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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10th March, 2021

Pronounced on: 23rd March, 2021

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OMP (I) (COMM) 29/2021

INDIABULLS HOUSING FINANCE LIMITED..... Petitioner

Through: Mr. Rajiv Nayar and Mr.
Maninder Singh, Sr. Advs. with Mr.
Dheeraj Nair, Ms. Anjali Anchayil,
Ms. Avni Sharma, Ms. Vishrutyi Sahni,
Mr. Prabhas Bajaj, Advs.

versus

AMBIENCE PROJECTS AND INFRASTRUCTURE

PRIVATE LIMITED & ORS. Respondents

Through: Mr. Sandeep Sethi, Sr. Adv.
with Ms. Ruby Singh Ahuja, Mr. P. K.
Agarwal, Mr. Vishal Gehrana, Mr.
Ashutosh P Shukla, Mr. Utkarsh Maria,
Mr. Sidhant Kumar Marwah, Ms. Tannya
Sharma, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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J U D G E M E N T

1. The petitioner Indiabulls Housing Finance Ltd (“IHFL”) has invoked the jurisdiction of this Court under Section 9 of the Arbitration & Conciliation Act, 1996 (“the 1996 Act”). The prayer clause in the petition reads thus:

“In view of the aforesaid facts and circumstances and the grounds pleaded above, it is respectfully prayed that this Hon'ble Court may be pleased to:

a) direct the Respondent Nos. 1-11 to deposit the total outstanding amount of INR 14,38,44,59,993 (Indian Rupees One Thousand Four Hundred Thirty Eight Crores Forty Four Lakhs Fifty Nine Thousand Nine Hundred and Ninety Three only) as of January 21, 2021, along with pending TDS of INR 16,58,51,625 (Indian Rupees Sixteen Crores Fifty Eight Lakhs Fifty One Thousand Six Hundred and Twenty Five Only) due and payable under eighteen loan agreements entered into with the Petitioner (collectively, "Loan Agreements") with the Registrar of this Hon'ble Court;

b) alternatively, an injunction against the Respondent Nos. 1 and 12- 26 from selling, transferring, alienating, creating any third-party rights or interests in or dealing with the properties furnished as security to the Petitioner for securing the loans aggregating to INR 1327,36,92,800 (Rupees One Thousand Three Hundred Twenty Seven Crore Thirty Six Lakh Ninety Two Thousand and Eight Hundred Only), being the disbursed amounts under the Loan Agreements, pending conclusion of the arbitration proceedings; and

c) an injunction restraining the Respondent No. 1 from making any payment to any third party or inter se transferring any funds and assets between its group I associate companies, and/or providing any financial assistance, directly or indirectly, to meet the obligations of any of the Respondent No. 1 's promoters, directors, personal or corporate guarantors, pending conclusion of the arbitration proceedings;

d) an injunction restraining the Respondent No. 1 from making any payment to any third party or inter se transferring any funds and assets between its group/associate companies, and/or providing any financial assistance, directly or indirectly, to meet the obligations of any of the Respondent No. 1 's group/associate companies (including but not limited to Ambience Private Limited) or their promoters, directors or personal I corporate guarantors, pending conclusion of the arbitration proceedings.

- e) grant ex-parte ad-interim relief in terms of prayers (a)- (d);
- f) award reasonable costs of this petition; and/or
- g) pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. Mr. Rajiv Nayar and Mr. Maninder Singh, learned Senior Counsel, appear for the petitioner and Mr. Sandeep Sethi, learned Senior Counsel appears for the respondents. Mr. Sethi opposes issuance of notice in the petition, whereas Mr. Nayar and Mr. Maninder Singh seek issuance of notice and grant of *ad interim* relief as sought in prayer (e) in the petition, *in terms of prayers (c) and (d) thereof*. Arguments were limited, therefore, to this aspect.

3. I am not examining, therefore, whether, *prima facie*, any case for directing deposit of any amount, by any of the respondents, as prayed in prayer (a) in the petition, is made out or not. The arguments before me were restricted to the prayer to injunct, *ad interim* and pending decision of the Section 9 petition, Respondent No. 1 Ambience Projects & Infrastructure Pvt Ltd (“APIPL”) from making any payment to any third party, or to any of its own sister concerns. I propose to consider, therefore, only whether a case is made out, by the petitioner, for granting *ad interim* relief in terms of prayer (e) read with prayers (c) and (d).

Facts

4. IHFL advanced the following loans, under 18 Loan Agreements, to APIPL and other co-borrowers, who are also respondents in the present petition:

Date of Agreement	Borrowers		Loan Amount (₹)
28 th November, 2018	(1)	APIPL	165,00,00,000
	(2)	Raj Singh Gehlot	
	(3)	Rockstar Buildcon Pvt Ltd	
28 th November, 2018	(1)	APIPL	20,54,00,000
	(2)	Raj Singh Gehlot	
	(3)	Vijeta Properties Pvt Ltd	
28 th November, 2018	(1)	APIPL	154,46,00,000
	(2)	Raj Singh Gehlot	
	(3)	Vijeta Properties Pvt Ltd	
28 th November, 2018	APIPL		245,00,00,000
28 th November, 2018	APIPL		55,00,00,000
29 th June, 2018	(1)	APIPL	148,00,00,000
	(2)	Rockstar Realty Pvt Ltd	
28 th November, 2018	(1)	APIPL	25,10,86,600
	(2)	Hitech Towers Pvt Ltd	
28 th November, 2018	(1)	APIPL	25,10,86,600
	(2)	Rockstar Realty Pvt Ltd	
28 th November, 2018	(1)	APIPL	25,10,86,600
	(2)	Caitriona Towers Pvt Ltd	
28 th November, 2018	(1)	APIPL	25,10,86,600
	(2)	Bigboss Realty Pvt Ltd	
28 th November, 2018	(1)	APIPL	25,10,86,600
	(2)	Greentech Colonizers Pvt Ltd	
28 th November, 2018	(1)	APIPL	25,10,86,600
	(2)	SupervalleyBuildtech Pvt Ltd	

11 th 2020	September,	(1)	APIPL	95,00,00,000
		(2)	Rockstar Realty Pvt Ltd	
28 th 2018	November,	(1)	APIPL	25,10,86,600
		(2)	Master Buildwell Pvt Ltd	
28 th 2018	November,	(1)	APIPL	25,10,86,600
		(2)	Ambience Power Projects Pvt Ltd	
29 th June, 2018		(1)	APIPL	14,25,00,000
		(2)	Bigboss Realty Pvt Ltd	
11 th 2020	September,	(1)	APIPL	180,00,00,000
		(2)	Bigboss Realty Pvt Ltd	
11 th 2020	September,	(1)	APIPL	170,00,00,000
		(2)	Hitech Towers Pvt Ltd	

5. The “Borrowers”, under the Loan Agreements, were APIPL and its co-borrowers, identified in the above table. The Loan Agreements provided for securing the loans by guarantees as well as by hypothecation and pledging of assets. The Borrowers, guarantors, hypothecators, pledgors and mortgagors were parenthesized as “obligors” under the Loan Agreements. Clause 2.1 of the Loan Agreements made the obligors jointly and severally liable to pay the borrowed dues to the lender. Clause 3.1.1 required the borrowers to repay the entire loan with interest to the lender, as per the Repayment Schedule annexed to the Loan Agreements. Non-payment of the borrower’s dues, or any part of, by the due date, was an “Event of Default”, under Clause 12.1.1 of the Loan Agreements. Additionally, Clause 12.1.9 (b) deemed an Event of Default to have occurred “if there is a failure in business, commission of an act of bankruptcy, general assignment for the benefit of creditors, if the Obligor(s) suspend(s) payment to any creditors or threatens to do so, in the petition in bankruptcy of, by, or against the Obligor(s) is filed or any

petition for winding up of the Obligor(s) is filed and not withdrawn within 30 days of being filed”. Clause 12.2 empowered the Lender, i.e. IHFL to, if an Event of Default occurred, cancel/recall the loan, without any notice to any of the Obligors. Upon such recall of the loan, Clause 12.2 rendered the Obligors liable to pay/repay, immediately, the Borrowers’ Dues. IHFL was entitled, in such event, to enforce or forfeit any part of the Security, whereby the loan was secured. Clause 15 of the Loan Agreements provided for “Cross Liability”, and read thus:

“15. CROSS LIABILITY

Notwithstanding anything to the contrary contained in any agreement(s), the Obligor(s) expressly accept(s) and agree(s) that if a breach/default/event of default occurs under any agreement(s) (including the Loan Documents) between (a) the Obligor(s) and/or any group entity/entities/associate company of the Obligor(s) and (b) the Lender and/or any of the Relevant Entities, then such a breach/default/event of default under such agreement(s) shall also be an Event of Default under the Loan Documents and vice versa and then in such an event the Lender and/or any of the Relevant Entities shall, without prejudice to any of its/their specific rights under each of the agreements, be absolutely entitled to exercise all or any of its/their rights (including Loan recall) under any of such agreements (including the Loan Documents) at the sole discretion of the Lender and/or the Relevant Entities.”

