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

+ CS(COMM) 288/2019 & I.A. 6053/2023

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

Through: Mr. Amit Sibal and Ms.  
Malvika Trivedi, Sr. Advs. with  
Mr. Hardeep Sachdeva, Mr.  
Kamal Shankar, Ms.  
Priyamvada Shenoy, Mr.  
Pradyumn Sharma, Mr. Kshitiz  
Rao, Mr. Vinay Tripathi, Mr.  
Saksham Dhingra, Mr. Mayank  
Bhargava, Mr. Darpan  
Sachdeva and Mr. Shailendra  
Slaria, Advs.

versus

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

Through: Mr. Arvind Nigam, Mr. Jayant  
K. Mehta & Mr. Rajshekhar  
Rao, Sr. Advs. with Mr. Ankur  
Chawla, Ms. Garima Bajaj, Mr.  
Raghavendra M. Bajaj, Mr.  
Agnish Aditya, Ms. Anu  
Srivastava, Ms. Prerna  
Mahajan, Mr. Nikhil Bamal,  
Mr. Kumar Karan and Mr.  
Areeb Amanullah, Advs.

**CORAM:  
HON'BLE MR. JUSTICE YASHWANT VARMA**

**ORDER**  
**28.03.2023**

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**I.A. 5728/2023**

1. The instant application has been moved for permission being accorded for sale of the property of defendant no.3 located at Shanti Niketan Phase III, Survey No. 138, Hissa No.5 admeasuring 13,376.55 sq. meters lying at Village Pashan, Taluka Mulshi, District



Pune.

2. For the purposes of evaluating the prayer which is made and to briefly encapsulate the dispute which forms the subject matter of the suit the Court, deems it apposite to extract the following passages from the order of 30 July 2019:

“39. Despite directions contained in the order dated 10th July 2019 till the time of writing this judgment, the Court has not been shown the assets of Defendants, apart from a strong statement that Defendant No. 3 has several ongoing projects. At this stage, although the Court is not adjudicating the merits of the case, I cannot ignore the most fundamental aspect that the financial transaction is not disputed. Defendant Nos. 1 to 3 admit receipt of money. The influx of the funds is a matter of record. The funding is thus transparent and admitted. The terms of the contract stipulate rate of interest and on that basis, concededly the outstanding dues aggregate to Rs. 450 crores (approx). Defendants contend that Plaintiff No. 2 is in control of affairs and is responsible for the stalemate on the payments. These questions are all subject matter of trial and I can only take a prima facie view. To me the documents on record exhibit a loan transaction and a default on the part of the Defendants owing to longstanding disputes. In order to allow the creditor to remain competitive, the security for its investment is of paramount importance. Plaintiff No. 2 poured in the money with the intent of reaping commercial benefits from the transaction. Today the security in the nature of pledged shares has disappeared, leaving Plaintiffs vulnerable to accumulating a bad debt. Whether indeed the structure of the transaction between the parties was that of investment or partnership is not discernible from the documents. The material before me prima facie shows the transaction to be a money lending transaction. Plaintiff also expressed serious doubts about Defendant’s credentials because of the concealed merger of Defendant Nos. 5 and 3 which according to them has prejudiced them and has resulted in erosion of this prime security. There are many conflicting zones between the parties that would require adjudication and I am reluctant to get drawn into this controversy at this stage.

40. The preponderant factor that persuades the Court to issue directions, as provided hereinafter is the disappearance of the pledged shares. At the time of the disposal of the suit several intricate topics would require detailed explanation and deeper probe, but it is especially vital that such questions are not rendered irrelevant because of circumstances. The conduct of the Defendants and the admitted infusion of funds, read with clauses providing for the repayment and the interest amount, leads to an inevitable conclusion that Defendants are prima facie in default. This calls for a more comprehensive undertaking to be given by the Defendants. Defendant also made alternate proposals and during the course of arguments, Mr. Kaul agreed that Defendant No. 3 can be ordered to



keep 10% of the sale value in a no-lien account, subject to further orders in the application and provide the land parcel ad-measuring about 66 acres situated at villages Manjaribudruk, Pune as security.

