 filed by the respondent were sufficient to secure the claim of the respondent under section 9 of the Arbitration Act and to invoke the principles of Order 38 Rule 5 of the Code of Civil Procedure even if it is strictly made applicable to the facts of this case.”

39. In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of the CPC. At the same time, *the power Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC.*

40. While it is true that the power under Section 9 of the Arbitration Act should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in the CPC, *the technicalities of CPC cannot prevent the Court from securing the ends of justice.* It is well settled that procedural safeguards, meant

¹³ 2017 SCC OnLine Del 8934

¹⁴ (2008) 2 SCC 302



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to advance the cause of justice cannot be interpreted in such manner, as would defeat justice.

41. Section 9 of the Arbitration Act provides that a party may apply to a Court for an interim measure or protection *inter alia* to (i) secure the amount in dispute in the arbitration; or (ii) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

42. As argued by Mr. Kaul, besides the specific power of securing the amount in dispute, the Courts have been empowered to pass any interim measure of protection, keeping in view the purpose of the proceedings before it. The said provision confers a residuary power on the Court to pass such other interim measures of protection as may appear to be just and convenient.

43. Many High Courts have also proceeded on the principle that the powers of a Court under Section 9 of the Arbitration Act are wider than the powers under the provisions of the CPC.

44. In *Ajay Singh v. Kal Airways Private Limited* the Delhi High Court correctly held:

“...Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines - therefore, the analogy of Orders 38 and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles...”

45. In *Jagdish Ahuja v Cupino Limited*¹⁵, the Bombay High Court correctly summarised the law in Paragraph 6 extracted hereinbelow:—

“6. As far as Section 9 of the Act is concerned, it cannot be said that this court, while considering a relief thereunder, is strictly bound by the provisions of Order 38 Rule 5. As held by our Courts, the scope of Section 9 of the Act is very broad; the court has a discretion to grant thereunder a wide range of interim measures of protection “as may appear to the court to be just and convenient”, though such discretion has to be exercised judiciously and

¹⁵ 2020 SCC OnLine Bom 849



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not arbitrarily. The court is, no doubt, guided by the principles which civil courts ordinarily employ for considering interim relief, particularly, Order 39 Rules 1 and 2 and Order 38 Rule 5; the court, however, is not unduly bound by their texts. As this court held in **Nimbus Communications Limited v. Board of Control for Cricket in India**¹⁶ (Per D.Y. Chandrachud J, as the learned Judge then was), the court, whilst exercising power under Section 9, “must have due regard to the underlying purpose of the conferment of the power under the court which is to promote the efficacy of arbitration as a form of dispute resolution.” The learned Judge further observed as follows:

“Just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code of Civil Procedure 1908, the rigors of every procedural provision in the Code of Civil Procedure 1908 cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case.”

46. In **Valentine Maritime Ltd. v Kreuz Subsea Pte. Ltd.**¹⁷, the High Court held:—

“88. ... It is now a well settled legal position, that at least with respect to Chartered High Courts, the power to grant temporary injunctions are not confined to the statutory provisions alone. The Chartered High Courts had an inherent power under the general equity jurisdiction to grant temporary injunctions independently of the provisions of the Civil Procedure Code, 1908...”

93. Insofar as judgment of Supreme Court in case of **Raman Tech. & Process Engg. Co.** relied upon by Mr. Narichania, learned senior counsel for the VML is concerned, it is held by the Hon'ble Supreme Court that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. The

¹⁶ 2012 SCC OnLine Bom 287

¹⁷ 2021 SCC OnLine Bom 75



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Hon'ble Supreme Court has further held that the purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. The said judgment of the Hon'ble Supreme Court was not in respect of the powers of court under section 9 of the Arbitration and Conciliation Act, 1996 but was in respect of power under Order 38 Rule 5 of the Civil Procedure Code, 1908 in a suit. Even otherwise, the said judgment is distinguishable in the facts of this case.

