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

Reserved on: 3rd January, 2022
Pronounced on: 5th January, 2022

\+ OMP (ENF.) (COMM.) 159/2019

LANDMARK PROPERTY DEVELOPMENT AND COMPANY LTD. & ORS. ..... Decree Holders
Through Mr. Mukesh Anand, Ms. Ruby Singh Ahuja, Ms. Manmeet Kaur, Ms. Hancy Maini, Ms. Anjali Dwivedi and Mr. Vasu Singh, Advocates

versus

ANSAL PROPERTIES & INFRASTRUCTURE LTD. & ORS. ..... Judgement Debtors
Through Ms Neelima Tripathi, Sr. Advocate with Mr. Sujoy Datta, Ms. Soumya Sharma and Mr. Parag Rai, Advocates

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

J U D G M E N T

% 05.01.2022
(Video-Conferencing)

EX.APPL.(OS) 1237/2021

1. The applicant in this application is the award holder, in whose favour the learned sole arbitrator, a former Chief Justice of India, has rendered award dated 7th September, 2018, which was, on applications under Section 33 of the Arbitration and Conciliation Act, 1996 ("the

1996 Act"), preferred by the award holders and the award debtors, amended twice, on 17th September, 2018 and 13th November, 2018 respectively. The second amendment dated 13th November, 2018 is not of particular significance, as it did not tinker with the operative portion of the award and merely corrected certain typographical errors. The first Section 33 order dated 17th September, 2018 is, however, relevant.

2. For the sake of convenience, the petitioners/award holders shall, hereinafter, be referred to as "Landmark". The respondents constitute the Ansal Group, of which the present judgement would require particular reference only to Respondent 1, M/s Ansal Properties & Infrastructure Limited, who shall, therefore, be referred to, hereinafter, as "APIL". The Ansal Group, comprising all the respondents, would alternatively be referred to as "the Ansals".

3. The operative para 11.1 of the award dated 7th September, 2018 read thus:

> "11.1 The claims filed by Landmark Group against Ansal Group are allowed to the extent of the following claims.
>
> a. Ansal Group shall pay an amount of Rs. 46.01 crores to Landmark Group by way of principal amount.
>
> b. Landmark Group shall pay an amount of Rs. 82,14,92,575/- to Ansal Group on account of interest due and payable for the period upto 09.05.2017 (the date of commencement of arbitral proceedings).
>
> c. The above amount of Rs. 46.01 crores and Rs. 82,14,92,575/- shall carry interest calculated @15%

per annum w.e.f. 10.05.2017 upto a date falling 30 days after the date of the award.

d. Ansal Group shall pay to Landmark Group an amount of Rs. 8.10 crores with interest calculated @15% per annum w.e.f. 29.06.2012 till the date falling 30 days after the date of the award.

e. Ansal Group shall pay to Landmark Group an amount of Rs. 0.60 crores with interest calculated @15% per annum from 01.12.2011 till the date falling 30 days after the date of the award.

f. Ansal Group shall pay to Landmark Group an amount of Rs.1,00,61,220/- by way of costs of the arbitral proceedings.

g. Ansal Group is allowed 30 days time to pay the awarded amount to Landmark Group. Failing such payment the awarded amount shall carry interest @ 18 % p.a. till the date of actual payment.

h. All the claims preferred by Ansal Group are rejected.

i. Ansal Group shall bear the costs of these proceedings as incurred by them.

j. The Landmark Group has made available stamp paper worth Rs 13,68,693/-which has been attached with the award retained on the record of the Tribunal The Landmark Group shall be entitled to recover one-half of the amount of stamp duty from Ansal Group along with the costs of these proceedings."

4. Clause (b) of the afore-extracted para 11.1 of the award was corrected, *vide* order dated 17th September, 2018, to read as under:

"b. Ansal Group shall pay an amount of Rs. 82,14,92,575/- to Landmark Group on account of interest due and payable for the period upto 09.05.2017 (the date of commencement of arbitral proceedings)."

5. The result was that, under the arbitral award dated 7th September, 2018, as corrected by order dated 17th September, 2018, the Ansals have become liable to pay, to Landmark, *inter alia*,

(i) the principal amount awarded of ₹ 46.01 crores,

(ii) interest, thereon, till 9th May, 2017, which works out to ₹ 82,14,92,575/-, being the interest payable upto 9th May, 2017,

(iii) interest on the aforesaid amounts of ₹ 46.01 crores and ₹ 82,14,92,575/-, w.e.f. 10th May, 2017 till the expiry of 30 days from the award, i.e. till 7th October, 2018, and

(iv) 18% interest on the total aforesaid awarded amount, from 7th October, 2018 till the date of actual payment.

6. The total amount, thus, payable by the Ansals to Landmark, it is submitted by Mr. Mukesh Anand, learned Counsel for Landmark, is in excess of ₹ 200 crores. Ms. Neelima Tripathi, learned Senior Counsel for the Ansals, does not dispute this fact.

7. It is also not in dispute that, against the aforesaid awarded amount, the Ansals have deposited with this Court, only an amount of ₹ 14,90,48,878/-.

8. Landmark, in order to secure the awarded amount, had preferred OMP (I) (COMM) 399/2018 before this Court under Section 9 of the 1996 Act. In the said OMP, on 17th December, 2018 the Ansals offered certain properties including residential plots in Sushant City-I, Bhatinda, as security towards satisfaction of the award. This Court, therefore, restrained the Ansals from creating any third party interest

in respect of the said properties.

