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

Date of decision: 08 August, 2023

+ O.M.P.(I) (COMM.) 399/2018 and CCP(O) No.35/2022 & I.A.
Nos.2614/2020 & 15336/2022

**LANDMARK PROPERTY DEVELOPMENT AND COMPANY
LIMITED & ORS.Petitioners**

Through: Mr. Amit Sibal, Senior Advocate with
Ms. Ruby Singh Ahuja, Mr. Manmeet
Kaur, Mr. Gurtejpal Singh, Mr. Vasu
Singh, Mr. Abhishek Rana, Ms.
Aashna Arora and Ms. Vinamra
Kopriha, Advocates.

versus

**ANSAL PROPERTIES & INFRASTRUCTURE LIMITED & ORS.
.....Respondents**

Through: Mr. Ashwani Kumar Mata, Senior
Advocate with Mr. NPS Chawla, Mr.
Sujoy Datta, Ms. Nishtha Khurana,
Ms. Mahima Shekhwat and Mr.
Karan Gaur, Advocates.
Mr. Anirudh Bakhru, Mr. Ayush Puri,
Mr. Umang Tyagi, Mr. K. Madnani,
Mr. Vijay Laxmi Rathi and Ms.
Pragya Choudhary, Advocates for
JD-2.
Mr. Gaurav H Sethi and Mr. Anant
Bajpai, Advocates for R-1 and R-3.

+ OMP (ENF.) (COMM.) 159/2019 & CCP(O) 28/2022,
EX.APPL.(OS) 1076/2019, 206/2020, 208/2020, 210-213/2020,
278/2021, 437/2021, 440/2021, 468-469/2021, 969/2021,
1134/2021, 2826/2022, 3231-3232/2022, 3235/2022, 19/2023,
257/2023

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By: DIVYA SHARMA
Signing Date: 08.08.2023
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O.M.P.(I) (COMM.) 399/2018 & OMP (ENF.) (COMM.) 159/2019

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LANDMARK PROPERTY DEVELOPMENT AND COMPANY
LTD. & ORS. Decree Holders

Through: Mr. Amit Sibal, Senior Advocate with
Ms. Ruby Singh Ahuja, Mr. Manmeet
Kaur, Mr. Gurtejpal Singh, Mr. Vasu
Singh, Mr. Abhishek Rana, Ms.
Aashna Arora and Ms. Vinamra
Kopriha, Advocates.

versus

ANSAL PROPERTIES & INFRASTRUCTURE LTD. & ORS.

..... Judgement Debtors

Through: Mr. Sujoy Datta, Ms. Nishtha
Khurana and Ms. Mahima Shekhawat
Advocates.
Mr. Anirudh Bakhru, Mr. Ayush Puri,
Mr. Umang Tyagi, Mr. K. Madnani,
Mr. Vijay Laxmi Rathi and Ms.
Pragya Choudhary, Advocates for JD-
2.
Mr. Gaurav H Sethi and Mr. Anant
Bajpai, Advocates for R-1 and R-3.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

I.A No.11507/2022 in O.M.P.(I)(COMM.) No. 399/2018

EX.APPL. (OS) No. 2906/2022 in OMP (ENF.) (COMM.) No. 159/2019

By way of the present judgment, this court proposes to dispose-
of applications bearing I.A. No.11507/2022 filed in O.M.P. (I)
(COMM.) No.399/2018 and EX.APPL. (OS) No.2906/2022 filed in
OMP (ENF.) (COMM.) No.159/2019 by M/s Landmark Property
Development and Company Limited & Ors. ('decree holders') seeking



release of the sums of Rs. 13 crores and Rs. 3,09,42,000/- respectively, that have been deposited by M/s Ansal Properties & Infrastructure Limited & Ors ('judgment debtors') in compliance of order/judgment dated 29.05.2019 and 05.01.2022, as detailed hereinafter.

2. This court has heard Mr. Amit Sibal, learned senior counsel appearing on behalf of the decree-holders; and Mr. Ashwani Kumar Mata, learned senior counsel appearing on behalf of the judgement-debtors on the present applications.