6. Various securities were provided by third parties (who were, therefore, “obligors” under the Loan Documents), to secure the loan extended to APIPL. Of these, the petitioner is concerned, in the present case, only with (i) three deeds of hypothecation executed by APIPL on 23rd July, 2020, 30th September, 2020 and 30th September, 2020, hypothecating the receivables from the “Project Creations”

project at Sector-22, Gurugram, and (ii) the securities provided by Respondents 12 to 26.

7. On or around 13th November, 2018, a petition, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“the IBC”) was filed, against Ambience Private Ltd (“APL”), which was a sister concern of APIPL, before the National Company Law Tribunal (“the NCLT”), by an entity known as Vistra ITCL (India) Ltd (“Vistra”). As the said petition was not withdrawn within 30 days of its being filed, the petitioner asserts that an “Event of Default”, within the meaning of Clauses 12.1.9(b) and 15 of the Loan Agreements, had occurred, as APL was an Obligor thereunder.

8. The petitioner further alleges that, in respect of 15 of the 18 Loan Agreements, there was default in repayment, by Respondents 1 to 11, of the total amount of ₹ 45.05 crores, for the months of October, November and December, 2020. As a result, 18 Loan Recall Notices dated 5th January, 2021 were issued by the petitioner to the borrowers in each of the Loan Agreements (which included APIPL in each case), recalling the loans and, consequently, demanding payment of the entire outstanding principal and interest within seven days of receipt of the Loan Recall Notices. It was alleged, in the Loan Recall Notices, that, on the proceedings, initiated against APL by Vistra under Section 7 of the IBC before the NCLT not being withdrawn within 30 days of their institution, an Event of Default, within the meaning of Clauses 12.1.9 (b) and 15 of the Loan Agreements, had occurred. The amount of outstanding loan repayable was specified, in

each Loan Recall Notice, along with the quantum of interest and TDS accrued thereon. In default, the addressees, in each of the Loan Recall Notices (cumulatively Respondents 1 to 11) were informed of the intention of the petitioner to proceed against the security/securities, including mortgaged properties and receivables, provided under the Load Documents.

9. On 30th September, 2020, Respondents 1 to 11 paid the outstanding principal amounts of the loan advanced by the petitioner, along with interest, due as on 31st August, 2020.

10. It is alleged that, thereafter, from October 2020 onwards, Respondents 1 to 11 again defaulted in payment, in respect of 16 of the 18 Loan Agreements. As a result, according to the petitioner, as on 21st January, 2021, Respondents 1 to 11 have become liable to pay, to the petitioner, principal and interest totally ₹ 1438,44,59,993/–, along with TDS of ₹ 16,58,51,625/–. This, in essence, constitutes the *summum bonum* of the dispute between IHFL and the respondents, the arbitrability of which is not disputed by the respondents.

11. Cause of action as pleaded:

11.1 The petitioner asserts, as the cause of action for invoking Section 9 of the 1996 Act, the developments in the proceedings initiated by Vistra against APL before the NCLT under Section 7 of the IBC and in the appeal preferred therefrom. Raj Singh Gehlot (a director of APL and APIPL) appealed, against the order dated 21st

December, 2020, of the NCLT, admitting the Section 7 petition of Vistra, to the National Company Law Appellate Tribunal (“NCLAT”). That appeal is presently pending. On 18th January, 2021, Raj Singh Gehlot submitted, before the NCLAT, that a settlement had been worked out between Vistra and APL, towards the satisfaction of which APIPL had paid ₹ 50 crores to Vistra. The remaining dues of Vistra, it was further submitted by Mr. Gehlot, would be paid by 31st March, 2021. The NCLAT, therefore, adjourned the appeal to 6th April, 2021. Simultaneously, the NCLAT restrained the Committee of Creditors of APL from taking any further steps. IHFL submits that it was also a member of the Committee of Creditors of APL, but was not impleaded as a party in the proceedings before the NCLT or the NCLAT, nor was made privy to the settlement between Vistra and APL. It was only thereafter, under a Memorandum of Understanding (MoU) dated 14th January, 2021, that IHFL claims to have received a copy of the said settlement. The settlement, contends IHFL, provides for payment, by APIPL and/or Raj Singh Gehlot, of the outstanding debt of Vistra, of ₹ 135 crores, on or before 31st March, 2021. The upfront payment of ₹ 50 crores, submits IHFL, demonstrates the obvious intent, of APIPL, to pay the balance amount of ₹ 135 crores, as well, in accordance with the terms of the Settlement Agreement.

12. If this is permitted to take place, contends IHFL, it would “grossly undermine the ability of” APIPL to make payments to IHFL under the Loan Agreements. “Similarly”, asserts the petitioner, the assets of Respondents 12 to 26, provided as security in terms of the Loan Agreements were at risk of being sold off/transferred/alienated

or encumbered for the purpose of making payments under the MoU or otherwise to fulfil debts of APIPL or of its group companies, including APL. This would result in inability, of the petitioner, to recover the amounts due and payable to it by Respondents 1 to 11, which would, in turn, result in the arbitration proceedings, yet to be initiated between the petitioner against the respondents, being rendered abortive even before they commence. Recourse to Section 9 of the 1996 Act, according to the petitioner, became necessary owing to the following order, passed by the NCLAT in the appeal of Raj Singh Gehlot on 18th January, 2021:

“It is submitted by Mr. Gopal Jain, Senior Advocate that the settlement has been worked out and in terms of settlement, 1st tranche of ₹ 50 crores has been paid by the Appellant to Respondent No. 1. This factual position is subscribed to and admitted by Mr. Arun Kathpalia, Senior Advocate representing Respondent No. 1. It is submitted that the balance dues have to be cleared by 31st March, 2021. In view of the same, a joint request has been made for adjournment of the appeal to 1st April, 2021. Since IRP is not in attendance, let notice be served upon him through electronic mode to appear on file status report in regards to CIRP.

Learned counsel for the Appellant season disallowed to file Terms of Settlement. Respondent No. 2 (IRP) may file a status report in regard to the status of the CIRP.

Let the matter be fixed on 6th April, 2021.

Meanwhile, Committee of Creditors will not proceed ahead till next date.”

IHFL has candidly disclosed the fact that it has also sought impleadment in the appeal of APL, pending before the NCLAT, and has moved an application, in the said proceedings, for a direction to

Vistra to return, forthwith, the amounts paid by it under the MoU, as well as to restrain Raj Singh Gehlot and Vistra from taking any further steps in accordance with the MoU. Inasmuch as the petitioner is not seeking any remedy, from this Court, in respect of the MoU, the petitioner contends that the present Section 9 proceedings are maintainable.