9. On 25th April, 2019, the Ansals, through learned Senior Counsel, undertook to deposit, with this Court, the principal amount of ₹ 46.01 crores awarded to Landmark by the learned arbitrator, on or before 31st July, 2019. It was further undertaken, by the Ansals, that this deposit would be made on or before 31st July, 2019 even if the Ansals were unable to find any buyers for the properties which included the residential plots in Sushant City-I, Bhatinda, forming subject matter of injunction granted on 17th December, 2018. In the circumstances, this Court disposed of OMP(I)(Comm) 399/2018 with the following directions:

> "6. Having heard the learned counsel for the parties, the captioned petition is disposed of with the following directions:
>
> > (i) The respondents will deposit the (principal sum) of Rs. 46.01 crores on or before 31.7.2019.
> >
> > (ii) An undertaking in the form of an affidavit will be filed, which will, *inter alia,* state in no uncertain terms that Rs. 46.01 crores will be deposited on or before 31.7.2019. The affidavit, though, will be filed by the Promoter-Directors of respondent Nos.1 to 4, within one week from today.
> >
> > (iii) As and when a firm offer is received by the respondents with regard to the properties, which have been referred to in paragraph 2 of the order dated 17.12.2018, the respondents will approach the Court for lifting and/or varying the restraint contained in the very same order.
> >
> > (iv) It is made clear that direction contained in paragraph 6(iii) is not linked with the directions contained in paragraph 6(i) and (ii) above.

(v) In case the respondents are unable to find a buyer, they will any which way deposit the sum of Rs.46.01 crores with the Registry of this Court on or before 31.7.2019.

(vi) Upon the sum of Rs.46.01 crores being deposited, the Registry will invest the same in an interest bearing fixed deposit, maintained with a nationalized bank.

(vii) In case the directions contained in paragraph 6(i) and (ii) are not complied with, the Promoter-Directors of the respondent Nos. 1 to 4, who have been ordered to file an undertaking in the form of an affidavit, will remain present in the Court on the next date of hearing.

7. Subject to the aforesaid, in the meanwhile, the operation of the impugned award shall remain stayed till further orders of this Court."

10. The Ansals, thereafter, filed IA 10375/2019, seeking extension of time to comply with the aforesaid directions contained in the order dated 25th April, 2019, passed by this Court, to the extent the order required the Ansals to deposit ₹ 46.01 crores before the Court. This application was disposed of, by this Court, *vide* order dated 1st August, 2019, in the following terms:

"6. Accordingly the application is disposed of with the following directions :

(i) The applicants/respondents will deposit a sum of Rs.46.01 crores within five weeks from today.

(ii) An unconditional undertaking in the form of an affidavit will be filed within three days from today indicating therein that the timeline fixed today will be scrupulously adhered to.

> (iii) Since assertions have been made in the application that certain properties have been sold after interim orders were lifted and the concerned properties were released, the details with regard to these sale transactions along with attendant documents will be placed on record."

11. Noting the fact that the Ansals had defaulted on their undertaking, to this Court, to deposit ₹ 46.01 crores, even after seeking and obtaining extension of time from this Court, it was directed, *vide* order dated 3rd September, 2019 in OMP (I) (Comm.) 399/2018, that, if the amount was not deposited by 5th September, 2019, the interim order, staying the operation of the award of the learned arbitrator, would stand vacated.

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.

15. The next order of this Court, which is relevant for the purpose of the present application, was passed by this Court on 24th September, 2019 in OMP (ENF) (Comm) 159/2019. On the said date, this Court injuncted the Ansals from "disposing of, alienating, encumbering either directly or indirectly or otherwise parting with the possession of any assets to the tune of the decretal amount except in the ordinary course of business and payment of salary and statutory dues till the next date of hearing".

16. This interim order was continued by orders dated 10th December, 2019 and 8th January, 2020.

17. Despite this order continuing to remain in force, APIL, on 21st September, 2020, entered into a "Memorandum of Business Understanding/MOU" with M/s. Mahaluxmi Infrahome Pvt. Ltd. (hereinafter "MIPL") (a Company of the Migsun group), Ansal IT City and Parks Ltd (AICPL) and Ansal Hightech Township Pvt Ltd, whereunder APIL consented to the transfer of its shareholding in AICPL, constituting 66.24% of the total shareholding in AICPL (the balance 33.76% being held by M/s. HDFC Ventures Trustee Co. Ltd. ("HVTCL"), against consideration. The specific recital to that effect, as contained in the MOU, read thus:

"AND WHEREAS the Fourth Party/*APIL* who is holding

presently 66.24 % of the total shareholding of AITCPL (along with HDFC Ventures Trustee Company Limited holding 33.76% of the total shareholding) being a holding company of AITCPL unequivocally accepts the aforementioned valuation and *has consented for the transfer of its shareholding in AITCPL under the terms of the present MOU against the considerations set out above and forming part of the terms of the present agreement as well.*"

(Emphasis supplied)

18. The aforesaid transaction provoked Landmark into filing, before this Court, EA 278/2021, alleging that the MOU dated 21st September, 2020 amounted to wilful disobedience of the order dated 24th September, 2019.

19. EA 278/2021 came to be disposed of, by a coordinate Bench of Hon'ble Mr. Justice Vibhu Bakhru, *vide* order dated 5th March, 2021, which deserves to be reproduced in full thus:

"1. The petitioner has filed the present application, *inter alia*, praying that directions be issued to Judgment Debtor No. 1 to provide complete details with regard to certain transactions, which are mentioned in Paragraph nos. 12 and 14 of the present application.

2. In addition, the Decree Holder prays that directions be issued against Judgment Debtor No.1 and its Promoters for wilful disobedience of an order dated 24.09.2019. The Decree Holder has also sought other reliefs in addition to the above.

3. Mr Nair, learned counsel appearing for the Decree Holder has drawn the attention of this Court to a letter dated 30.12.2020 addressed by Judgment Debtor No. 1 to the National Stock Exchange of India informing the Exchange that Judgment Debtor No. 1 has entered into an Agreement to sell its entire shareholding of 66.24% held in its subsidiary company, M/s Ansal IT City and Parks Limited — which in turn owns 37.5 acres of land located at Greater Noida - to M/s Mahaluxmi Infrahome Private Limited (a company described

as a part of the Migsun Group).