95. Insofar as judgment of this Court delivered by the Division Bench of this court in case of *Nimbus Communications Limited v. Board of Control for Cricket in India* relied upon by the learned senior counsel for the VML is concerned, this Court adverted to the judgment of Hon'ble Supreme Court in case of *Adhunik Steels Ltd. v Orissa Manganese and Minerals (P) Ltd.*¹⁸, and held that in view of the decision of the Supreme Court in case of *Adhunik Steels Ltd.* the view of the Division Bench in case of *National Shipping Company of Saudi Arabia*¹⁹ that the exercise of power under section 9(ii)(b) is not controlled by the provisions of the Civil Procedure Code, 1908 cannot stand. This court in the said judgment of *Nimbus Communications Limited (supra)* held that the exercise of the power under section 9 of the Arbitration Act cannot be totally independent of the basic principles governing grant of interim injunction by the civil Court, at the same time, the Court when it decides the petition under section 9, must have due regard to the underlying purpose of the conferment of the power upon the Court which is to promote the efficacy of arbitration as a form of dispute resolution.

96. This court held that just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Civil Procedure Code, 1908, the rigors of every procedural provision in the Civil Procedure Code, 1908 cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case. The principles laid down in the Civil Procedure Code, 1908 for the grant of interlocutory remedies must furnish a guide to the Court

¹⁸ (2007) 7 SCC 125

¹⁹ *National Shipping Company of Saudi Arabia v Sentrans Industries Ltd*, AIR 2004 Bom 136

OMP (I) (COMM.) 401/2023 and other connected matters



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when it determines an application under Section 9 of the Arbitration and Conciliation Act, 1996. The underlying basis of Order 38 Rule 5 therefore has to be borne in mind while deciding an application under Section 9(ii)(b) of the Arbitration Act.

104. The Division Bench of this court in case of *Deccan Chronicle Holdings Limited v. L & T Finance Ltd.*²⁰, after advertent to the judgment of Supreme Court in case of *Adhunik Steel Ltd. (supra)*, judgment of the Division Bench of this court in case of *Nimbus Communications Ltd. (supra)* held that the rigors of every procedural provision of the Code of Civil Procedure cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of the justice. The object of preserving the efficacy of arbitration as an effective form of dispute resolution must be duly fulfilled. This would necessarily mean that in deciding an application under Section 9, the Court would while bearing in mind the fundamental principles underlying the provisions of the Code of Civil Procedure, at the same time, have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process. The Division Bench of this Court in the said judgment did not interfere with the order passed by the learned Single Judge directing the parties to furnish security so as to secure the claim of the original petitioner in arbitration by applying principles of Order 38 Rule 5 of the Code of Civil Procedure. ...”

47. In *Srei Infrastructure Finance Limited v Ravi Udyog Pvt. Ltd.*²¹, the Calcutta High Court, speaking through one of us (Indira Banerjee, J.), as Judge of that Court, said:—

“An application under section 9 of the Arbitration & Conciliation Act, 1996 for interim relief is not to be judged as per the standards of a plaint in a suit. If the relevant facts pleaded, read with the documents annexed to the petition, warrant the grant of interim relief, interim relief ought not to be refused by recourse to technicalities...”

48. *Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the*

²⁰ 2013 SCC OnLine Bom 1005

²¹ 2008 SCC OnLine Cal 974



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arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.

49. *If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC.”*

32. As against this, in *Sanghi Industries*, the Supreme Court held:

“4. Having heard learned counsel appearing on behalf of the respective parties and in the facts and circumstances of the case, more particularly, when the bank guarantees were already invoked and the amounts under the respective bank guarantees were already paid by the bank much prior to the Commercial Court passed the order under Section 9 of the Arbitration Act, 1996 and looking to the tenor of the order passed by the Commercial Court, it appears that the Commercial Court had passed the order under Section 9(ii)(e) of the Arbitration Act, 1996 to secure the amount in dispute, *we are of the opinion that unless and until the pre-conditions under Order XXXVIII Rule 5 of the CPC are satisfied and unless there are specific allegations with cogent material and unless prima-facie the Court is satisfied that the appellant is likely to defeat the decree/award that may be passed by the arbitrator by disposing of the properties and/or in any other manner, the Commercial Court could not have passed such an order in exercise of powers under Section 9 of the Arbitration Act, 1996.* At this stage, it is required to be noted that even otherwise there are very serious disputes on the amount claimed by the rival parties, which are to be adjudicated upon in the proceedings before the arbitral tribunal.

