

(2020) 07 DEL CK 0162

In the Delhi High Court

Case No : Original Miscellaneous Petition (I) (COMM.) No. 280, 281, 282, 283, 284, 285, 286 Of 2019

Neeru Jain & Ors

APPELLANT

Vs

Jasmine Buildmart Pvt. Ltd

RESPONDENT

Date of Decision : 27-07-2020

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9(1), 9(2), 13, 14, 17, 21
Insolvency And Bankruptcy Code, 2016 — Section 7, 61

Citation : (2020) 07 DEL CK 0162

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Akhil Sibal, Vipul Wadhwa, Swarna Kashyap, Deboshree Mukherjee, Bina Gupta, Sheena Taqui

Final Decision : Disposed Of

Judgement

Jyoti Singh, J

I.A. 721/2020 in O.M.P.(I) (COMM.) 280/2019

I.A. 715/2020 in O.M.P.(I) (COMM.) 281/2019

I.A. 716/2020 in O.M.P.(I) (COMM.) 282/2019

I.A. 717/2020 in O.M.P.(I) (COMM.) 283/2019

I.A. 718/2020 in O.M.P.(I) (COMM.) 284/2019

I.A. 719/2020 in O.M.P.(I) (COMM.) 285/2019

I.A. 720/2020 in O.M.P.(I) (COMM.) 286/2019

1. All the above applications are being decided by this common order since the original Petitions were decided by a common judgement by this Court.

2. Present Applications have been filed by the Petitioners seeking clarification /

modification of Order dated 21.10.2019 passed by this Court

restraining the Respondents from executing sale deeds in respect of the apartments in question as well as from parting with possession, to the extent

the Court directed that the interim order shall remain in operation only for the period prescribed under Section 9 (2) of the Arbitration and Conciliation

Act, 1996 (hereinafter referred to as the 'Act').

3. At the outset, it needs to be noted that judgement in the present Petitions was pronounced by the Court on 21.10.2019. Prior to the said date neither

party herein made any effort to bring to the notice of this Court that steps had been taken for commencement of the Arbitral Proceedings. It is only by

way of the present Applications that the said fact has been brought to the notice of this Court by the Petitioners.

4. In the present Applications Petitioners aver that prior to the pronouncement of the judgement, parties had taken steps to commence the Arbitral

Proceedings. The chronology, as averred, is that vide email dated 15.10.2019, Respondent had appointed a Sole Arbitrator to adjudicate the disputes

between the parties and vide emails dated 19.10.2019 and 29.10.2019, Learned Arbitrator apprised the Petitioners about his appointment. Petitioners

responded, by letter dated 31.10.2019, objecting to the unilateral appointment by the Respondent with intimation of the objection to the learned

Arbitrator. In the light of the objections raised by the Petitioners, learned Arbitrator withdrew his nomination and communicated the same vide email

dated 01.11.2019. Subsequent thereto, Respondent nominated another Arbitrator on 05.11.2019, which was again objected to by the Petitioners and

finally, Petitions were filed in this Court under Section 14 of the Act seeking termination of the mandate of the said Arbitrator.

5. Learned Senior Counsel for the Petitioners argues that chronology of facts and events indicates that parties took steps to commence Arbitral

Proceedings on 15.10.2019, which is prior to the pronouncement of the judgement by this Court and therefore Section 9(2) of the Act will have no

application to the present case.

6. Reply has been filed by the Interim Resolution Professional (IRP). It is not disputed in the reply that steps were taken for commencement of the

Arbitral Proceedings. Rather, it is admitted in para 7 of the reply that the Sole Arbitrator initially appointed by the Respondent had withdrawn once his

appointment was questioned by the Petitioners. Applications are contested on the ground that NCLT, vide its order dated 28.11.2019, in IB

No.1722/ND/2018, titled Mrs. Meera Ahuja & Ors. vs. Jasmine Buildmart Pvt. Ltd. has admitted the Application under Section 7 of the IBC, 2016

and has issued a moratorium under Sections 13 and 14 of the Act. An IRP has been appointed to take over the management of the Respondent

Company. On being aggrieved by the order of NCLT, one majority shareholder of the Corporate Debtor preferred an Appeal under Section 61 of IBC

before NCLAT. Vide order dated 29.11.2019, NCLAT has stayed the publication and formation of Committee of Creditors, however, the moratorium

has not been stayed and the Appeal is pending consideration.

7. A plain reading of Section 9(2) makes it clear that when a Court passes an order for any interim measure of protection under sub-Section (1) of

Section 9 of the Act, before the commencement of the Arbitral Proceedings, Arbitral Proceedings shall be commenced within a period of 90 days

from the date of such order or within such further time as the Court may determine. Section 21 of the Act deals with commencement of Arbitral

Proceedings and reads as under :-

“Section 21 - Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on

which a request for that dispute to be referred to arbitration is received by the respondent.”

8. The phrase “Arbitral Proceedings shall be commenced” in Section 9(2) has to be understood in light of Section 21 of the Act and when so read

it is evident that the Arbitral Proceedings would commence when the opposite party receives a request for the dispute to be referred to

Arbitration. This is clearly fortified from a reading of the judgement of the Supreme Court in Sundaram Finance Ltd. v. NEPC

India Ltd. (1999) 2 SCC 479. The relevant para of which reads as under :-

“11. The reading of Section 21 clearly shows that the arbitral proceedings commence on the date on which a request for a dispute to be

referred to arbitration is received by the respondent. It is in this context that we have to examine and interpret the expression “before or

during arbitral proceedings” occurring in Section 9 of the 1996 Act. We may here observe that though Section 17 gives the arbitral

tribunal the power to pass orders the same cannot be enforced as orders of a Court. It is for this reason that Section 9 admittedly gives the

Court power to pass interim orders during the arbitration proceedings.â??

9. Reading Section 9(2) conjointly with Section 21 can lead only to one inevitable conclusion that when the proceedings commence prior to the Court

passing an order granting interim relief to a party under Section 9(1) of the Act, provisions of Section 9(2) would have no application. In view of this

settled position of law Applications seeking modification deserve to be allowed.

10. Direction of the Court in para 52 of the judgement dated 21.10.2019, whose modification is sought, is as follows :-

â??52. Petitioners must take steps for constitution of the Arbitral Tribunal as the present interim order shall remain in operation only for

the period as prescribed in Section 9(2) of the Actâ?!.â??

11. This direction is deleted and the Judgement dated 21.10.2019 stands modified to this limited extent. Applications are disposed of accordingly.