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

Date of decision: 08th DECEMBER, 2025

IN THE MATTER OF:

\+ **ARB.P. 1755/2025**

LOGIX TECHNOPARK PVT LTD .....Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate, Mr. Sanjay K. Shandilya, Mr. Abhishek Kumar Singh, Ms. Molly Agarwal, Mr. Adit Srivastava, Mr. Shekhar Kumar and Ms. Piya Uppal, Advocates

versus

ATS HEIGHTS PVT LTD .....Respondent

Through: Mr. Saifur Rahman Faridi, Mr. Ishaan Saraswat, Mr. Anoop Rawat, Mr. Saurav Panda, Mr. Arjun Singh Rana and Mr. Aditya Marwah, Advocates for R-1

(56)

\+ **O.M.P.(I) (COMM.) 257/2024 & I.A. 40537/2024**

LOGIX TECHNOPARK PVT. LTD. .....Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate, Mr. Sanjay K. Shandilya, Mr. Abhishek Kumar Singh, Ms. Molly Agarwal, Mr. Adit Srivastava, Mr. Shekhar Kumar and Ms. Piya Uppal, Advocates

versus

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ATS HEIGHTS PVT. LTD .....Respondent

Through: Mr. Saifur Rahman Faridi, Mr. Ishaan Saraswat, Mr. Anoop Rawat, Mr. Saurav Panda, Mr. Arjun Singh Rana and Mr. Aditya Marwah, Advocates for R-1

Mr. Ashish Dholakia, Senior Advocate with Mr. Raunak Dhillon, Ms. Niharika Shukla, Ms. Ananya, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. ARB.P. 1755/2025 has been filed by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Arbitration Act'*) for appointment of an Arbitrator to adjudicate on the disputes which have arisen between the parties.

2. O.M.P.(I) (COMM.) 257/2024 has been filed by the Petitioner under Section 9 of the Arbitration Act seeking interim injunction against the Respondent restraining it from creating any third party rights over the area earmarked under the Addendum to the Compensation Agreement dated 02.03.2017.

3. The present Petitions arise out of a long commercial relationship between the Petitioner and the Respondent. It is stated that both companies are engaged in the real estate and commercial development sector. The genesis of the present dispute goes back to the year 2013, when the Respondent, then the owner of a land parcel measuring 46,340 sq. meters bearing Plot No. A-1/A, Sector-124, Noida, was approached by the Petitioner for the purchase of four acres out of the said land. It is stated that

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a Memorandum of Understanding (MoU) dated 17.05.2013 was entered into by the Petitioner and the Respondent, under which the Petitioner paid Rs.79,28,00,000/- to the Respondent as part consideration for the land, and the Respondent undertook to obtain statutory approvals for sub-division of the land and thereafter execute a sale deed in favour of the Petitioner. It is stated that the Respondent failed to obtain the required approvals and could not complete the sale transaction. Consequently, the parties mutually agreed to withdraw from the proposed sale and executed a Compensation Agreement dated 01.03.2017, whereby the MoU stood cancelled and the Respondent undertook to refund the amount received and pay compensation of Rs.324 crores to the Petitioner within 54 months from 01.03.2017. It is stated that the parties also agreed that an earmarked commercial saleable area of 2,70,000 sq. ft., described in Schedule-A of the Agreement, would be set aside to secure this compensation. It is stated that immediately thereafter, the Respondent issued Cheque No. 1033 dated 03.03.2017 for Rs.79,28,00,000/-, to the Petitioner which the Petitioner encashed as repayment of the earlier advance. It is stated that to refine the commercial structure, the parties executed an Addendum dated 02.03.2017, modifying the Compensation Agreement. Under this Addendum, the earmarked area was enhanced from 2,70,000 sq. ft. to 3,24,000 sq. ft. and valued at Rs.10,000 per sq. ft. It was further agreed that any shortfall between the value realised from the earmarked area and the compensation amount of Rs.324 crores would be borne by the Respondent. It is stated that the Addendum also expressly provided that its terms would supersede the original Compensation Agreement wherever inconsistent. It is stated that on the request of the Respondent, the parties executed a Supplementary