13. As these aspects constitute the justification for the invocation, by the petitioner, of the jurisdiction vested in this Court by Section 9 of the 1996 Act, I deem it appropriate to reproduce, *in extenso*, paras 57 to 64 of the present petition, thus:

“57. The. Petitioner's apprehension is based on certain recent actions taken by the Respondent No. 1 and Mr. Raj Singh Gehlot. The Petitioner has recently come to know that Mr. Raj Singh Gehlot (who is the director of Ambience Private Limited and the Respondent No. 1) had filed an appeal against the order of the Hon'ble Adjudicating Authority dated December 21, 2020 commencing the corporate insolvency resolution process of Ambience Private Limited ("Appeal"). The Appeal is currently pending before the Hon'ble National Company Law Appellate Tribunal ("Appellate Tribunal"). On January 18, 2021 when the Appeal was listed for hearing before the Hon'ble Appellate Tribunal, it was submitted by the counsel for Mr. Raj Singh Gehlot that a settlement had been worked out with the financial creditor, Vistra ITCL (India) Limited who had filed the petition under Section 7 of the Code against Ambience Private Limited. It was submitted that in terms of the settlement an amount of INR 50 crores (Rupees Fifty Crores) had been paid by the Respondent No. 1 to Vistra ITCL (India) Limited. It was further submitted that the remaining dues would be paid by March 31, 2021 and in light of the same, the parties were jointly seeking an adjournment of the Appeal to April 1, 2021. In light of these submissions, this Hon'ble Appellate Tribunal adjourned the hearing of the Appeal to April 6, 2021. The Hon'ble Appellate Tribunal also stayed the committee of creditors of Ambience Private Limited ("CoC") from taking

any further steps till such date. The Hon'ble Appellate Tribunal has not accepted the settlement nor has it passed any directions in respect of the settlement.

58. The above reliefs were sought from the Hon'ble Appellate Tribunal without the CoC (of which the Petitioner is a member) or the financial creditors of the Ambience Private Limited (including the Petitioner), being made a party to the proceedings. Nor was the private settlement between Mr. Raj Singh Gehlot and Vistra (ITCL) India Limited brought to the notice of the CoC for its approval under the provisions of the Code.

59. The Petitioner has since received a copy of the aforesaid settlement under a memorandum of understanding dated January 14, 2021 ("Settlement MoU").

60. The Settlement MoU has been entered into, *inter alia*, for the withdrawal of the petition filed by Vistra (ITCL) India Limited under Section 7 of the Code against Ambience Private Limited. Under the terms of the Settlement MoU, Mr. Raj Singh Gehlot has agreed, purportedly on behalf of the Respondent No. 1, that the Respondent No. 1 and / or Mr. Raj Singh Gehlot would pay the outstanding amount of INR 135,00,00,000 (Rupees One Hundred and Thirty Five Crores) owed to Vistra ITCL (India) Limited. As part of this, the Respondent No. 1 has already made a payment of INR 50 crores to Vistra ITCL (India) Limited.

61. *The Petitioner submits that the Respondent No. 1 has already defaulted in its payments to the Petitioner. If the resources of the Respondent No. 1 are utilised to make payments to Vistra ITCL (India) Limited or other creditors of group companies of the Respondent No. 1, it would grossly undermine the ability of the Respondent No. 1 to make payments to the Petitioner under the Loan Agreements, which it is contractually obliged to do.*

62. *The Petitioner apprehends that similarly the assets of the Respondent Nos. 12-26 which have been provided as security in terms the Loan Agreements are at risk of being sold off / transferred / alienated or encumbered for the purpose of making payments under the Settlement MoU or*

otherwise towards other debt obligations of the Respondent No. 1 or the obligations of the group companies of the Ambience group or their directors, promoters or personal / corporate guarantors.

63. *If this happens, the Petitioner will not be able to recover the amounts due and payable to it by the Respondent Nos. 1-11 and the arbitration proceedings to be commenced by the Petitioner against the Respondents shall be rendered infructuous as a result.*

64. For the sake of completeness, it is submitted that the Petitioner has filed an application seeking impleadment in the Appeal proceedings before the Hon'ble Appellate Tribunal. The Petitioner has also filed an application seeking directions to: (i) Vistra ITCL (India) Limited to return the amounts already paid to it under the Settlement MoU to Vistra ITCL (India) Limited and / or Mr. Raj Singh Gehlot; and (ii) Mr. Raj Singh Gehlot and Vistra ITCL (India) Limited to not take any further steps under the Settlement MoU. Therefore, the Petitioner is not seeking any relief in respect of the Settlement MoU from this Hon'ble Court.”

(Emphasis supplied)

14. After the present petition was filed, the Supreme Court, vide order dated 23rd February, 2021 in Civil Appeal 717/2021 (***Indiabulls Housing Finance Ltd v. Raj Singh Gehlot***) has stayed the order, dated 18th January, 2021, of the NCLAT. The order of the Supreme Court reads thus :

“1. Permission to file the appeal is granted

2. The appeal arises from an order of the National Company Law Appellate Tribunal dated 18 January 2021. Mr. Shyam Divan, learned senior counsel appearing on behalf of the appellant has highlighted the following facets of the case:

(i) On 21 December 2020, the National Company Law Tribunal admitted the application

filed against the Corporate Debtor and initiated the Corporate Insolvency Resolution Process;

(ii) Following the admission of the application, the IRP was appointed;

(iii) The Committee of Creditors was constituted some time prior to 15 January 2021, which is evident from the e-mail (Annexure A-2) dated 15 January 2021 by the IRP convening the first meeting of the Committee of Creditors on 20 January 2021;

(iv) After the admission of the application, a Memorandum of Settlement was arrived at on 14 January 2021 between the first respondent and second respondent; and

(v) The agenda to the notice (page 62 of the paper book) would indicate that the claim of the appellant to the extent as acknowledged has been quantified at Rs 840 crores (representing 44% of the dues), while the claim which is due to the second respondent is quantified at Rs 297 crores (representing 15.4% of the dues).

2. Mr. Shyam Divan has submitted that having due regard to the provisions of Section 12A of the Insolvency and Bankruptcy Code 2016, once the application has been admitted under Sections 7, 9 or 10, as the case may be, withdrawal of the application can be made by the applicant with the approval of a 90% voting share of the Committee of Creditors, in such manner as maybe prescribed. Regulation 30A provides for the manner in which the withdrawal can take place. Section 12A was enforced with effect from 6 June 2018. Regulation 30A has been enforced with effect from 25 July 2019.

3. Apart from the above provisions, reliance has also been placed on Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, under which the adjudicating authority may permit withdrawal of an application on a request made by the applicant before its admission. Consequently, it has been urged

that the private settlement which was entered into between the first and second respondents is contrary to the express provisions of the IBC and may even amount to a preferential transaction within the prohibition contained in Section 43.

4. In view of the above submissions, issue notice, returnable in three weeks.

5. Till the next date of listing, the following ad-interim order is issued:

(i) The impugned judgment and order of the NCLAT dated 18 January 2021 in Company Appeal (AT) (Insolvency) No 6 of 2021 shall remain stayed; and

(ii) In terms of the application for additional interim reliefs, there shall be a direction restraining the first and second respondents from taking any steps under the Memorandum of Settlement dated 14 January 2021.”

15. Detailed arguments were advanced by learned Senior Counsel, as already noted hereinbefore. Written submissions have also been filed by the petitioner and Respondent No 1 – against whom, alone, prayers (c) and (d) of the petitioner are directed. Mr. Sandeep Sethi, learned Senior Counsel for APIPL, prays that the petition be dismissed. Mr. Nayar and Mr. Maninder Singh, learned Senior Counsel for IHFL pray, *per contra*, that *ad interim* protective relief, in terms of prayer (e) in the petition, read with prayers (c) and (d), be granted.

16. As submissions were advanced, by both sides, only qua prayers (c) and (d), read with prayer (e), and the remaining prayers in the petition have yet to be addressed, issue notice, returnable on 7th May,

2021. Notice is accepted by Mr. Vishal Gehrana on behalf of Respondent No 1. Let notice be issued to the remaining respondents by all modes, including *dasti* wherever possible. Counter-affidavits, in response to the petition, be filed within a period of four weeks from the date of pronouncement of this order, with advance copy to learned counsel for the petitioner, who may file rejoinder thereto, if any, within 2 weeks thereof.

