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

Reserved on : 10 July 2024
Pronounced on : 3 September 2024

\+ OMP (ENF.) (COMM.) 148/2021 & CCP(O) 9/2024, CRL.M.A. 1903/2023, EX.APPL.(OS) 2751/2022, EX.APPL.(OS) 78/2023

ANAND GUPTA & ANR. .....Decree Holder

Through: Mr. Saif Khan, Mr. Swastik Bisarya, Mr. Achuthan Sreekumar, Mr. Rohil Bansal and Ms. Apoorva Prasad, Advs.

versus

M/S. ALMOND INFRABUILD PRIVATE LIMITED & ANR. .....Judgment Debtors

Through: Mr. Kartik Nayar, Adv. with Mr. Krish Kalra and Mr. Divyansh Rai, Advs.

\+ OMP (ENF.) (COMM.) 10/2022 & EX.APPL.(OS) 2778/2022

DEEPAK TIWARI .....Decree Holder

Through: Mr. Saif Khan, Mr. Swastik Bisarya, Mr. Achuthan Sreekumar, Mr. Rohil Bansal and Ms. Apoorva Prasad, Advs.

versus

ANAND DIVINE DEVELOPERS PVT. LTD & ANR. .....Judgment Debtors

Through: Mr. Kartik Nayar, Adv. with Mr. Krish Kalra and Mr. Divyansh Rai, Advs.

\+ OMP (ENF.) (COMM.) 149/2021 & CRL.M.A. 1901/2023,

EX.APPL.(OS) 2744/2022, EX.APPL.(OS) 3413/2022, EX.APPL.(OS) 102/2023

GAGANDEEP SINGH PURI .....Decree Holder

Through: Mr. Saif Khan, Mr. Swastik Bisarya, Mr. Achuthan Sreekumar, Mr. Rohil Bansal and Ms. Apoorva Prasad, Advs.

versus

M/S. ALMOND INFRABUILD PRIVATE LIMITED & ANR. .....Judgment Debtor

Through: Mr. Kartik Nayar, Adv. with Mr. Krish Kalra and Mr. Divyansh Rai, Advs.

\+ OMP (ENF.) (COMM.) 168/2021 & CRL.M.A. 1899/2023, EX.APPL.(OS) 2747/2022, EX.APPL.(OS) 3412/2022, EX.APPL.(OS) 104/2023

PALLIPPURAM RAMAKRISHNAN LAKSHMINARAYANAN .....Decree Holder

Through: Mr. Saif Khan, Mr. Swastik Bisarya, Mr. Achuthan Sreekumar, Mr. Rohil Bansal and Ms. Apoorva Prasad, Advs.

versus

ANAND DIVINE DEVELOPERS PRIVATE LIMITED & ANR. .....Judgment Debtors

Through: Mr. Kartik Nayar, Adv. with Mr. Krish Kalra and Mr. Divyansh Rai, Advs.

\+ OMP (ENF.) (COMM.) 172/2021 & CRL.M.A. 1898/2023, EX.APPL.(OS) 2743/2022, EX.APPL.(OS) 105/2023

MANEESH GOEL .....Decree Holder

Through: Mr. Saif Khan, Mr. Swastik Bisarya, Mr. Achuthan Sreekumar, Mr. Rohil Bansal and Ms. Apoorva Prasad, Advs.

versus

ANAND DIVINE DEVELOPERS PRIVATE LIMITED & ANR. .....Judgment Debtors

Through: Mr. Kartik Nayar, Adv. with Mr. Krish Kalra and Mr. Divyansh Rai, Advs.

\+ OMP (ENF.) (COMM.) 174/2021 & CRL.M.A. 1897/2023, EX.APPL.(OS) 2746/2022, EX.APPL.(OS) 103/2023

NAVDEEP SHERGILL .....Decree Holder

Through: Mr. Saif Khan, Mr. Swastik Bisarya, Mr. Achuthan Sreekumar, Mr. Rohi Bansal and Ms. Apoorva Prasad, Advs.

versus

ALMONDS INFRABUILD PRIVATE LIMITED & ANR. .....Judgment Debtor

Through: Mr. Kartik Nayar, Adv. with Mr. Krish Kalra and Mr. Divyansh Rai, Advs.

\+ OMP (ENF.) (COMM.) 9/2022 & EX.APPL.(OS) 2745/2022

ANURAG JAIN .....Decree Holder

Through: Mr. Saif Khan, Mr. Swastik Bisarya, Mr. Achuthan Sreekumar, Mr. Rohil Bansal and Ms. Apoorva Prasad, Advs.

versus

ANAND DIVINE DEVELOPERS PRIVATE LIMITED & ANR. .....Judgment Debtors

Through: Mr. Kartik Nayar, Adv. with Mr. Krish Kalra and Mr. Divyansh Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

% 02.09.2024

1. The petitioners in each of these execution petitions seek execution and enforcement of a Settlement Agreement drawn up amongst the petitioner(s), Respondent 1 and Respondent 2. Respondent 2, in each of these petitions is M/s. ATS Infrastructure Ltd[1]. In OMP (Enf) (Comm) 148/2021, OMP (Enf) (Comm) 149/2021 and OMP (Enf) (Comm) 174/2021, Respondent 1 is M/s Almond Infrabuild Pvt Ltd[2] whereas in OMP(Enf)(COMM) 10/2022, OMP(Enf)(COMM) 168/2021, OMP(Enf) (COMM) 172/2021 and OMP(Enf)(COMM) 9/2022, Respondent 1 is Anand Divine Developers Pvt Ltd[3]. Almond Infrabuild and Anand Divine Developers are wholly owned subsidiaries of ATS.

2. In each of these petitions, the disputes between the parties were referred to mediation by the Delhi High Court Mediation and Conciliation Centre[4], under whose aegis Settlement Agreements were drawn up, settling the disputes. These petitions seek enforcement of the said Settlement Agreements.

[1] "ATS", hereinafter
[2] "Almond Infrabuild", hereinafter
[3] "Anand Divine Developers", hereinafter
[4] "the Mediation Centre"

3. The terms of the Settlement Agreements are identical. As such, the issues arising for consideration in these enforcement petitions are also identical. For the sake of convenience, this judgment makes reference to the parties in OMP (Enf) (Comm) 148/2021, namely Anand Gupta and his wife, Anuradha Vinod Gupta as the petitioners, Almond Infrabuild as Respondent 1 and ATS as Respondent 2.

Facts

4. Before adverting to the Settlement Agreements of which enforcement is sought, a brief recital of the facts which led up to this Execution Petition is necessary.

5. In 2014, the respondents launched a Group Housing Residential Project under the name "ATS Tourmaline". The project was in the nature of a guaranteed buyback and subvention scheme. Each investor who invested in the project are allotted a residential unit. On the expiry of 33 to 36 months from the date of investment, an investor had an option to exit the project by selling the residential unit back to Respondent 1 at a price of ₹ 1,500/- per sq. ft. over and above the booking price of ₹ 8,000/- per sq. ft. Respondent 1, as the developer, therefore, agreed to buy back the residential unit at the said terms.