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Agreement dated 13.03.2019, under which the compensation was reduced to Rs.90 crores, payable within six months, and the earmarked area was correspondingly reduced to 90,000 sq. ft. It is stated that this restructuring was based on the reduced time value of money. It is stated that the said amount of Rs.90 crores was not paid by the Respondent, resulting in disputes between the parties. It is stated that Clause 2.3 of Supplementary Agreement 13.03.2019 contains an Arbitration Clause which provides that any dispute arising between the parties would be referred to a mutually appointed Sole Arbitrator. The said Clause also provides that the seat and venue of arbitration would be at New Delhi. It is stated that when despite repeated assurances, the Respondent failed to pay Rs.90 crores, the Petitioner issued a settlement notice dated 14.03.2023, served on 16.03.2023, granting 15 days time to the Respondent for payment. It is stated that since the Respondent failed to respond to the said settlement notice, a notice under Section 21 of the Arbitration Act was sent by the Petitioner on 19.08.2023 invoking arbitration. It is stated that the said notice was not replied to by the Respondent. It is stated that the Petitioner issued another notice dated 01.02.2024, nominating Hon'ble Mr. Justice Krishna Murari (Retd., Supreme Court of India) as Sole Arbitrator. It is stated that since the Respondent failed to respond to both the notices, the Petitioner approached this Court by filing ARB.P. 404/2024 seeking appointment of an Arbitrator to adjudicate on the disputes between the parties. Notice in ARB.P. 404/2024 was issued on 22.03.2024, returnable on 20.05.2024. It is stated that on the next date of hearing, i.e. 20.05.2024, learned Counsel appearing for the Respondent submitted that CIRP proceedings against the Respondent had been initiated by the NCLT on 22.04.2024 and a

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moratorium was in force. It is stated that relying on this representation, the Petitioner withdrew ARB.P. 404/2024 with liberty to take appropriate steps. It is stated that after withdrawing the Arbitration Petition, the Petitioner discovered that the NCLAT had already passed an order on 09.05.2024, directing that no further steps in the CIRP be taken except construction under supervision of a retired Judge. It is stated that this fact was not disclosed before this Court when the earlier petition was withdrawn.

4. It is stated that in order to safeguard its contractual rights, the Petitioner approached the this Court by filing O.M.P.(I)(COMM.) 257/2024 under Section 9 of the Arbitration Act seeking to restrain the Respondent from creating third-party rights over the earmarked area. It is stated that in the said Petition, this Court on 08.08.2024, issued notice and *prima facie* held that the Respondent's objection based on the CIRP moratorium was misconceived. This Court further observed that Section 9 of the Arbitration Act empowers the Court to protect the arbitral corpus even during CIRP as long as the relief sought does not interfere with the control of the IRP under the IBC.

5. It is stated that in view of the Respondent's persistent default, and in view of the liberty granted by this Court vide Order dated 20.05.2024, the Petitioner filed ARB.P. 1755/2025 for appointment of a Sole Arbitrator.

6. It is pertinent to mention that a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) has been filed against the Respondent by certain entities to whom the Respondent owed money. By an Order dated 22.04.2024 the application was admitted and an IRP was appointed. The said Order was challenged by the Respondent and the erstwhile Director of the Respondent by filing Company Appeal (AT)

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(Insolvency) No. 912 of 2024 & Company Appeal (AT) (Insolvency) No. 926 of 2024 respectively, before the NCLAT. The said Appeals were admitted and the following interim order was passed by the NCLAT on 09.05.2024:

