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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 8th May, 2024*

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O.M.P.(I) (COMM.) 137/2024**DLF LIMITED**

..... Petitioner

Through: Mr. Rajiv Nayar, Mr. Darpan Wadhwa, Sr. Advs. with Ms. Ruby Singh Ahuja, Mr. Pravin Bahadur, Mr. Kartik Nayar, Mr. Ishan Gaur, Ms. Aakriti Vohra, Ms. Kanika Gomber, Ms. Manjira Dasgupta, Ms. Megha Dugar, Mr. Jappanpreet Hora, Mr. Saurabh Kumar, Mr. Amer Vaid & Mr. Arjun, Advs.

versus

**TWENTY FIVE DOWNTOWN REALTY LIMITED
& ORS.**

..... Respondents

Through: Mr. Saurabh Kirpal, Sr. Adv. with Ms. Khushbu Chhajer & Ms. Adya Luthra, Advs. For R-1 (M-9665174444)
Mr. Karan Bharihoke, Adv. For R-2 (M-8826122888)
Mr. Prateek Seksaria, Sr. Adv. with Mr. Sajit Suvarna, Mr. Nirav Shah, Ms. Aneesa Cheema, Ms. Shivani Khanwilkar, Mr. Varun Kalra, Mr. Krishan Kumar & Mr. Pranav Khanna, Advs. for R-3 (M-9871452750)
Mr. Amit Sibal, Mr. Sanjoy Ghose, Senior Advs. With Mr. Rishi Agrawala, Mr. Anirudh Sharma, Mr. Ankit Banati, Mr. Shravan Niranjana, Mr. Prabhav Bahuguna, Ms. Shriya Chanda, Advs. for R-4 (M-9811428913)
Ms. Paulomi Mehta and Ms. Srishti



Khare, Advs. For PNBHFL. (M-8744049255)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

Background

2. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter, '1996 Act'*) filed by the Petitioner-DLF Ltd. against the following four parties: -

- (i) Respondent No. 1-Twenty-Five Downtown Realty Limited (Previously known as Joyous Housing Ltd.)
- (ii) Respondent No. 2- Twenty-Five South Realty Limited
- (iii) Respondent No. 3-Hubtown Limited
- (iv) Respondent No. 4-OCM India Opportunities XB Alternate Investment Fund-I.

3. DLF Ltd., the Petitioner, is a real estate company incorporated under the Companies Act, 1956, initially held shareholding in Respondent No. 1, which also operates in the real estate sector. Alongside DLF Ltd., Chinsha Property Private Limited (*hereinafter, 'Chinsha'*), also held an equal share in Respondent No. 1. The petition states that 75% of these shares, collectively held by DLF Ltd. and Chinsha, were transferred to Respondent No. 2-Twenty-Five South Realty Limited, another real estate company, which purportedly acquired significant control over Respondent No. 1. The remaining 25% of shares in Respondent No. 1 are held by Respondent No. 3-Hubtown Ltd. Additionally, Respondent No. 4, OCM India Opportunities



XB Alternate Investment Fund-I, part of the Oaktree Capital group, was allotted debentures worth Rs. 250 crores by Respondent No. 1, with these debentures featuring conversion rights into equity in the event of a default.

4. DLF Ltd. and the Respondents have a long history of disputes amongst them. The crux of the disputes is in respect of control of Respondent No. 1, which is presently known as Twenty-Five Downtown Realty Limited, previously known as Joyous Housing Ltd. For the sake of brevity, this company shall be referred to as '*JHL*'.

5. JHL is in control of a real estate project in Tulsiwadi Society, Mumbai, under a re-development agreement with the Municipal Corporation of Greater Mumbai dated 24th March, 2004. Pursuant to the said re-development agreement, a Memorandum of Understanding (*hereinafter*, '*MoU*') dated 15th April, 2004 was entered into between DLF Ltd., JHL, Hubtown Ltd. and Chinsha. It is stated that under the said MoU, DLF Ltd. agreed to be the shareholder of JHL, and participate in the construction of the said Tulsiwadi Project.

