

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.39 OF 2025**

Indiabulls Infraestate Ltd.	...Petitioner
Versus	
Imagine Realty Pvt. Ltd.	...Respondent

**WITH
INTERIM APPLICATION (L) NO.4230 OF 2024
IN
ARBITRATION PETITION NO.39 OF 2025**

Imagine Realty Pvt. Ltd.	...Applicant
--------------------------	--------------

IN THE MATTER BETWEEN

Indiabulls Infraestate Ltd.	...Petitioner
Versus	
Imagine Realty Pvt. Ltd.	...Respondent

ARBITRATION PETITION NO.33 OF 2025

Indiabulls Infraestate Limited	...Petitioner
Versus	
Bliss Habitat Pvt. Ltd.	...Respondent

**WITH
INTERIM APPLICATION (L) NO.4204 OF 2024
IN
ARBITRATION PETITION NO.33 OF 2025**

Bliss Habitat Pvt. Ltd.	Applicant
-------------------------	---------------

IN THE MATTER BETWEEN

Indiabulls Infraestate Limited	...Petitioner
Versus	
Bliss Habitat Pvt. Ltd.	...Respondent

Mr. Anoshak Davar *a/w. Mr. Dhaval Sethia & Kirti Shetty i/b Mr. Vaibhav Jagdale, Advocates for Petitioner.*

Mr. Chetan Kapadia, *Senior Advocate a/w. Mr. Shadab Jan, Mr. Abhay Chattopadhyay, Mr. Samarth Saxena & Mr. Atharva Diwe i/b. Economic Laws Practice, Advocates for Respondents.*

CORAM : **SOMASEKHAR SUNDARESAN, J.**
RESERVED ON : **April 4, 2025**
PRONOUNCED ON : **April 23, 2025**

JUDGEMENT:

Context and Background:

1. These Petitions are applications under Section 29-A of the Arbitration and Conciliation Act, 1996 (*“the Act”*), filed by the Petitioner, Indiabulls Infraestate Ltd. (*“Indiabulls”*) seeking an extension of mandate of the Arbitral Tribunal.

2. In both the Petitions, Indiabulls has sought extension by one year, of the mandate of the Learned Arbitral Tribunal, which expired on August 31, 2023. The relevant arbitral proceedings covered by Arbitration Petition No. 33 of 2025 involve the Respondent, Bliss Habitat Pvt. Ltd. (*“Bliss”*), as the Claimant. In Arbitration Petition No.39 of 2025, the Respondent, Imagine Realty Pvt. Ltd. (*“Imagine”*), is the Claimant. The arbitral proceedings are being conducted together as one composite matter.

3. Mr. Chetan Kapadia, Learned Senior Counsel on behalf of Bliss and Imagine would submit that the Learned Sole Arbitrator manning the Learned Arbitral Tribunal should be substituted in the course of disposal of these Petitions. For the reasons recorded herein, I am unable to agree with his request.

4. The Learned Arbitral Tribunal is seized of disputes and differences between the parties. In each of the arbitral proceedings, the agreement in question entailed Bliss and Imagine

having booked high-end apartments in the project called *Indiabulls Blu* in Worli, Mumbai. The apartments were allotted to Bliss and Imagine by Indiabulls. In each of the proceedings, a loan facility was availed of by Bliss and Imagine from Indiabulls Housing Finance Ltd. (“***IHFL***”), for which a mortgage was created over the units agreed to be acquired by them.

5. The project was completed and the occupation certificate was received, but according to Indiabulls, despite being given opportunities, Bliss and Imagine did not pay the balance amounts due. Eventually, with the apartments having been reserved for Bliss and Imagine, Indiabulls is said to have given an opportunity to make the final payment due. On failure to make payment, eventually, the reservation of these units allocated to Bliss and Imagine was cancelled. The amounts owed by them to IHFL was paid by Indiabulls to release the mortgage and correspondingly, the allotments were cancelled.

IHFL Arbitration:

6. Arbitration between IHFL and each of Imagine and Bliss was initiated by IHFL before a Learned Sole Arbitrator (“***IHFL Arbitration***”), seeking a declaration that the acceleration and the closing out of the loan account was valid in law.

7. On August 11, 2020, Bliss and Imagine moved an application before the Learned Sole Arbitrator conducting the IHFL Arbitration seeking to implead Indiabulls as a party to those proceedings. By an order dated November 7, 2020, the Learned Sole Arbitrator dismissed the application seeking impleadment of Indiabulls, ruling that the cause of action in the IHFL Arbitration

was different from the disputes and differences between Indiabulls on one side and Bliss and Imagine on the other. The issue in the IHFL Arbitration was whether IHFL had rightly appropriated the amounts towards redemption of the loan advanced and release of mortgage while the dispute with Indiabulls was about whether the cancellation of the allotments was legitimate.