6. The order(s) which may be passed by the Commercial Court in an application under Section 9 of the Arbitration Act, 1996 is basically and mainly by way of interim measure. It may be true that in a given case if all the conditions of Order XXXVIII Rule 5 of the CPC are satisfied and the Commercial Court is satisfied on the conduct of opposite/opponent party that the opponent party is trying to sell its properties to defeat the award that may be passed and/or any other conduct on the part of the



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opposite/opponent party which may tantamount to any attempt on the part of the opponent/opposite party to defeat the award that may be passed in the arbitral proceedings, the Commercial Court may pass an appropriate order including the restraint order and/or any other appropriate order to secure the interest of the parties. However, *unless and until the conditions mentioned in Order XXXVIII Rule 5 of the CPC are satisfied such an order could not have been passed by the Commercial Court which has been passed by the Commercial Court in the present case, which has been affirmed by the High Court.*”

(Emphasis supplied)

33. Thus, regarding the strict applicability of Order XXXVIII Rule 5 of the CPC to Section 9 of the 1996 Act, the Supreme Court has, in *Sanghi Industries*, advocated implicit adherence, whereas, in *Essar House* and *Sepco*, the Supreme Court has held that, while the Court may be *guided* by Orders XXXVIII and XXIX of the CPC, a decision in an application under Section 9 is not strictly restrained by Order XXXVIII Rule 5.

34. On the question of which judgement would be required to be followed, we are guided by the judgement of the Constitution Bench of the Supreme Court in *National Insurance Co Ltd v Pranay Sethi*²², which has subsequently been followed and and reaffirmed in *Union Territory of Ladakh v Jammu & Kashmir National Conference*²³, and which holds that the earlier judgement would have precedence.

35. The interlocutory reliefs sought by Indiabulls have, therefore, to be examined in the light of the aforestated law.

²² (2017) 16 SCC 680

²³ 2023 SCC OnLine SC 1140



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Applying the law to the facts

36. At the very outset, certain undisputed facts stare one in the face. These may be enumerated as under:

(i) Agreements to sell stand executed between Indiabulls and Ambience, whereunder, against amounts which are payable by Indiabulls, residential units in the Tiverton, Caitriona and Creacion housing units of Ambience are to be sold to Indiabulls.

(ii) The ATSS, on their face, are standalone agreements. *There is no reference, in any of the ATSS, to the Settlement Deed dated 18 November 2022 or to the Addendum dated 6 December 2022. Nor, in the Settlement Deed, is there any reference to the ATSS.* The attempt by Mr. Mehra to conflate the ATSS and the Settlement Deed, by submitting that the ATSS were not actually intended to be instruments of sale, but were only agreements whereunder the residential units of Ambience were provided as security towards the advances extended by Indiabulls, is not borne out by any recital either in the ATSS or in the settlement deed. While it would always be open to Ambience to demonstrate this interconnect in the arbitral proceedings, no *prima facie* case to that effect can be set to have been made out at this stage.



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(iii) Against the aforesaid payment of ₹ 638,07,75,728/- made by Indiabulls to Ambience under the ATs, no sale deed has been executed by Ambience, in respect of even a single unit covered by the ATs.

(iv) The incontrovertible position is, therefore, that *Ambience has retained, with itself, the entire amount paid by Indiabulls under the ATs, without executing any document of sale*, in respect of any of the units forming subject matter of the ATs, in favour of Indiabulls.

Regarding the Settlement Deed

37. Apart from the fact that there is no perceptible interconnect between the ATs and the Settlement Deed/Addendum forthcoming on the record, there are at least three other reasons why Ambience cannot seek to escape its liabilities by seeking recourse thereto.

38. Firstly, as Indiabulls has correctly pointed out – and Ambience has not chosen to deny – the benefit of the buy back Clause 11 in the Settlement Deed would not be available to Ambience in view of Clause 13 and in view of the three successive defaults, by Ambience, of exercise of its right of buy back, despite Indiabulls having called on it to do so on 23 January 2023, 21 February 2023 and 22 March 2023.

39. Secondly, Ambience itself apparently acknowledged this position, as it wrote to Indiabulls on 29 March 2023, calling on



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Indiabulls to pay the balance consideration under the ATSS. This request, coming as it did on the heels of Indiabulls' communication dated 22 March 2023, clearly indicates Ambience's awareness that its right of buy back no longer survived, and all that survived were the ATSS.