> "*10. List both the Appeals on 12.07.2024 for disposal.*
>
> *In the meantime, in pursuance of the impugned order dated 22.04.2024, no further steps shall be taken in the CIRP except the construction to be carried out under the IRP with the assistance of officers and staff of the corporate debtor under the supervision of Justice Sunil Gaur as directed by the Adjudicating Authority at paragraph 30.*
>
> *The RERA account which are earmarked for the construction of the project, under the instructions of the IRP and other signatories of the fund may be used for construction. Financial Creditors also to extend co-operation for release of fund for the purpose of the construction.*"

7. It is also pertinent to mention that when O.M.P.(I)(COMM.) 257/2024 came for hearing for the first time, the Respondent was being represented by its erstwhile management and not by IRP. This Court while issuing notice in the said Petition also issued notice to the IRP. Relevant portions of the said Order reads as under:

> "*12. Prima facie, the submission is misconceived. If there is an arbitration agreement between the parties and an arbitrable dispute exists, Section 9 of the 1996 Act obligates the Court, in a situation in which orders of protection are justified, to protect the arbitral corpus, by passing appropriate orders.*
>
> *13. Besides, even if the submission of Mr. Kalra that*

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> *the IRP continues to remain in control of the disputed property is to be accepted, the order being passed today does not, in any way, affect the control of the IRP over the property, as the petitioner is only asking for a restraint against creating third party interests in respect of the disputed property.*
>
> *14. The limited permission that has been granted by the learned NCLAT is only with respect to the construction to be carried out by the IRP under the supervision of a retired Judge of this Court. No permission to sell or otherwise alienate the property has been granted by the learned NCLAT.*
>
> *15. In view thereof, issue notice. Notice be additionally issued to the respondent by all modes including to IRP Mr. Gaur Katiyar*."

8. Assets of the Respondent are in control of the IRP under the IBC. The IRP is taking steps for restructuring the company in accordance with the provisions of the IBC.

9. Learned Counsel appearing for the IRP opposes the present Petition. He states that the Order passed by the NCLAT is only for the purpose of protecting the home-buyers. He states that other proceedings against the Respondent cannot be permitted to continue as that would be in the teeth of Section 14 of the IBC. To substantiate his contention, he draws the attention of this court to the Judgment passed by the Apex Court in Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd., **2017 SCC OnLine SC 1362**, wherein the Apex Court has held as under:

> "***5****. The mandate of the new Insolvency and Bankruptcy Code, 2016, is that the moment an insolvency petition is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution*

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or continuation of pending suits or proceedings against corporate debtors.

6. This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated July 6, 2017 and further state that the effect of section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is non est in law."

(emphasis supplied)

10. He also draws the attention of this Court to a Judgment passed by a co-ordinate Bench of this Court in Mercury Car Rentals (P) Ltd. v. Shiva Industrial Security Agency Gujrat Limited, **2024 SCC OnLine Del 6646**, wherein, while interpreting a similar stay Order, the co-ordinate Bench has held as under:

"*3. The former Director of the respondent assailed the aforesaid order before the National Company Law Appellate Tribunal3 by way of Company Appeal (AT) (Insolvency) No. 1446 of 2023 (Sameer Sharma v. Lease Plan India Pvt. Ltd.). The learned NCLAT, while issuing notice on the appeal, observed/ruled as under:*

"09.11.2023:

Learned Senior Counsel for the Appellant submits that the Adjudicating Authority has admitted Section 9 Application on the ground that there was breach of Master Lease Agreement. It is submitted that with regard to the 2nd part of the Settlement regarding 120 vehicles, No-Objection-Certificate has not been issued, hence, the said settlement itself was breached. It is submitted that

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the Appellant without prejudice to his rights and contentions is ready to deposit an amount of Rs. 1,49,89,587/- which was rental towards unpaid lease rental in the Court.