Rival contentions

Initial submissions of Mr. Rajiv Nayar and Mr. Maninder Singh

17. On behalf of the petitioner, Mr. Nayar and Mr. Maninder Singh contend thus:

- (i) As many as three Events of Default have occurred in the present case. The first Event of Default was occasioned by the failure, of Respondent Nos. 1 to 11, to repay the loan, in accordance with the Loan Agreements, for the months of October, November and December, 2020. The second Event of Default occurred when, despite the expiry of 30 days from their institution, the proceedings initiated by Vistra against APL under Section 7 of the IBC, in the NCLT, were not withdrawn. The third Event of Default resulted on the failure, of Respondent Nos. 1 to 11 to comply with the request for repayment of the loan, as contained in the Loan Recall Notices dated 5th January, 2021, within the period of seven days

provided therein. Mr. Nayar submits that, in the concluding sentence of the opening paragraph of its response dated 12th January, 2021, to the said Loan Recall Notices (which reads as under), APIPL had admitted the occurrence of the Event of Default :

“We have gone through your notices and find that your notices have been issued for wholly malafide intent and ulterior motives in order to put us and all our companies under great stress and pressure in order to yield to your nefarious designs in order to part with valuable assets to you and/or your nominee. There has been no default committed by these Companies till date and they continue to service the Loan Accounts in terms of the repayment schedule under the Loan Agreements. Your malice is apparent on the face of it as you have issued notices without referring to any Event of Default and basing the same on the ploy of event of default under Clause 12 read with Clause 15 of your loan documents. Not only that you have issued notices to even those companies including M/s Sara Estates Pvt. Ltd. and M/s Alankar Apartments Pvt. Ltd. which have not been Borrower or Co-borrower/Obligors, in any of your loan accounts. We may also point out that your malice with the intent to ruin our business is evident from the fact that you did not allege that 30 days have passed since the filing of the petition by Vistra ITCL for the last about 2 years and now suddenly got issued the above notices. *You could exercise this option in August 2019 when the CIRP was ordered to be initiated.*”

(Emphasis supplied)

(ii) APIPL could not be permitted to transfer its monies to its sister concerns or other associated companies or, for that matter, any other entity, to liquidate the debt owed by such other entity to a third party, while its liability, towards the petitioner, remained outstanding. As Mr. Maninder Singh

expressed it, the corporate freedom enjoyed by APIPL could not extend to dissipation of its assets and monies in favour of others, while its creditor, i.e. IHFL, remained unpaid.

(iii) IHFL was apprehensive that, if APIPL were permitted to do so, it would not be left with any resources, in case the award was ultimately in favour of IHFL.

Submissions of Mr. Sandeep Sethi, in response

18. Mr. Sethi submits, in response to the arguments of Mr. Nayar and Mr. Maninder Singh, thus:

- (i) The present petition amounts to gross abuse of the process of law. IHFL has filed, seeking similar reliefs,
 - (a) a proceeding under Section 7 of the IBC against APIPL,
 - (b) an application seeking impleadment in the appeal, preferred by APL against the order dated 21st December, 2020 before the NCLAT and
 - (c) in the said appeal, an application, seeking directions to Vistra to return, to APIPL, the amounts paid by it to satisfy the debt of APL to Vistra and to Raj Singh Gehlot and Vistra not to take any further steps under the MoU dated 14th January, 2021.

IHFL, contends Mr. Sethi, cannot be allowed to move two different fora, seeking the same relief. In fact, contends Mr.

Sethi, the petitioner is merely seeking to derail the proceedings before the NCLAT, and stifle the Settlement MoU from fructifying. Having failed to obtain any relief from the NCLAT, against the MoU dated 14th January, 2021, Mr. Sethi submits that the petitioner is misusing the legal process, to obtain the same relief from this Court. Copies of the petition filed by IHFL against APIPL under Section 7, IBC, the impleadment application filed by IHFL in the appeal preferred by APL against the order dated 21st December, 2020 of the NCLT, and the application for directions, filed by IHFL in the said appeal, have also been provided along with the written submissions. These documents, I may note, have not been called into question by learned Senior Counsel for the petitioner.

(ii) No Event of Default, within the meaning of Clauses 12 and 17 of the Loan Agreements, has occurred. Vistra is not a creditor of APL. The contention that Vistra had filed a bankruptcy petition against APL before the NCLT is also denied. These aspects, however, it is acknowledged, are pending in the appeal of which the NCLAT is presently *in seisin*. Even during the period October 2020 till 5th March, 2021, contends APIPL, ₹ 90,358,324/- has been credited to the petitioner IHFL, from the Escrow Account.

(iii) IHFL had never raised any issue of occurrence of any Event of Default, under the Loan Agreements, when Vistra had petitioned the NCLT, against APL, under Section 7 of the IBC.

(iv) The money agreed to be repaid to Vistra, in the proceedings before the NCLT/NCLAT, was only the principal amount of ₹ 135 crores, invested by Vistra in APIPL, against the total dues of Vistra of ₹ 296 crores admitted in the CIRP proceedings. This refund was not being made out of the receivables from the “Ambience Creacions” residential housing project, at Sector 22, Gurugram, out of which the loans extended by the petitioner to APIPL and other respondents, was to be serviced as per the Loan Agreements. Mr. Sethi invited my attention, in this context, to Clause 2 of the Settlement MoU, which read thus:

“The Promoter through Ambience Projects & Infrastructure Private Limited (**SPV**) have accordingly caused to deposit the amount of INR 50,00,00,000/- (Rupees Fifty Crores), the First Tranche Payment, on 14.01.2021 & 15.01.2021 by way of RTGS to the account of Vistra ITCL. The said amount of INR 50 Crores shall be utilised by Vistra ITCL towards

a. INR 43,85,43,110/- against redemption of debentures issued by Ambience Projects & Infrastructure Private Limited (**SPV**); and

b. INR 6,14,56,890/- against repayment of the unsecured loans extended to Ambience Projects & Infrastructure Private Limited (**SPV**).”

APIPL contends that no debtor could be directed not to liquidate its debt, to its creditors, or to prioritise one creditor over another.

(v) The Loan Agreements, too, did not require APIPL to liquidate its dues to IHFL, before paying its other creditors.

(vi) Even after the alleged Event of Default, IHFL advanced loans, to APIPL and its group companies, to the tune of ₹ 445 crores, over a period of two years, during which no issue of occurrence of any Event of Default, under the Loan Agreements, was ever raised by IHFL. This casts serious doubts regarding the bona fides of the present petition.

(vii) The jurisdiction of the Court under Section 9 of the 1996 Act, was to be exercised in spare and exceptional cases. The principles governing exercise of the said jurisdiction was analogous to those applicable to Order 38 Rule 5 of the CPC. Reliance has been placed, in this context, on the judgment of the Supreme Court in *Raman Tech & Process Engineering Co. v. Solanki Traders*¹ and of this Court in *Natrip Implementation Society v. IVRCL Ltd*², *BMW India Pvt Ltd v. Libra Automotives Pvt Ltd*³ and of the High Court of Bombay in *Nimbus Communications Ltd v. B.C.C.I.*⁴

¹ (2008) 2 SCC 302

² 2016 SCC OnLine Del 5023

³ (2019) 261 DLT 579

⁴ 2012 SCC OnLine Bom 287

(viii) IHFL was guilty of suppressing material facts, as it had not filed, before this Court, the petition, under Section 7 of the IBC, preferred by the petitioner IHFL against APIPL, the application filed by it for impleadment in the appeal of APL against the order dated 21st December, 2020, of the NCLT, or the application filed by it, in the said appeal, seeking directions.

(ix) The loan Agreements envisaged repayment of the loans out of the receivables from sale of the apartments to be constructed in the “Ambience Creacions” residential housing project, at Sector 22, Gurugram, as well as other projects. For this purpose, three deeds of Hypothecation dated 23rd July, 2020, 30th September, 2020 and 30th September, 2020, already stood executed in favour of the petitioner, hypothecating the receivables from the Ambience Creacions project. They were also secured by securities provided by Respondent Nos. 12 to 26. A tabular statement of the said securities has been provided, by Respondent No. 1 with its written submissions, and is also annexed as Annexure A to this order. The sum total value of the securities, points out Mr. Sethi, is in the region of ₹ 4563 crores, which is far in excess of the petitioner’s exposure. Mr. Sethi points out that there is no plea, in the petition, that the security is deficient or insufficient to secure the petitioner’s exposure, or that its value has diminished at any point of time. Mr. Sethi has invited my attention, in this context, to the definitions of “receivables” and “said properties”, in sub-Clauses (xxi) and (xxiii) of Clause 1.1, Clause 2.1 (b) and

Clauses 2.2 and 2.3 of the Loan Agreements, which provided thus:

“1.1 Definitions

xxi. **“Receivables”** means the entire sale proceeds, advance, allotment money, rent, lease rentals, license fees, security deposit(s) and/or other receivables received or to be received (on and from the date of this Agreement) by, *inter alia*, the Obligor(s) from all the concerned persons, including the buyer(s), transferee(s), allottee(s), lessee(s), sub-lessee(s), developer(s), tenant(s) and/or licensees of the Said Properties and/or any portion or unit thereof and/or any other properties as mutually agreed between the Lender and the Obligor(s), from time to time, pursuant to any application(s), agreement(s), document(s) and/or contract(s) for, *inter alia*, sale, transfer, allotment, assignment development, lease, sub-lease, renting and/or license of the Said Properties and/or any portion or unit thereof and/or any other properties as mutually agreed between the Lender and the Obligor(s).

xxiii. **“Said Properties”** means the properties as mentioned in **Schedule III** hereunder.