40. Thirdly, Clause 2(c) of the Addendum clearly required Ambience to fulfil its obligations under the ATSS. The Addendum, being a contract *inter partes*, also reflects the joint understanding, of Indiabulls and Ambience, that the Settlement Deed did not dilute, or efface, their rival obligations under the ATSS.

The equities of the case

41. The ATSS entitle Indiabulls to seek specific performance thereof. Whether it would, or would not, succeed in this endeavour, only time, and the due course of arbitral proceedings, can tell. What cannot be disputed is, however, the fact that a major portion of the payment under the ATSS stand paid by Indiabulls to Ambience, whereas Ambience has not budged an inch towards performance of its obligations under the ATSS by executing Sale Deeds in respect of the disputed units in Indiabulls' favour.

42. The equities of the case are, therefore, decidedly overwhelmingly in favour of Indiabulls and against Ambience.



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43. *The entitlement of Indiabulls, to be secured under Section 9 cannot, therefore, be substantially denied.*

44. Ambience has already undertaken, before this Court, not to alienate any of the remaining units under the ATs, in respect of which no cancellation deeds have been executed. The question that arises is, therefore, whether Indiabulls is nonetheless entitled to a direction to Ambience to deposit the amount paid by Indiabulls to Ambience under the ATs.

Mr Mehra's objections

45. Mr. Mehra has advanced three objections to this claim. The first is preliminary; the other two on merits.

46. The first objection of Mr. Mehra is that, as there is no prayer in the OMPs, for securing the amounts paid by Indiabulls to Ambience under the ATs by directing deposit by Ambience, such a prayer cannot be made in interlocutory applications filed in the OMPs. Expressed otherwise, Mr. Mehra is pressing, into service, the classical principle that a prayer in an interim application cannot exceed the prayer in the main petition.

47. The second objection of Mr. Mehra, to the interim protection sought by Indiabulls, is that there is no corroborative material to substantiate the submission of Indiabulls that Ambience was alienating or creating any third party rights in respect of the units



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forming subject matter of the ATSS. This was a mere allegation, and no more. The apprehension of Indiabulls that, if it is not secured, the arbitral proceedings may be rendered a futility, is therefore, he submits, imaginary.

48. Mr. Mehra's third objection is that Indiabulls stands sufficiently secured by the undertaking, of Ambience, that it would not alienate or create any third party rights in respect of the surviving units covered by the ATSS. Once Indiabulls thus stands sufficiently secured, any prayer for further security, by way of deposit by Ambience with the Registry of this Court must, therefore, according to Mr. Mehra, merit rejection.

49. I proceed to examine each of these three contentions.

Re. objection that prayer for deposit, contained in IAs, exceeds prayer in the OMPs

50. The submission of Mr. Mehra that Indiabulls could not, in interlocutory applications, expand the scope of the prayer in the main petitions is, undoubtedly, facially attractive. There can, however, be no dispute about the fact that, in view of Section 9(1)(ii)(b) of the 1996 Act a prayer by Indiabulls to direct Ambience to deposit the amounts paid by Indiabulls to Ambience under the ATSS, would certainly be maintainable. It is also indisputable that all the material, on the basis of which the Court can decide the said prayer, is on record and that Ambience has not only submitted substantive replies



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to the IAs filed by Indiabulls seeking securing of Indiabulls' claim by deposit, but has also been heard at length on the point. Written submissions have also been filed by both sides. The question is whether, even so, the Court must refuse to examine Indiabulls' claim for a direction to Ambience to deposit the amounts paid by Indiabulls to Ambience under the ATs in relation to the disputed units, or consider the said prayer on merits.

51. Keeping in mind the overwhelming interests of justice, and the undeniable fact that the equities of the situation are entirely in favour of Indiabulls and against Ambience, I am of the opinion that Ambience cannot oppose an adjudication of Indiabulls' prayer for a direction of deposit to Ambience merely on the ground that such a prayer that was not contained in the OMPs, but only in the IAs.

52. In so holding, I am also persuaded by the fact that the present case is not, classically, one of substantive prayers in a main petition and interlocutory reliefs sought in IAs filed therein.