4. By an order dated 24.09.2019, this Court had restrained the Judgment Debtor from disposing of, alienating, encumbering either directly or indirectly or otherwise parting with the possession of any assets to the tune of decretal amount except in the ordinary course of business and for payment of salary and statutory dues till the next date of hearing. The said order was subsequently modified on 10.12.2019 and the Judgement Debtor was also granted liberty to pay its liabilities to banks/financial institutions.

5. *Clearly, the said transaction of hiving off a subsidiary company cannot be considered as a transaction in the ordinary course of business. Accordingly, the Judgment Debtor is directed to maintain status quo as to its shareholding in Ansal IT City and Parks Limited and the immovable assets held by the said company, till the next date of hearing*. In the meanwhile, the Judgment Debtors may file their response to the application.

6. Mr Grover, learned counsel appearing for the Judgment Debtors states that the said property has been sold to discharge the liabilities of HDFC Bank Limited. *Since the award made against the Judgement Debtors remains unsatisfied, it is necessary to ensure that its assets are sold in a transparent manner and there are no preferential payments.*

7. Admittedly, the Judgement Debtor is selling its asset purportedly to discharge its liability to HDFC Bank; the Bank is not enforcing its security interest over the assets in question (the shares of M/s Ansal IT City and Parks Limited). *This Court is, prima facie, of the view that the same cannot be permitted until the position of the entire assets and liabilities is placed before the Court and an arrangement is made for discharge of the entire debts of the Judgment Debtor.*

8. The Judgment Debtor may place all material facts on record and this Court shall take a view on the same after hearing the parties. *At this stage, it is necessary to ensure that the assets of the Judgement Debtor are preserved*.

9. List on 07.04.2021."

(Emphasis supplied)

20. Clearly, the order dated 5th March, 2021 viewed the execution of the MOU dated 21st September, 2020 as infracting the order dated 24th September, 2019 passed by this Court. The Ansals, therefore, were directed to maintain *status quo*, *inter alia*, regarding the shareholding of APIL in AICPL. Additionally, towards the conclusion of the order, it was noted that it was necessary to ensure that the assets of the Ansals were preserved.

21. Even while the above order continued to remain in force, Landmark came across a news item, reporting the announcement of the Migsun Group (of which MIPL is part) that it had acquired the entire shareholding in AICPL, including the 66.24% shareholding held by APIL. Alleging that, thereby, APIL had again resorted to contumacious disobedience of the directions of this Court, this time, of para 5 of the order dated 5th March, 2021, Landmark has preferred the present application EA 1237/2021, praying thus:

> "In view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:
>
> a. Pass directions in favour of the Decree Holders and against Judgment Debtors securing the Decree Holders in so far as granting a *status quo* order with respect to any new sales carried out or to be carried out by the Judgement Debtors till the disposal of the present matter;
>
> b. Pass directions with respect to disclosing all documents and details of the transaction between Judgement Debtor No.1, HDFC and Migsun Group with respect to the concerned sale, including the value of stakes of HDFC and Judgment Debtor No.1.

c. Pass directions with respect to reversing the concerned redemption/sale transaction and declaring the same to be null and void as the same is in blatant contravention of order dated 05.03.2021.

d. Pass directions with respect to deposit of monies, immediately with this Hon'ble Court, acquired by HDFC and/or Judgement Debtor No.1 through redemption/sale of their shares/stakes in M/s Ansal IT City and Parks to Migsun Group;

e. Issue garnishee notices to HDFC and direct them to deposit the receivables from the redemption/sale of their stake/shares of M/s Ansal IT City and Parks directly with this Honorable Court, in order to satisfy the award amount.

f. Pass any such further order(s) that this Hon'ble Court may deem fit and proper in the facts and circumstances, of the present case."

22. I have heard Mr. Mukesh Anand, learned Counsel for Landmark and Ms. Neelima Tripathi, learned Senior Counsel for the Ansals at length on this application.

23. When the aforesaid application came up before this Court on 18th November, 2021, Ms. Tripathi, learned Senior Counsel for the Ansals submitted, on instructions, that the 66.24% shareholding of APIL in AICPL continued to remain in the escrow account in the name of APIL, and that no part thereof had been transferred to the Migsun Group or to any company of the Migsun Group. There had, therefore, been no infraction of para 5 of the order dated 5th March, 2021, in her submission. She was directed to place this position on record by way of an affidavit.

24. From the material which has come on record thereafter, a startling and frankly disturbing scenario emerges.

25. After the passing of the aforesaid order by Bakhru, J on 5th March, 2021, directing maintenance of *status quo* regarding the shareholding of APIL in AICPL, *two* Escrow agreements were executed, the first on 12th March, 2021 and the second on 19th July, 2021.

26. The parties to the Escrow Agreement dated 12th March, 2021 were HPTCL, APIL, MIPL, AICPL and HDFC Bank Ltd. (which was the Escrow agent). Clauses 4.1, 4.2 and 4.3 of the Escrow Agreement dated 12th March, 2021 read thus:

> "4.1 Simultaneous with the execution of this Agreement, the Transferor shall transfer the HVTCL Equity Shares from its dematerialized account along with duly executed delivery instruction slips and the duly executed annexure for off market sale, for transfer of the HVTCL Equity Shares into the HVTCL Designated Dematerialized Accounts. *Simultaneously, APIL shall also transfer the APIL Equity Shares to the HVTCL Designated Dematerialized Accounts along with duly executed delivery instruction slips and the duly executed annexure for off market sale, for transfer of the APIL Equity Shares.* Upon receipt of the HVTCL Equity Shares and APIL Equity Shares from the Transferor and APIL in the HVTCL Designated Dematerialized Account, the Escrow Agent shall, not later than one (1) Business Day, issue a written acknowledgement in the form annexed hereto as Schedule III (the "Shares Acknowledgement") to the Parties confirming that the HVTCL Sale Shares and APIL Sale Shares have been received in the HVTCL Designated Dematerialized Account. *Simultaneously with the execution of this Agreement, the Transferor shall also hand over to the Escrow Agent a duly signed letters for (i) transferring the HVTCL Equity Shares and APIL Equity Shares from the Designated Dematerialised Account to the Transferees'*

Demat Account in form annexed as Schedule IV(A), (ii) immediately returning the HVTCL Sale Shares and APIL Sale Shares to HVTCL and APIL, respectively, in form annexed as Schedule IV(B) upon occurrence of such events under this Agreement that require the said securities to be transferred back to HVTCL and APIL, respectively.

