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

+ **CS(COMM) 288/2019**

**VISTRA ITCL (INDIA) LIMITED & ANR. .... Plaintiffs**

Through: Mr. Sanjeev Puri, Sr. Adv. with  
Mr. Hardeep Sachdeva, Mr. Kamal  
Shankar, Mr. Abhimanyu Chopra,  
Mr. Aman Sharma and Mr. Gautam  
Kumar Bhargava, Advs.

versus

**LALIT KUMAR JAIN & ORS. .... Defendants**

Through: Mr. Rajiv Nayyar, Sr. Av. with  
Mr. Vaibhav Joglekar,  
Mr. Raghavendra Mohan Bajaj and  
Mr. Anirudh Bhakru, Advs. for D-1 to  
3.

**CORAM:  
HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

% **28.05.2019**

**I.A. 8024/2019 & I.A. 8025/2019 (exemptions)**

1. Exemptions allowed subject to all just exceptions.

**I.A. 8026/2019(application under Section 149 of CPC, 1908 read with Section 151CPC seeking time to file the balance court fees)**

2. In view of the averments made in the application, the application is allowed. The deficient court fees be deposited within a period of three days.

**CS(COMM) 288/2019**

3. Mr. Rajiv Nayyar, learned senior counsel who appears in the matter



along with the briefing counsel without notice or caveat has raised preliminary objections with respect to maintainability of the present suit. An objection has been raised that there is a previously instituted suit, Commercial Suit No. 11 of 2019, ***Pranay Lalit Kumar & Ors v. S.I. Developers Pvt. Ltd. & Ors***, pending before the District Court Pune, wherein the default notices and other the transaction documents have been challenged. It is contended that the subject matter of the present suit is identical and therefore in view of the principles of Section 10 Code of Civil Procedure, 1908 (CPC) the present suit is not maintainable. It is further urged that Plaintiff's application under O. 7 R. 11, CPC is also pending consideration and the same is listed for hearing on 13<sup>th</sup> June, 2019. Additionally, Mr. Rajiv Nayyar argued that the Court does not have territorial jurisdiction to entertain the present suit on the ground that the transaction in question relates to immovable property that is situated outside the jurisdiction of this Court. It is contended that the Plaintiffs are in management of the project in question. The repayment of the funding given to Defendant No. 4 was to be done from the sale of the project land. Reference was also made to the transaction documents to contend that the subject matter of the present suit is an immovable property notwithstanding the nature of prayer made in the plaint. Therefore the court does not have territorial jurisdiction under Section 16, CPC. In support of this submission reliance is placed on:

1. ***Splendor Landbase Limited v. Mirage Infra Limited and Anr. 2010 SCC Online Del 1455.***
2. ***Harshad Chiman Lal Modi v DLF Universal Ltd (2005) 7 SCC 791***



**3. *Sumer Builders Pvt. Ltd v. Narender Gorani 2015 SCC OnLine SC 953***

4. The Court has heard the counsel for the parties. The court has also perused the plaint in the suit filed before the District Court, Pune. In the said suit several parties have been arrayed who are not parties to the present suit. *Prima facie* the nature and subject matter of the two suits is also different. On the question of territorial jurisdiction, all the three judgments cited by Mr. Nayyar, do not appear to be applicable to the facts of the case. The facts of the aforesaid judgments are distinguishable and differentiable. The reliefs sought in the present suit are in the nature of money claims and the reliefs sought in the judgments were related to the immovable property. Be that as it may, this question has to be examined in detail and as of now, in view of the averments made in the plaint, the cause of action *prima facie* appears to have arisen within the jurisdiction of this Court. Further, the transaction documents provide for exclusive jurisdiction to the courts in Delhi to adjudicate upon the disputes arising therefrom.

5. Let the plaint be registered as a suit.

6. Issue summons in the suit. Mr. Raghavendra Mohan Bajaj, learned counsel appearing for Defendant Nos. 1 to 3 accepts notice. Written Statement be filed within 30 days from date of service of the complete paper book.

7. Issue summons to the remaining Defendants through all modes upon filing of Process Fee.



8. The summons to Defendants shall indicate that a written statement to the plaintiff shall be filed positively within 30 days from date of service of the complete set of paper book on the counsel for the Plaintiff. Along with the written statement, Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

9. Liberty is given to the Plaintiffs to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiffs, an affidavit of admission/denial of documents of the Defendants be filed by Plaintiffs, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

10. List before the Joint Registrar for marking of exhibits on 26<sup>th</sup> August, 2019.

11. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

12. List before Court on 1<sup>st</sup> October, 2019.

**I.A. 8023/2019 (application under Order XXXIX rule 1 & 2 CPC)**

13. The present suit has been filed for recovery for a sum of Rs. 448,75,58,347/- and for permanent and mandatory injunctions.