53. The OMPs are themselves seeking interlocutory relief, pending disposal of the arbitral proceedings. They are styled as substantive OMPs only because of the original jurisdiction that vests in this Court to decide claims for interim protection under Section 9 of the 1996 Act. This position can be understood by a simple illustration. If, for example, the prayer in the OMPs have been advanced before an Arbitral Tribunal under Section 17 of the 1996 Act, could it be said that the claimant was barred from seeking further interim protection



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by way of deposit, by a further Section 17 application? The answer, clearly, has to be in the negative. Were arbitral proceedings between Indiabulls and Ambience to have been ongoing, Indiabulls would clearly be within its right in filing two applications under Section 17 before the Arbitral Tribunal, seeking, in the first, a restraint against Ambience creating third party rights in respect of the disputed units and, in the second, a direction to Ambience to secure Indiabulls' claims by way of deposit. It would not be open, in such an eventuality, for Ambience to contend that the second application was not maintainable and that the prayers in the second application could not be entertained, as it went beyond the prayer in the first application. The Arbitral Tribunal would have to consider and decide both applications. Of course, it would always be open to the Arbitral Tribunal to hold that only one of the two prayers could be granted, or even that neither prayer had merit. The Tribunal could not, however, refuse to consider the second prayer for deposit merely because, in the first application, the prayer was for a direction to Ambience not to create third party interests in respect of the disputed units.

54. The same principle, in my considered opinion, would apply here. The interlocutory prayer contained in the OMPs was for a direction to Ambience not to create third party interest in respect of the disputed units. A further prayer was contained in the IAs filed by Indiabulls, for a direction to Ambience to deposit, with the Court, the amounts paid by Indiabulls to Ambience under the ATs, relating to the disputed units. Both are interlocutory prayers, seeking interim protection pending arbitration. Each of them is individually



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maintainable under Section 9. The Court cannot refuse to consider the second prayer merely because it goes beyond the first prayer. Both prayers have, therefore, to be considered on merits and decided.

55. That said, I am clearly of the opinion that both the prayers cannot simultaneously be granted. In other words, Ambience cannot be restrained from alienating any of the disputed units and simultaneously be directed to deposit, with the Registry of the Court, the amounts paid by Indiabulls under the ATs. If a direction for deposit is passed, on the deposit being made, the restraint against alienation of the units must come to an end. Both cannot co-exist.

56. Ambience had already undertaken not to alienate or create third party interests in respect of any of the disputed units.

57. The Court has, therefore, only to consider whether Indiabulls has made out a case for a direction to Ambience to deposit the amounts paid by Indiabulls under the ATs.

58. This disposes of the first objection of Mr. Mehra, which is that Indiabulls was not entitled, in the interlocutory applications filed in the OMPs, to seek a deposit by Ambience, of the disputed amount with this Court, in the absence of any such prayer in the OMPs.

Re. objection that there was no evidence of Ambience disposing of the disputed units



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59. The second submission of Mr. Mehra is that the OMPs are predicated on bald allegation that Ambience is creating third party interest in respect of the disputed properties, with no corroborative material.

60. In this context, it is worthwhile to note the assertion in the OMPs, regarding the apprehension of Indiabulls that Ambience is in the process of alienating the disputed units and Ambience's response thereto. I may note that the pleadings in this regard are similar, across the OMPs. For ready reference, one may reproduce the assertion in OMP (I) (Comm) 401/2023, and the reply filed by Ambience thereto, thus:

Assertion in OMP

"15. However, in the 1st week of December, the Petitioner has learnt from market sources that the Respondent contrary to its assurances and representations to the Petitioner and more significantly in breach of Clause 8(ii) of the ATS is seeking to alienate and create third party rights in the Units which are a subject matter of the ATS dated 18.11.2022. The Petitioner has reliably learnt from brokers dealing in Units relating to the Tiverton Project of the Respondent, that the Units agreed to be sold and transferred to the Petitioner under the ATS have been placed on the market by the Respondent and are being offered for sale by the Respondent. It is therefore clear that the Respondent is acting in breach of the terms of the ATS and seeking to resile therefrom in a clandestine manner and behind the back of the Petitioner. While on the Petitioner's part the Respondent is assuring to perform the terms of the ATS and fulfill its obligations, while on the other hand, the Respondent is seeking to alienate the units behind the Petitioner's back.