4.2 As per the timelines set out in the SPA for payment of the HVTCL Consideration ("SPA Payment Timelines"), upon the execution of this Agreement (since the SPA has already been executed), the Transferee shall pay to the Company and in turn the Company shall pay to the Transferor an amount equivalent to Rs (redacted) towards outstanding Redemption Amount. Furthermore, in terms of the SPA, the Transferee shall make payment of the Share Sale Consideration to the Transferor as per the SPA Payment Timelines.

4.3 The Transferor shall within 2 (two) Business Days of receipt of each tranche of consideration in terms of the SPA, notify such receipt to the Escrow Agent with a copy of the same marked to the Company, Transferee and APIL. *Upon receiving the notification of receipt of the entire HVTCL Consideration by the Transferor to the Escrow Agent (with a copy to the Company, Transferee and APIL) the Escrow Agent shall as per the duly executed letter as per Schedule IV(A)documents provided as per clause 4.1, transfer the HVTCL Equity Shares and APIL Equity Shares from the HVTCL Designated Dematerialized Account to the Transferee either into the Transferees' Demat Accounts or into the Demat Account of the nominees of the Transferee as per the directions of the Transferee more specifically mentioned hereunder.* The Escrow Agent shall thereafter send a confirmation of the said transfer to the Transferor, Transferee and APIL.

Name of the proposed shareholders/nominees	***Shares to be transferred (in numbers)***	***Shares to be transferred (in percentage)***
Mahaluxmi Infrahome Pvt. Ltd.	*3,46,499*	*15%*
Mr.Yash Miglani	*2,31,000*	*10%*
Mahaluxmi Buildtech Ltd.	*3,46,499*	*15%*
Mr. Sunil Miglani	*3,46,499*	*15%*
Mahaluxmi Realtech Pvt Ltd.	*3,46,499*	*15%*

Mahaluxmi Buildtech Consortium Pvt. Ltd.	3,46,499	15%
Mridula Engineering Private Limited	3,46,499	15%

"

(Emphasis supplied)

27. This Court was never informed of the execution of the above Escrow Agreement dated 12th March, 2021, despite *status quo*, regarding APIL's shareholding in AICPL, having been specifically directed by this Court just a week prior thereto.

28. Thereafter, without obtaining any leave of the Court, the Escrow agent was changed and a fresh Escrow agreement was executed on 19th July, 2021 (again, without so much as a by-your-leave from this Court), again among APIL, MIPL, AICPL and SKI Capital Services Ltd., the new Escrow Agent. It would be relevant to reproduce the opening recitals I, II, III and Clauses 2.4, 3.3, 4.1, 4.2, 6.2, 10.8 and 11.4 of the aforesaid escrow agreement dated 19th July, 2021 thus:

> "I. By and under a Securities Purchase Agreement executed on December 29, 2020 ("SPA"), (i) the Company has agreed to redeem the Debentures held by HDFC Ventures Trustee Company Limited. (HVTCL Debentures) by paying the Redemption Amount (as defined in the SPA) which was agreed to be funded by the Transferee to the Company and (ii) the Transferee has agreed to purchase the Equity shares held by HDFC Ventures Trustee Company Limited "HVTCL" in the company ("HVTCL Equity Shares") from the HVTCL in its name and/or in the name of its nominees, upon the payment of the Share Sale Consideration (as defined in the SPA) and on the terms set out therein. Capitalised terms used but not defined shall have the meaning ascribed to these terms in the said SPA.

II. *Similarly, APIL has also entered into an agreement with the Transferee in terms of which, (i) the Company has agreed to redeem the APIL Debentures and (ii) APIL has agreed to sell to the Transferee, and the Transferee has agreed to purchase from APIL, the APIL Equity Shares (as defined therein).*

That *to consummate the redemption of HVTCL Debentures and APIL Debentures and sale and purchase of the HVTCL Equity Shares and The APIL Equity Shares in the manner contemplated in the SPA, the Transferor, Transferee, Company and HDFC Bank Ltd. (hereinafter HDFC Bank Ltd. will be referred to as "HDFC/Escrow Agent") had entered into an earlier Escrow Agreement dated 29.01.2021* (hereinafter "HDFC Escrow Agreement") which *inter alia* also dealt with the transfer of the shareholding of the Company by the existing shareholders in terms of the Share Purchase Agreement, however, before the culmination of the transactions contemplated under the SPA and the said Escrow Agreement, a restraint order dated March, 5, 2021 passed by the Hon'ble Delhi High Court was brought to the notice and attention of the transferee and wherein *status quo* has been directed to be maintained with regard to the shares held by APIL in the Company and the said order was also shared by the Transferee with HVTCL and the Escrow Agent.

III. That on account of the aforementioned restraint order passed by the Hon'ble High Court only the HVTCL shares could be transferred and the APIL shares are yet to be transferred to the Transferee as contemplated under the terms of the Escrow Agreement & SPA and later as the HDFC has desired to seek a discharge from its obligations under the Escrow Agreement, therefore, *the parties had decided to transfer the APIL shares in a new Escrow Account to be operated and maintained by SKI as per the present terms*. Needless the mention that the transfer of HVTCL equity shares has already been effectuated as per the agreed terms.