14. Issue notice. Mr. Raghavendra Mohan Bajaj, learned counsel appearing for Defendant Nos. 1 to 3 accepts notice. Issue summons to the remaining



Defendants through all modes upon filing of Process Fee.

15. The case of the Plaintiffs as stated in the plaint, is that Plaintiff No. 2 is a company incorporated under the laws of Singapore having its registered office at the address mentioned in the cause title. The present suit is filed by Mr. Kapil Mohan Gupta, duly authorized by Plaintiff No. 2 to file the present suit by virtue of board of resolution dated May 24, 2019.

16. It is submitted that Defendant Nos. 1 and 2 are the promoters of Defendant No. 4. Defendant No. 3 is a promoter and a majority shareholder of Defendant No. 4 and is a company incorporated under the provisions of the Companies Act, 1956. Defendants Nos. 1 and 2 are the promoters of Defendant No. 3. Defendants Nos. 1 to 3 are hereinafter collectively referred to as the "Promoters". Defendant No. 4 is a company incorporated under the Companies Act, 1956.

17. Defendant Nos. 1 to 4 and Plaintiff No. 2, entered into a Debenture Subscription Agreement dated 5<sup>th</sup> December 2014 ("**Series A DSA**"), whereby it was mutually agreed and decided between the parties to the Series A, DSA that, subject to the fulfillment of certain conditions precedent prescribed under the Series A DSA by Defendant Nos. 1 to 4, Plaintiff No. 2 would have the right and option, in its sole and absolute discretion, to subscribe to senior, rated, redeemable, transferable and interest bearing cumulative NCDs ("**Debentures**") in Defendant No. 4, as follows:

- (a) 160 (one hundred sixty) Series A Debentures of INR 1,00,00,000/- (Indian Rupees One Crore Only) each, aggregating to INR 160,00,00,000 (Indian Rupees One Hundred Sixty Crores Only)



("Series A Tranche 1"); and

(b) 40 (forty) Series A Debentures of INR 1,00,00,000/- (Indian Rupees One Crore Only) each, aggregating to INR 40,00,00,000 (Indian Rupees Forty Crores Only) ("**Series A Tranche 2**").

18. Defendant Nos. 1 to 4 and Plaintiff No. 2, voluntarily, willingly and without any coercion, also entered into another Debenture Subscription Agreement dated December 5, 2014 ("Series C DSA"), whereby it was agreed that subject to the fulfillment of certain conditions precedent prescribed under the Series C DSA, Plaintiff No. 2 shall have the right and option, in its sole and absolute discretion, to subscribe to the Debentures in Defendant No. 4, as follows:

(a) up to 35 (thirty five) Series C Debentures of INR 1,00,00,000/- (Indian Rupees One Crore Only) each, aggregating to an amount of INR 35,00,00,000/- (Indian Rupees Thirty Five Crores Only) ("**Series C Tranche 1**") ; and

(b) up to 45 (forty five) Series C Debentures of INR 1,00,00,000/- (Indian Rupees One Crore Only) each, aggregating to an amount of INR 45,00,00,000/- (Indian Rupees Forty Five Crores Only) ("**Series C Tranche 2**").

19. In furtherance of the Series A DSA and Series C DSA, Debenture Trust Deed ("Series A DTD" & "Series C DTD") executed between Defendant Nos. 1 to 4 and Plaintiff No. 1, whereby Defendant No. 4 appointed M/s. Vistra ITCL (India) Limited ("Plaintiff No. 1") as the trustee for the benefit



of Plaintiff No. 2 and to act as the agent of Plaintiff No. 2 to enforce the provisions of the Series A & C DTD and the Transaction Documents. Further, Share Pledge Agreements were executed by Defendant Nos. 1 to 4 in favour of Plaintiff No. 1 ("SDPL Share Pledge Agreement") in relation to pledging of 65,00,000 (sixty five lakhs) equity shares of Defendant No. 4, constituting 100% (one hundred percent) of the share capital of Defendant No. 4 held by Defendant Nos. 1 and 3 ("SDPL Pledged Shares"), for the purposes of securing the loan/ debt advanced by Plaintiff No. 2 to Defendant No. 4 under the Series A DSA and the Series C DSA and the re-payment thereof along with the Redemption Amounts. Deed of Personal Guarantee were also executed by Defendant Nos. 1 and 2 in favour of Plaintiff No. 1 in relation to the Series A and Series C DSA ("Series A PG" and "Series C PG"), whereby Defendant Nos. 1 and 2 agreed to guarantee and secure the immediate and due payment of the Redemption Amounts and the due and punctual discharge of the 'guaranteed obligations' as set out in the Series A and Series C PG. On 2<sup>nd</sup> March 2015 Plaintiff No. 2 subscribed to 160 Series A Debentures issued by Defendant No. 4 and remitted an amount aggregating to INR 160,00,00,000/- and on 17<sup>th</sup> January 2018 Plaintiff subscribed to 30 unlisted, redeemable, interest bearing Series C Debentures issued by Defendant No. 1 and remitted an amount aggregating to INR 30,00,00,000/-