Reply by Ambience

11. The Petitioner has wrongly averred that the Respondent was attempting to alienate the Noida Apartments without the knowledge of the Petitioner which resulted in passing of the ex-parte ad-interim Order dated 08.12.2023 whereby a blanket stay



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was issued restraining the Respondent from dealing with the Noida Apartments, even though the Settlement Deed provides for such a right of sale.

12. *The Petitioner does not have any right to restrain the Respondent from exercising its right to sell the Noida Apartments. The only obligation on the part of the Respondent is to release the advance payments made by the Petitioner immediately upon selling the Noida Apartments to prospective buyers.* In this context, it may be noted that even after obtaining the ad-interim stay, the Petitioner has executed Deeds of Cancellation whereby the Respondent has repaid the advances under the ATS to the Petitioner. A copy of the acknowledgments issued by the Petitioner acknowledging the receipts of payments for the units cancelled pursuant to the ad-interim Order dated 08.12.2023 are herein annexed as Document-4 (Colly).

15. Further it is trite law that a party approaching this Hon'ble Court for interim reliefs under Section 9, Arbitration and Conciliation Act, 1996 must satisfy the requirements of Order XXXIX Rule 1 and 2, Code of Civil Procedure, 1908. From the submissions above, it is abundantly clear that *the Petitioner has made out no prima facie case whatsoever to restrain the Respondents from selling the Noida Apartments. Therefore, the Petitioner cannot seek any injunction against the Respondent restraining them from dealing with the Noida Apartments.*

16. It may also be noted that the Petitioner has not justified any apprehension regarding sale of the Noida Apartments without the knowledge of the Petitioner. The Respondent has not in one instance transferred or created any encumbrance diluting the collateral offered to the Petitioner, and none pointed out by the Petitioner. Therefore, the apprehension of the Petitioner that third party encumbrances are being created without the knowledge of the Petitioner is demonstrably false.

17. The Petitioner has not pleaded any ground for tilting the balance of convenience in its favour. As provided in the Settlement Deed and the Addendum thereto, as mutually agreed between the Parties, *the Respondent has unfettered right to sell the Noida Apartments.* In fact, the balance lies squarely in favor of the Respondent against grant of any injunction, as *the Respondent's right to sell the Noida Apartments in terms of Clause 10 of the Settlement Deed* will be rendered meaningless and otiose if any injunction is granted and the Respondent is restrained from selling its apartments.



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19. The Petitioner has further failed to establish that any irreparable loss or damage will be caused to the Petitioner if the injunction is refused. As categorically set out in the Settlement Deed, the Petitioner's only sole surviving claim against the Respondent is to compel the Respondent to sell the Noida Apartments and return the advances contemplated in the ATS. At the maximum, should any dispute arise between the Parties, the Petitioner can seek a money decree for return of the advance payments as recorded in the ATS. Therefore, the Petitioner cannot seek any injunctive relief as its loss is quantifiable, even assuming there is any."

(Emphasis supplied)

61. These pleadings contain two interesting assertions. The first, as already noted, is that Ambience *has a right to sell the disputed units*. The second is an acknowledgement of Indiabulls' right to seek return of the payments made by it, to Ambience, under the ATSs.

62. Further, even in para 9 of its written submission, Ambience has contended thus:

"9. The Petitioner without making any reference to the Settlement Deed dated 18.11.2022 and the Addendum to Settlement Deed dated 06.12.2022, *providing a right to the Respondent to sell the ATS units*, obtained an ex-parte ad-interim injunction against the Respondent from this Hon'ble Court."

63. Thus, even while averring that Indiabulls had not provided any categorical material to indicate that the Ambience was in the process of alienating the disputed units, the right to sell the disputed units has been repeatedly stressed by Ambience in its pleadings and in its written submissions. There is, therefore, *prima facie* substance in Indiabulls' apprehension that, were interim protection not to be



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granted, the possibility of the disputed units being alienated by Ambience looms large.

64. The second objection of Mr. Mehra, that there is no foundation for Indiabulls' apprehension that Ambience may alienate the disputed units is also, therefore, rejected.