41. The Court is conscious of the volatility and uncertainty in the real estate markets and the general slowdown in the growth in this sector, as contended by the Defendants. It has been argued that the effect of aforesaid orders is that Defendant Nos. 1 to 3 are unable to function and undertake their business in its usual and ordinary course. It is also submitted that real estate business thrives on the reploughing/reinvestment of receivables. I agree with these submissions. The realtor's portfolio of assets would naturally be the properties that are under construction. By virtue of the order of injunction granted vide order dated 28th May 2019, Defendant Nos. 1 to 3 are prevented from alienating units/properties in their ordinary course of business to generate monies from their purchaser/customers and in the absence of inflow of money into the Company, Defendant Nos. 1 and 3 may not even be able to meet their day to day expenses. It is also crucial for Defendant No. 3 to remain afloat. Sustainability of Defendant No. 3 is necessary even for the Plaintiff. Due to the hardships being faced by Defendant Nos. 1 to 3 and taking note of the serious implications that an injunction order can have in view of the nature of business of Defendants, this Court is persuaded to take an alternate approach to resolve the stalemate and conundrum.

42. Till the application is heard and decided, the Court will also have to ensure that Defendant No. 3 does not fetter away its assets to render the Plaintiff without any effective recourse. Having given my thoughtful consideration on every aspect, I feel that since the security being offered by the Defendants in the nature of Options 1, 2 & 3 cannot be accepted, the alternate proposal of depositing an amount, in a separate no lien account, generated from the sale of each flat or unit from any of Defendant No. 3's ongoing project or projects proposed to be launched in future, till further orders of this Court, is a more viable and a purposeful approach in the current scenario. Thus, notwithstanding the rejection of the options given by Defendants, till such time the Court takes a final decision on the application, it is necessary that an urgent relief be granted to Defendant Nos. 1 to 3 by way of modification/variance/clarification of the order dated 28th May 2019, so that they can undertake further development of the ongoing projects. Defendant Nos. 1 to 3 have volunteered to deposit 10% of the amount, in a separate no lien account. However, in order to balance the equities and in the interest of justice and having regard to the facts of the case as noted above, it would be appropriate to order Defendant Nos. 1 to 3 to deposit of 25% of the amount generated, in a separate no lien account, from the sale of each flat or unit from any of Defendant No. 3's ongoing project or projects proposed to be launched in future, either independently or under a joint venture or partnership etc. It is further clarified that the amount generated from sale of each flat or unit should be construed to mean and include all amounts received whether, in the form of booking amount, part-payment or final payment, received on or after 31 st



July 2019. These amounts shall not be utilized for any purpose without the permission of the Court.

43. The above condition shall be strictly adhered to by Defendant Nos. 1 to 3, and they shall submit the amounts in the Court on a fortnightly basis. The above condition shall be implemented subject to the Defendant Nos. 1 to 3 filing an affidavit, giving complete details of the sale transaction that were executed on or after the date of passing of the order dated 28 th May 2019 with full particulars as to the details of the property, the amount received thereunder from the prospective purchaser and the balance amount due, along with the list of its ongoing projects and their stage of construction. Defendant Nos. 1 to 3 must also furnish affidavits for any future project that Defendant No. 3 would undertake in the future, until further orders of this Court. Further, Defendant No. 3 will continue to be restrained from alienating/selling any lands held by the Defendant No. 3 without permission of the Court, as mentioned in their note of submissions.

44. This affidavit shall be filed within a period of one week from the date of the passing of the order.

45. Subject to the above, the order dated 28th May 2019 is modified / clarified to the effect that it does not restrict Defendant No. 3 to carry out its routine/ordinary course of business which includes the construction and development of its projects, undertake sale of flats/units being developed by Defendant No. 3 and to receive sale proceeds therefrom; enter into fresh development agreements, joint ventures agreements and to receive consideration therefrom. However, the sale of flats/Units being developed by Defendant Nos. 1 to 3, is subject to the above-mentioned conditions. Defendants have sought further clarification by way of seeking permission to undertake corporate restructuring in the nature of Mergers and Amalgamations with Defendant No. 3. However it is not within the purview of this Court to expand or dilute the scope of its own order by way of a clarification to its previous order and therefore no clarification is necessary on the above aspect.”