“2.1 Loan Amount

b) Hypothecation

The Borrower(s) shall cause the Hypothecator(s) and the Hypothecator(s) shall agree, to the satisfaction of the Lender, to hypothecate, encumber, charge, pledge and/or assign (by way of Security) the Hypothecated Asset(s) in favour of the Lender. The Borrower(s) shall cause the Hypothecator(s) to promptly submit with the Lender (if so requested by the Lender) all the original documents of the Hypothecated Asset(s) duly endorsing the lien/hypothecation in favour of the Lender. The Obligor(s) shall forthwith deposit or shall cause to be deposited the Receivables directly in an escrow account(s) (and to no other account) as may be stipulated/agreed by the Lender and shall forthwith execute escrow agreement(s) in a form satisfactory to the Lender with respect to deposit of the Receivables into the escrow account(s) and transfer of amounts into the Lender's specified bank account(s) on the Due Date(s). The Receivables shall be utilized/transferred in a manner as approved/instructed by the Lender in writing from time to time. It is hereby clarified that in case of shortfall in the escrow account(s), payment default(s) by the Obligor(s) and/or occurrence of an Event of Default, the Obligor(s) is/shall be under an obligation to pay from any source so as to pay the amount(s) payable in accordance with the Loan Documents to the Lender. The Obligor(s) undertake to forthwith issue irrevocable instructions (in a format acceptable to the Lender) to all the concerned persons for deposit of the Receivables only in the escrow account(s) and obtain confirmations in this regard (and forthwith provide a copy thereof to the Lender) from all such person(s). The Obligor(s) shall not give any instruction(s) to the escrow agent(s) and the escrow agent(s) shall not in any circumstance act on any instruction(s) of the Obligor(s). The Borrower(s) undertake to, and the Borrower(s) shall cause the other Obligor(s) to, irrevocably appoint the Lender as its attorney by execution of a Power of Attorney for collection of Receivables (in the form and substance satisfactory to the Lender) in favour of the Lender for, *inter alia*, collection of the Receivables from all the concerned persons. The Borrower(s) further, agree that such power(s) would be power(s) coupled with interest and therefore irrevocable.”

2.2 Security and additional Security

To secure, to the satisfaction of the Lender, the fulfillment of all the obligations of the Obligor(s) under the Loan Documents including payment of the Borrower's Dues and other amounts by the Obligor(s) to the Lender under the Loan Documents, the Borrower(s) hereby undertake(s) to forthwith create, and/or shall cause the Obligor(s) to forthwith create, (a) such Security in favour of the Lender as mentioned in the Loan Documents (including those mentioned hereunder) and (b) such other additional Security of adequate value (to the satisfaction of the Lender), if the Lender so requests from time to time for any reason(s) whatsoever including due to inadequate value (in the opinion of the Lender) of any Security and/or the Lender's right on any Security getting adversely affected in any manner pursuant to, *inter alia*, injunction/stay/order/freeze/attachment of any Security or any part thereof. The Borrower(s) shall, and/or shall cause the Obligor(s) to, (a) forthwith execute and register, if required, appropriate Security Documents and other agreements/deeds relating thereto (in a format acceptable to the Lender) and (b) take/obtain a written no objection certificate (“NOC”) from the Lender prior to, *inter alia*, any application(s), agreement(s), document(s) and/or contract(s) for/of relating to, *inter alia*, sale, conveyance, transfer, lease, possession, sub-lease, rent, leave and license, negative lien, assignment, development, lien, charge, third party rights/interests, allotment and/or encumbrance (in any manner) of the Security (and/or any portion/unit thereof). Unless otherwise mentioned in the Loan Documents, the Borrower(s) further undertake that it shall, and shall cause the Obligor(s) to, forthwith execute the Security Documents and create the first-ranking mortgage/charge/pledge/hypothecation (in a mode/manner acceptable to the Lender) over the Security in favour of the Lender before or at the time of entering into this Agreement. Any failure

/delay in execution of the Security Documents and creation of the Security as aforesaid shall be an Event of Default under the Loan Documents. The Borrower(s) shall, and/or shall cause the Obligor(s) to, execute/to issue a Power of Attorney authorizing/empowering the Lender to, *inter alia*, allot, sell, transfer, lease, sub-lease, assign, mortgage, encumber, construct and/or develop the Security (and/or any part/unit thereof).”

2.3 Security Cover

The Borrower(s) shall, and/or shall cause the Obligor(s) to, maintain the Security Cover as stipulated in Schedule I hereunder at all times during the validity of the Loan Documents ("**Security Cover**"). For the purposes of calculating the Security Cover, only the value of the immovable properties ("**Said Immovable Properties**") mortgaged in favour of the Lender to secure, *inter alia*, the Group Borrower's Dues shall be taken into consideration. If at any time during the continuance of this Agreement, the Lender is of the opinion that the value of the Said Immovable Properties has become inadequate to maintain the Security Cover, then whether or not the Lender advises the Obligor(s) to that effect, within two days the Borrower(s) shall forthwith provide and furnish and/or shall cause the Obligor(s) to forthwith provide and furnish to the satisfaction of the Lender, either cash or such other Security (acceptable to the Lender) to the satisfaction of the Lender to make good the shortfall in the Security Cover so as to maintain the Security Cover at all times. The Lender shall be entitled to make a call for additional Security to the Borrower(s) if the Security Cover is not maintained and the Borrower(s) shall be bound to forthwith (within two days) provide/create additional Security to the satisfaction of the Lender. Without prejudice to the other provisions of the Loan Documents, the Lender shall have the right to recall the Loan/Borrower's Dues in part or in full or exercise other rights under the Loan Documents including sell, transfer, dispose

of,encumber and/or deal with the Security, or any part thereof, in any manner if the Security Cover is not maintained.

The value of any Security shall be calculated by a valuer acceptable to the Lender or as deemed fit by the Lender. The cost of valuation of any Security shall be borne only by the Obligor(s) and the same shall be for with payable. Further, the valuation of the Security shall be done as and when required by the Lender and in any case, the Obligor(s) will provide the valuation of the Security (as aforesaid) at least once in a financial year.”

(x) Under the Loan Agreements, the receivables, upon which IHFL had a charge, were deposited in an Escrow Account, in accordance with the Escrow Agreement dated 24th July, to which IHFL, M/s Indiabulls Commercial Credit Ltd, APIPL and the Punjab and Sind Bank, were parties. These amounts stood directly appropriated by the petitioner under Clause 2.1(b) of the Loan Agreements from time to time. There was no allegation of diversion of any amounts from the said Escrow Account. The receivables and immovable properties mortgaged in favour of the petitioner were valued at ₹ 4563.29 crores. The petitioner’s exposure, which was to the tune of ₹ 1327 crores was, therefore, more than adequately secured. No case for passing any protective orders under Section 9 of the 1996 Act, therefore, existed. In this context, Mr. Sethi referred to various covenants of the Escrow Agreement dated 24th July, 2020.

(xi) In any event, in view of the order, dated 23rd February, 2021, whereby the Supreme Court has stayed the order dated

18th January, 2021, of the NCLAT and, accordingly, execution of the Settlement MoU, the very basis for filing the present petition has ceased to exist. No urgent or imminent threat, requiring protective interlocutory measures by this Court, could be said to exist.