6. The petitioners invested in the project, consequent to which a Memorandum of Understanding[5] was executed among Respondent 1 and the petitioners on 26 March 2014. Clause 8 of the MOU

incorporated the terms of the Buyback and Subvention Scheme and read thus:

> "8. It is hereby agreed by the parties that the Purchaser/Investor, within a time frame of 33 months from date of booking to 36 months from the date of booking, shall be entitled to call upon the Owner/Developer in writing, to purchase the aforesaid Apartment at the Basic Sale Price of **₹ 9,500**/- per square feet plus service tax paid till date by the Purchaser/investor and in such a case the Owner/Developer shall repurchase the said Apartment within 30 days of expiry of 36 months from the date of booking. The Purchaser/Investor will execute the necessary documents to surrender the allotted units in favour of the Owner/Developer upon receipt of payment. The Purchaser/Investor shall execute such necessary deeds, documents in favour of Owner/Developer for the surrender of the said Apartment by the Purchaser/investor to Owner/Developer and the payment of repurchase price is subject to applicable tax laws. In case of delay in making the payment of repurchase price by the Owner/Developer to the Purchaser/Developer beyond 30 days, the Owner/Developer shall be liable to pay interest @ 18% per annum for the period of delay on the total repurchase price payable to the Purchaser/Investor. It is hereby clarified that till the time the repurchase price is fully paid by the Owner/Developer to the Purchaser/investor, the Owner/Developer shall also be liable to pay to the Bank all installments, Pre possession EMI, interest to the bank directly and keep the Purchaser/Investor fully indemnified in this regard."

7. On 15 December 2016, Petitioner 1 wrote to the respondents, evincing the petitioners' interest in availing the buyback option under the MOU. The respondents were therefore requested to confirm the sale of the unit allotted to the petitioners and make payment to the petitioners, in terms of the MOU, by March 2017.

8. The respondents, *vide* reply e-mail dated 16 December 2016, confirmed that the parties were bound by the terms and conditions of the MOU.

[5] "MOU", hereinafter

9. This was, however, followed by a communication dated 10 February 2017 from Respondent 1 to Petitioner 1, recommending that the petitioners take possession of the unit allotted to them. However, in the alternative, if the petitioners chose to exit the MOU, the letter requested for further time to the respondents to abide by its terms and conditions. The letter further required the petitioners to confirm their Bank loan details, pre EMI amount and loan account number so that the respondents could facilitate repayment of the EMIs payable to the Bank till consummation of the transaction.

10. As the extended period by which the respondents were to make payment to the petitioners in terms of Clause 8 of the MOU was to expire on 1 April 2018, the petitioners wrote to the respondents on 20 March 2018, seeking to know when the payments would be received by them. There was no response to this communication.

11. The respondents started defaulting in paying the EMIs to the Bank. The petitioners addressed several e-mails to the respondents towards the beginning of January 2019 in that regard. This was followed by a detailed legal notice dated 1 April 2019 in which it was specifically alleged that the respondents had defrauded the petitioners, who had resultantly, become liable to pay interest of ₹ 18 lakhs per year on the ₹ 1.97 crore loan availed from the Bank, which was never their liability in the first place. Besides, it was alleged that Respondent 1 also defaulted in its buyback obligations to the petitioners under the MOU. In these circumstances, the petitioners called upon the

respondents to pay the buyback amount to the petitioners, along with accrued interest, totalling ₹ 1.36 crores, repay the three defaulted instalments of ₹ 4.62 lakhs to the Bank and settle the remaining outstanding loan of ₹ 1.97 crores with the Bank.

12. On the respondents not complying with these requests, the petitioners approached this Court by means of OMP (I) (Comm) 156/2020 under Section 9[6] of the Arbitration and Conciliation Act, 1996[7], as the MOU envisaged resolution of disputes between the parties by arbitration.

13. The matter was settled between the petitioners and the respondents, with the intervention of the Mediation Centre, *vide*

[6] **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;
(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.

[7] "the 1996 Act", hereinafter

Settlement Agreement dated 14 October 2020, which read thus :

"Date : 14th October 2020

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into on 14th October 2020

BETWEEN

Mr. Anand Gupta, S/o Late Tarun Gupta, and Mrs. Anuradha Vinod Gupta, w/o Mr. Anand Gupta, at C-589 Defence Colony, First Floor, New Delhi, 110024 (jointly referred to as Petitioner) (hereinafter referred to as a First Party).

AND

M/s Almond Infrabuild Private Limited (CIN No. U45400DL2010PTC204100) at 711/92, Deepali, Nehru Place, New Delhi-110019 through its Authorized Representative Ms. Jyoti Anand (PAN - AHYPA1340E), authorized vide Board Resolution dated 10th July 2020, copy whereof is annexed herewith as **ANNEXURE- A. (hereinafter referred to as the Second Party).**

AND

M/s ATS Infrastructure Ltd. (CIN No. U45201DL1996PLC083475) at 711/92, Deepali, Nehru Place, New Delhi-110019, through its Authorized Representative Ms. Jyoti Anand (PAN-AHYPA1340E), authorized vide Board Resolution dated 22nd September 2020, copy whereof is annexed herewith as **ANNEXURE-B (hereinafter referred to as the Third Party)**

WHEREAS the First Party had entered into an agreement with the Second Party for purchase of an Apartment No. [1232] on the 23rd floor having super area of approximately 3150 sq. ft. (292.64 sq. mts.) in Tower/ Building No. 1 in 'ATS TOURMALINE along with 2 proposed car parking(s) earmarked in the basement/ Open area vide Buyers Agreement dated 2 April, 2014.

AND WHEREAS the Second Party also had executed a MOU dated 26 March 2014 with the First Party. Consequently, disputes and differences arose between the parties arising out of the MOU dated 26 March 2014 and the Buyers Agreement dated (2 April

2014) and thereafter the First Party filed an O.M.P. (I) No. [156)/2020 against the Second Party seeking various measures of interim relief under Section 9 of the Arbitration & Conciliation Act, 1996 which is pending before the Hon'ble High Court of Delhi.

AND WHEREAS during the pendency of the said O.M.P. (I) (Comm.) No. 156/2020 the parties were referred to Samadhan (Delhi High Court Mediation and Conciliation Centre) vide an order dated 07.07.2020 passed by Hon'ble Ms. Justice Rekha Palli for an attempt towards an amicable settlement

AND WHEREAS the Delhi High Court Mediation and Conciliation Centre assigned the matter to Mr. Arun Agarwal and Mr. Vinod Kumar as the Mediator and Co-Mediator respectively to facilitate a settlement between the parties and the parties hereto consented to their appointment.

AND WHEREAS comprehensive Mediation Sessions were held by the Learned Mediator and Learned Co-Mediator with the parties and/or their respective Counsel on various dates but the parties could not arrive at an amicable resolution and the matter was returned to the Hon'ble Delhi High Court as 'not settled".

AND WHEREAS thereafter, the matter was again referred to Samadhan (Delhi High Court Mediation and Conciliation Centre) vide an order dated 11.08.2020 passed by Hon'ble Ms. Justice Rekha Palli.

AND WHEREAS the parties agreed that Mr. Sudhanshu Batra, Senior Advocate and Ms. Nisha Bhambhani, Advocate would act as their Mediator and Co-Mediator respectively.

AND WHEREAS virtual meetings through Cisco Webex of the mediation centre were held with the parties on 24.08.2020, 01.09.2020, 17.09.2020, 22.09.2020, 25.09.2020, 01.10.2020 and the parties have with the assistance of the Learned Mediator and Co- Mediator, voluntarily arrived at an amicable resolution of all their disputes and differences. The First Party was accompanied by its counsel, Mr. Nishant Kumar, Advocate (Enrl. No. D/2061/2017) (email: tcjurists@gmail.com), the Second Party was accompanied by its counsel, Mr. Kartik Nayar, Advocate (Enrl. No. D/513/2007) (email: knayar@knlegal.in) and Mr. Sarthak Malhotra, Advocate (Enrl. No. D/6588/2017) (email: sarthak@knlegal.in), and the Third Party was accompanied by its counsel Mr. Kartik Nayar, Advocate (Enrl. No. D/513/2007) (email: knayar@knlegal.in) and Mr. Sarthak Malhotra, Advocate (Enrl. No. D/6588/2017)

(email: sarthak@knlegal.in). The parties, with the assistance of the Mediator and proactive participation of the counsels have voluntarily arrived at an amicable solution resolving the abovementioned disputes and differences.