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2.4 The parties agree that *the APIL Shares presently held in the demat account with the HDFC Bank and proposed to be transferred to the SKI Designated Dematerialised Account have been purchased by the Transferee and the complete consideration thereof already stand paid and in view of which*

APIL has not been left with any right or interests over the same, however, *the transfer thereof is yet to be effectuated*, subject to terms agreed herein.

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3.3 The New Escrow Agent shall under the covenants agreed between the parties herein shall fully & completely ensure that it shall only act as per the mandate under the present agreement (particularly Clause 4.3*) for the transfer of the APIL equity shares in favour of the Transferee company* and under no circumstances deal/transfer/ retain/hold/revert the said shares in/to any other demat account including that of the Transferor company. Needless to state that any defect, deficiency or shortcoming in any of the mandate issued as per the Schedule(s) herein under no circumstances shall not deprive the transferee of any rights with regard to the said shares.

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4.1 With the execution of this Agreement. the existing Escrow Agent will be advised to transfer the APIL Equity Shares from "HVTCL Designated Dematerialised Account", maintained & operated by HDFC, and the HDFC shall also be advised to transfer the said shareholding with duly executed delivery instruction slips and the duly executed annexure for off market sale, for transfer of the APIL Shares into the SKI Designated Dematerialised Account. Upon receipt of the APIL Equity Shares from the Escrow Agent in the SKI Designated Dematerialized Account, the New Escrow Agent shall, not later than one (1) Business Day, issue a written acknowledgement in the form annexed hereto as Schedule I (the "Shares Acknowledgement") to the Parties confirming that the APIL Shares have been received in the SKI Designated Dematerialized Account. Simultaneously with the execution of this Agreement, the APIL *shall also hand over to the New Escrow Agent a duly signed irrevocable mandate/ letter for transferring the APIL Equity Shares from the SKI Designated Dematerialised Account to the Transferees' Demat Account in form annexed as Schedule II.*

4.2 That APIL Company and the Transferee state and confirm that as per the timelines set out in the SPA for

payment of the HVTCL Consideration ("**SPA Payment Timelines**") and terms of the HDFC Escrow Agreement (since the SPA has already been executed), *the Transferee has already paid the complete considerations payable to the Company under the present terms and in turn the Company with regard to the HVTCL shares but also APIL shares as per the agreed timelines and no amounts are accordingly payable under the SPA. The receipt and sufficiency thereof is fully confirmed by APIL.*

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6.2 *APIL declare that it has no right or interests left in the APIL shares* and till the said shares are transferred in favour of the Transferee and/or its nominee as per the present arrangement, it shall neither directly or indirectly deal in the same nor allow the same to be transferred to any other person/entity.

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10.8 The Escrow agent further also unequivocally agrees that the object of the present agreement is to hold the APIL Equity Shares in the SKI Designated Dematerialised Account for the benefit of the Transferee Company/its nominee only till the receipt of a duly certified judicial order passed by the Hon'ble High Court of Delhi or any other Court of competent jurisdiction thereby vacating/modifying or amending or recalling the earlier order dated 05.03.2021 passed in OMP (Enf.) (Comm.) No. 159/2019 (or any other order(s) passed by it thereby restricting the transfer of the APIL shares) on account of which the transfer of the APIL shares shall be allowed in express terms or by implication by vacation/modification thereof. It is understood that *the only requirement for the transfer of the APIL Equity Shares in favour of the Transferee company (or its nominee) is the receipt of the aforementioned order/directions, and in any event the mandate as per the Schedule(s) is not provided or the same is avoided/ delayed by transferor for any reasons, SKI after due notice to the APIL, may seek appropriate declaration/undertaking from the Transferee company confirming the vacation/modification of the restraint order, and shall remain bound to transfer the same without any delay.*

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> 11.4 It is clearly understood between the parties that the instant agreement has only been executed on account of the restrain order passed by the Hon'ble High Court, otherwise, *neither there is any dispute, challenge, or impediment with regard to the transfer of the APIL shares in favour of the Transferee(s) nor there are any pending/unfulfilled obligations of the transferee towards the Transferor*. The parties also agree that except otherwise agreed by the Transferee specifically in writing, *the APIL Shares (Subject matter of the present agreement) having transferred in the SKI designated account under the present arrangement can be transferred in favour of the Transferee(s) only* and under no circumstances can revert to the demat account of APIL or any other agency/third party."
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> (Emphasis supplied)

29. Mr. Mukesh Anand, learned Counsel for Landmark submits that a cohesive reading of the covenants of the Escrow Agreement dated 19th July, 2021 makes it clear that the entire consideration, towards transfer of APIL's 66.24% shareholding in AICPL to MIPL stands paid by MIPL and that, as a consequence thereof, APIL has relinquished its rights over the said shares. This, he submits, is clear violation of para 5 of the order dated 5th March, 2021 of Bakhru, J, which directed *status quo* to be maintained with respect to the shareholding of APIL in AICPL.

30. Mr. Mukesh Anand submits that the manner in which APIL has been conducting itself, throughout, inspires no confidence whatsoever in its *bonafides* and, rather, denotes a transparent attempt at hiving off its assets, so as to frustrate the arbitral award and its enforcement in favour of Landmark. He, in the circumstances, presses the prayers in

this application.

31. Responding to the said submissions, Ms. Tripathi, learned Senior Counsel for APIL, submits that, by virtue of the agreement dated 21st September, 2020, APIL was committed to sell its 66.24% shareholding in AICPL to MIPL for the consideration envisaged by the agreement. This commitment, she submits, is not negotiable in nature. She submits that, if this commitment was not being honoured, it was only because of the stay granted by Bakhru, J *vide* his order dated 5th March, 2021. The moment that order is lifted, Ms. Tripathi was frank enough to admit, the shares of APIL in AICPL would stand transferred to MIPL.

