IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 223 OF 2024

Nandkishore Bhandari ...Petitioner

Versus

Landmark Abodes Private Limited ...Respondent

AND
COMMERCIAL ARBITRATION PETITION NO. 37 OF 2024

Prakash And Daga Infra Projects Private Limited ...Petitioner

Versus

Landmark Abodes Private Limited ...Respondent

Mr. Anand Kumar, *i/b Daulat A. Jehangir, for the Petitioner.*
Appearance not received for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : OCTOBER 1, 2025

ORDER :

1. The captioned Petitions are post-award Petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("***the Act***") seeking intervention of this Court to secure the fruits of the arbitral award. Both the Petitioners are signatories to the Consent Terms, in terms of which the arbitral award was passed on April 13, 2018. The Respondents are identical in both the proceedings. For convenience, all

references to dates are taken from Commercial Arbitration Petition No.223 of 2024 ("***Petition No.223 of 2024***"). Learned Counsel for the parties jointly state that a decision on the issues in Petition No.223 of 2024 would be dispositive of the Commercial Arbitration Petition No.37 of 2024 ("***Petition No.37 of 2024***") as well.

2. By an order dated April 30, 2025, since none was appearing for Respondents, despite notice, as an *ad-interim* measure, reliefs in terms of prayer clauses (a) and (b) were granted. It was left open to the Respondents to enter appearance and point out on the next date as to why the *ad-interim* reliefs must not varied, altered or vacated. Thereafter, the matter has been stood over from time to time with the Respondents having once entered appearance on July 3, 2025, and the matter has eventually come up today.

3. It is seen from the record that by minutes of meeting held on April 13, 2018, the Learned Arbitrator had passed an award in terms of the Consent Terms tendered by the parties. On the face of it, paragraph 3 of the Consent Terms demonstrates and acknowledges liability of a sum of Rs.~4.5 crores owed to the Petitioner in Petition No.223 of 2024 and the sum of Rs.~4.47 crores payable to the Petitioner in Petition No.37 of 2024. Clause 4 of the Consent Term records that in lieu of such

amounts, the Petitioners have agreed to accept the commitment by the Respondents to allot residential area covering such amount to be computed at Rs.12.500/- per sq. ft. built up saleable area in the development project on the property set out in schedule 1 and 2 of the Consent Terms.

4. On this basis, the parties struck a bargain and agreed that appropriate compliances with the Real Estate Regulatory Authority would be met and that in lieu of the liability owed, the interest of the Petitioners would be secured over the property described in schedule 1 and 2 of the said consent award.

5. It is also seen from Clause 16 of the Consent Terms that the parties specifically agreed that if there was no progress in the matter either for the development or sale of the property for a period of three years from the date of the Consent Terms, the Respondents would allot additional area of 375 sq. ft. saleable area.

6. The Petitioners also hold shares in Respondent No.1 and in Clause 13 of the Consent Terms, it is agreed that the Petitioner would continue to hold the same and by way of security for compliance with the Consent Terms their shareholding would remain undisturbed. Appropriate documents were to be executed for transfer of the shares to

specific Respondents and the Petitioners were also meant not to dispose of such shareholding.

7. The Petitioners were also permitted to suggest and bring prospective developers or purchasers for the said property and in that event, the parties were to enter upon further negotiations in consonance with the principles set out in the Consent Terms. In the event of development not taking place for a period of three years, the parties have agreed upon Petitioner's allotment of area and irrespective of a market rate to freeze the rate to be applied to such additional area at the rate of Rs.12500/- per sq. ft.

8. This is a Petition filed under Section 9 of the Act. This Court must be mindful that the scope of jurisdiction under this provision is to secure fruits of the arbitral award after it is passed and before it can be executed. Therefore, the award being an award passed by consent, the contours of the consent and the agreement reached between the parties cannot be lost sight of. The parties have explicitly agreed for an acknowledged liability of the Respondents in favour of the Petitioners for the sum set out in the consent awards and for the manner in which such liability shall be discharged. These amounts are indeed requird to be discharged. Whether and how these sums are to be secured is also

agreed upon by the parties and that would have to be in terms of the security interest over the said properties.

9. However, the Consent Terms explicitly record that in lieu of such amounts the parties had settled their bargain in terms of delivery of developed property and not in terms of cash. Whether there are other avenues available to the Petitioners to secure their interests upon default of the contract arrived at in Consent Terms is for the Petitioners to pursue. This Court would have to be mindful of the scope of the jurisdiction under Section 9 and therefore against this backdrop the prayers sought in prayer clause (a) is made absolute and the ad-interim relief granted in terms of prayer clause (b) is vacated.

10. Learned Counsel for the Respondents commits and assures that the project (a slum redevelopment project) is still being worked on, and he has instructions to commit that the Respondents would abide by the terms of the Consent Terms. One also cannot forget the fact that this Petition under Section 9 has been filed in connection with the award dated April 13, 2018, and is affirmed on August 11, 2023 – a good seven years after the event.

11. Therefore, balancing the competing interests of the parties and examining specific contours of what the parties have explicitly

agreed in the consent award, in respect of which this Section 9 Petition has been invoked, this Petition is being ***disposed of*** in terms of prayer clause (a).

12. I afraid that I am unable to direct deposit of any cash in view of the contours of the Consent Terms, and therefore, the ad-interim relief granted in terms of prayer clause (b) is hereby vacated. Relief in terms of prayer clause (a) is made absolute. It is directed that the Respondents shall not alienate, encumber or create any right, title or interest in any of the property as set out in the first and second schedule of the award, which are also set out in Exhibit 'B' to the Petition.

13. The captioned Petitions are ***finally disposed of*** in the aforesaid terms.

14. 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.]