Indiabulls Arbitration:

8. Meanwhile, on an application filed by Bliss and Imagine under Section 11 of the Act, on December 7, 2020, the Learned Arbitral Tribunal was constituted pursuant to an order passed by a Learned Single Judge of this Court. The Section 11 jurisdiction was invoked to initiate arbitration to adjudicate disputes and differences Bliss and Imagine had with Indiabulls (“***Indiabulls Arbitration***”). The Learned Single Judge took note of the consent of the parties to proceed to arbitration by the same Learned Sole Arbitrator and stated that the order disposing of the applications filed by Bliss and Imagine was not an order in exercise of the powers under Section 11 of the Act. Since the IHFL Arbitration was already pending before the Learned Sole Arbitrator, the parties recorded consent to submit the Indiabulls Arbitration to the same Learned Sole Arbitrator.

9. Pleadings were completed in the Indiabulls Arbitration on April 19, 2021. On June 22, 2021, Bliss and Imagine moved an application (“***June 2021 Application***”) in the IHFL Arbitration asking to club the Indiabulls Arbitration with these arbitration proceedings. It was also prayed that no award be pronounced in the IHFL Arbitration until the Indiabulls Arbitration was concluded.

10. The June 2021 Application was heard after completion of pleadings in it, on July 10, 2021, July 21, 2021 and July 22, 2021. Orders were reserved.

Core Controversy:

11. On February 26, 2023, the Learned Sole Arbitrator sent an email setting the date and time for pronouncement of the award in the IHFL Arbitration for February 28, 2023 at 1800 hours.

12. On February 28, 2023, Bliss and Imagine filed an application asking for orders to be passed on the June 2021 Application. It was submitted that before the arbitral award in the IHFL Arbitration is passed, it would be imperative to pass orders on the June 2021 Application. By an order dated February 28, 2023, the Learned Sole Arbitrator rejected the June 2021 Application, ruling that the contentions made in the June 2021 Application filed in the IHFL Arbitration were identical to the contentions already made in the application seeking impleadment of Indiabulls, which had been rejected. Consequently, the Learned Sole Arbitrator dismissed the June 2021 Application.

13. On the same day, i.e. on February 28, 2023, the final arbitral award in the IHFL Arbitration was issued. The award held that IHFL was well within its rights to appropriate the amounts paid by Indiabulls towards extinguishment of the loans extended to Bliss and Imagine. Bliss and Imagine believe the market value of the units was much higher than the value at which they were given credit for the foreclosure and that they have been short-changed by collusion between Indiabulls and IHFL.

14. Thereafter, on May 10, 2023, arguments were concluded in

the Indiabulls Arbitration and judgement was reserved. The mandate of the arbitral tribunal in the Indiabulls Arbitration was scheduled to expire on August 31, 2023.

15. On June 20, 2023, after judgement was reserved and before the mandate expired, Indiabulls sought to bring on record further documents by filing an application dated June 20, 2023. This was replied to by Imagine and Bliss on July 7, 2023, which in turn was met with a rejoinder from Indiabulls on July 17, 2023. Arguments and submissions on the application were heard on July 24, 2023 and August 14, 2023.

16. On August 14, 2023, the Learned Arbitral Tribunal noted that the arguments were incomplete and noted that the parties may seek an extension of the mandate, and fixed the next date of hearing as September 16, 2023. The mandate of the Learned Arbitral Tribunal expired on August 31, 2023. A hearing on the application scheduled for September 16, 2023 was adjourned at the request of Indiabulls, and the matter was stood over to September 25, 2023. On that date since an adjournment was sought yet again, the Learned Arbitral Tribunal ruled that the parties may secure an extension of mandate from the Bombay High Court and intimate the Learned Arbitral Tribunal for the matter to progress any further.

17. Advocates for Bliss and Imagine wrote to advocates for Indiabulls asserting that this Court had no jurisdiction in the matter. They indicated that the Delhi High Court had been presented with Section 29-A applications by Bliss and Imagine.

Section 29-A Petitions:

18. These Petitions were filed by Indiabulls on September 29, 2023. Imagine and Bliss filed their replies to the Petitions by their affidavits dated November 2, 2023. First, although the Learned Arbitral Tribunal was appointed by this Court, the replies contended that this Court had no jurisdiction to entertain these Petitions. Each of them claimed to have filed an independent petition under Section 29-A of the Act in the Delhi High Court. According to them, although the agreed seat of arbitration is Mumbai, since the arbitration was conducted in New Delhi, it would be the Delhi High Court that would have jurisdiction. It was claimed that in the course of conduct of the Indiabulls Arbitration, the Delhi High Court had issued witness summons at the request of Bliss and Imagine, without any jurisdictional objection from Indiabulls.