19. Mr. Sethi submits, therefore, that the petition deserves to be dismissed at the outset.

Rejoinder Submissions of Mr. Nayar and Mr. Maninder Singh

20. Rejoining to the submissions advanced by Mr. Sethi, Mr. Nayar and Mr. Maninder Singh contend thus:

(i) There was no connection, save and except by virtue of the MoU dated 14th January, 2021, between the IBC proceedings initiated by Vistra against APL and the present proceedings. As such, no concealment could be alleged, against the petitioner, for not having placed, on record, all the details of the proceedings pending in the NCLT and NCLAT. The cause of action, for the petitioner to invoke the Section 9 jurisdiction of this Court, was the execution of the Settlement MoU dated 14th January, 2021, whereby and whereunder APIPL agreed to liquidate the dues of APL to Vistra. If this arrangement had not been accepted by APIPL, learned Senior Counsel contended that the petitioner would have had no grievance, as the proceedings before the NCLAT/NCLT were essentially

between Vistra and APL. It was not open, however, to APIPL to, in the said proceedings, transfer monies to APL, when its loans against the petitioner were still outstanding. Mr. Nayar has also relied on the judgment of the Supreme Court in ***S.J.S. Business Enterprises (P) Ltd v. State of Bihar***⁵, to contend that suppression could be alleged only if material facts were concealed.

(ii) The availability or adequacy of the securities, provided in respect of the loans advanced by IHFL to APIPL and its co-borrowers, could not detract from the right of IHFL to seek, under Section 9, securing of the obligation of APIPL to repay the loan. Reliance was placed, in this context, on ***S. Nazeer Ahmed v. State Bank of Mysore***⁶, ***Bihar State Electricity Board v. Gaya Cotton & Jute Mills Ltd***⁷ and ***China & South Sea Bank Ltd v. Tan***⁸.

(iii) APIPL could not be allowed to pay creditors of other companies, including those of APL, before liquidating its dues to its own creditor, i.e. IHFL.

(iv) The amounts received in the Escrow Account had been duly adjusted while issuing the Loan Recall Notices dated 5th January, 2021.

⁵ (2004) 7 SCC 166

⁶ (2007) 11 SCC 75

⁷ 1976 SCC OnLine Pat 66

⁸ (1989) 3 All ER 839

(v) The security of ₹ 4563 crores, cited by APIPL, was common security for all loans advanced by IHFL to the Ambience group, which were 34 in number, of which only 18 form subject matter of the present proceedings.

(vi) Besides, IHFL's right to recover the loan amounts from APIPL was independent of its right to proceed against the securities.

(vii) Intervention had been sought, by IHFL, in the NCLT, in his capacity as a creditor of APL, in respect of loans secured by separate loan agreements. APIPL was, therefore, needlessly seeking to confuse the two proceedings. That apart, the right to move the Court under Section 9 co-existed with the remedies available under Section 7 of the IBC.

Consideration and Analysis

21. Even as per IHFL, the primary cause of action, which prompted it to approach this Court by way of the present proceedings under Section 9 of the 1996 Act, was the order dated 18th January, 2021, of the NCLAT, which permitted payments to be made in terms of the Settlement MoU. This order, admittedly, stands stayed by the Supreme Court, *vide* order dated 23rd February 2021 in Civil Appeal Diary No 4231/2021 (renumbered, thereafter, as Civil Appeal 717/2021). Before proceeding further, it would be appropriate to view, in perspective, therefore, the proceedings before the NCLT, NCLAT and the Supreme Court.

IBC proceedings

22. Section 7 of the IBC entitles any and all financial creditor(s) to apply to the adjudicating authority – i.e. the NCLT – for initiating of the CIRP against a corporate debtor when a default has occurred. “Default” is defined, in clause (12) of Section 3, as “non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be”.

23. In IB-1600/ND/2018, instituted by Vistra (as the Financial Credit) against APL (as the Corporate Debtor) before the NCLT under Section 7 of the IBC, Vistra pleaded that

- (i) APL had approached the INDIAREIT Fund Scheme-IV in 2011, representing that it had won a bid to acquire three land parcels situated in Gurgaon,
- (ii) in view of this representation, Vistra, as trustee to the INDIAREIT Fund Scheme, executed a Share Subscription cum shareholders agreement whereunder the INDIAREIT Fund Scheme agreed to invest ₹ 134,95,61,340/- in APIPL, which was a Special Purpose Vehicle (SPV) of APL, to fund the construction and development of a residential and commercial project,
- (iii) after Vistra had already invested ₹ 200 crores in APIPL, APL sought for additional funding, which resulted in disputes between Vistra and APL in 2015,

- (iv) when the dispute could not be resolved, Vistra called upon APL, on 6th September 2016, to repay the invested amount of ₹ 200 crores with interest,
- (v) the dispute was referred to conciliation, resulting in a Settlement Agreement dated 7th April 2017 between APL and Vistra, and
- (vi) APL, however, defaulted in payment of the amounts payable by it under the Settlement Agreement.

24. Accepting these pleas, and rejecting those advanced by APL in opposition thereto, the NCLT, *vide* order dated 21st December 2020, admitted the application of Vistra and appointed an Interim Resolution Professional (IRP), to oversee the affairs of APL.

25. Company Appeal (AT) Insolvency No. 06 of 2021 was preferred (referred to, hereinafter, as “Company Appeal 6/2021”), against this order, by Raj Singh Gehlot, Director of APL and APIPL, before the NCLAT.

26. During the pendency of the appeal, Vistra and Raj Singh Gehlot, entered into the MoU on 14th January 2021, proposing settlement of the dispute between Vistra and APL on the following terms (the “parties” being Vistra and Raj Singh Gehlot):

“1. The Parties agree that the disputes between them can be resolved if the Promoter and/or Ambience Projects & Infrastructure Private Limited (SPV) agree and undertake to make the Principal Outstanding sum of INR 135,00,00,000/– (Rupees One Hundred and Thirty Five Crores) under the

Settlement Agreement/Arbitral Award to Vistra ITCL in the following manner:

- a. INR 50 crores on the date of signing of the present MoU (First Tranche Payment);
 - b. Transfer of a floor/apartment in an apartment complex situated in Panchsheel Park, New Delhi-110017 at measuring 500 sq. yds on or before 31 March 2021 in favour of Piramal Fund Management or its nominee (said "Property")
 - c. The balance INR 85 crores on or before 31 March 2021 (Balance Payment).
2. The Promoter through Ambience Projects & Infrastructure Private Limited (SPV) have accordingly caused to deposit an amount of INR 50,00,00,000/- (Rupees Fifty Crores), the first Tranche payment, on 14.01.2021 and 15.01.2021 by way of RTGS to the account of Vistra ITCL. The said amount of INR 50 Crores shall be utilised by Vistra ITCL towards
- a. INR 43,85,43,110/- against redemption of debentures issued by Ambience Projects & Infrastructure Private Limited (SPV); and
 - b. INR 6,14,56,890/- against repayment of the unsecured loans extended to Ambience Projects & Infrastructure Private Limited (SPV).
3. In acknowledgement of the above payment terms set out at Clause 1 and receipt of first Tranche Payment, Parties agree to keep the Appeal pending before the Hon'ble NCLAT in abeyance till the expiry of the Balance Payment., i.e. 31.03.2021, and also consents to make a joint request to the Hon'ble NCLAT to stay the operation of the Order 21.12.2021[sic] till 31.03.2021 and adjourned the proceedings to 01.04.2021 or any day thereafter subject to the convenience of the Hon'ble NCLAT.
4. Parties agree and covenant that the present MoU is signed on a without prejudice basis, Vistra ITCL shall have the right to continue contesting the Appeal in the event the

Balance Payment and conveyance of said Property is not made on or before 31 March 2021. In the event, the Balance Payment is not made on or before 31 March 2021 and the said Property is not conveyed in favour of Piramal Fund Management or its nominee on or before 31 March 2021, the stay on the Order shall be vacated and it shall become operated without any action on part of any of the Parties and original Outstanding Amount (less the amount received under this MoU) will be reinstated;

5. Vistra ITCL and Promoter, the Parties, hereby expressly agree and covenant that upon successful completion of the Balance Payment and conveyance of the said Property in favour of the normal Fund Management or its nominee, the present MoU shall have the effect of a full and final settlement agreement of all claims of Vistra ITCL under the Settlement Agreement/Arbitral Award. No. claim / demand / due shall survive thereafter against any of Ambience Private Limited and/or Ambience Projects & Infrastructure Private Limited and/or the Promoter. Vistra ITCL shall, on completion of the Balance Payment and conveyance of the said Property in favour of Piramal Fund Management or its nominee:

a. Return/transfer all Investor Securities and Unsecured Loans to Promoter/Promoter Group Entities

The terms “Investor Securities” and “Unsecured Loans” shall have the same meaning as assigned under the Settlement Agreement/Arbitral Award;

b. Withdraw all claims, suits, execution and proceedings in respect of the Settlement Agreement/Arbitral Award including but not limited to:

i. The Petition against Ambience Private Limited CP (IB) 1600 of 2018;

ii. The Execution/Enforcement proceedings filed by Vistra ITCL against Ambience Private Limited, the Promoter and Ambience Projects & Infrastructure Private Limited before the

Hon'ble Delhi High Court in OMP (ENF.)
(Comm) 200/2019;

c. shall instruct its representatives, lawyers/counsels to take appropriate steps/action including making representation to the Courts, NCLAT and NCLT to reflect the above commercial understanding between the parties.”