6. The initial shareholders in JHL, as per the Shareholders Agreement dated 15th April, 2004 executed between DLF Ltd., Hubtown Ltd. and Chinsha, were as follows:

- (i) DLF Ltd.: 37.5%,
- (ii) Chinsha: 37.5% and,
- (iii) Hubtown Limited: 25%,

7. The said Shareholders Agreement contains an arbitration clause, and certain disputes arising out of the said Shareholders Agreement are pending before the Id. Sole Arbitrator, Justice Indu Malhotra (Retd.), who was appointed by the Bombay High Court on 28th September, 2022.



8. A Share Pledge Agreement (*hereinafter* 'SPA') dated 26th December, 2017, was executed between PNB Housing Finance Ltd. (*hereinafter* 'PNBHFL'), JHL, and the three shareholders in JHL i.e., DLF Ltd., Hubtown and Chinsha, in view of a loan of Rs.800 crores sanctioned by PNBHFL on 15th September, 2017 and 20th December, 2017. Vide the said SPA, DLF Ltd. (along with the other shareholders of JHL) pledged its shares in favour of PNBHFL, for securing the said loan for JHL.

9. As per the chronology of events mentioned in the petition, defaults were committed by JHL in the payment of the monthly instalments to PNBHFL between May 2021 - March 2022, which led to PNBHFL recalling the said loan on 20th September, 2021, and the said account was declared as a 'Non-Performing Asset' (*hereinafter*, 'NPA') on 4th January, 2022. Following the defaults by JHL, a Default Notice was issued to JHL and its shareholders on 2nd November, 2022, which offered the shareholders, including DLF Ltd., an opportunity to express interest in acquiring 100% of JHL's shares and control. As per DLF Ltd., it sought to purchase the entire shareholding of JHL, at over Rs. 1400 crores - however this acceptance was neither formally rejected nor denied.

10. Further, on 5th August, 2023, as per the petition, PNBHFL invoked the pledge under the SPA and, on 7th August, 2023, sought to assign the debt. Admittedly, PNBHFL also initiated a Swiss Challenge Process to facilitate such assignment.

11. Consequently, the entire NPA account was assigned on 19th August, 2023, to one M/s Omkara Assets Reconstruction Company Limited (*hereinafter*, 'Omkara') by PNBHFL. This dispute in respect of DLF Ltd. and PNBHFL, wherein DLF has raised various allegations against the



PNBHFL under the said SPA are now pending adjudication before the Id. Sole Arbitrator - Mr. Justice (Retd.) V. Ramasubramanian, Former Judge, Supreme Court of India. In respect of the disputes arising out of the said SPA, the Id. Sole Arbitrator was appointed by this Court in '***DLF Ltd. v. PNB Housing Finance Ltd.***' (2024:DHC:2347) vide order dated 22nd March, 2024.

12. In the meantime, two petitions under Section 9 of the 1996 Act were filed by the parties when disputes had arisen. It is stated that the first Section 9 petition was precipitated by a series of breaches by PNBHFL, as it assigned a loan given to JHL to Omkara, despite DLF Ltd.'s earlier offer to buy out JHL's total shareholding—an offer that was allegedly disregarded. Further, on 6th September, 2023, Omkara sold 75% of JHL's shares, specifically those owned by DLF Ltd. and Chinsha (without involving shares held by Hubtown), without taking into account DLF's commitment or providing detailed transaction information. Vide judgment dated 18th September, 2023, a Id. Single Judge in ***DLF Ltd. v. PNBHFL*** (2023:DHC:6813) had passed the following order:

“42. Prayer (b) is inchoate in view of Prayer (a) since the identity of the transferee is not known yet, in view of which, no order can be passed against the unknown transferees. However, it would be appropriate if pledged shares sold to a third party by Omkara are kept in a suspended animation by directing JHL not to recognise further sale, if any, undertaken by Omkara transferees. If any request is received by JHL by further transferees the same shall not be acted upon by JHL and further transferees shall not be recorded as members (shareholders) in the record of JHL.”