32. As on date, however, she submits, that transfer is yet to take place. There has, therefore, in her submission, been no violation of para 5 of the order dated 5th March, 2021. Ms. Tripathi has sought to impress on the Court that her client has no intent of disobeying the directions issued by the Court and cannot be said, by any stretch of imagination to have committed any kind of contempt.

33. To support this submission, Ms. Tripathi drew my attention to the statement of holdings of SKI Capital Services Ltd. (the new Escrow Agent) on the website of the National Security Depository Ltd. This statement of holdings, however, as I have noted in my order dated 22nd December, 2021, merely reflects the holdings by SKI Capital Services Ltd. as the new Escrow Agent of the shares in AICPL. It does not indicate whether these shares were held by APIL or by MIPL or any other company of the Migsun Group. It does not,

therefore, assist the Court in understanding whether there has, in fact, been transfer of the shareholdings of APIL in AICPL to MIPL or not.

34. Ms. Tripathi also took me through the following recitals in the MOU dated 21st September, 2020:

> "AND WHEREAS, the value for takeover of all the assets of the target company along with its liabilities on a going concern basis along with 100% shareholding of the AITCPL for the purpose of its takeover under the present MOU based purely on value of assets has been (redacted) Crores (Rupees (redacted) and the consideration in said regard is subject to Terms and Conditions of present MOU. It is understood that the valuation done on Net Assets Value (NAV) basis shall be the only amount which shall be adjusted by the Second Party under the Credit notes and the same shall be arrived after making due adjustments in the said assets value of (redacted) Crores i.e. after deducting the third party liability, statutory dues, Amounts payable to the Authority against the assets etc. from the total value of Rs. (redacted) (Rupees (redacted)) and the balance amount after such adjustment has been agreed to be the consideration for the transfer of the complete shareholding of AITCPL and the same has been/will be paid by the Second Party by adjustment of Credit notes only as stated above.
>
> *****
>
> 2. THAT, the parties to the present agreement further agree that since the value of the assets of the Target Company has been assessed and frozen to (redacted), all liabilities due, payable and outstanding as on the date of transfer of the complete shareholding shall be liable to be deducted from the aforementioned amount and only the balance shall be liable to be adjusted as consideration through the credit notes. It is made clear that if the transfer of shareholding is done in piecemeal, the transfer of shareholding for the purpose of the present clause shall mean the transfer of complete 100% shareholding only.
>
> 3. THAT, the Parties to the present Agreement further agree that total consideration for acquisition of 100% shareholding of the Target Company by Second Party which

has been agreed in total for (redacted) and the aforesaid purchase consideration shall be deemed to be paid to the shareholders by way of adjustment of credit note as envisaged in this MOU.

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17. THAT, the parties also agree that presently there are unpaid amounts/liability to an extent of Approx. (redacted) payable towards GNIDA, including the liability under the demand letter dated 19.02.2020 issued by it for a sum of Rs. (Rs. redacted) i.e. Annual Lease rentals from 2015-16 till date, and which shall be liability the second party from the date of signing of this MOU. However, the liability of the Second Party towards any payments of GNIDA as mentioned hereinabove shall commence only after the transfer of complete shareholding in the name of Second Party. Since the same is a liability of the Target Company the said liability of (redacted) shall be considered as payable against the sales consideration until and unless either the same is withdrawn by GNIDA or set aside by a Court of competent jurisdiction and accordingly the aforementioned amount of Rs (redacted) shall be reduced from the amount of Rs (redacted) ,as above for adjustment of the net consideration as mentioned above. In the event and at any stage (even after transfer of 100% shareholding in favour of the Second Party) it is found that the liabilities of the Target Company are over and above the said amount of Rs (redacted), the same shall be first paid off/settled by the Target Company then only the Second Party shall be obligated to make adjustments to the credits notes as per the scheme under the present MOU. Any unpaid liabilities (relating to the pre-acquisition period), remaining undetected or undisclosed or unpaid even after the transfer of the complete shareholding shall be deemed to an unsettled obligation of the target company under the present MOU and which at the relevant time shall be paid/settled by APIL from its resources. The parties categorically agree and understand that in the event the aforementioned liability towards GNIDA is found to be less than or in excess of Rs. (redacted) (as the case may be), then the Second Party shall be authorized to accordingly make necessary adjustments in the final amount of the credit notes to be adjusted for satisfaction/payment of the balance consideration under the present scheme. Needless to mention that on account of the aforementioned change in the value(s) of the liabilities (both current & contingent as

well as disclosed & un-disclosed), if the total liabilities of the First Party exceed the value of the assets calculated as on today i.e. Rs. (redacted) then, the Second Party shall not be obligated to adjust any amount through the Credit notes under the present scheme and shall remain entitle to call upon the Fourth Party to settle and pay/seek restitution of the liabilities found in excess of the said value of (redacted) Adjustment of the credit notes by the Second Party shall not be deemed to be a waiver of the aforementioned right of payment or restitution."

35. The aforesaid covenants, according to Ms. Tripathi, indicate that consideration would pass, from MIPL to APIL, only after the shares were transferred. The recital, in Clause 2.4 of the Escrow Agreement dated 19th July, 2021 to the effect that complete consideration for transfer of the shares already stood paid is, therefore, in her submission, erroneous. On the attention of Ms. Tripathi being invited to Clause 4.2 of the Escrow Agreement, Ms. Tripathi submits that the reference, in the said Clause, to the transfer of the APIL shares is incorrect and that, in fact, the reference ought only have been to the shares of HVTCPL in AICPL.