27. Consequent on the execution of the above MoU on 14th January, 2021, the NCLAT passed the order, dated 18th January, 2021, reproduced in para 11 *supra* which, according to IHFL, has necessitated filing of the present petition, invoking Section 9 of the 1996 Act.

28. On the same day, i.e. 18th January, 2021, IHFL filed an application, before the NCLT, against APIPL, under Section 7 of the IBC. The case set out, in the said application, is identical to that set out in the present petition under Section 9 of the 1996 Act. This is apparent from the Synopsis filed with the application, which reads as under:

“The Financial Creditor is a housing finance company regulated by the National Housing Bank. The Financial Creditor is India's second largest housing finance company and provides housing finance including home loans.

During the period from November 2017 to June 2018, the Financial Creditor entered into various loan agreements with the Corporate Debtor and its group companies, under which it provided financing to such entities for the construction and/or development of housing/residential projects. The details of the various credit facilities extended to the Corporate Debtor, which are more particularly described in the Application are summarized below:

- a. In November 2017, the Financial Creditor entered into 2 loan agreements dated November 28, 2017 under which it agreed to provide loan facilities of up to Rs. 300 crores to the Corporate Debtor; and
- b. In June 2018, the Financial Creditor entered into a loan agreement dated June 29, 2018 under which it agreed to provide loan facilities of up to Rs. 148 crores to the Corporate Debtor and Rockstar Realty Private Limited;

The aggregate loan amount sanctioned vide the above loan agreements is Rs. 448,00,00,000 (Rupees Four Hundred and Forty Eight Crores only) and the aggregate loan amount disbursed is Rs. 327,25,00,000 (Rupees Three Hundred Twenty Seven Crore Twenty Five Lakhs Only).

The above loan facilities were secured by way of security, personal guarantees as well as corporate guarantees issued by the Corporate Debtor or its group companies.

In addition to the above loan agreements, the Financial Creditor has extended other loan facilities to the Corporate Debtor by way of other loan agreements. The aggregate amount sanctioned under the abovementioned loan agreements is Rs. 1135,86,92,800 (Rupees One Thousand One Hundred and Thiliy Five Crores Eighty Six Lakhs Ninety Two Thousand Eight Hundred Only) whereas the aggregate amount disbursed is Rs. 1000,11,92,800 (Rupees One Thousand Crores Eleven Lakhs Ninety Two Thousand Eight Hundred Only).

On December 13, 2018, a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") was filed against one of the group companies/associate companies of the Corporate Debtor, Ambience Private Limited ("APL") on or around November 13, 2018 and was not withdrawn within 30 days of its filing. Accordingly, an Event of Default occurred in terms of Clause 12.1.9(b) read with Clause 15 of each of the Loan Agreements, and the outstanding amounts under the Loan Agreements became due and payable.

Since the Event of Default continued to persist with the commencement of insolvency resolution process against APL

being ordered by the Hon'ble National Company Law Tribunal by order dated December 21, 2020, the Financial Creditor issued Loan Recall Notices dated January 5, 2021 under Clause 12.2 of each of the Loan Facilities to the Corporate Debtor by courier and email recalling the Loans and demanding payment within 7 days thereof.

The Corporate Debtor, and the co-borrowers, failed to make payment of the outstanding amounts till date. Instead, on January 12, 2021, the Corporate Debtor and other group companies of the Corporate Debtor issued a reply, denying any liability to make payment of the outstanding amounts. Therefore, another default occurred on January 12, 2021 when the Corporate Debtor failed to make payment of the outstanding amounts. The outstanding principal amount and interest as on January 16, 2021 are as follows:

Outstanding principal: Rs.292,35,01,216/- (Rupees Two Hundred Ninety Two Crores Thirty Five Lakh One Thousand Two Hundred and Sixteen Only)

Interest: Rs.10,67,77,891/- (Rupees Ten Crores Sixty Seven Lakhs Seventy Seven Thousand Eight Hundred and Ninety One Only).

Given the persistent default of the Corporate Debtor, the Financial Creditor has strong reasons to believe that the Corporate Debtor is not financially solvent, being unable to pay its debts. Therefore, the Financial Creditor is filing the present Application against the Corporate Debtor.

No effective orders have, however, been passed, by the NCLT, on this application, till date.

29. Apart from this, IHFL filed 2 applications in Company Appeal 6/2021, preferred by Raj Singh Gehlot against Vistra. One application sought permission for IHFL to implead itself in the appeal, and the second application sought interim directions. It was specifically averred, in the impleadment application, that APL had defaulted in

payment of its dues to IHFL, following which IHFL had recalled all loans extended to APL in terms of the loan agreements and that, after having, thereafter, liquidated the loans for the months of August and September, 2020, APL had taken defaulted in repayment of the loan on 30th September 2020. In the applications seeking directions, para 12 read thus:

“The Applicant is seeking certain directions from this Hon’ble Appellate Tribunal in respect of the January Order since the Applicant apprehends that the Appellant may seek setting aside/withdrawal of the corporate insolvency resolution process already initiated against the Corporate Debtor on the basis of the purely private settlement between the Appellant and the Respondent No.1. This is clear from the terms of the Settlement MoU, which are annexed with this Application. *The Appellant has already caused a group company of the Corporate Debtor, Ambience Projects and Infrastructure Private Limited (“APIPL”) to make a payment of INR 50 crores to the Respondent No.1 under the Settlement MoU. It is submitted that APIPL is already defaulted on payments to the Applicant, and any such payment would lead to further defaults, affecting its liability to make payments to the Applicant.* Thus, the Applicant is being hit with a double whammy, on account of the default of the Corporate Debtor and that of APIPL (who defaults are being further worsened).”

(Emphasis supplied)

Following on the above averments, the prayer clause, in the application for directions, preferred by IHFL before the NCLAT in Company Appeal 6 of 2021, read, *inter alia*, thus:

“In light of the facts and circumstances as stated hereinabove, it is most respectfully prayed that this Hon’ble Appellate Tribunal may be pleased to:

- a. modify the order dated January 18, 2021 of this Hon’ble Appellate Tribunal in the captioned Appeal to omit/exclude the state granted in respect of the

proceedings of the Committee of Creditors of the Corporate Debtor;

d. direct the Respondent No. 1 to return the amounts already paid to it under the memorandum of understanding dated January 14, 2021 between the Appellant and the Respondent No. 1 (“Settlement MoU”) to Ambience Projects and Infrastructure Private Limited and/or the Appellant...”

30. It is an admitted position that no substantial orders been passed, by the NCLAT, in either of the above applications filed by IHFL before it.

31. In the meanwhile, the Supreme Court, on 23rd February, 2021, passed the order in Civil Appeal No. 717/2021, preferred by way of challenge to the order dated 18th January, 2021 of the NCLAT, reproduced in para 13 *supra*. The matter now stands adjourned, by the Supreme Court, to 6th April, 2021 .

32. In view of the submission, of the respondent, that, with the passing of the above order by the Supreme Court on 23rd February 2021, the justification for seeking *ad interim* relief, by the petitioner, did not survive, I had listed this matter on 15th March, and again on 19th March, 2021, on request of the Counsel for the parties, for instructions as to whether they would prefer to await the outcome of further proceedings in the Supreme Court. However, learned Counsel for the petitioner requested the Court, on 19th March, 2021, to decide the prayer for *ad interim* injunction.