AND WHEREAS although the Second Party disputes the case of the First Party and denies the Buy Back Agreement on various grounds but the Parties herein have decided to settle their dispute amicably and mutually but without getting into the merits of the matter, the parties have entered into this settlement agreement.

1. The First Party hereby authorizes the Second Party to act on their behalf and sell the Apartment No. [1232] on the 23rd floor having super area of approximately [3150] sq. ft. ([292.64] sq. mts.) in Tower/ No. [1] along with [2] proposed car parking(s) earmarked in the basement/ Open area ("**Apartment**") in respect of which the parties had executed a Buyers Agreement dated [2 April 2014) and an MOU dated [26 March 2014) as well as a Tripartite Agreement dated (2 April 2014] with [ICICI] Bank for loan account number [LBNOD00002088057], on an 'as is where as basis'. It is agreed between the First Party and Second Party that the Second Party shall be fully authorized to sell the said Apartment subject to the NO OBJECTION from the (ICICI) Bank, on such terms and conditions as maybe considered fit by the Second Party and the Second Party shall be entitled to appropriate the entire sale proceeds from the sale of the said Apartment. It is agreed between the parties hereto that the First Party shall authorize the Second Party, who shall be responsible to get the 'NO OBJECTION' from the (ICICI) Bank, for sale of the said apartment. Failure to obtain the 'NO OBJECTION' for any reason whatsoever shall not absolve the Second and Third Parties of their obligations contained in this settlement agreement.

2. In consideration of the above, the Second Party agrees and undertakes to pay to the First Party on or before the 14th July 2021, the principal amount invested by the First Party i.e. an amount of Rs. [52,34,581]/- (Rupees [Fifty Two Lakhs, Thirty Four Thousand, Five Hundred Eighty One] Only) and a further amount of [33,62,248) (Rupees [Thirty Three Lakhs, Sixty Two Thousand, Two Hundred Forty Eight) Only) which is equivalent to the entire EMIs paid directly by the First Party to [ICICI] Bank and such further amount being 50% of monthly EMIs that will be paid by virtue of this agreement and in terms of the Loan Account No. [LBNOD00002088057) and more particularly set out in **Annexure-C**(hereafter referred to as the 'Settled amount'). The said Settled amount shall be paid by the Second Party to the First Party

irrespective of the sale of the Apartment as envisaged in Clause 1 for whatever reason. It is further agreed that the said payment of the Settled amount may be made or caused to be paid by the Second Party or any other person/ entity on behalf of the Second Party either in a single installment or in multiple tranches so as to pay the entire amount agreed upon herein on or before the 14th July 2021

3. It is further agreed that the Second Party shall continue to pay 50% of all future monthly EMIs to ICICI Bank under Loan Account No. LBNOD00002088057 by way of direct bank transfer to the First Party three days before the stipulated dates of payment of the EMI under the Loan Agreement till such time that the entire amount due to the Bank under Loan Account No. (LBNOD00002088057] is not completely discharged/paid by the Second Party either through itself or any other person/entity. It is agreed by the Parties that the remaining 50% of all future EMIs to (ICICI) Bank under Loan Account No. LBNOD00002088057, shall continue to be borne by the First Party which shall be reimbursed to the First Party by the Second Party by including it in the Settled amount, in terms of Clause 2 above.

4. In addition to the aforesaid payments, which are required to be paid by the Second Party to the First Party on or before the 14th of July 2021, the Second Party agrees and undertakes to make the entire payment to [ICICI] Bank under Loan Account No. [LBNOD00002088057] on or before the 14th July 2021irrespective of the sale of the Apartment as envisaged in Clause 1including but not limited to any accrued interest, charges and accumulated EMIs (and EMI interest owing to the moratorium) as on the date of execution of the Settlement Agreement. It is further agreed that the said payment to the Bank may be made or caused to be paid by the Second Party or any other person/entity on behalf of the Second Party either in a single installment or in multiple tranches. In case of failure of the Second Party to clear the entire outstanding loan amount of the First party as stipulated herein, the Second Party and Third Party jointly and severally agree and undertake to indemnify and keep harmless the First party from any claim raised or action taken by the (ICICI) Bank against the First Party absolutely and forever.

5. The Parties hereto agree that in terms of Clause 2 and 3 in case the Second Party fails, neglects or otherwise refuses to pay the agreed Settled amount and clear the Bank loan no [LBNOD00002088057] from [ICICI] Bank in the manner and within the time envisaged in this settlement agreement, the Second and Third Parties shall be jointly and severally liable to pay the

'Settled amount' plus the entire loan amount paid and payable by the First party to the ICICI Bank along with simple interest @18% per annum on the unpaid Settled amount (as on 15th July 2021) from the date of expiry of three years from the date of execution of the Buyer's Agreement till the date of actual payment. In such eventuality, the First Party shall be entitled to enforce such payment through execution of the order of court passed in terms of this Settlement Agreement in accordance with law in addition to any other remedy available to him.

6. Notwithstanding anything contained in this Agreement, the First Party shall at its sole discretion, have a right to retain the aforesaid Apartment No. [1232] and claim possession thereof by issuing a notice to the Second Party before the expiry of the period of ten months from the date of this Agreement. In the event the First Party exercises this right under the foregoing provision, the present Settlement Agreement shall stand extinguished and the Parties shall be bound by the Buyers Agreement dated (2 April 2014)

7. In view of this Settlement Agreement, the First Party further agrees to withdraw all other proceedings (if applicable) initiated against the Second Party in any other forum within 7 days from the date of this Agreement.

8. The Third Party being the flagship company of the ATS group hereby agrees and undertakes that in case of failure of the Second Party to pay the settled amount and clear the Bank Loan no [LBNOD00002088057] from [ICICI] Bank in terms hereof, the Third Party shall be jointly and/or severally liable to pay the amounts payable by the Second Party and shall be liable for all consequences arising therefrom.

9. Any and all amounts payable by the Second Party or Third Party, as the case may be to the First Party under this Agreement shall be paid to the First Party's bank account set out in **Annexure-C.**

10 The First Party agrees to file an appropriate application before the Hon'ble High Court in O.M.P.(I) No. 156/2020 seeking impleadment of ATS infrastructure Limited as a party to the said proceeding before the next date of hearing so as to bind itself to the terms of this settlement.

11. The Second Party agrees to file an appropriate application before the Hon'ble Delhi High Court in O.M.P.(I) No. 156/2020 seeking early listing thereof within 7 days from the date of execution of this Agreement.

12. In the event of non-compliance of this Agreement, the defaulting party shall also be deemed to be in a default akin to a default of an undertaking given to a court and the non-defaulting party shall be entitled to pursue appropriate remedies in accordance with law including but not limited to initiating contempt of court proceeding against all the signatories and Directors of the defaulting Parties.

13. The Parties agree that they shall not disclose the existence of this Agreement or the terms and conditions contained herein and shall keep the same confidential Notwithstanding the foregoing, the information shall not be subject to this confidentiality obligation if it (a) is already known to the receiving party at the time it is obtained; (b) is or becomes publicly known or available through no wrongful act of the receiving party, (c) is requested or required to be disclosed by the receiving party pursuant to a court order or governmental agency request or law, (d) is relevant to the defense of any claim or cause of action asserted against the receiving party, or (e) is necessary or desirable for the parties to release such information for compliance with this Agreement. The provisions of this Clause shall survive termination of this Agreement.

14. The present Agreement shall be deemed to have come into effect from 15 September 2020.

15. In terms of the aforesaid arrangement and upon fulfilling all obligation by the respective parties hereto, any and all obligations of each of the Parties in respect of the MOU dated [26 March 2014] and Buyers Agreement dated (2 April 2014) shall stand completed and discharged and this Settlement Agreement shall constitute a full and final settlement of the Parties claims under these agreements

16. By signing this Agreement and upon fulfilment of the parties' obligations as specified herein, the parties hereto agree that they shall be left with no further claims or demands against each other and all the disputes and differences in this regard shall be deemed to have been amicably settled by the Parties hereto through the process of Mediation

17. That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in this agreement and not to dispute the same hereinafter in future.