19. Bliss and Imagine have also contended that should this Court disagree with them and hold that it indeed has jurisdiction, the Learned Sole Arbitrator ought to be substituted. They allege inordinate delay on the part of the Learned Arbitral Tribunal in completing the arbitration. They would submit that but for the Covid-19 pandemic, the mandate would have expired on April 19, 2022 and yet the Learned Arbitral Tribunal did not complete the proceedings. They would then contend that due to the extension of statutory timelines from February 28, 2022, the one-year period was counted from March 1, 2022 and ended on February 28, 2023. They would then contend that they were constrained to agree to the contractual extension of six months which led to the scheduled expiry of mandate stretching to August 31, 2023, and yet, the Learned Arbitral Tribunal did not complete the proceedings.

20. That the application by Indiabulls to bring on record further documents was filed after orders were reserved, and the fact that it was entertained, would indicate according to Bliss and Imagine, that the Learned Arbitral Tribunal has been very slow in conduct of the arbitration. Even the IHFL Arbitration was concluded with the award being passed with a delay of one year, nine months and 20 days. It is contended by Bliss and Imagine that the efficacy of the arguments have been eroded by the prolonged efflux of time.

21. On February 2, 2024, Bliss and Imagine filed interim applications in these Petitions, seeking substitution of the Learned Sole Arbitrator. They would submit that the rejection of the scope to adjudicate on the fraudulent conduct by Indiabulls in collusion with IHFL, would show that the Learned Arbitral Tribunal has made up its mind already. By not allowing impleadment of Indiabulls in the IHFL Arbitration and by rejecting the request for clubbing the IHFL Arbitration with the Indiabulls Arbitration, the Learned Arbitral Tribunal was biased, they allege. On these grounds, Mr. Kapadia would contend that a case has been made out to invoke the powers of this Court when exercising jurisdiction under Section 29-A of the Act, to substitute the Learned Sole Arbitrator.

Analysis and Findings:

22. Having heard Mr. Kapadia on behalf of Bliss and Imagine and Mr. Anoshak Davar, Learned Counsel on behalf of Indiabulls, and perusing the record with their assistance, I am not convinced that a case has been made out to take the drastic step of substituting the Learned Sole Arbitrator in the Indiabulls Arbitration.

23. First, it must not be forgotten that the scope of these Petitions is the Indiabulls Arbitration and not the IHFL Arbitration. Indeed, Bliss and Imagine would verily believe that the only right course of action for the Learned Arbitral Tribunal was to club the IHFL Arbitration and the Indiabulls Arbitration. However, the Learned Arbitral Tribunal, for reasons spelt out in its order dismissing the application for impleadment of Indiabulls in the IHFL Arbitration, also dismissed the the application for clubbing of the two arbitrations. Whether that view is right can be tested when challenging the award made in the IHFL Arbitration under Section 34 of the Act, which challenge, I am informed, has been mounted. However, that view could never become the basis for substituting the Learned Sole Arbitrator in the Indiabulls Arbitration and that too when considering a petition under Section 29-A of the Act.

24. Naturally a party that has lost in an arbitration would be aggrieved about the outcome, but the forum for airing the grievances about the outcome would be the appropriate court exercising jurisdiction under Section 34 of the Act. The Section 29-A Court, and that too in another parallel arbitration where the parties are indeed not entirely identical would not become a forum for airing these grievances.

Substitution of Arbitrator:

25. Section 29-A(6) of the Act is the provision that deals with the power to substitute an arbitrator. For felicity, it is reproduced below:-

Section 29-A Time limit for arbitral award.

*(1) to (5) *****

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

*(7) to (9) ****

26. A plain reading of the foregoing would show that the jurisdictional Court would have the power to substitute the arbitrator. However, such power can never be construed to be an absolute power that can be exercised for the asking and that too by a party aggrieved by having lost in a parallel arbitration.

27. That apart, one of the foundational legislative principles underlying the Act is to minimise court interference in arbitration. In the scheme of the Act, substitution of an arbitrator is envisaged in Section 15 of the Act where the mandate of the arbitrator terminates due to his withdrawal from office or pursuant to an agreement between the parties. Under Section 14 of the Act, in addition, it is seen that if the arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons, he fails to act without undue delay, an arbitrator may be replaced.