Submissions on behalf of Decree-Holders

3. The decree-holders seek release of the deposited amounts for the following reasons :
 - 3.1 It is submitted that calculating the awarded amount as due upto 12.05.2023, as per the arbitral award, the judgement-debtors are liable to pay to the decree-holders the sum of about Rs. 278 crores; which however has not been done and only small sums have been deposited by the judgement-debtors in court pursuant to orders made by this court;
 - 3.2 It is submitted that the petition under section 9 of the A&C Act was filed to protect the awarded amount; and pursuant to order dated 25.04.2019 made in the matter, the enforcement of the arbitral award was stayed till 31.07.2019 based on the undertaking given by the judgement-debtors that they would deposit a sum of about Rs. 46 crores in court, which the judgement-debtors have failed to do;
 - 3.3 It is further submitted that the judgement-debtors are also in contempt of court orders, having violated order dated 29.05.2019 since, it is verily believed, that the judgement-debtors have sold



- certain immovable properties in Meerut without depositing the sale proceeds thereof in this court immediately thereafter, as directed by that order. It is submitted that separate contempt proceedings have been initiated in that respect;
- 3.4 It is argued that the decree-holders have suffered huge losses due to non-payment of the awarded amount by the judgement-debtors, and therefore are entitled to immediate release of the amount of Rs. 13 crores and Rs. 3,09,42,000/- , which now stand deposited by the judgement-debtors in court.

Submissions on behalf of Judgement-Debtors

- 4 Learned senior counsel appearing for the judgement-debtors, on the other hand, opposes the release of the deposited amount to the decree-holders, principally for the following reasons :
- 4.1 It is argued that the amount of Rs. 13 crores deposited by the judgment-debtors in court is subject to the outcome of OMP (COMM) No. 68/2019; and in seeking release of the amount deposited, the decree-holders are in fact seeking partial execution of the arbitral award which is still under challenge as well as enforcement of judgement dated 05.01.2022, which ought not to be allowed;
- 4.2 It is submitted that previously, the decree-holders had sought release of a sum of about Rs. 14 crores deposited by the judgement-debtors in court; and under guise of a settlement, the decree-holders had received the monies so deposited by way of a joint application bearing E.A No. 28/2021 in OMP. ENF (COMM) No. 159/2019. After receiving that sum of money



- however, it is submitted, the decree-holders immediately backed-out of the settlement; and an application bearing E.A. No. 469/2021 has been filed by the judgement-debtors seeking re-deposit of the sum in court and that application is still pending consideration before this court. It is accordingly urged, that any further release of money in favour of the decree-holders ought to be done only after that application is taken-up, so as to protect the interests of the judgement-debtors;
- 4.3 It is further submitted that the deposit and retention of the aforesaid amount with the Registry of this court sufficiently protects the interests of the decree-holders, especially since the money so deposited is being held in an interest-bearing fixed deposit account. Furthermore, it is argued that the deposit of Rs. 13 crores was made in this petition in terms of section 9 of the A&C Act, the scope of which proceedings is limited to *securing* the amount that was in dispute in the arbitration during the interim period, and not *enforcement* of the arbitral award, as is being sought to be done;
- 4.4 In the alternative, it is urged, that if this court at all permits withdrawal of the monies, it ought not to be unconditional and the decree-holders should only be permitted to withdraw the monies subject to furnishing a bank guarantee, so that the judgement-debtors are not exposed to irreparable loss.

Discussions and Conclusions

- 5 The present two applications are a small part of a fairly complex set of litigations between two business groups which concern various



companies owned by them, which groups may, for ease of reference be called ‘Landmark’ and ‘Ansals’. It may be clarified that reference to the parties as Landmark and Ansals respectively, is not in any manner intended to detract from the reference to a specific company, entity or individual who may otherwise be concerned with any particular aspect of the matter.

6 At last count there are some 30 applications filed by the rival parties, which are pending consideration in the present batch of matters. In view thereof, this court does not propose to deal with the present 02 applications with too much elaboration, since that may infringe the rights and liabilities of Landmark and Ansals in the various pending litigations.

