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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 479/2018**
ANSAL HOUSING & CONSTRUCTION LTD.

..... Plaintiff

Through : Mr.Sachin Datta, Sr Advocate with
Mr.Vikas Tiwari and Mr.Aamir
Jamal, Advocates.

versus

SAMYAK PROJECTS PVT. LTD.

..... Defendant

Through : Mr.Vivek Kohli, Mr.Sandeep
Bhuraia, Ms.Perna Kohli,
Ms.Anubha Singh and Ms.Neetika
Bajaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 11.10.2018

IA No.14031/2018

1. This application is moved by the defendants under Section 8 of the Arbitration and Conciliation Act on the plea the Memorandum of Understanding dated 12.07.2012 contains an arbitration clause and the dispute so raised by the plaintiff is covered by it. The learned counsel for defendant has relied upon the decision in *Mulheim Pipecoatings GmbH vs Welspun Fintrade Limited* (2014) 2 AIR Bom R 196 in this context.

2. Issue notice. The learned counsel for plaintiff accepts notice and intends to file reply. Be filed within three weeks from today with an advance copy thereof to the learned counsel for applicant.



Rejoinder thereto, if any, be also filed before next date of hearing.

IA No.13144/2018

3. This application under Order XXXVIII Rule 5 CPC is moved by the plaintiff. Though the learned counsel for plaintiff has referred to various terms and conditions of the Memorandum of Understanding dated 12.07.2012; Cancellation Deed dated 20.04.2013; as well as the notice issued by the plaintiff and reply thereof sent by the defendant to press home his point that a sum of Rs.12.00 Crores is due against the defendant and defendant has already filed the TDS certificate in respect thereof, thereby admitting the liability, hence till the pendency of suit the property of defendant to such an extent be attached.

4. The learned counsel for the defendant says as per clause 3 of the Cancellation Deed, the plaintiff has the every right to adjust the dues of the defendant against the dues in other accounts and the defendant has also to recover Rs.173 Crores along with interest in such other account between the parties.

5. Since the amount due in the present case is due since the year 2015; as such it is the plea of the defendant there is no urgency and no case of attachment under Order XXXVIII Rule 5 CPC is made out.

6. The learned counsel for the plaintiff on the other hand says the defendant has already issued a notice of sale of entire project and hence is apprehensive by the next date of hearing the defendant may not dispose of its entire property and then there would be no asset with the defendant to satisfy the decree if passed in favour of the plaintiff.



7. In the circumstances, it would be appropriate to direct the defendant in case it is intending to mortgage or create any third party interest beyond 85% of the total area of the project namely *Town Plaza, Part of Essencia Township, Sector – 67, Gurugram, Haryana*, the defendant shall inform the plaintiff in writing, at least a week before such deal so that the plaintiff can press this IA.
8. List both the IAs on 19.11.2018.
9. Copy of this order be given *dasti* under signature of the Court Master to both the parties.

YOGESH KHANNA, J

OCTOBER 11, 2018

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