20. Learned senior counsel for Plaintiffs has argued that on account of defaults by Defendants, Plaintiffs issued demand notices dated 5<sup>th</sup> October, 2018 and 11<sup>th</sup> October 2018 in terms of Section 13.2 of the Series A Debenture Trust Deed and Series C Debenture Trust Deed, calling upon



Defendants to cure the defaults within the prescribed period. The relevant portion of which reads as under:

"6. The Company and the Promoters have, following the receipt of the Tranche 1 Debenture Subscription Amount, continuously defaulted in complying with their obligations under the Series A DTD, Series A DSA and the Guarantee Deed. As such, inter alia, the following events have occurred in respect of the Company and the Promoters which are defaults as listed under Schedule XIV of the Series A DTD thereby constituting an Event of Default under the Series A DTD;-

(a) the Company and the Promoters have failed to obtain the EIA Clearance for (i) the entire Project (with total Carpet Area (including the terrace and balcony area) of not less than 8,16,281 (eight lakhs sixteen thousand two hundred eighty one) square feet (excluding the parking space, amenities space, etc.) on the Project Land, and (ii) for the common area, parking space, amenities space, lifts, lift lobbies, corridors, staircases, lift machine room, entrance lobbies, amenity/ club areas, parking, guard room, tanks, common terraces, roof top, services areas etc., in the Project; in accordance with the applicable Laws, within a period of 1 (one) year from December 5, 2014;

(b) the Promoters have failed to undertake and complete the construction of 9,584 (nine thousand five hundred eighty four) square meters of the FSI of the slum rehabilitation buildings viz. Buildings number A10, A11, A12 and Transit Building in the Rajiv Gandhi Slum and obtain the occupancy certificate from the SRA/PMC and, or, such other relevant department of the Governmental Authority in respect of the said A10, A11, A12 and Transit Building in the Rajiv Gandhi Slum, on or before the expiry of a period of 12 (twelve) months from December 5, 2014;

(c) the Promoters have failed to clear and vacate the entire Kelewadi Slum in accordance with applicable Laws and obtain



all necessary Approvals, authorisations, consents, permits, etc., in order to be able to construct the slum rehabilitation buildings viz. 7 (seven) buildings in the Kelewadi Slum bearing nos. A19 to A25 and such other slum rehabilitation building as are required for the generation, accrual, utilisation of the Vested FSI and the Additional FSI, on or before the expiry of a period of 18 (eighteen) months from December 5, 2014;

(d) the Promoters have failed to undertake and complete the construction and development of the slum rehabilitation buildings proposed to be constructed in the Kelewadi Slum viz. 7 (seven) buildings in the Kelewadi Slum bearing nos. A19 to A25 and such other slum rehabilitation building as are required for the generation, accrual, utilisation of the Vested FSI and the Additional FSI and also obtain the occupancy certificate from the SRA/ PMC and, or, such other relevant department of the Governmental Authority for such slum rehabilitation buildings in the Kelewadi Slum, on or before the expiry of a period of 42 (forty two) months from December 5, 2014;

(e) the Promoters have failed to (i) clear and vacate the entire Project Land and all access roads, of all Encumbrances; and (ii) construct the boundary walls and fence the entire. The Defendant Nos. 1 to 4 rather than complying with the aforesaid default notice and rectifying the same, issued a common reply dated 14<sup>th</sup> January 2019 denying that any defaults have been committed. Project Land; within a period of 4 (four) months from the Tranche 1 Deemed Date of Allotment, in accordance with the applicable Laws and to the satisfaction of the Series A Debenture Holder;

(f) any act, event, step, omission of any nature whatsoever, occurs that may adversely affect, hamper, harm, hinder or impact, (i) the development, construction, marketing and sale of the Project on the Project Land is prohibited, stopped, ceased, halted or delayed; and, or, (ii) the development and construction of the slum rehabilitation buildings in the Rajiv Gandhi Slum and, or, the Kelewadi Slum; and, or, (iii) or leads to interruption, stoppage, obstruction or hindrance to the



development, construction, marketing and sale of the Project including owing to the lack of Additional FSI and, or, the Vested FSI; and

(g) the Vested FSI and, or, the Additional FSI does not vest and, or, become available to the Company or the Company is unable to utilize/ use the Vested FSI, free from all Encumbrances for development, construction, marketing and sale of the Project on the Project Land within the timelines stipulated by the Series A Debenture Holder, due to any reason whatsoever.