3. As is manifest and evident from the ultimate directions which were framed by the learned Judge, the original order of injunction which had come to be passed on 28 May 2019 was modified and the defendant no.3 was permitted to carry on its ordinary business which included construction and development of housing projects as well as to undertake sale of flats/units being developed by the said defendant and to receive sale proceeds therefrom. The Court had further provided that from the sale proceeds that may be so obtained, 25% shall be placed in a No Lien Account. The Court had also provisioned



for fortnightly affidavits being filed by the defendant no.3 so as to monitor the activities being undertaken by them.

4. The present application essentially seeks the modification of the original order of injunction enabling the applicant to undertake the sale of the one particular plot mentioned in the present application.

5. Mr. Nigam, Mr. Mehta as well as Mr. Rao, learned senior counsels appearing for the applicant, have submitted that unless the sale is permitted to go through, it would essentially amount to stifling the defendants and putting them out of business itself. It was also contended that no prejudice shall be caused to the plaintiff since all amounts that may be obtained from that sale shall be available to be apportioned by the Court in terms of further directions that may be framed.

6. The prayers made are strenuously opposed by Mr. Sibal and Ms. Trivedi, learned senior counsels appearing for the plaintiffs, who have by way of a compilation of documents which has been filed, drawn the attention of the Court to the alleged defaults and disobedience of various directions issued by this Court in these proceedings.

7. It was submitted that as per the directions contained in the order of 30 July 2019 the defendant applicants were required to file affidavits fortnightly. However, it is brought to the attention of the Court that no affidavits for the period commencing from 16 January 2022 to 15 June 2022 were filed in accordance with the timelines as framed. Similarly for the period between 16 June 2022 and 31 December 2022 it was pointed out by Mr. Sibal that affidavits of compliance were filed only on 16 February 2023. However, copies of those affidavits are stated to have been served upon the plaintiffs only around 23/25 March 2023.



8. It is also contended by the plaintiffs that the land which is proposed to be sold has neither been valued nor has any valuation report been placed before the Court which may inspire confidence and warrant consideration of the prayers that are made in the present application.

9. Mr. Sibal has also taken the Court through the earlier orders passed in these proceedings and which had taken note of the allegations of funds being diverted as well as a failure on the part of the defendant no.3 to file its affidavits of disclosure.

10. Before the Court proceeds to consider and examine the prayers which are made in the present application it would appear appropriate to call upon the defendant no.3 to firstly ensure compliance with the earlier orders passed including the directions which stand incorporated in the order of 30 July 2019.

11. The Court consequently proceeds to frame the following directions: -

- a) Defendant no.3 applicants shall firstly place on the record full details of the total number of flats which are stated to have been sold by it between 30 July 2019 till date. It shall also place on the record requisite details of the inventory of flats presently controlled by it.
- b) Defendant no.3 shall also apprise the Court of the details of the No Lien Account which had to be created in terms of the directions issued earlier.

12. The Court frames the aforesaid directions bearing in mind the assertion of the plaintiffs that the total sales which were effected during this period amounted to only Rs.10,62,72,158.48 and that only a fixed deposit valued at Rs.2,65,68,036.87 came to be created. The



aforesaid assertion is disputed on behalf of applicant defendants with learned senior counsels submitting that an amount of approximately Rs.6.5 crores has been deposited in the No Lien Account.

13. In view of the aforesaid all details of sales of flats that may have been conducted by the defendants 1 to 3 from 30 July 2019 till date shall be placed on the record.

14. The Court also leaves it open to the applicant defendants to place on the record a valuation report which may indicate the value of the property which is proposed to be sold. However and in order to balance the interests of both sides, the Court shall also keep the issue of appointment of a Local Commissioner for the aforesaid and other allied purposes open for consideration on the next date.

15. The plaintiffs shall also respond to the various disclosures which have been made by the defendants in terms of the affidavits which have been circulated on or about 23/25 March 2023.

16. The prayers that are made in the instant application shall be taken up for consideration post the aforesaid processes being completed.

17. Additionally defendants 1 to 3 shall file their affidavits as per para 43 of the order dated 30 July 2019.

18. Let this matter be called again on 25.04.2023.

19. Let I.A. 6053/2023 be also called on the next date.

**YASHWANT VARMA, J.**

**MARCH 28, 2023**

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