18. This agreement has been arrived at between the parties

voluntarily and without any force, fraud or undue influence from any quarters

19. The parties agree that they shall appear before the Hon'ble court during the virtual hearing to make their statements in terms of the present settlement agreement…"

14. Following the execution of the above Settlement Agreement, this Court disposed of OMP (I) (Comm) 156/2020 by the following order passed on 18 November 2020:

"I.A. 10628/2020

2. This is an application filed by the petitioner under Order-1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908. Vide the present application, the petitioner is primarily seeking disposal of the petition in terms of the Settlement Agreement dated 14.10.2020 arrived at between the parties before the Delhi High Court Mediation and Conciliation Centre. However, since, M/s ATS Infrastructure Limited is a party to the aforesaid settlement, the petitioner is also seeking its impleadment as respondent no. 4 in the present petition.

3. Issue notice. Mr. Sarthak Malhotra, Advocate accepts notice and does not oppose the application.

4. Having perused the contents of the settlement agreement, I am inclined to accept the application and the same is, accordingly, allowed. Consequently, M/s ATS Infrastructure Limited is impleaded as respondent no. 4. Amended memo of parties, if not already filed, be filed within three days.

5. The application is disposed of.

O.M.P. (I) (COMM.) 156/2020

6. Mr. Sarthak Malhotra, Advocate enters appearance on behalf of the newly added respondent no. 4.

7. In view of the application being allowed and the Settlement Agreement being taken on record, the petition is disposed of in terms of the settlement dated 14.10.2020, which will now form part of the record. Needless to say, the parties will remain bound by the terms of the said settlement.

8. The petition is disposed of in the aforesaid terms and the next date of hearing stands cancelled."

15. The present petition seeks execution and enforcement of this settlement agreement. Mr. Khan, learned Counsel for the petitioners, presses only prayers a) to c) in the petition. As such, it is necessary to extract the said prayers:

"45. In the light of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to pass the following orders:

a) An order issuing notice to the Judgement Debtors, its Director and authorised signatory whilst directing them to comply with the consent order dated 18 November 2020, passed by this Hon'ble Court in OMP (I) (Comm) 156/2020 by immediately complying with the terms of the Settlement Agreement dated 14 October 2020 forming part of the consent order dated 18 November 2020, thereby paying the Decree Holder is the Settlement Amount along with interest at the rate of 18% per annum as stipulated under Clause 2 read with Clause 3 and Clause 5 of the said Settlement Agreement and also by immediately clearing off the remaining loan amount with the ICICI Bank against the Loan Account No. LBNOD00002088057 as undertaken in Clause 4 of the settlement agreement; and

b) An order directing the Judgement Debtors to pay 100% of the EMI amounts owed to the banks and remove the current burden on the Degree Holders of paying the 50% EMI amount, till such time when the entire loan amount with the ICICI Bank against the Loan Account No. LBNOD00002088057 is paid off by the Judgement Debtors; and

c) Pass an order attaching the assets of the Judgement Debtors and direct them to deposit the decree will amount (sum total of the Settlement Amount interest along with the total amount to clear off the above-mentioned ICICI Bank Loan) in accordance with the Settlement Agreement dated 14th October, 2020 before this Hon'ble Court."

Orders passed by this Court in the present proceedings

16. The following orders came to be passed by this Court in the present petition:

(i) While issuing notice on 20 September 2021, the respondents were directed to file the affidavits of their assets and were also restrained from alienating their assets/properties to the extent of the amount payable to the petitioners as per the Settlement Agreement.

(ii) On 23 March 2022, the respondents submitted that they needed time to pay the decretal amount and that they were paying the EMIs to the Bank. They also undertook to "take over the payment of all EMIs being paid by or to be paid by the Decree Holders, with effect from the next EMI". The undertaking was accepted, and an affidavit to that effect was directed to be filed. The Court went on to grant the parties three days' time "to work out the schedule of payment and other modalities whereby the decree will be satisfied without any further financial obligation or pressure upon the Decree Holders", and directed that the amount already paid by the petitioners would be repaid to them by the respondents.

(iii) On 10 May 2022, the following order was passed:

> "1. Learned senior counsel for the judgment debtor prays for some time to submit a proposal to pay the entire

decreed amount. He submits that for the said purpose certain documentation would be required to be executed by the decree holders.

2. Learned counsel for the decree holders submits that they have no objection to the execution of the documents provided there is no further liability or obligation on their part either towards the proposed third party purchasers or towards the bank and they are paid their amount as per the agreed timelines."

(iv) On 9 September 2022, learned Counsel for the respondents stated that the respondents would make the EMI payments to the Bank as per the stipulated date in the Settlement Agreement.

(v) On 11 April 2023, further submissions and undertakings were given by the respondents, which were recorded thus:

"2. Mr. Nayar submitted that in order to lay all controversies at rest, the respondents are ready and willing to negotiate and enter into arrangements with the banks and financial institutions which have extended loans and other financial facilities to the petitioners in this batch and to take over the entire liability in terms of the Settlement and the Award. It was his submission that once such arrangements are entered into with the individual financial institutions, the respondents shall call upon the petitioners to either enter into an Agreement to Sell with third parties identified by the respondents or to execute a "Surrender" document enabling them to take further steps for disposal of the immovable properties in question. It was submitted that till such time as the liabilities owed by the petitioners to the financial institutions is cleared and the transfer or sale of the immovable properties are finally affected, the respondents would tender security in the shape of title deeds of unencumbered immovable properties which would cover the entire liability that are owed to all the petitioners in this batch.

3. In order to evaluate the merits of the offer that is made it

> would appear expedient for the respondents being called upon to place the same on the record of these proceedings by way of an affidavit of a responsible officer of the company duly authorized in this regard. Let the said affidavit be filed within a period of two weeks from today. The affidavit be filed in OMP(ENF.)(COMM.)148/2021 and copies thereof be circulated amongst learned counsels appearing for the petitioners in this batch.
>
> 4. The respondents shall, in any case, be liable to abide by the terms of the agreement and the assurance recorded earlier that they would continue to service all EMIs' payable by the petitioners in the meanwhile"

(vi) On 27 February 2024, the following order was passed:

> 3. Mr. Nayar, learned counsel for the judgment-debtors assures that the monthly EMIs shall be paid within one week from today.
>
> 4. Mr. Nayar further states that the judgment-debtors are ready and willing to sell the flats of the decree-holders.
>
> 5. Mr. Khan, learned counsel for the decree-holders states that he is ready to sign the Agreement to Sell provided that the judgment-debtors will indemnify for any liability that may arise out of the Agreement to Sell. The decree-holders are agreeable to have an agreement with ATS Infrastructure Private Limited provided they also make a submission that they will pay the interest as per the Samadhan Agreement**.**

Thereafter, on 10 July 2024, arguments were heard in these petitions and orders reserved.

Rival Contentions and Analysis

17. In their reply to the petitioners' application under Order XXI Rule 41 of the CPC, as well as in their written submissions tendered after orders were reserved in these matters, the respondents have

raised issues of maintainability as well as merits. Though arguments in Court were restricted to the merits of the petition, I proceed to deal with both aspects.

18. Re. Submission that order dated 18 November 2020 is neither an "award" nor a "decree" and cannot, therefore, be executed under Section 36[8] of the 1996 Act

18.1 The respondents contend that the order dated 18 November 2020, of which execution/enforcement is sought, is neither an award nor a decree and cannot, therefore, be executed.

18.2 The present Execution Petitions have not been filed under Section 36 of the 1996 Act, but have been filed under Order XXI Rule 10[9] read with Section 151[10] of the CPC. The petitioners do not seek to invoke Section 36 of the 1996 Act.