7 A conspectus of the factual narrative, though contested by the rival parties, that is relevant for a decision of the present applications is as follows:

7.1 Arbitral award dated 07.09.2018 was rendered by a learned sole arbitrator against Ansals (‘judgment-debtors’) awarding the sum of Rs. 46.01 crores in favour of Landmark (‘decree-holders’). The arbitral award was impugned by way of a petition under section 34 of the Arbitration & Conciliation Act 1996 (‘A&C Act’) bearing O.M.P.(COMM) No. 68 of 2019. That challenge is pending consideration before this court. During the course of those proceedings, Landmark filed before this court a petition under section 36 of the A&C Act seeking enforcement of the arbitral award *vide* O.M.P. (ENF.)(COMM) No. 159/2019. *Vide* order dated 05.01.2022 made on an application bearing EX. APPL. (OS) No. 1237 of 2021 in the enforcement petition, this



court made certain observations and issued the following directions :

“12. Even thereafter, the Ansals have not complied with the undertaking, given by it to this Court on 1st August, 2019, to pay ₹46.01 crores. The Ansals have deposited, out of its entire liability towards Landmark under the award, a mere amount of ₹14,90,48,878/-. This position is not in dispute.

“13. The corollary is, necessarily, that by operation of para 7 of the order dated 25th April, 2019 read with the orders dated 1st August, 2019 and 3rd September, 2019, the stay of operation of the award of the learned sole arbitrator, as granted by this Court, stands vacated. This fact also stands recorded by this Court in para 3 of subsequent order dated 24th September, 2019. The award is, therefore, enforceable in full. The Ansals are, therefore, liable, in law, to, at the least, deposit, with this Court, the entire amount awarded by the learned arbitrator, principal as well as interest.

“14. Barring the amount of ₹14,90,48,878/-, already noted hereinbefore, the Ansals have not, however, deposited a single farthing with the Court.

* * * * *

*“50. I am, however, inclined to pass orders in terms of prayer (d) in the application, as also otherwise to secure the interests of the petitioner as the Award Holder, as under.
Order*

“51. The present application stands disposed of with the following directions:

(i) APIL shall deposit, with the Registry of this Court, Rs. 32 crores (Rs. 46.01 crores less Rs. 14,90,48,878/-, rounded off) being the differential amount remaining to be deposited, out of the principal amount of Rs. 46.01 crores awarded by the learned arbitrator, within a period of four weeks from today.



(ii) APIL shall further deposit, with the Registry of this Court, an amount of Rs. 34 crores which has been stated by Mr. Sujoy Datta, learned Counsel briefing Ms. Tripathi, on behalf of APIL, to constitute the value of the sale consideration against transfer of the shares held by APIL in AICPL to MIPL. This deposit too, shall be made within a period of four weeks from today.

(iii) On such deposit being made, all orders of stay, granted by this Court, against any immovable properties held by APIL, shall stand lifted. APIL shall be free to deal with its immovable properties.

(iv) APIL shall continue, however, to maintain liquidity in its accounts at least to the extent of Rs.120 crores.

(v) In the event of default, by APIL, in complying with directions (i) and (ii) above, APIL shall deposit, with the Registry of this Court, an amount of Rs. 200 crores, within a period of eight weeks from today.

(vi) All amounts deposited would be retained by the Registry of this Court in an interest bearing fixed deposit, and would abide by the outcome of OMP (Comm) 68/2019 and OMP (ENF) (Comm) 159/2019, and orders to be passed therein.

“52. The aforesaid directions have been issued to APIL keeping in mind the fact that the respondents, as award-debtors, are all part of the Ansal Group. It shall be open to any of the other award-debtors in this Execution Petition to comply with the above directions, in place of APIL.

(emphasis supplied)

7.2 It also transpires that during the pendency of a petition under section 9 bearing O.M.P. (I) (COMM) No. 399/2018, the parties entered into a ‘settlement’ comprised in Memorandum of Understanding dated 07.12.2020 (‘MoU’) in an effort to resolve



- their disputes; under which settlement Ansals agreed to pay to Landmark the sum of Rs.140 crores towards a one-time-settlement of the dispute. In compliance of the terms of such settlement, Ansals deposited an amount of Rs.14,90,48,878/- in the Registry of this court, which amount was subsequently released in favour of Landmark *vide* orders dated 11.01.2021 and 05.02.2021 by way of an interim arrangement pursuant to the settlement;
- 7.3 It turned-out however, that the settlement comprised in the MoU itself went into dispute, leading to termination of the MoU by Landmark *vide* Notice dated 10.02.2021 issued to Ansals; though the amount of about Rs. 14 crores received by Landmark from Ansals under the settlement was retained by Landmark. In that respect, Ansals moved an application bearing EA No. 469/2021 praying that the said sum of Rs.14 crores be re-deposited by Landmark into court, which application is still pending consideration before this court;
- 7.4 On the other hand, in partial compliance of the directions contained in judgment dated 05.01.2022 made in the enforcement proceedings, which had directed Ansals to deposit the sum of Rs. 32 crores in addition to another sum of Rs. 34 crores¹, Ansals have deposited in court only the following amounts so far : (i) Rs.13 crores *vide* 05 Demand Drafts dated 08.07.2022 and 11.07.2022; and (ii) Rs. 3,09,42,000/- *vide* 03 Demand Drafts dated 11.01.2022; and 29.01.2022, that is to say an aggregate sum of