2. Learned Counsel appearing for the Respondents has refuted the submissions made by Learned Counsel for the Appellant and submits that the amount which should be deposited is an amount of Rs. 2,28,49,880/- as was noticed in Paragraph 16 of the impugned order. He submits that with regard to sale of vehicles, there is no issue between the parties. It is submitted that vehicles are still in the custody of the Corporate Debtor which statement is denied by the Counsel for the Appellant. Submissions advanced by both the parties need scrutiny.

3. Issue Notice. Learned Counsel accepts notice on behalf of Respondents. Let a Reply be filed within three weeks. The Appellant may deposit an amount of Rs. 1,49,89,587/- by way of Fixed Deposit in favour of 'Registrar, National Company Law Appellate Tribunal, New Delhi' within three weeks from today.

4. Learned Counsel for the Appellant submits that the Appellant shall still make endeavor to settle the matter with the Operational Creditor. He may do so.

5. List this Appeal on 14.12.2023.

***In the meantime, no further steps shall be taken in pursuance of the order dated 16.10.2023**."*

11. This submission, again, completely begs the issue at hand. The moratorium imposed by the NCLT

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> *specifically restrains institution and continuation of any proceedings including arbitral proceedings against the respondent. The prayer in this petition is specifically for institution of arbitral proceedings against the respondent. It cannot, therefore, be granted while the moratorium is in place.*" (emphasis supplied)

11. In the opinion of this Court, the Order passed by the NCLAT does not have the effect of staying the Order dated 22.04.2024, passed by the NCLT, admitting the Application under Section 7 of the IBC and initiating CIRP proceedings against the Respondent. The Orders passed by the NCLAT and the NCLT are for protecting the rights of the home-buyers and for permitting certain activities so that the home-buyers do not suffer. Attention of this Court has also been drawn to the presence of a preferential lender, who has a superior interest in the property in question and the Compensation Agreement specifies the rights of the preferential lender. Relevant portions the Compensation Agreement reads as under:

> "3.....*The First Party agrees that receipt by it of the aforesaid sums, or any part thereof, shall am ~ ant to discharge of the obligation of the Second Party to pay s1.1ch sums to the First Party. It is hereby agreed amongst the Parties that 50% of the charges/fee/penalty payable to Noida for seeking extension of time for period upto January 18, 2019, for completion of construction and development of the Said Land shall be borne by the First Party and the First Party shall keep the Second Party indemnified for all such charges/fees/penalties. The second Party shall make payment of the Compensation Amount to the First Party after adjusting and deducting . (i) 50% of the charges/fees/penalty already paid by it, if any, in this regard; (ii) any charges/fees/penalty paid by the Second Party with respect to or on account of*

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agreements listed in it Schedule B hereof erstwhile Agreements") and the ·First Party shall keep the Second Party fully indemnified against any charges/fees/penalty payable towards or with respect to the Erstwhile Agreements. It is hereby agreed amongst the Parties that any taxes payable on or in respect of the Compensation Amount shall be borne and payable by First Party. The Second Party agrees to keep aside 2,70,000 sq.ft. of commercial saleable i.e. Super Built-up· space as prescribed in Schedule A ("Earmarked Area"), which area shall, from time to time as the Compensation Amount is paid, be reduced in the manner set out below) for the purpose of payment of the Compensation Amount and agrees that subject to the terms of this Agreement and the approval of the ***Preferential lender****, the sale proceeds from the sale I disposal of this Earmarked Area shall be used to pay the Compensation Amount or be deposited in the escrow account as described below. Provided however that simultaneously with any payment of an installment of the Compensation Amount by the Second Party in accordance with Clause 3, the total area of the Earmarked Area shall be automatically reduced by the same proportion that represents the total amount of Compensation Amount that has been paid till and including the payment of that installment. Upon the payment of the complete Compensation Amount to the First Party, the Second Party shall stand discharged of all its liabilities, obligations and dues towards the First Party and the First Party shall cease to have any rights, claims, or interest in the Earmarked Area or against the Second Party. It is clarified that till such time as the entire aggregate Compensation Amount has not been paid to the First Party, the Second Party shall have the right to sell all or any part of the said Land including the Earmarked Area without any prior permission from the First Party, provided that subject to consent of Preferential lender the sale proceeds to*