[8] **36. Enforcement**-
(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.
(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.
(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:
Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908)

[9] **10. Application for execution** - Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper office thereof.

[10] **151. Saving of inherent powers of Court** - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

18.3 Insofar as the enforceability of the order dated 18 November 2020, passed by this Court in OMP (I) (Comm) 156/2020 is concerned, the issue stands covered against the respondents by the judgment of the Division Bench of this Court, authored by Gita Mittal J (as she then was) in ***Angle Infrastructure Pvt Ltd v Ashok Manchanda***[11]**.** The decision clearly holds that an order passed in a petition under Section 9 of the 1996 Act, based on a settlement arrived at in mediation is a "decree" and is, therefore, capable of being executed under the CPC.

18.4 In ***Angle Infrastructure***, disputes having arisen between Angle Infrastructure[12] and Ashok Manchanda[13], and as the contract between them contained an arbitration clause, Ashok filed a petition against Angle under Section 9 of the 1996 Act, seeking pre-arbitral interim reliefs. The parties were referred to the Delhi High Court Mediation and Conciliation Centre, to attempt resolution of their disputes by mediation, by order dated 8 May 2013 passed by this Court. In mediation, the parties arrived at a settlement, and a Settlement Agreement dated 30 October 2013 was drawn up. Consequent thereon, the Section 9 petition filed by Ashok was disposed of, by a learned Single Judge of this Court, by the following order passed on 6 November 2013:

> "I have perused the terms of the settlement. The same are lawful. As prayed, the petitions are disposed of in terms of the Settlement Agreement dated 30.10.2013. Parties shall abide by the terms of

[11] **228 (2016) DLT 624 (DB)**
[12] "Angle" hereinafter
[13] "Ashok" hereinafter

the settlement. Accordingly, a decree is passed in terms of the settlement agreement.

The petitions are, accordingly, disposed of."

18.5 Ashok filed Execution Petition 405/2014 for execution of the Settlement Agreement**.** A learned Single Judge of this Court held, on 14 November 2014, that the settlement had morphed into an arbitral award on the terms agreed in the Settlement Agreement. It was, therefore, required to be treated as an arbitral award, which could straightaway be executed by the concerned court in Gurgaon, as the immovable property against which execution was sought was located in Gurgaon. The learned Single Judge, therefore, disposed of the Execution Petition, reserving liberty with Ashok to execute the Settlement Agreement as an arbitral award before the Gurgaon Court.

18.6 Angle challenged the order dated 14 October 2014 of the learned Single Judge by way of appeal to the Division Bench of this Court.

18.7 In an intricately reasoned judgment, the Division Bench first examined whether the Settlement Agreement dated 30 October 2013 was the outcome of mediation or of conciliation. This, it was noted, was relevant as Section 74[14] of the 1996 Act accorded, to a conciliation agreement, the "same status and effect as if it is an arbitral award", while not according any such status to a Settlement Agreement which was the outcome of mediation. Section 36 of the

[14] **74. Status and effect of settlement agreement. -**The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral

1996 Act envisaged enforcement of an arbitral award "in the same manner as if it were a decree". Thus, enforcement of a Settlement Agreement emerging from conciliation would, therefore, have to be under Section 36 of the 1996 Act, treating the Settlement Agreement as an arbitral award, which, therefore, became enforceable like a decree. Para 38 of the report in ***Angle Infrastructure***, which so holds, read thus:

> "38. Therefore, enforcement of such settlement would have to be effected in accordance with Section 36 under Chapter-VIII of the Arbitration and Conciliation Act, 1996. Section 36 specifically dealing with enforcement, stipulates that an arbitral award shall be enforced "*under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree*". Therefore, such conciliation, that commences by voluntary acts as provided under Part-III of the Arbitration and Conciliation Act, 1996 does not envisage intervention of the court other than for the purposes of enforcement thereof which has to be by the civil court as it were a decree of the court. A settlement in the conciliation, therefore, would not result in a decree."
>
> (Emphasis in original)

Reliance was also placed, in this context, on Section 89[15] of the CPC, which empowered the Court to refer parties, under sub- section (2), to

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tribunal under section 30.

[15] "**89. Settlement of disputes outside the Court.—**

(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for—

(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat; or
(d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or

arbitration, conciliation, Lok Adalat settlement, judicial settlement or mediation. If the dispute was referred to conciliation, Section 89(2a) specifically mandated that the provisions of the 1996 Act would apply, as if the dispute had been referred for settlement under it. The Division Bench encapsulated this legal position thus, in para 48 of the report:

> "48. From the above, it is apparent that conciliation as a dispute redressal mechanism can be initiated voluntarily by the parties in accordance with Part-III of the Arbitration and Conciliation Act, 1996. Even in a case before the court, the parties, with their consent, can be referred to conciliation under Section 89 of the CPC. Such reference would be dealt with in accordance with Section 64[16] of Arbitration Act. The settlement, if any, shall be governed by Section 74 of the Arbitration and Conciliation Act and would require to be enforced in the manner of an arbitral award."

18.8 As against this, on a settlement being arrived at in mediation, Section 89(2)(d) of the CPC applied, and the Court was required to

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person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

[16] **64. Appointment of conciliators.—**

(*1*) Subject to sub-section (*2*)**—**

(*a*) in conciliation proceedings, with one conciliator, the parties may agree on the name of a sole conciliator;

(*b*) in conciliation proceedings with two conciliators, each party may appoint one conciliator;

(*c*) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(*2*) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,**—**

(*a*) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or

(*b*) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

effect a compromise between the parties and follow such procedure as may be prescribed. These procedures, it was noted, in para 49 of the report, were contained in the Delhi High Court Mediation and Conciliation Rules, 2004.

18.9 The Division Bench went on to examine the position which obtained in the Section 9 petition filed by Ashok against Angle. It was observed, in para 50 of the report, that the dispute was not referred to conciliation following the procedure envisaged in that regard in Part III of the 1996 Act, but was referred specifically to mediation by the Mediation Centre. The settlement that resulted was, therefore, the outcome of mediation, not of conciliation. In that view of the matter, the Division Bench found the learned Single Judge to have been in error in holding that the Settlement Agreement had morphed into an arbitral award and that, therefore, it was directly executable as an arbitral award under Section 74 of the 1996 Act. *These findings clearly apply, on all fours and mutatis mutandis, to the present case.*

18.10 Having thus held that the Settlement Agreement had not morphed into an arbitral award, as held by the learned Single Judge, the Division Bench went on to examine whether the settlement agreement, or the consequent order passed by the Court disposing of the Section 9 petition, was a "decree", executable under the CPC.

18.11 A Section 9 petition, it was held, was disposed of by an "order", and not a "decree". Section 2(14)[17] of the CPC clearly excluded, from the ambit of the definition of "decree", "orders". Even if, therefore, are Section 9 petition were to be allowed, the Court doing so could neither pass a decree not direct a decree to be drawn up. It was so held in para 63 of the report:

> "63. It is therefore, well settled that even if a petition under Section 9 of the Arbitration Act was to be allowed, no decree could be passed nor a decree sheet could be ordered to be drawn up. Proceedings under Section 9 of the Arbitration Act culminating in a Settlement Agreement between the parties result in the passing of an order in terms thereof."

Thus, the Division Bench found the direction, contained in the order dated 6 November 2013 passed by the learned Single Judge, under challenge before it, to draw up a decree in terms of the order, to be an unnecessary surplusage and contrary to law, as an order disposing of Section 9 petition on the basis of a mediated settlement cannot result in a decree.