¹ cf. para 51 (i) (ii) of judgment 05.01.2022



- Rs.16,09,42,000/-, which Landmark is now seeking to withdraw by way of the applications under consideration;
- 7.5 It may be re-iterated that Landmark also continues hold the sum of about Rs.14 crores that it had received under the purported settlement comprised in MoU dated 07.12.2020, which is not disputed;
- 7.6 Thus, if the present applications are allowed, Landmark would receive an additional sum of Rs.16,09,42,000/-, and would thereby have received a total of Rs. 30,99,90,878/- as against the principal sum of Rs. 46.01 crores awarded by way of the arbitral award;
- 7.7 It is further observed that in judgment dated 05.01.2022, the court had in any case directed Ansals to maintain liquidity in their account at least to the extent of Rs.120 crores; and had further stipulated that if Ansals were to default in complying with the directions for payment of Rs.32 crores *plus* Rs. 34 crores, they were to deposit Rs. 200 crores with the Registry of this court (within 08 weeks of the date of that order). Admittedly, Ansals have failed to comply with any of the directions contained in judgment dated 05.01.2022 and have thereby defaulted on all counts. In fact, a contempt petition bearing CCP (O) No. 28/2022 filed by Landmark for violation of the said judgment is pending against Ansals in the present batch of matters;
- 7.8 Furthermore, it is the confirmed position that Ansals have also not paid to Landmark the sum of Rs.140 crores in terms of the settlement comprised in MoU dated 07.12.2010, which was admittedly signed between the parties.



8. In the above backdrop, what is undisputed is:
- 8.1 That the principal amount awarded *vide* Arbitral Award dated 07.09.2018 is Rs.46.01 crores;
- 8.2 That Ansals are evidently in default of compliance with judgment dated 05.01.2022 made in EX. APPL. (OS) No. 1237 of 2021 in the enforcement petition, inasmuch none of the directions contained in the said judgment have been complied with by Ansals;
- 8.3 That, as a condition of vacating the stay order that had been passed in relation to their immovable properties, Ansals were obligated to deposit the monies as directed in para 51 (i) and (ii) of judgment dated 05.01.2022; and their failure to do so evidently points to the lack of liquidity in the hands of Ansals; and
- 8.4 Even if Landmark was to receive the monies as sought for by way of the applications under consideration, Landmark would have only received an aggregate sum of about Rs. 30,99,90,878/- as against the principal sum of Rs.46.01 crores awarded by the arbitral award.
9. Considering the conduct of Ansals in the present proceedings, regardless of the justifications offered for such conduct, this court has no hesitation in allowing the present applications, thereby directing the release of the sum of Rs. 13 crores alongwith interest *and* the sum of Rs.3,09,42,000/- alongwith interest, as lying with the Registry of this court to M/s Landmark Property Development and Company Limited (decree-holder No. 1), being the first constituent of the 'Landmark Group' as defined in para 2.5 of arbitral award dated 07.09.2018.



10. Let M/s Landmark Property Development and Company Limited approach the Registry of this court within 02 weeks for the above purpose; and let the amount be released to the said company within 01 week thereafter.
11. It may be mentioned that the receipt of monies by Landmark under the present judgment shall be entirely without prejudice to the rights and contentions of Landmark and Ansals in the various pending proceedings; and more specifically, in the event the arbitral award is set-aside in the proceedings under section 34 of the A&C Act, Ansals would of course be entitled to restitution of the monies released to Landmark by way of the present order.
12. The applications are disposed-of in the above terms.

ANUP JAIRAM BHAMBHANI, J

AUGUST 08, 2023

uj/ds