28. The jurisdiction under Section 29-A of the Act is not one that would give me unbridled power to substitute an arbitrator lightly, without meeting the ingredients of Section 14 and 15 of the Act. The Learned Arbitral Tribunal ought to have become *de jure* or *de facto* ineligible to be an arbitrator. Admittedly that is not so. The allegations that the Learned Arbitral Tribunal has made up its mind and that it is likely to not change its mind, are in the realm of speculation, even if it may be reasonable to think that outcome in

the Indiabulls Arbitration may be aligned with the outcome in the IHFL Arbitration. This may present a ground in the challenge under Section 34 but cannot be the basis to substitute the arbitrator lightly because of such a grievance by a party that lost in the other arbitration.

29. Merely because substitution is referred to in Section 29-A(6) of the Act, the principles and the grounds on which the substitution is envisaged in the Act would not evaporate. This is precisely why Bliss and Imagine have attempted to depict the delay alleged against the Learned Arbitral Tribunal and had sought to indicate that the delay is an undue delay. However, they wish away the Covid-19 pandemic and the extension of statutory deadlines, and compound that with stating that their own consent for a six-month extension was something they were “constrained” to provide. Such an argument does not inspire confidence at all.

30. Arbitration is a creature of contract and contracts are creatures of the autonomy of the parties to the contract. When a party to an arbitration willingly gives consent for an extension of six months, it would not lie in its mouth to wish it away by merely stating that it was constrained to give consent. That apart, it would just not be open to bring to bear an allegation of undue delay for the period during which statutory deadlines were admittedly suspended between March 15, 2020 and February 28, 2022 by the Supreme Court due to the Covid-19 pandemic.

Stance on Jurisdiction:

31. The conduct of Bliss and Imagine is unacceptable for other reasons too. They contend that this Court has no jurisdiction

under Section 29-A of the Act. In the same breath, they also seek substitution of the arbitrator by filing an interim application in the same Petitions. Apart from the evident contradiction, their conduct also flies in the teeth of their own past conduct – it was Bliss and Imagine that had approached this Court invoking Section 11 of the Act. To get over that, they claim that the order appointing the Learned Arbitral Tribunal made it clear that it was not an order under Section 11 of the Act. This would not take their case very far. Even if the order appointing the Learned Arbitral Tribunal by consent of the parties is not an order under Section 11 of the Act, by operation of Section 42 of the Act, this is the only Court that can hear a petition under Section 29-A of the Act. Under Section 42, where any application with respect to an arbitration agreement has been made in a certain Court, that Court would have jurisdiction and all subsequent proceedings are required to be made in that Court. Having approached this Court first in connection with the arbitration agreement with Indiabulls, they were obliged by statute to file all subsequent proceedings relating to the same arbitration only in this Court. Their approach to the Delhi High Court is misconceived or perhaps mischievous or perhaps, both. The impression it leaves behind is that the idea is to buy time and postpone the prospect of the arbitration coming to a closure.

32. Such an inherently contradictory approach has indeed succeeded in ensuring that a Section 29-A Petition that is ordinarily meant to be disposed of in 60 days has been stretched for beyond one and half years. These Petitions were filed on September 29, 2023, followed by bulky pleadings and making of propositions, based on contentions relating to other arbitration

proceedings.

33. For purposes of my analysis, even if I were to assume that Bliss and Imagine have a valid right to contend that it would have been wise for the Learned Arbitral Tribunal to club the IHFL Arbitration and the Indiabulls Arbitration, it would not follow that a different approach would be untenable. Bliss and Imagine have lost in the IHFL Arbitration, but that would not mean that the Learned Arbitral Tribunal cannot rule in their favour in the Indiabulls Arbitration. I am refraining from articulating how and to what extent and in what manner a view could emerge in the Indiabulls Arbitration, mindful of the fact that this is the Court that has jurisdiction to hear an eventual challenge under Section 34 of the Act. I do not desire to enter upon the realm of speculation and conjecture at this stage, when the jurisdiction is only to consider whether the mandate of the Learned Arbitral Tribunal deserves to be extended.

34. Indiabulls itself has made an application to the Learned Arbitral Tribunal to bring on record additional documents at a highly belated stage – after judgement was reserved on May 10, 2023. It would be open to the Learned Arbitral Tribunal to impose such costs as it may feel necessary for such conduct. However, the short point is that the Learned Arbitral Tribunal cannot be blamed for the arbitral award in the Indiabulls Arbitration not having been pronounced. The fact that Indiabulls was advised to attempt to bring on record further documents at such a belated stage could be a pointer to its nervousness about the outcome, which could in turn be a pointer to how the outcome in the Indiabulls Arbitration need not be a foregone conclusion

merely because of the outcome in the IHFL Arbitration.