18.12 The present respondents rely only on the above enunciation, in ***Angle Infrastructure***, that a Settlement Agreement executed consequent on mediation by the Mediation Centre is neither an award nor a decree. The respondents, however, conveniently omit to refer to the fact that, having so observed, the Division Bench in ***Angle Infrastructure*** goes on to hold that the order disposing of the Section 9 petition on the basis of the Settlement Agreement is nonetheless

[17] **2. Definitions.—**In this Act, unless there is anything repugnant in the subject or context,—
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enforceable under the CPC, just as a decree would be enforceable, in view of Section 36[18] of the CPC, which equates orders with decrees. Para-83 of the report in ***Angle Infrastructure*** specifically so holds:

> ""83. *Such an order (passed in terms of the settlement agreement) would be executable under Section 36 of the Code of Civil Procedure in the same manner as a decree*."
>
> (Emphasis supplied)

18.13 Thus, though the order dated 18 November 2020, passed by this Court disposing of OMP (I) (Comm) 156/2020 is neither an award nor a decree, it is capable of being executed in the same manner as a decree is executed, in view of Section 36 of the CPC, as held in para 83 of the judgment of the Division Bench in ***Angle Infrastructure***.

18.14 The respondents' objection that, as the order dated 18 November 2020 is neither an award nor a decree, it is not capable of execution under the CPC is, therefore, rejected.

18.15 I may observe, here, that, though some of the provisions of the 1996 Act dealing with mediation stand deleted with the enactment of the Mediation Act, 2023, those deletions would not apply here, as the Settlement Agreement was executed prior to the coming into force of the Mediation Act. Even otherwise, the *ratio decidendi* of ***Angle Infrastructure*** would squarely apply to the present case.

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(14) "order" means the formal expression of any decision of a Civil Court which is not a decree

[18] **36. Application to orders**.—The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the

19. Re. submission that, as the respondent's assets are located outside Delhi, this Court lacks the territorial jurisdiction to deal with the present Execution Petitions

19.1 The respondents next contend that the present execution petition is not maintainable before this Court, as the assets of the respondents are situated outside its jurisdiction.

19.2 Ironically, however, the passage, from the judgment of the Supreme Court in ***Sundram Finance v Abdul Samad***[19], on which the respondents rely, itself defeats their contention. The passage reads thus:

> "19. The Madras High Court in ***Kotak Mahindra Bank Ltd. v. Sivakama Sundari***[20], referred to Section 46 of the said Code, which spoke of precepts but stopped at that. *In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the court, which passes the decree where an execution application has to be filed at the first instance*. An award under Section 36 of the said Act, is equated to a decree of the court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the Arbitral Tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the court within whose jurisdiction the arbitral award was passed should be taken to be the court, which passed the decree. The said Act actually transcends all territorial barriers."

The Supreme Court, in the above passage from ***Sundram Finance***, has distinguished between a decree and an arbitral award, insofar as the Court which can be approached for execution is concerned. Section 36 of the 1996 Act equates an arbitral award with a decree of

execution of orders (including payment under an order).

[19] **(2018) 3 SCC 622**

[20] **2011 SCC OnLine Mad 1290**

a court only for the purposes of its executability. Section 36 only says that the award is executable as a decree of a Court. This is in contradistinction to the position which obtained under the erstwhile Arbitration Act, 1940, under which an arbitral award was not per se executable, unless it was made rule of the Court on moving a specific application for the purpose. As against this, under the 1996 Act, by virtue of Section 36, the arbitral award is *ipso facto* executable as a decree of the Court. The Supreme Court clarified, however, that the entitlement to execution of an arbitral award as a decree of a Court cannot be extended to the award being treated as a decree of the Court within whose territorial jurisdiction the award was rendered. This is in keeping with the well tested principle that a deeming fiction cannot extend beyond the frontiers to which it is intended. Thus, an arbitral award passed within the territorial jurisdiction of this Court is executable as a decree, but it does not transmogrify into a decree of this Court. The appropriate Court, which would have to be moved for execution of the award would, therefore, have to be determined on the basis of the situs of the properties against which the execution is directed, and not the Court within whose territorial jurisdiction the award is rendered.

19.3 This principle, however, has no application to the present case, as the order dated 18 November 2020 of this Court, of which the petitioners seek execution, is not an award, as ***Angle Infrastructure*** clarifies, but an order. The principles applicable to execution of an arbitral award, contained in para 18 of ***Sundram Finance*** do not, therefore, apply.

19.4 What applies is, rather, the preceding observation in the same paragraph of ***Sundaram Finance***, that it is "liable to be executed primarily by the Court, which passes the decree where an execution application has to be filed at the first instance". Section 36 of the CPC equates the order dated 18 November 2020 with a decree under the CPC. Ergo, insofar as the aspect of execution is concerned (as held in ***Angle Infrastructure***), the execution petition has to be filed before this Court, as the Court which has passed the order of which execution was sought. In the event that, for execution, the properties of the respondents are situated outside the territorial jurisdiction of this Court have to be attached, the Court would have to issue the necessary precepts to the Court(s) within whose jurisdiction the properties are situate. That is all.

19.5 The execution petitions are, however, clearly maintainable before this Court, and the objection to the contrary, raised by the respondents is, therefore, also rejected.

20. Relief, if any, to which the petitioners are entitled

20.1 As already noticed in para 15 *supra*, Mr. Khan presses only prayers a) to c) in each of these petitions. Prayer a) seeks a direction to the respondents to make payment to the petitioners in terms of Clauses 2, 3 and 5 of the Settlement Agreement and to clear off the remaining loan amount with the ICICI Bank as per Clause 4 of the Settlement Agreement. This prayer, in fact, subsumes prayers b) and

c), inasmuch as prayer b) seeks a direction to the respondents to pay the entire EMI amounts owed to the banks and prayer c) seeks a direction to attach the assets of the respondents and direct them to deposit the total of the settlement amount with interest and the amount required to be paid for clearing of the ICICI Bank loan, in accordance with the Settlement Agreement.

20.2 In view of my decision that the present Execution Petition lies, and is maintainable before this Court, it is obvious that both sides have to comply with the terms of the Settlement Agreement. All that is to be seen, therefore, is what the Settlement Agreement requires.

20.3 It is not necessary to refer to the rival contentions in this regard, is one may directly advert to the Settlement Agreement itself, to understand its contents.

20.4 To my mind, the covenants of the Settlement Agreement are fairly clear, and do not admit of any complexity. The rival rights and obligations, as encapsulated in the Settlement Agreement, may be enumerated as under:

> (i) *Vide* Clause 1, the petitioners authorised Respondent 1 to act on the petitioner's behalf and sell Apartment 1232[21] along with two proposed earmarked car parkings, subject to NOC from the ICICI Bank. The responsibility of obtaining NOC from the ICICI bank was of Respondent 1. The terms and

conditions of sale were to be determined by Respondent 1. Respondent 1 was entitled to appropriate the entire sale proceeds.

(ii) Clause 1 further stipulated that *the respondents would not be absolved of their obligations under the Settlement Agreement even if they failed to obtain an NOC from the ICICI Bank.*

(iii) "In consideration of the above", Clause 2 obligated Respondent 1 to pay, to the petitioners, on or before 14 July 2021,

> (a) ₹ 52,34,581/–, being the principal amount invested by the petitioner,
>
> (b) ₹ 33,62,248/–, equivalent to the EMIs directly paid by the petitioners to the ICICI Bank and
>
> (c) 50% of the monthly EMIs is payable to the Bank as per the Settlement Agreement in respect of Loan Account No LBNOD00002088057, as set out in Annexure C to the Settlement Agreement.

(iv) *Clause 2 further clarified that the liability of Respondent 1 to make the above payment to the petitioners was "irrespective of the sale of the Apartment as envisaged in Clause 1 for whatever reason".*

[21] "the Apartment", hereinafter

(v) Clause 3 obligated Respondent 1 to continue to pay 50% of all future monthly EMIs to the Bank by direct transfer to the petitioners, 3 days prior to the stipulated date of payment of the EMI, till complete discharge of the entire amount due to the Bank by Respondent 1.