36. Ms. Tripathi, has also invited my attention to Clauses 8.1 to 8.3, 9.3 to 9.5, 10.8 and 11.4 of the Escrow Agreement dated 19th July, 2021, Clause 10.8 & 11.4 of which already stand extracted *supra* and the rest read thus:

"8.1 The New Escrow Agent shall be entitled to resign from its appointment and be discharged from its duties or obligations hereunder, at any time by giving not less than 30 (30) days' prior written notice to such effect to the other Parties. The New Escrow Agent, upon its resignation, shall only deal with APIL Equity Shares held in the SKI Designated Dematerialized Account, and shall deliver the APlL Equity Shares, pursuant to and in the manner specified

in the written instructions substantially in the form annexed hereto as Schedule III delivered to the SKI prior to the expiry of the resignation date referred to above. Within the expiry of the notice period given by the SKI regarding its resignation; the APIL and the Transferee shall have the right to appoint another Escrow Agent as the successor Escrow Agent for the purposes hereof, on terms similar to the terms hereof, and the New Escrow Agent shall only be entitled to transfer the APIL Equity Share (if not already done) to accounts maintained with such successor Escrow Agent. The New Escrow Agent shall in no way be liable for any losses that may have been incurred due to such appointment or resignation.

8.2 The appointment of SKI may, at any time, be terminated jointly by the Transferor and the Transferee, by informing the other party atleast fifteen (15) days' prior written notice to such effect to the SKI. Prior to the termination of the appointment, SKI shall deliver the APIL Equity Shares, and deal with the SKI Designated Dematerialized Account, pursuant to, and in the manner specified in, the written instructions substantially in the form annexed hereto as Schedule IV delivered jointly by the APIL and the Transferee to SKI prior to the expiry of the notice period referred to above.

8.3 Upon resignation by the New Escrow Agent in terms Clause 8.l or removal of the said Agent in terms or Clause 8.2, as the case may be, the APIL and the Transferee shall forthwith appoint a successor Escrow Agent for purposes of this Agreement. The resignation or termination of the Escrow Agent's appointment in terms of this Agreement shall not (notwithstanding Clauses 8.1 and 8.2 above) become effective until such a successor Escrow Agent has been duly appointed. In the event that the APIL and the Transferee fail to appoint any successor Escrow Agent within the notice period prescribed under this Clause 8.3, the New Escrow Agent shall, on the expiry of the aforesaid notice period transfer the APIL Equity Shares lying in the SKI Designated Dematerialized Account in the manner as specified by the Transferee in this regard.

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9.3 Notwithstanding anything to the contrary in this Agreement, the New Escrow Agent shall not, in any event, be

liable for any failure or delay in the performance of its obligations under this Agreement if it is prevented from so performing its obligations by any existing or future law, order or regulation of a governmental, supranational or regulatory body, regulation of the banking or securities industry, any existing or future act of governmental authority, the lack of any requisite consent, license, approval, authorization, registration, declaration or filing, acts of God, war, terrorism, riot, rebellion, civil commotion, strike, lockout, other industrial action, general failure of electricity or other supply.

9.4 The New Escrow Agent undertakes and agrees to indemnify and keep the APIL and the Transferee indemnified against:

(i) All transfers wrongly made out of either or all of the SKI Designated Dematerialized Account, contrary to this Agreement; and

(ii) All direct losses arising out of or relating to the gross negligence, fraud, willful misconduct, illegal acts or acts in bad faith of the Escrow Agent.

9.5 The APIL and the Transferee hereby undertake and agree that the New Escrow Agent shall solely act in the capacity of an Escrow Agent and shall not be responsible for any other matter, issue or dispute between the APIL and the Transferee for any reason whatsoever and shall act strictly in accordance with this Agreement and shall be responsible to entertain all written correspondences received as per the terms hereof from the APIL and the Transferee, and the New Escrow Agent shall not be made party to any dispute, except to provide any evidence or statement for any dispute or unless there is breach of the agreed terms, gross negligence, wilful breach, fraudulent conduct, wilful misconduct, illegal acts or acts in bad faith on the part of the New Escrow Agent or not acting as per the terms hereof."

37. Drawing attention to Clause 4.1 of the Escrow Agreement, Ms. Tripathi submits that, though the said clause, towards its conclusion states that, *simultaneously with the execution of the Escrow Agreement,* APIL would handover, to the new Escrow Agent, a duly

signed irrevocable mandate/letter for transferring the APIL shares in AICPL from the Demat account of APIL to the Demat Account of MIPL, no such letter has been issued till date.

38. Ms. Tripathi submits, finally, that though the clauses of the Escrow Agreement dated 19th July, 2021 may be somewhat unhappily worded, there has, in fact, been no transfer of shareholding of APIL in AICPL to MIPL. A holistic reading of the clauses of the Escrow Agreement, she submits, would indicate that all parties have maintained restraint qua this transfer and are not effectuating it, during the period para 5 of the order dated 5th March, 2021, of Bakhru, J., continues to remain in operation. The shares of APIL in AICPL, she submits, would be transferred to MIPL only after the stay granted by para 5 of the said order is lifted or vacated by this Court. The apprehension of Mr. Mukesh Anand, is, therefore, according to her, unfounded, and no case is made out to grant the reliefs sought in this application.

Consideration and Analysis

39. A holistic appreciation of the facts, and the manner in which APIL has conducted itself in these proceedings, I am afraid, does not compel this Court to repose even the slightest confidence in APIL, at least regarding its inclination to abide by orders passed by this Court.

40. Against a total awarded amount of around ₹ 242.28 crores till 15th November, 2021, as stated by Landmark in this application, till date, the only amount deposited before the Registry of this Court by

APIL is ₹ 14,90,48,878/.