Re. submission that Indiabulls stands sufficiently secured

65. Which leaves, for consideration, Mr. Mehra's third objection, which is that Indiabulls stands sufficiently secured by Ambience's undertaking not to alienate the disputed units and that, therefore, no case for a direction for deposit exists.

66. I have applied my mind to this contention, keeping in mind the principles of law applicable to grant of relief in terms of Section 9 (1)(ii)(b) and Section 9(1)(ii)(e) of the 1996 Act.

67. The position of law, in this regard, already stands noted in paras 29 to 34 *supra*.

Essar House

68. In my opinion, it is necessary, given the nature of the dispute in the present case, also to note the facts, which were before the Supreme Court in ***Essar House***.



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69. The appeal before the Supreme Court arose out of two orders passed by the Division Bench of the High Court of Bombay, one in Commercial Arbitration Appeal (L) 1022/2021 filed by Essar House Pvt. Ltd.²⁴ against Arcellor Mittal Nippon Steel India Ltd.²⁵ and the second in Arbitration Appeal 1023/2021 filed by Essar Services against Arcellor. Commercial Arbitration Appeal (L) No. 1022/2021, in turn, arose out of Commercial Arbitration Petition (L) 6602/2020 filed by Arcellor against Essar House, and Arbitration Appeal 1023/2021 arose out of Commercial Arbitration Petition (L) 6607/2020 filed by Arcellor against Essar Services. Both original petitions had been filed by Arcellor under Section 9 of the 1996 Act.

70. Arcellor had, in its Section 9 petitions against Essar House and Essar Services, prayed for a direction to Essar House and Essar Services to deposit, with the Court, ₹ 35,51,89,875/- and ₹ 47.41 crores. The learned Single Judge of the High Court allowed Section 9 petitions and directed the Essar House to deposit ₹ 35,51,89,875/- and Essar Services to deposit ₹ 47.41 crores. The Commercial Appeals filed against the said decisions of the learned Single Judge, were dismissed by the Division Bench of the High Court. Essar House and Essar Services, therefore, approached the Supreme Court by way of Civil Appeals, which were dismissed by the judgment under discussion.

71. It is not necessary to inter into the intricacies of the facts, which are extensive and convoluted. Suffice it to state that the amounts of ₹

²⁴ “Essar House” hereinafter

²⁵ “Arcellor” hereinafter



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35,51,89,875/- and ₹ 47.41 crores represented the security deposits which Essar Steel had to make in agreements executed with Essar Services and Essar House respectively. Pursuant to proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016²⁶ having been initiated against Essar Steel by the Standard Chartered Bank and the State Bank of India, Corporate Insolvency Resolution Process²⁷ was initiated against Essar Steel by the National Company Law Tribunal²⁸.

72. The NCLT appointed Arcellor as the resolution applicant of the Essar Steel. In its capacity as such resolution applicant, Arcellor entered into disputes with Essar House and with Essar Services, with respect to the agreements executed by Essar Steel with each of them. Arcellor staked a claim, in these disputes, for being refunded the security deposit amounts paid by Essar Steel, of ₹ 35,51,89,875/- and ₹ 47.41 crores.

73. As the disputes were amenable to resolution by arbitration, Arcellor, pending the arbitral proceedings, filed the aforementioned Section 9 petitions before the High Court of Bombay, seeking a pre-emptive deposit, by Essar House and Essar Services, of the security deposit amounts of ₹ 35,51,89,875/- and ₹ 47.41 crores deposited by Essar Steel.

74. As already noted, the prayer for deposit was allowed by the learned Single Judge as well as by the Division Bench of the High

²⁶ “IBC” hereinafter

²⁷ “CIRP” hereinafter

²⁸ “NCLT” hereinafter



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Court against, which Essar House and Essar Services appealed to the Supreme Court.

75. One of the principal contentions advanced before the Supreme Court by Essar House and Essar Services was that a prayer for deposit, under Section 9 of the 1996 Act, could be granted only if the ingredients of Order XXXVIII Rule 5 of the CPC was satisfied. However, the extant legal position, as already noted, does not mandate strict compliance with the pre-requisites of Order XXVIII Rule 5 before a direction for deposit can be made, whether under clause (b) or (e) – as both clauses seem to be applicable in this regard – of Section 9(1)(ii) of the 1996 Act. The Court has to be mindful of the overall circumstances of the case, and the tilting equity balance.