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the extent of the outstanding Compensation Amount, received from the sale of only the Earmarked Area but after set-off of the outstanding tax, governmental and other statutory dues payable thereon ("Earmarked Area Sale Amount"), shall be kept in a separate escrow account to be opened by the Second Party specifically in this regard and the funds from the said escrow account shall be utilized only for the purpose of payment of the outstanding Compensation Amount shall, subject to rights of the Preferential Lender, keep aside the relevant monies in its general bank account and utilize the same solely for payment of the Compensation Amount.

The Second Party shall execute the necessary documents including the escrow agreement prior to such sale of the Earmarked Area if permitted by the Preferential lender.

The Second Party shall submit a quarterly MIS to the First Party within 15 (fifteen) days of close of every calendar quarter describing the details of area sold in the commercial project to be developed on the Said land including from the Earmarked Area and the amounts received therefrom and credited to the escrow account as above and utilization of the same.

Further, the First Party hereby acknowledges that the Second Party has availed certain sums as debt from Piramal Enterprises Limited ("Preferential Lender", which term shall include any assigns, transferees and novatees of such person and any person refinancing whether in part or in whole such persons) for the repayment of which, the Second Party has granted the Preferential lender a prior and superior right to the proceeds of the sale of the retail/commercial and residential project ("Project") launched/to be launched by the Second Party on the Subject Land.

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The First Party further agrees and confirms to the Second Party that the right of the First Party to receive any part of the Compensation Amount is subordinate to the right of the Preferential lender to first receive repayment of the principal, interest and any penal amounts (collectively, "Preferential Debt") from the cash flows of the Project.

*****

8. That the First Party hereby undertakes, covenants, agrees, admits and acknowledges to the Second Party that simultaneously. with execution of this Agreement, save and except for the right to receive the Compensation Amount or the Earmarked Area in lieu thereof (as provided in this Agreement) all rights, claims and interest of the First Party, in the Subject Land or any other assets, property, business or operations of the Second Party or any of its shareholders/investors shall stand immediately, irrevocably and unconditionally extinguished such that the First Party is left with no rights, claims, disputes, charge, or interest in the MoU and/or the Subject Land, whether at present or at any time in the future. The right of the First Party against the Second party shall be limited to the right to receive the Compensation Amount or the Earmarked area or so much thereof as is still earmarked, in case of failure of the Second party to pay compensation amount in the manner set out in the Agreement. In the event, the second Party delays or defaults in the payment of the Compensation Amount, the First Party undertakes and covenant that the receipt of Earmarked Area, or so much thereof as is still earmarked, shall be the sole remedy available to it and the only relief that the First Party may claim in this regard shall be for specific performance by the Second Party of its obligation to handover the Earmarked Area or so much thereof as is

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> *still earmarked as provided under this Agreement.* ***The right of the First Party to initiate a legal action on the subject matter of this Agreement whether inter-se the First Party or against the Second Party shall be subject to the prior consent, in writing, of the Preferential Lender***.” (emphasis supplied)

12. In view of the fact that there is another preferential lender, whose rights are also included, this Court is of the opinion that the Order of the NCLAT cannot be construed as an absolute stay on the moratorium and, therefore, the moratorium still subsists and during the moratorium, the proceedings under Section 9 or 11 of the Arbitration Act cannot be permitted to proceed ahead.

13. Accordingly, both the Petitions are disposed of with liberty to the Petitioner to approach this Court once again by filing fresh Petitions under Section 9 and 11 of the Arbitration Act depending upon the outcome of the proceedings initiated under the IBC.

SUBRAMONIUM PRASAD, J

DECEMBER 08, 2025
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