41. The undertaking by APIL to this Court through learned Senior Counsel, as advanced on 25th April, 2019, to deposit ₹ 46.01 crores, has not been honoured till date, despite the Ansals being, even as per the submission of Ms. Tripathi, one of the largest real estate agglomerations in India, with thousands of customers across the length and breadth of the country.

42. The default, by APIL, in complying with the undertaking given by it to this Court constrained Landmark to re-approach this Court, whereupon this Court, *vide* order dated 24th September, 2019, restrained APIL from disposing of, alienating, encumbering, or otherwise parting possession with its assets, except in the ordinary course of business. Despite this order, and without so much as batting an eyelid, APIL proceeded with impunity, to enter into agreement on 23rd September, 2020, for transfer of its shareholding in AICPL to MIPL, keeping this Court entirely in the dark. This, again, constrained Landmark to reapproach this Court *vide* EA 278/2021. Adjudicating the said application, this Court clearly observed, in its order dated 5th March, 2021 (per Bakhru, J.) that the MoU dated 21st September, 2020, was not in accordance with the order dated 24th September, 2019. Accordingly, this Court directed *status quo* to be maintained regarding the shareholding of APIL in AICPL till further orders, and also observed that the assets of the Award Debtor, i.e. the Ansals, were required to be preserved.

43. This order, too, did not deter APIL from entering into a fresh

Escrow Agreement, without leave of the Court. A reading of the covenants of the Escrow Agreement make it clear that APIL has relinquished its rights over its shareholding in AICPL and that it has ceded all rights to deal with the shares to MIPL. APIL has, again without batting the proverbial eyelid, proceeded to shift the Escrow Agent and enter into yet another Escrow Agreement with the new Escrow Agent. Clause 2.4 of the Escrow Agreement dated 19th July, 2021 goes to the extent of stating that complete consideration, against the transfer of shares also stands paid, though, according to Ms. Tripathi, this is an erroneous recital. It continues to remain, however, unaltered till date. To the same effect is the recital in Clause 4.2 of the Escrow Agreement, to the effect that MIPL has paid complete consideration to APIL against the transfer of shares held by APIL in AICPL. Clause 6.2, for its part, declares, unambiguously, that no right or interest in its shareholding in AICPL – of which this Court had directed *status quo* to be maintained – remains with APIL, and stands entirely relinquished in favour of MIPL.

44. The ceding, by APIL, of its entire right and interest in its 66.24% shareholding in AICPL to MIPL, regarding which the Escrow Agreement is clear and unambiguous and which even Ms Tripathi was unable to dispute, clearly alters the *status quo* regarding the shareholding of APIL in AICPL and is blatantly in the teeth of para 5 of the order dated 5th March, 2021 of Bakhru, J. It amounts to no less, in my considered opinion, than a challenge to the authority of this Court, and the orders passed by it.

45. That apart, though Ms Tripathi sought to submit that the

"unhappily worded" Escrow Agreement dated 19th July, 2021 conveyed an erroneous impression, and that the recital, in Clauses 2.4 and 4.2 thereof, that full consideration, against such transfer, stood paid by MIPL, was incorrect, she has not been able to draw my attention to any material on the basis of which her contention that, in the Escrow Account maintained by SKI Capital Services Ltd., 66.24% shareholding in AICPL still stands in the name of APIL. No communication or other document, which could disabuse this Court of the correctness of the recital, in Clauses 2.4 and 4.2, of passing of complete consideration has, either, been brought to my notice. In a transaction of this magnitude, if such a serious error is contained in a commercial contract, the least that would be expected is that it would be rectified by means known to law. Nearly 6 months have passed since the execution of the Escrow Agreement; no attempt at correcting the "erroneous" recital is, however, forthcoming.

46. It appears, on the face of it, that the Ansals have scant regard for the orders passed by this Court or for the undertakings tendered by it. Mr. Mukesh Anand is, *prima facie,* correct in his apprehension that, unless strong steps are taken by the Court, irrespective of orders which this Court may pass from time to time, the Ansals would leave no stone unturned in avoiding their obligations under the award dated 7th September, 2018, which, by virtue of the order dated 25th April, 2019 read with orders dated 1st August, 2019 and 3rd September, 2019, has become enforceable *in toto*, as the stay of the award, granted by the earlier order dated 25th April, 2019, stands vacated owing to the Ansals' own default in abiding by its undertaking tendered to this Court.

47. *Prima facie,* therefore, the Ansals, as the Award Debtors under the award dated 7th September, 2018, have become liable to secure the entire awarded amount including interest, which, undisputedly, is in the realm of ₹ 200 crores (as per Landmark, ₹ 242.28 crores).

48. In these circumstances, this Court is not inclined to continue its decision to secure the amounts awarded to Landmark by the award dated 7th September, 2018 by way of securing of immovable properties or other such assets. These orders, in my view, require to be altered and modified and the prayers in the present application of Landmark, deserve to be allowed, at least partially.

49. Of the prayers in the present application, prayer (a) cannot be granted, as no occasion exists to completely freeze all sales to be carried out by the Ansals till disposal of the Execution Petition. Prayer (b) is in the nature of a request for disclosure, which, too, cannot be granted at this stage. The petitioner is, however, at liberty to apply separately for the said relief. Prayer (c), again, is in the nature of a substantive prayer to undo the sale of shares of APIL in AICPL to MIPL. Apart from the fact that a relief would require separate substantive proceedings to be initiated, no such direction is required, to secure the interests of Landmark. Prayer (e) seeks initiation of garnishee proceedings against HDFC Bank. Given the order I propose to pass, at this stage, I am not inclined to accede to the prayer.

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, ₹ 32 crores (₹ 46.01 crores less ₹ 14,90,48,878/-, rounded off) being the differential amount remaining to be deposited, out of the principal amount of ₹ 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 ₹ 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 ₹ 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 ₹ 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.

53. The application stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

JANUARY 5, 2022
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