13. The above decision dated 18th September, 2023, was challenged by various parties before the Id. Division Bench. The Id. Division Bench vide order dated 11th January, 2024 in ***Twenty Five South Realty Ltd. v. DLF Ltd. (2024:DHC:282-DB)*** passed the following order:

“1. Issue notice.

1.1 Learned counsels appearing for the respondents in the above-captioned matters accept notice.

2. With the consent of the counsel for the parties, the appeals are taken up for hearing and final disposal, at this stage itself.

3. The above-captioned appeals are directed against the judgment dated 18.09.2023 passed by the learned Single Judge.

4. Via the impugned judgment, the learned Single Judge has disposed of the Section 9 petitions preferred under the Arbitration and Conciliation Act, 1996 [in short, “1996 Act”].

4.1 The aforementioned Section 9 petitions were preferred by the DLF Limited [in short, “DLF”] and Chinsha Property Private Limited [in short, “Chinsha Property”]. It is not in dispute that DLF and Chinsha Property are shareholders of a company named Joyous Housing Ltd. [in short, “JHL”].

5. Counsels for the appellants submit that the impugned judgment was passed without an opportunity being accorded to them to file replies to the Section 9 petitions.

6. The operative directions which the learned Single Judge has issued are contained in Paragraph 42. For convenience, the said directions are extracted hereafter:

“42. Prayer (b) is inchoate in view of Prayer (a) since the identity of the transferee is not known yet, in view of which, no order can be passed against the unknown transferees. However, it would be appropriate if pledged



shares sold to a third party by Omkara are kept in a suspended animation by directing JHL not to recognise further sale, if any, undertaken by Omkara transferees. If any request is received by JHL by further transferees the same shall not be acted upon by JHL and further transferees shall not be recorded as members (shareholders) in the record of JHL.”

[Emphasis is ours]

7. We may note that insofar as the shareholding pattern of JHL is concerned, at the relevant point in time, it was broadly as follows:

(i) 37.5% equity stake was held by DLF.

(ii) Another 37.5% equity stake was held by Chinsha Property.

(iii). The balance 25% equity stake was held by Hubtown Ltd [in short, “Hubtown”].

8. We may also note that one of the appellants i.e., Twenty Five South Realty Ltd [in short, “Twenty Five South”] is a transferee, which has acquired the shares held by DLF and Chinsha via yet another appellant before us i.e., Omkara Asset Reconstruction Company Limited [in short, “Omkara”]

9. Twenty Five South, thus, acquired 75% of the equity stake in JHL.

9.1. Mr. Harin P. Raval, learned senior advocate, who appears for the said appellant, on instructions, confirms that Twenty Five South continues to hold 75% of the equity stake in JHL.

9.2. Likewise, Mr. Prateek Seksaria, learned counsel, who appears for Hubtown, on instructions, confirms that the said entity continues to hold 25% shares in JHL.

12. Since the appellants before us were not given an opportunity to file replies to the Section 9 petitions,



according to us, the matter requires fresh examination by the learned Single Judge.

13. Notably, Mr Raval, on instructions, states that to facilitate a fair hearing in the matter, he has instructions to convey to the court that Twenty Five South will continue to hold 75% equity stake in JHL till such time the Section 9 petitions are disposed of by the learned Single Judge.

14. Mr Seksaria, however says that since no direction has been issued by the impugned judgment qua Hubtown, he cannot make a statement of the kind that Mr Raval has made before us.

14. Mr Rajiv Nayar, learned senior advocate, who represents DLF and Mr Sandeep Sethi, learned senior advocate, who represents Chinsha Property, say that the same directions need to be issued qua Hubtown as well.

15. In our view, at this juncture, we would not be able to issue any direction qua Hubtown, especially since Hubtown is not in appeal before us against the impugned judgment.

15.1. However, liberty is granted to DLF and Chinsha Property to move the learned Single Judge by way of an appropriate application, if deemed fit, for securing their interest vis-à-vis Hubtown.

16. Furthermore, Mr. Saurabh Kirpal, learned senior advocate, who appears on behalf of JHL, confirms that the shareholding pattern as it obtains today is reflective of the fact that 75% of the equity stake is held by Twenty Five South, while the remaining 25% is held by Hubtown.