76. Moreover, and significantly, in the present case, the prayer for deposit as made by Indiabulls, *is only in respect of the amounts which Indiabulls has admittedly paid to Ambience under the ATSS. Ambience, in the passages from its reply to OMPs filed by Indiabulls, has conceded the position that Indiabulls has a right to claim return of the said amount, in the event that sale deeds are not executed in respect of the disputed units, as already noted earlier in this judgment.*

77. The right of Indiabulls to seek return of the amount deposited by it with Ambience, therefore, *stands conceded*. It is also a conceded position that *Ambience has in fact not executed any sale deeds, in respect of the disputed units forming subject matter of ATSS, despite a*



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substantial part of the sale consideration, towards the said ATs, having been paid by Indiabulls to Ambience. Moreover, Clause 31 of the ATs specifically entitles Indiabulls to apply for specific performance of the ATs. A prima facie case is clearly made out in that regard, as a substantial part of the sale consideration stands paid by Indiabulls to Ambience and, despite such payment, no sale deeds, in respect of even a single unit forming subject matter of the seventeen ATs has, till date, been executed by Ambience to Indiabulls.

78. These facts, seen in the backdrop of the insistence, by Ambience, in its replies to the OMPs as well as in its written submissions, that it is at liberty to sell the disputed units, in my opinion, makes out a case to direct Ambience to deposit, with the Registry of this Court, the amounts paid by Indiabulls to Ambience under the ATs. Ambience has no legal or even moral right to hold on to the said amounts, as it has not executed a single sale deed in favour of Indiabulls, for the units in respect of which the said amounts were paid by Indiabulls to it.

79. Allowing Ambience to continue to retain the said amounts, pending arbitral proceedings, would, in the circumstances, be grossly inequitable.

80. I may note, in this regard, that during the course of arguments, Mr. Nayar repeatedly suggested that the whole affair could be brought to a close by Ambience returning the said amounts to Indiabulls and



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retaining control over all the disputed units with which it would then be free to do as it liked. To my mind, the suggestion was wholesome. Mr. Mehra, however, on instructions, was unable to accede to the said offer.

81. In the present case, even the requisites of Order XXXVIII Rule 5 of the CPC would, in a sense, stand satisfied, in view of Ambience's repeated insistence, predicated on the Settlement Deed, that it has a right to sell the disputed units. In view of the repeated assertion, by Ambience, of the said right, and given the position, *conceded by Ambience*, that, if the units are sold, Indiabulls would have a right to seek to be returned the amounts paid by it to Ambience, the least that Ambience can be directed to do is to deposit the amounts paid by Indiabulls to Ambience towards transfer of ownership of the said units to Indiabulls.

82. Viewed any which way, therefore, I am of the opinion that a case for directing Ambience to deposit, with the Registry of this Court, the amounts received from Indiabulls under the ATSS, is made out. On compliance with the said direction, needless to say, Ambience would stand released from its undertaking not to alienate the disputed units.

Conclusion

83. Resultantly, these OMPs, as well as all pending interlocutory applications, stand disposed of in the following terms:



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(i) Ambience shall deposit, with the Registry of this Court, the entire amount paid by Indiabulls under the ATs, relating to the units covered by the ATs which have not been cancelled till date, total to ₹ 638,07,75,728/-²⁹ within a period of four weeks from the date of uploading of this judgment on the website of this Court.

(ii) Till then, Ambience shall continue to remain restrained from creating any third party rights in respect of the disputed units. On deposit being made as aforesaid, the restraint against dealing with the disputed units shall stand lifted.

(iii) These directions shall abide by further orders, if any, to be passed in the arbitral proceedings, as and when they are initiated.

84. The OMPs, as well as all pending interlocutory applications, stand disposed of in the aforesaid terms with no order as to costs.

85. All observations contained in this judgment are intended only to dispose of the present OMPs preferred under Section 9 of the 1996 Act. They should not be read as a substantive opinion on the merits of the dispute and would not influence the arbitral proceedings as and when they are instituted.

C. HARI SHANKAR, J.

²⁹ As taken from Indiabulls' written submissions dated 25 September 2024, and not disputed by Ambience in its written submissions



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Click here to check corrigendum, if any