(vi) While the petitioners undertook to pay the remaining 50% of future EMIs to the Bank, Clause 3 obligated Respondent 1 to reimburse the said payment to the petitioners by including it in the Settled amount as per Clause 2.

(vii) Clause 4 further obligated Respondent 1 to make payment of the entire loan amount, including accrued interest, charges and accumulated EMIs as on the date of the Settlement Agreement to the Bank on or before 14 July 2021, irrespective of the sale of the Apartment, whether in one instalment or multiple tranches.

(viii) Clause 5 was in the nature of a penalty clause. In the event of Respondent 1 failing to pay the agreed Settled amount and clear the Bank loan in the manner and within the time envisaged in the Settlement Agreement, the respondents have been made jointly and severally liable to pay, to the petitioners,

(a) the Settled amount,

(b) the entire loan amount paid and payable by the petitioners to the Bank, and

(c) simple interest @ 18% per annum on the unpaid Settled amount as on 15 July 2021 from the expiry of 3 years from the date of execution of the Buyers Agreement (2 April 2014) till the date of actual payment.

(ix) By Clause 6, the petitioners were, till the expiry of 10 months from the date of the Settlement Agreement, given the right to retain and claim possession of the Apartment, by issuing notice to Respondent 1. In that event, the Settlement Agreement would stand extinguished. Undisputedly, no such notice was ever issued by the petitioners.

(x) *Vide* Clause 8, Respondent 2 undertook that, in the case of failure of Respondent 1 to pay the settled amount and clear the Bank loan in terms of the Settlement Agreement, Respondent 2 would be liable to pay the amounts payable by Respondent 1 as well as for all consequences arising in that regard.

The terms of the Settlement Agreement, and the rights and obligations of the petitioners and the respondents thereunder are, if I may employ a time-worn cliché, clear as crystal.

20.5 The main plank of the respondents' argument is that, owing to default, on the part of the petitioners, in granting no objection for sale of the Apartment, the sale could not take place. The respondents seek to rely on the words "in consideration of the above", with which

Clause 2 of the Settlement Agreement commences, to contend that all obligations of the respondents towards the petitioners were conditional on the petitioners cooperating in effecting sale of the Apartment by, *inter alia*, tendering no objection for such sale. The respondents believe that the Settlement Agreement contained reciprocal obligations, the obligation of the respondents to make monetary payments, whether to the petitioners or to the Bank being conditional upon the petitioners providing its no objection and thereby cooperating in the sale of the Apartment. The respondents also invoke, in this context, the expression "on such terms and conditions", contained in Clause 1 of the Settlement Agreement. Mr. Nayar contends that Respondent 1 was, therefore, entitled to call upon the petitioners to provide its no objection for sale of the Apartment, as one of the terms and conditions on which Respondent 1 would execute the said Settlement Agreement. The words "irrespective of sale of the Apartment", contained in Clause 2, he submits, is intended to cater to a situation in which, despite compliance, by the petitioners, of its obligations under the Settlement Agreement, sale of the Apartment still could not take place. In such an event, the obligation of the respondents to make payments to the petitioners would subsist, even though the Apartment could not be sold. No such obligation, however, he submits, would even arise if the petitioners were in default of their obligation to provide no objection for sale of the Apartment, thereby hindering the sale from taking place.

20.6 The submission is, in my view, completely unacceptable.

20.7 The Settlement Agreement, at more than one point, makes it clear beyond doubt that the monetary obligations of the respondents – primarily of Respondent 1 – towards the petitioners was "irrespective of the sale of the Apartment". The attempt of the respondents to interlink the sale of the Apartment with their financial obligations to the petitioners is, therefore, completely futile and cannot be accepted for an instant.

20.8 Besides, Mr. Khan correctly submits that permission to act on behalf of the petitioners and sell the Apartment already stood accorded by Clause 1 of the Settlement Agreement. The only condition, subject to which the sale of the Apartment was to be undertaken, was obtaining of the NOC from the Bank which, too, as per Clause 1, was the obligation and responsibility of Respondent 1. Clause 1, nonetheless, went on to clarify that failure to obtain NOC from the Bank would also not discharge the respondents of their obligations under the Settlement Agreement towards the petitioners.

20.9 The words "in consideration for the above", with which Clause 2 of the Settlement Agreement commences, cannot support the respondents' stand to any noticeable extent. These words merely indicate that, as Respondent 1 had been given permission, by Clause 1 of the Settlement Agreement, to sell the Apartment and appropriate the entire sale proceeds, Respondent 1, in consideration therefor, was made liable to make payments to the petitioners as set out in Clause 2 and enumerated earlier in this judgment. It was in order to avoid the possibility of the respondents adopting the stand that Mr. Nayar has

sought to canvas before this Court, i.e., that the financial liabilities of the respondents towards the petitioners was contingent and conditional upon sale of the Apartment taking place, that the Settlement Agreement, in Clause 2 and Clause 4, obligated the respondents to make payments to the petitioners irrespective of the sale of the Apartment. The submissions of Mr. Nayar seek to urge precisely that which the Settlement Agreement sedulously seeks to avoid.

20.10 It defeats comprehension, therefore, as to how the respondents are seeking to contend, in their written submissions, that "the payment obligations as envisaged in the SA were to accrue only *after the unit was sold and the sale consideration was appropriated by the JD"*. Needless to say, the submission is completely unacceptable, being in the teeth of the express stipulation, in the Settlement Agreement, that the financial obligations of the respondents were *irrespective of the sale of the Apartment.*

20.11 In fact, a reading of the covenants of the Settlement Agreement make it apparent that no obligation remained to be performed by the petitioners, towards ensuring sale of the Apartment. Consent and permission for such sale already stands granted by Clause 1 of the Settlement Agreement, whereby and whereunder Respondent 1 was authorized to act on *behalf of the petitioners* and sell the Apartment. No further NOC, from the petitioners, or, for that matter, any other act to be performed by the petitioners, is envisaged in the Settlement Agreement. Respondent 1 has sought to contend, in its written

submissions, that Clause 1 of the Settlement Agreement "only authorized (Respondent 1) to identify a buyer and facilitate the sale of the apartment to the prospective buyer". This contention is clearly untenable, as it is contrary to the express words in Clause 1, whereunder the petitioners has authorized Respondent 1 "to act on their behalf and sell the Apartment No. [1232] … along with [2] proposed car parking(s) earmarked in the basement/Open area…" In calling upon the petitioners to further provide NOC or permission to sell the Apartment, therefore, the respondents were transgressing the terms of the Settlement Agreement.

20.12 The reliance, by Mr. Nayar, on Clause 6 of the Settlement Agreement, is also completely futile. Clause 6 merely granted the right, to the petitioners, if it so chose, to retain possession of the Apartment by issuing notice to Respondent 1. This was merely a possible eventuality, which never came to pass. No such notice was ever issued by the petitioners to Respondent 1. The Settlement Agreement does not envisage Respondent 1 waiting for 10 months before proceeding to sell the Apartment.

20.13 In any event, at the cost of repetition, as the financial liabilities and responsibilities of the respondents towards the petitioners under the Settlement Agreement are in no way linked to the sale of the Apartment, Clause 6 can make no substantial difference to the controversy.

20.14 Similarly, the reliance, by Mr. Nayar, on the words "on such terms and conditions" as contained in Clause 1, is no more than an argument of desperation. These words merely clothed Respondent 1 with the authority to decide the terms and conditions on which the Apartment was to be sold. These terms and conditions would, quite obviously, be between Respondent 1 and the buyer of the Apartment. They cannot, quite obviously, be employed by Respondent 1 to contend that it could insist for a further NOC from the petitioners before selling the Apartment. That, quite clearly, would amount to rewriting the Settlement Agreement.