17. Accordingly, the above-captioned appeals are disposed of with the following directions:

(i) The impugned judgment is set aside. The learned Single Judge is requested to rehear the Section 9 petitions.



(ii) Twenty Five South will continue to retain 75% equity stake in JHL till the disposal of the Section 9 petitions.

(iii) Since Mr Kirpal says that the optionally-convertible debentures have an unexpired timespan of six (6) months, and therefore, the shareholding pattern would remain unaltered for the next six (6) months, we request the learned Single Judge to dispose of the Section 9 petitions at the earliest, bearing in mind the limiting factor flagged by Mr Kirpal.

(iv) Twenty Five South and JHL will file affidavits of undertaking before this Court, in the backdrop of the statement made before us by Mr Raval and Mr Kirpal.

(v) Liberty is given to DLF and Chinsha Property to move appropriate applications before the learned Single Judge to secure their interest vis-à-vis Hubtown, as deemed fit.

18. List the Section 9 petitions before the learned Single Judge for directions on 15.01.2024.

19. Needless to add, we have not expressed any view on the merits of the controversy obtaining between the parties.

20. Before we conclude, we may indicate that while passing the order dated 10.01.2024, we had noted that Mr Raval who, as indicated above, only appears for Twenty Five South, will continue to maintain status quo not only with regard to the equity stake held by Twenty Five South, but also Hubtown.

21. This direction was issued on account of a communication gap. As indicated above, Hubtown was



represented by Mr Seksaria, both on that date and today. Therefore, Mr Raval could not have given any concession qua Hubtown.

21.1. The order dated 10.01.2024 shall stand corrected to that extent.

22. Parties will act based on the digitally signed copy of the order.”

14. As can be seen from the above order passed by the Id. Division Bench, an assurance was given before the Id. Division Bench that the company in control of Defendant No.1—JHL, i.e., Twenty Five South, shall continue to hold 75% equity in JHL, until the Section 9 petitions are disposed of by the Id. Single Judge.

15. Another Section 9 petition was also filed being ***O.M.P.(I) (COMM) 392/2023*** titled '***DLF Limited v. PNB Housing Finance Limited and Ors.***' and ***O.M.P.(I) (COMM.) 395/2023*** titled '***Chinsha Property Pvt. Ltd. v. PNB Housing Finance Limited & Ors.*** In the second petition, it was stated that subsequent to the order dated 18th September, 2023, that provided DLF Ltd. interim relief, the Respondents continued to manipulate the shareholding structure of JHL. On 3rd October, 2023, a new board approved by Hubtown and other related entities, issued an increase in JHL's share capital and issued new shares to one company, namely, Akruti Nirman Pvt Ltd. (*hereinafter, 'Akruti'*), thereby allegedly diluting the DLF's share to less than 1%. Such acts were part of a series of steps taken to alter the governance structure and equity basis of JHL. In the said petition under Section 9 of the 1996 Act, DLF Ltd. *inter alia* sought directions to restrain JHL from issuing and, or allotting any further equity shares of JHL in favour of Akruti. Further, in the event that equity shares have been preferentially



issued and allotted to Akruti, then to place such additional shares in suspended animation and order such shares to be placed in receivership. In the said petition, vide order dated 14th December, 2023, further directions were issued in the following terms:

“5. *Learned counsel for respondent nos.6 and 7 submit that they will not deal with/alienate/create third party rights in respect of the shares of Joyous Housing Limited and/ or convertible debentures held by them; and/ or take any precipitative steps so as to alter the status quo so as circumvent the relief/s sought in this petition and/or the pending petition/s under Section 11 of the A&C Act, 1996.*

6. The above statement has been made without prejudice to the contention that the present petitions, as also the petition/s under Section 11, are not maintainable, and, accordingly, the aforesaid statement shall operate only pending consideration of the said petition/s under Section 11.

7. It is made clear that this Court has not entered into the merits of the present petitions, and therefore this order shall not be construed as an expression of opinion of this Court on the merits of the dispute/s between the parties.”