8. In view of the above facts and circumstances, we hereby issue this Default Notice and call upon you, the Company and the Promoters, to rectify the above mentioned Events of Default which also constitute events as specified under Section 2.1.2 of the Guarantee Deed, within a period of 75 (seventy five) Business Days from the date of this Default Notice, in accordance with Section 13.2.2 of the Series A DTD. We further simultaneously invoke section 2.1.2 of the Guarantee Deed and call upon you the Guarantors to cure the abovementioned events within a period of 75 (seventy five) Business Days from the date of issuance of this Default Notice, in accordance with Section 2.1.2 of the Guarantee Deed. Please take notice that, in the event, you the Noticees Nos. 1 to 4, fail to cure the abovementioned Events of Default within a period as specified under the Series A DTD and the Guarantee Deed, we shall be entitled to exercise all rights, entitlements and remedies available under the Transaction Documents, applicable laws and equity."

21. Defendant Nos. 1 to 4, rather than complying with the aforesaid default notice and rectifying the same, issued a common reply dated 14<sup>th</sup> January 2019 denying that any defaults have been committed. Pursuant to this additional default notices were sent to Defendant Nos. 1 to 4 calling upon Defendant Nos. 1 to 4 to cure the defaults within a period of 45 days. In reply to these additional default notices Defendant Nos. 1 to 3, denied their



liability towards the Project as well as towards Plaintiff No. 2. The ratification period expired on 16<sup>th</sup> April 2019. On 22<sup>nd</sup> May 2019 Plaintiff issued demand notice under the Deed of Personal Guarantee for Series A and Series C Debentures, calling upon Defendant Nos. 1 and 2 to make payments of the Redemption Amounts.

22. Learned senior counsel further argued that forensic diligence report available with Plaintiff No. 2 indicates that Defendant No.1 to 4 are habitual and perpetual defaulters and as per the credit rating report dated January 18, 2019 published by Brickwork Ratings, the credit ratings assigned to INR 177,00,00,000/- non-convertible debentures issued by Defendant No. 4 have been de-graded in recent times.

23. It is further stated that Defendant No. 2 has already fled from the country and is now residing in Switzerland and, or the United Kingdom and there is a *bona fide* and serious apprehension that Defendant No. 1, who is the father of Defendant No. 2 and a co-guarantor along with Defendant No. 2 may also flee from the country to evade his obligation under the Transaction Documents.

24. In view of the aforesaid facts, the Court is satisfied that Plaintiffs have made a *prima facie* case and the balance of convenience also lies in favour of the Plaintiffs and irreparable loss would be caused to them in case injunction is not granted. Huge amount have been expended by the Plaintiffs. Defendants *prima facie* appear to have defaulted in complying with the terms of agreement. The prayers sought in the plaint are for protection of the securities given under the transaction documents.



Defendant Nos. 1 to 3 are signatories to the loan credit documents and are jointly and severally liable for the amount due from Defendant No.4. Accordingly, till the next date of hearing, protecting the securities which have been pledged and the negative covenant contained in the agreement, Defendant Nos. 1 and 2 the guarantors, along with Defendant 3, are restrained from transferring, alienating, selling, parting with, disposing of, creating third party rights or interests or otherwise encumbering in any manner whatsoever any and all movable and immovable assets, shares, properties or any other assets.

25. Defendant Nos. 1 to 3 and 5 are further restrained from transferring or permitting to transfer or attempting to transfer any pledged shares, being 22,20,000 equity shares held in a dematerialized form, constituting 74% of the share capital of Defendant No. 5 in any manner. Defendant Nos. 1 to 4 are further restrained from or permitting a Transfer or attempting to Transfer any Pledged Shares, being 65,00,000 equity share constituting 100% of the share capital of Defendant No.4.

26. Provisions of Order 39 Rule 3 be complied within one week.

27. This order be given dasti under signatures of the Court master.

**SANJEEV NARULA, J**

**MAY 28, 2019**

*Pallavi*