35. Allegations of bias cannot be lightly levelled and where it is a meritorious allegation, the forum for levelling it would be the Section 34 Court after the award is made. *Prima facie*, it appears that the allegations are being made to try and derail the completion of the arbitration by alleging bias and that too because an application to club the two proceedings had not been explicitly ruled upon rapidly. It is noteworthy that the earlier application for impleadment of Indiabulls in the IHFL Arbitration had been rejected earlier, with reasons, and therefore, in substance the same effect was being sought by a different application. Indeed, the Learned Arbitral Tribunal could have rejected the second application *in limine*. However, it appears that the Learned Arbitral Tribunal did not want to shut out the parties, who have been advised to make bulky pleadings on every such issue at every stage of the proceedings, and make elaborate submissions over multiple sittings. Yet, it is not open to me to substitute the Learned Arbitral Tribunal's approach to conducting arbitration with my own approach of how the arbitration could have been conducted. Any perceived difference between the two approaches could never sustain an assessment of undue delay, which is the ground for substituting an arbitrator.

36. Even for challenging an arbitrator on the grounds of independence and impartiality, the statutory framework explicitly enables making such an allegation as a ground of challenge under Section 34 of the Act, after the award is passed. The statutory framework explicitly prevents approach to a Court in the interregnum since that would derail the arbitration.

37. The Indiabulls arbitration is an extremely advanced stage. In fact, judgement was reserved in May 2023. Indiabulls' application for more documents to be produced after judgement was reserved, and the pleadings that it led to, has indeed caused delay. However, such delay cannot be laid at the doorstep of the Learned Arbitral Tribunal for purposes of effecting a substitution of the Learned Arbitral Tribunal. The parties have already incurred significant costs in the conduct of the arbitration proceedings. Substituting the Learned Arbitral Tribunal is not even a convenient measure quite apart from not being a measure worthy of acceptance under Section 29-A(6) of the Act, in the facts of this case.

38. The only logical recourse that commends itself is to extend the mandate of the Learned Arbitral Tribunal by a reasonable period. Indeed, this is the Court with jurisdiction to so extend the mandate. Moreover, no case is made out for substituting the Learned Arbitral Tribunal.

39. In these circumstances, these Petitions are ***finally disposed of*** extending the mandate of the Learned Arbitral Tribunal by a ***further period of six months from today***. It is hoped that the Learned Arbitral Tribunal shall rule on Indiabulls' belated application to bring on record further documents expeditiously. Should it be held by the Learned Arbitral Tribunal that no documents are permissible to be brought on record at this stage, it is hoped that the Learned Arbitral Tribunal would pronounce the arbitral award well within the extended timeframe. Should a case be made out for bringing on record subsequent developments and thereby further documents, it is hoped the extension of six months

from today would still be sufficient to wrap up the proceedings and conclude.

Consideration of Costs:

40. I have given my anxious consideration to the aspect of costs. Bliss and Imagine, who had come to this Court under Section 11 of the Act have chosen to approach another High Court under Section 29-A. They have opposed Indiabulls for having rightly come to this Court for that very purpose. In their replies to these Petitions, they have objected to the jurisdiction of this Court and yet, sought substitution of the arbitrator by this Court in exercise of the very jurisdiction they contend the Court does not have. Such conduct would deserve assessment of costs.

41. Indiabulls too has inexplicably sought to bring new documents on record in the Indiabulls Arbitration, well after judgement was reserved. This too does not appear to be blemishless from the perspective of costs, but that is a matter for the Learned Arbitral Tribunal to decide. The Learned Arbitral Tribunal is requested to assess costs to be imposed should it find that Indiabulls' late application for introducing documents was untenable.

42. I had called for computation of costs incurred by the parties in these proceedings. It is evident that each side has incurred costs of about Rs. 10 lakh for these Section 29-A proceedings alone. Discounting such costs owing to the conduct of both parties and without prejudice to the Learned Arbitral Tribunal deciding the matter of costs in the final arbitral award, in my opinion, it would be appropriate to impose costs in the sum of Rs. 1,50,000 to be

borne jointly and severally by Bliss and Imagine. Such costs shall be paid to Indiabulls within four weeks of the upload of this judgement on the website of this Court. Needless to reiterate that such imposition of costs would not preclude the Learned Arbitral Tribunal from assessing and imposing costs on Indiabulls in the arbitral proceedings on merits in such manner as it considers necessary and justifiable.

43. In view of the disposal of these Petitions, attendant Interim Applications, if any, stand disposed of.

44. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]