16. Both Section 9 petitions were finally disposed of vide a consolidated order dated 22nd April, 2024, passed by the Coordinate Bench of this Court in *DLF Ltd. v. PNBHFL [O.M.P (I)(COMM) 296/2023 & O.M.P (I)(COMM) 392/2023]*, wherein it was recorded that the interim directions contained in the Id. Division Bench’s order dated 11th January, 2024, which were extended by the order dated 19th January, 2024, in the Section 9 petition, shall continue until they are varied or modified in the proceedings under Section 17 of the 1996 Act. The said final order in the Section 9



petitions are also extracted below:

“Mr. Rajiv Nayar, learned senior counsel appearing for M/s. DLF Ltd. submits, that during the pendency of the present proceedings, the arbitral tribunal has been constituted, comprising a former Hon’ble Judge of the Supreme Court.

2. Mr. Nayar informs the court, that the arbitral tribunal has held a preliminary hearing in the matters on 16.04.2024 and the next sitting of the learned Arbitrator is scheduled on 23.07.2024. In the circumstances, Mr. Nayar submits that the present petitions filed under section 9 of the Arbitration & Conciliation Act, 1996 (‘A&C Act’) be placed before the learned Arbitrator as applications under section 17 of the A&C Act, to be dealt with in accordance with law.

3. Mr. Nayar further submits that, in the meantime, the directions contained in para 17 of order dated 11.01.2024 made by the Division Bench in FAO(OS)(COMM) No.218/2023 and connected matters, as continued by this court vide its order dated 19.01.2024, be extended during the pendency of the applications under section 17 of the A&C Act before the learned Arbitrator

4. Mr. Akhil Sibal, learned senior counsel appearing for PNB Housing Finance Ltd.; and Mr. Karan Bharihoke, learned counsel appearing for Twenty-Five South Realty Ltd., the respondents in these matters, inform the court that they have filed/are in the process of filing a challenge to the judgement of the Co-ordinate Bench, whereby the learned Arbitral Tribunal was constituted.

5. Be that as it may, in view of the submission made on behalf of M/s. DLF Ltd, the present petitions are



disposed-of, by directing that they be placed as applications under section 17 of the A&C Act before the learned Arbitrator, as they are; to be decided by the learned Arbitrator, in accordance with law.

6. In the meantime, interim order dated 11.01.2024 passed by the Division Bench, as extended vide order dated 19.01.2024 by this court, shall continue until varied, modified or set-aside by the learned Arbitrator in the proceedings under section 17 of the A&C Act.”

17. As per Id. Counsels for the parties, a further order has been passed on 2nd May 2024 in *DLF Ltd. v. PNBHFL [O.M.P (I)(COMM) 296/2023 & O.M.P (I)(COMM) 392/2023]*, wherein the Court observed as follows:

“By way of the present application filed on the principles of sections 151 and 152 of the Code of Civil Procedure 1908, the applicant/petitioner seeks rectification/correction in para 6 of order dated 22.04.2024 passed by this court, to clarify that the interim orders that were extended by way of order dated 22.04.2024 would also include interim order dated 14.12.2023, as modified by order dated 22.12.2023, and as thereafter extended by order dated 19.01.2024.

2. Mr. Darpan Wadhwa, learned senior counsel appearing for the applicant/petitioner submits that on a combined reading of orders dated 14.12.2023, 22.12.2023 and 19.01.2024, it is evident that while disposing-of the petitions under section 9 of the Arbitration & Conciliation Act, 1996 ('A&C Act'), and leaving them to be taken-up as applications under section 17 of the A&C Act by the learned Arbitrator, **this court had directed that all interim orders as well as the statements made by the parties were to continue, until a view thereon was taken by the learned Arbitrator.**



3. Mr. Wadhwa however points-out, that it would appear that by inadvertence, order dated 14.12.2023 as modified by order 22.12.2023 and as extended by order dated 19.01.2024, does not find mention in para 6 of order dated 22.04.2024.

4. Issue notice.

5. Learned counsel, as above, appear for the respondents on advance copy; accept notice; and seek time to file replies, opposing the prayer made.