20.15 These findings have been returned only in view of the respondents' submissions that they were unable to sell the Apartment owing to the petitioners' default and that their financial obligations to the petitioners under the Settlement Agreement was conditional upon, and commenced, only when the Apartment was sold and its proceeds realized by Respondent 1. In fact, the Settlement Agreement neither contained reciprocal obligations, nor were the respondents entitled to treat their financial obligations towards the petitioners as conditional upon the Apartment being sold.

20.16 The inexorable sequitur is that, as Respondent 1 has failed to pay the Settled amount and clear the Bank loan in the matter within the time envisaged in the Settlement Agreement, the respondents have been rendered jointly and severally liable to pay the entire settled amount, along with the entire loan amount paid and payable by the petitioners to the Bank along with simple interest at the rate of 18%

p.a. from the date of execution of the Buyers Agreement, i.e. from 2 April 2014 till the date of actual payment.

20.17 Mr. Nayar sought to contend, apropos the respondents' liability to interest, that, on 13 December 2021, Respondent 1 had offered to pay the petitioners ₹ 22.05 lakhs, so that no interest can run from that date. This submission, too, has obviously to be rejected as, with the default, on its part, to making payment of the Settled amount along with all Bank dues in the manner and within the timelines envisaged in the preceding clauses of the Settlement Agreement, the respondents became liable to make all payments to the petitioners as were envisaged in Clauses 5 and 6 of the Settlement Agreement.

20.18 Thus, the petitioners are clearly entitled to complete enforcement of the Clauses of the Settlement Agreement in its favour and against Respondents 2 and 3.

20.19 Mr. Khan has pointed out that, under cover of affidavit dated 17 May 2023, Respondent 1 has also offered the title deeds of two agricultural properties owned by it and located at in Khata/Khatauni No. 00215, Khasra No. 567 A Area 4.1440 Hectare & Khasra No. 567-B Area 0.0460 Hectare Total Khata No. 2 Total Area 4.1900 Hectare, Situated at Village Gajroulashiv, Par. & Tehsil & District Bijnor, Uttar Pradesh, and agricultural Land comprised in Khata/Khatauni No. 0004, Khasra No. 595 Area 0.228 Hectare Total Khata No. 4 Total Area 3.351 Hectare Situated at Village

Gajroulashiv, Par. & Tehsil & District Bijnor, Uttar Pradesh[22] valued at ₹ 19 crores. In the event of the respondents not making payments to the petitioners in terms of the Settlement Agreement, the amounts would have to be recovered by sale/auction of the said properties, till which they would have to remain encumbered.

Conclusion

21. Accordingly, this Enforcement Petition is disposed of in the following terms:

(i) The respondents are directed, forthwith, to deposit, with the Registry of this Court, the entire amounts payable to the petitioners in terms of Clause 5 of the Settlement Agreement, which would include

(a) the Settled Amount as per Clause 2 of the Settlement Agreement,

(b) the entire remaining amount to be paid to the Bank towards the loan availed from it, and

(c) the entire amount thus far paid to the Bank by the petitioner,

along with interest thereon @ 18% p.a. Compliance be effected positively within 2 weeks from the date of uploading of this judgment on the website of this Court.

[22] "the two attached properties", hereinafter

(ii) The properties at agricultural Land comprised in Khata/Khatauni No. 00215, Khasra No. 567 A Area 4.1440 Hectare & Khasra No. 567-B Area 0.0460 Hectare Total Khata No. 2 Total Area 4.1900 Hectare, Situated at Village Gajroulashiv, Par. & Tehsil & District Bijnor, Uttar Pradesh, and agricultural Land comprised in Khata/Khatauni No. 0004, Khasra No. 595 Area 0.228 Hectare Total Khata No. 4 Total Area 3.351 Hectare Situated at Village Gajroulashiv, Par. & Tehsil & District Bijnor, Uttar Pradesh shall stand attached. The respondents are restrained from dealing with the said properties in any manner till the entire dues of the petitioners are paid as directed in (i) *supra*.

(iii) List before the Joint Registrar to ensure compliance with the above directions on 18 September 2024.

(iv) In the event of the respondents failing to liquidate the petitioner's dues as directed hereinabove within 2 weeks from the date of uploading of this judgment on the website of this Court, the two attached properties shall be put to auction, for which purpose the Joint Registrar shall renotify this matter before the Court for directions.

(v) In the event of the amounts payable to the petitioners as set out in (i) *supra* being paid within two weeks, the attachment of the two attached properties shall stand lifted and the title deeds would be returned to the respondents.

22. The Enforcement Petition stands allowed in the aforesaid terms.

OMP (Enf) (Comm) 9/2022, OMP (Enf) (Comm) 10/2022, OMP (Enf) (Comm) 149/2021, OMP (Enf) (Comm) 168/2021, OMP (Enf) (Comm) 172/2021, OMP (Enf) (Comm) 174/2021

23. The petitioners in these petitions are also purchasers and investors in the respondent's scheme. There is no difference between the facts of these cases and those in OMP (Enf) (Comm) 148/2021, except that the project in OMP (Enf) (Comm) 149/2021 and OMP (Enf) (Comm) 174/2021 is the 'ATP Tourmaline' and that in OMP (Enf) (Comm) 9/2022, OMP (Enf) (Comm) 10/2022, OMP (Enf) (Comm) 168/2021, OMP (Enf) (Comm) 172/2021 is the 'ATP Triumph'. Else, the issues of fact and law are identical. In all these cases, Settlement Agreements, identical to that in OMP (Enf) (Comm) 148/2021, on the basis of which the Section 9 petitions filed by the petitioners were disposed of, have been executed. The covenants of the Settlement Agreements are also identical. The reasoning and conclusions in OMP (Enf) (Comm) 148/2021 would, therefore, apply *mutatis mutandis* to these petitions.

24. Mr. Khan had handed over, in Court, a chart depicting the amounts payable under the Settlement Agreements to each of the petitioners in these petitions. The chart constitutes Annexure A to this judgment. Inasmuch as there is no traversal to the figures in the chart, in the written submissions which subsequently came to be filed by the

respondents, the Court proceeds on the premise that the figures in the chart represents the correct amounts payable.

25. These petitions, too, therefore, are allowed in terms of the judgment rendered today in OMP (Enf) (Comm) 148/2021.

C. HARI SHANKAR, J.

SEPTEMBER 3, 2024
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Annexure A

OVERVIEW OF AMOUNTS PAYABLE BY JUDGMENT DEBTORS IN ACCORDANCE WITH THE RESPECTIVE SAMADHAN AGREEMENT OF INDIVIDUAL DECREE HOLDERS

Sl. No	Name of the Decree Holder	Amount due to Decree Holder including interest as on 31.03.2022	Amount owed to the Bank as on 31.03.2022	Total amount due to the Decree Holder and Bank as on 31.03.2022
1.	Mr Anand Gupta and Mrs Anuradha Vinod Gupta	₹1,87,30,906	₹2,02,63,444	₹3,89,94,350
2.	Mr. Gagandeep Singh Puri	₹84,85,023	₹1,15,54,200	₹2,00,39,223
3.	Mr Lakshminarayanan P.R	₹1,32,07,660	₹1,57,80,392	₹2,89,88,052
4.	Mr Maneesh Goel	₹1,51,17,217	₹1,59,11,734	₹3,10,28,951
5.	Mr. Navdeep Shergill	₹86,36,394	₹1,14,24,092	₹2,00,60,486
6.	Mr. Anurag Jain	₹1,02,91,180	₹1,58,65,159	₹2,61,56,339
7.	Mr. Deepak Tiwari	₹1,04,67,156	₹1,50,46,023	₹2,55,13,179
	GRAND TOTAL	**₹8,49,35,536**	**₹10,58,45,044**	**₹19,07,80,580**