6. Be that as it may, it is observed that vide order dated 22.04.2024, both petitions bearing O.M.P.(I) (COMM.) No.392/2023 and O.M.P.(I) (COMM.) No.395/2023 under section 9 of the A&C Act had been disposed-of, with a direction that they be placed before the learned Arbitrator, so that the learned Arbitrator could take a view in the matter. While doing so, quite clearly, the intention and purpose of this court was that the position obtaining in the above-mentioned section 9 petitions on the date of that order, would continue until varied, modified or set-aside by the learned Arbitrator.

7. Furthermore, a closer reading of paras 5 and 6 of order dated 14.12.2023, as modified vide para 6 of order dated 22.12.2023, and as thereafter extended by order dated 19.01.2024, shows that not only the interim orders but also the statements made on behalf of the respondents were continued during the pendency of the abovementioned section 9 petitions.

8. In the circumstances, the court does not deem it necessary to await a written reply from any of the respondents.



9. Accordingly, the application is allowed, thereby modifying/clarifying that para 6 of order dated 22.04.2024 would now read as follows :

“6. In the meantime, interim order dated 14.12.2023, as modified by order dated 22.12.2023, and as extended vide order dated 19.01.2024; as well as interim order dated 11.01.2024 passed by the Division Bench, as extended vide order dated 19.01.2024 by this court, shall continue until varied, modified or set-aside by the learned Arbitrator in the proceedings under section 17 of the A&C Act.”

10. The application is disposed-of in the above terms.

11. The petition already stands disposed-of.

12. Needless to add that this order would not prevent any of the respondents from moving an appropriate application before the learned Arbitrator seeking modification of the interim orders/statements obtaining in the matter.”

18. Thus, as of today, on a perusal of the order dated 11th January, 2024 passed by the Id. Division Bench in ***Twenty Five South Realty Ltd. v. DLF Ltd. (2024:DHC:282-DB)*** and orders dated 22nd April, 2024 and 2nd May, 2024, passed by the Co-ordinate Bench in ***DLF Ltd. v. PNBHFL [O.M.P (I)(COMM) 296/2023 & O.M.P (I)(COMM) 392/2023]***, the acknowledged position is that the order of the Id. Division Bench dated 11th January, 2024, continues to operate between the parties. The apprehension now expressed by DLF Ltd. in the present Section 9 petition is that JHL has issued new



Non-Convertible Debentures (*hereinafter*, 'NCDs'), which also includes the option to be converted into ordinary equity shares upon default, pursuant to a Special Resolution dated 21st February, 2024 (*hereinafter*, 'the transaction'). The said option reads as follows:

'RESOLVED THAT pursuant to Section 62 (3) and other applicable provisions, if any, of the Companies Act, 2013 and subject to all such approvals, permissions or sanctions as may be necessary and subject to such conditions and modification(s) as may be prescribed or imposed, while granting such approval(s), permission(s) or sanction(s) which may be agreed to by the Board of Directors of the Company (hereinafter referred to as the "Board", which expression shall be deemed to include any committee duly constituted/ to be constituted by the Board to exercise its powers, including the powers conferred by this Resolution), in connection with issue up to 2500 (Two Thousand Five Hundred) secured, unrated, unlisted, redeemable and non-convertible debentures (NCDs) of face value of Rs.1,000,000 (Rupees One Million only) each, to be issued at par, in a single or more series / tranches of NCDs aggregating up to Rs.2,500,000,000 (Rupees Two Billion Five Hundred Million only) (hereinafter referred to as the "Debentures"), for cash on a private placement basis, the consent of the Members be and is hereby accorded to the Board in respect of the financial assistance extended / to be extended in respect of the issuance of the Debentures such that in the Event of Default by the Company under the transaction documents, the Debenture Holders and/or the Debenture Trustee, at its option may be able to convert the outstanding Debentures Obligations or part thereof to ordinary equity shares of the Company in accordance with the terms of the Debentures and at a price to be determined in accordance with the



applicable rules and regulations at the time of conversion."

Submissions by Id. Counsels for the parties

19. On behalf of DLF Ltd., Mr. Rajiv Nayyar, Id. Senior Counsel, submits that while he cannot have any objections to the issuance of the said NCDs, the latter part of the option, which allows for the conversion of the said NCDs into ordinary equity shares upon default by JHL, could result in diluting JHL's shareholding to the detriment of DLF Ltd. This, according to him, is contrary to the Id. Division Bench's order dated 11th January, 2024. He thus prays that an interim order be granted to prevent any dilution of the equity shareholding of JHL. It has also been submitted that upon becoming aware of such a transaction, DLF Ltd. issued a notice dated 16th April, 2024, to Respondent No. 4/Oaktree. In the said notice, DLF called upon Respondent No. 4/Oaktree to furnish certain information related to the transaction and to also desist from converting the aforesaid NCDs into ordinary equity shares of the company. According to DLF Ltd., such a conversion would be in violation of the directions of the learned Division Bench. Further, since Respondent No. 4/Oaktree is not a party to the arbitration proceedings, DLF Ltd. is unable to avail of its remedies under Section 17 of the 1996 Act. Hence, the present petition is necessary to stop any attempt to dilute the shareholding.

20. On behalf of Respondent No.1 - JHL, Mr. Saurabh Kirpal, Id. Senior Counsel, submits that the Id. Division Bench order contains two important portions - one in paragraph 13 and another in paragraph 17. Insofar as the maintenance of shareholding at 75% and 25% is concerned, as recorded in paragraph 13, it shall remain effective until the Section 17 application is



decided. However, regarding the directive given in paragraph 17(iii), a six-month time period has been noted by the Id. Division Bench. He submits, based on instructions, that JHL would fully adhere to the directions recorded by the Id. Division Bench on 11th January, 2024.

21. All the Respondents object to the maintainability of this petition, *inter alia*, on the following grounds:

- i) that the said Shareholding Agreement is not subject to the jurisdiction of this Court, as the seat of arbitration is Mumbai;
- ii) the parties to the SPA, which is sought to be invoked in the present Section 9 petition, have not been made parties to the present petition.

22. Mr. Prateek Seksaria, Id. Senior Counsel representing Respondent No. 3, objects to the maintainability of the present petition. He submits that, as of today, no cause of action has arisen in favor of DLF Ltd. According to the agreement entered into with Respondent No. 4/Oaktree, to whom the NCDs have been issued, the commencement of the quarterly payments is set for 31st December 2024 and the same would continue until 31st March 2026, unless there is a default in the quarterly payments. Thus, at present, the situation does not warrant the issuance of any equity shareholding in favor of Respondent No. 4. He therefore submits that the entire petition is premature.

23. On behalf of Respondent No.4/Oaktree, the company which has been issued the NCDs, it is submitted by Id. Senior Counsel Mr. Amit Sibal that his client is not even a party to either of the agreements, so there is no privity of contract between DLF and his client-Respondent No.4/Oaktree. In any event, he submits that the interest payments would also be due in terms



of the arrangement entered into between Respondent No.4/Oaktree and JHL. But Respondent No.4/Oaktree has no intentions to convert the outstanding debenture obligations to ordinary equity shares, until and unless a default takes place by JHL.

24. He also submits that his client is willing to inform the Court at least two weeks prior to issuance of default notice by Respondent No.4. Further, before insisting upon conversion of NCDs to equity shares, his client is willing to issue two weeks' notice even to DLF Ltd., before exercising the default option for conversion of NCDs to equity shares in terms of the Id. Division Bench order.

25. On behalf of PNBHFL, it is submitted by Ms. Mehta, Id. Counsel, that DLF Ltd. has no standing to raise any issues regarding the shareholding of JHL, as DLF Ltd. currently holds no shares; these were pledged with PNBHFL and have now been assigned to Omkara.

26. The Court has heard the submissions of all the parties concerned. Firstly, this Court is of the opinion that the parties who are also Respondents in the arbitral proceedings, ought to be impleaded in this petition, so as to ensure that all parties are heard before any final orders are passed. Accordingly, the following parties:

- i) PNB Housing Finance Ltd.
- ii) M/s Omkara Assets Reconstruction Company Limited.
- iii) Akruiti Nirman Pvt Ltd.
- iv) Chinsha Property Private Limited

27. The above parties are impleaded in the present petition as Respondent Nos.5 to 8. The amended memo of parties be filed within a period of one week.



28. Insofar as the maintainability of the petition before this Court is concerned, some of the relevant clauses of the SPA are as follows:

“13. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and be subject to the laws of India. Each Pledgor and the Lender agree to submit to the jurisdiction of the courts and tribunals Delhi/Mumbai only, provided however the Lender may, at its sole option, take action of in the courts or before the authorities of any other jurisdiction in India, for any dispute arising hereunder.

14. ASSIGNMENT

No Pledgor may assign or transfer all or any of its rights, benefits or obligations under this Agreement. However, the Lender shall have an absolute and unrestricted right to assign all its rights under this Agreement and the Finance Documents to any person without being required to take any consent of the Pledgors.

17.11 Any and all disputes, claims, difference arising out of or in connection with this Agreement and the Schedule(s) of Term/Repayment Schedule/s attached hereto or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the Lender and the award thereupon shall be binding upon the parties to this Agreement. The place of arbitration shall be in Delhi or any other place as Arbitrator may decide, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The proceeding of Arbitration Tribunal shall be conducted in English language. Each party shall bear cost of representing its case before the Arbitrator. Costs and charges of Arbitrator to be shared equally unless/otherwise provided for in the award.”



29. Thus, following the decision of the Supreme Court in *BALCO v. Kaiser Aluminium Technical Services Inc.*, [(2012) 9 SCC 552] it is clear that the above clause designates Delhi as the place of arbitration, and therefore the Delhi High Court would have supervisory jurisdiction over the arbitration proceedings, as it is the 'seat of arbitration'. Furthermore, given that the reference under the SPA has taken place in a petition pending before this Court, presided over by a Id. Single Judge of this Court, and the seat is also Delhi, this petition is indeed maintainable before this Court.

30. Insofar as the maintainability of the present petition *qua* Respondent No.4/Oaktree is concerned, an objection may be taken in the reply, and the same shall be considered after pleadings are completed.

31. Issue notice. Notice is accepted on behalf of the following Respondents by the following Id. Counsels:

- (i) JHL- Ms. Khushbu Chhajed, Id. Counsel.
- (ii) Respondent No. 2- Mr. Karan Bharihoke, Id. Counsel
- (iii) Respondent No. 3- Mr. Sajit Suvarna, Id. Counsel
- (iv) Respondent No. 4- Mr. Rishi Agrawala, Id. Counsel
- (v) PNBHFL- Ms. Paulomi Mehta, Id. Counsel (virtual)

The Id. Counsels appearing before the Id. Arbitral Tribunal for the remaining three Respondents, may also be served by DLF Ltd.

32. In view of the submissions made today on behalf of Respondent Nos. 3, 4 and JHL, at this stage there appears to be no apprehension of the equity/shareholding being diluted, as Respondent No.4/Oaktree has been issued NCDs. It is only if there is any default by JHL, that Respondent No.4/Oaktree would have to be issued equity shares in JHL. Having



considered the submissions made by Mr. Kirpal and Mr. Sibal it is sufficient to observe, at this stage, that parties shall strictly abide by the order of the Ld. Division Bench dated 11th January 2024. Further, it shall be ensured that if the default option is to be exercised by Respondent No.4/Oaktree, in terms of the Special Resolution dated 21st February, 2024, (as extracted above), two weeks' notice shall be given by Respondent No.4/Oaktree to DLF Ltd., and the said notice shall also be placed before the Court, with advance copies to all the parties. If any of the parties wish to seek any interim relief at that stage, they are free to move an application.

33. Let replies to the present petition be filed by 30th May, 2024 and rejoinder be filed by 5th July, 2024.

34. List on 8th July, 2024 for consideration.

**PRATHIBA M. SINGH
JUDGE**

MAY 8, 2024

Rahul/dn

(corrected and released on 13th May, 2024)