33. From the above sequence of proceedings in the NCLT, the NCLAT and the Supreme Court, two issues arise; firstly, as to whether the petitioner has been guilty of concealment, from this Court, of material facts and, secondly, as to whether the filing of applications, by the petitioner, before the NCLAT, for impleadment in Company Appeal 6/2021, and for directions, restraining Vistra and APL from enforcing the MoU dated 14th January, 2021, impacts the maintainability of the present petition under Section 9 of the 1996 Act.

34. I am inclined to hold, on both the issues, in favour of the petitioner and against the respondent.

35. On the first issue, I am not persuaded to agree with Mr. Sandeep Sethi that there has been wilful or material concealment of relevant facts, from this Court. While it is true that the petitioner has not placed, on record, the applications, filed by it, in Company Appeal 6/2021 pending before the NCLAT, the fact of filing of the said applications, and the prayers contained therein, have been candidly disclosed in para 64 of the petition, already reproduced hereinabove. No concealment of material facts can, therefore, be laid at the door of the petitioner.

36. Qua the 2nd submission, regarding the impact, of the proceedings in the NCLT and NCLAT, on the present petition, I am unable to agree with the submission, of Mr. Nayar and Mr. Singh, that

the applications, filed by IHFL in Company Appeal 6/2021 imperil, in any manner, the present petition under Section 9 of the 1996 Act. No authority, supporting such a proposition, has been brought to my notice. Mr. Nayar and Mr. Singh have submitted, categorically, that IHFL was entitled, in law, to simultaneously prosecute its applications before the NCLAT in Company Appeal 6/2021, and the present proceedings under Section 9 of the 1996 Act. This, to me, appears to be an unexceptionable proposition. Indeed, it was necessary for IHFL to, in the first instance, seek vacation of the order dated 18th January, 2021, of the NCLAT, before approaching this Court by the present petition under Section 9. Else, a legitimate objection could have been raised to the effect that, having accepted the order dated 18th January, 2021, IHFL was estopped from moving this Court, seeking directions which would effectively interfere with the said order, thereby accepting the order before one forum and questioning the order before another. The order dated 18th January, 2021 having been passed by the NCLAT, IHFL, as an entity claiming to have been affected, adversely, by the said order, therefore, justifiably moved the NCLAT, seeking impleadment in the proceedings and vacation of the order. (When I use the word “justifiably”, I do not intend to pronounce on the *merits* of IHFL’s application before the NCLAT, which would have to be appreciated and addressed by the NCLAT itself.)

37. The remedy under Section 9 of the 1996 Act is *sui generis*, and is intended to afford interim protection, against arbitral proceedings being frustrated. That remedy is available to any party to an arbitration agreement, and cannot be denied on the ground that,

seeking relief which would result in the same consequence, the party had moved the NCLAT. Besides, the nature of the two proceedings are entirely different. The application of IHFL, before the NCLAT, is for vacation of the order, dated 18th January, 2021 and, consequently, for a direction, to Vistra and APL, not to act on the MoU dated 14th January, 2021. The application before this Court is for interim protection, on the ground that arbitrable disputes has arisen between the parties and that, if APIPL were to make payments to APL, in accordance with the MoU dated 14th January, 2021, it would render APIPL incapable of honouring any award, which may come to be passed in favour of IHFL at a subsequent point of time. The mere fact that, in either case, IHFL is effectively seeking an interdiction against implementation of the MoU dated 14th January, 2021, cannot non-suit IHFL, in the present proceedings, which are, clearly, otherwise maintainable in law.

38. The case of IHFL, before me, is that the MoU dated 14th January, 2021, if implemented, might adversely affect the ability of APIPL to liquidate its debt to IHFL, which might, in turn, frustrate the arbitral exercise. For this, Section 9 of the 1996 Act (or Section 17, once the arbitral proceedings commence), is unquestionably the provision to be invoked. The order, dated 18th January, 2021, of the NCLAT, adjourned the proceedings to enable the parties to proceed in accordance with the MoU. Variation, modification or vacation of this direction had to be necessarily sought either before the NCLAT itself, or in appeal. Both remedies have been availed by IHFL. That cannot,

however, disentitle the petitioner to prosecute its cause under Section 9 of the 1996 Act.

39. The submission of Mr. Sethi that, by the present proceedings, IHFL is abusing the legal process, and is effectively seeking to interfere with the order dated 18th January, 2021, of the NCLAT is, therefore, *prima facie* misconceived. In fact, the order dated 18th January, 2021 merely adjourns the proceedings, recording the fact that the MoU, dated 14th January, 2021, stood executed, as well as the manner in which payments were to be made under the said MoU. IHFL, as a member of the Committee of Creditors of APL has, however, been disentitled, by the NCLAT, from participating in the said exercise, and the grievance of IHFL, in that regard, cannot be characterised as misconceived. Even for this reason, too, therefore, IHFL cannot be faulted for having moved the present petition, before this Court, invoking its jurisdiction under section 9 of the 1996 Act.

40. The present petition is not, therefore, *prima facie*, *rendered non-maintainable*, because of the proceedings pending in the NCLAT, or the participation of IHFL therein. Even so, those proceedings *do* impact the *entitlement*, of the petitioner, to relief in the present petition, as the discussion hereinafter would disclose.

41. This Court has, in its earlier decisions in *Avantha Holdings Limited v. Vistra ITCL India Ltd*⁹, observed that, apart from the existence of a *prima facie* case, balance of convenience and

⁹ MANU/DE/1548/2020

irreparable injury, the applicant seeking injunctive relief under Section 9 of the 1996 Act has also to necessarily establish that, were such a relief not to be granted, the arbitral proceedings would stand frustrated. In the case of a pure money claim, as in the present instance, therefore, it is not enough for the Section 9 applicant to say: “The respondent owes me money. The dispute is arbitrable. Please secure the amount or grant other protective interim directions.” Rather, he would have to say: “The respondent owes me money. *In case interim protection is not granted, my claim would stand frustrated, even before I could obtain relief under Section 17, from the Arbitral Tribunal.* Interim protection is, therefore, necessary, *so that the arbitral proceedings are not rendered futile.*”

42. Has IHFL bridged this chasm?

43. Admittedly, even as per the averments in the petition, the “apprehension” of the petitioner is based on the developments in the Section 7 proceedings, initiated by Vistra against APL in the NCLT. According to the petitioner – and as per the submissions orally advanced by Mr.Nayar and Mr. Maninder Singh – the execution of the MoU on 14th January, 2021, and the passing of the order, by the NCLAT on 18th January, 2021, justify the prayer for interim protection, under Section 9 of the 1996 Act. The specific averment in this regard, to be found in Para 61 of the petition is that “if the resources of (APIPL) are utilised to make payments to Vistra ITCL (India) Ltd or other creditors of group companies of the Respondent No. 1, it would grossly undermine the ability of the Respondent No. 1

to make payments to the Petitioner under the Loan Agreements, which it is contractually obliged to do.” Para 62 goes on to voice the apprehension that “similarly the assets of the Respondent Nos. 12-26 which have been provided as security in terms of the Loan Agreements are at risk of being sold off/transferred/alienated or encumbered for the purpose of making payments under the Settlement MoU or otherwise towards other debt obligations of (APIPL) all the obligations of the group companies of the Ambience group or their directors, promoters or personal/corporate guarantors” and that “if this happens, the petitioner will not be able to recover the amounts due and payable to it by the Respondent Nos 1-11 and the arbitration proceedings to be commenced by the Petitioner against the Respondents shall be rendered infructuous as a result.”

44. To my mind, on the face of it, these assertions are woefully insufficient to maintain a prayer for interim protection, under Section 9 of the 1996 Act. No particulars, of the manner in which the making of payments, to Vistra, by APIPL, would “grossly undermine the ability” of APIPL to make payments to IHFL, are forthcoming. No basis for the “apprehension” that the assets of Respondents 12 to 26 are at the risk of being sold off/transferred/alienated is, either, provided in the petition. (This aspect is, strictly speaking, not relevant for the present order, as Mr. Nayar restricted his prayer for ad interim relief to a restraint, against APIPL, from making payments to APL or to any other creditors or group companies.) How, even if payments were to be made by APIPL to APL, or to Vistra, towards satisfaction of the MoU dated 14th January, 2021, the arbitral proceedings relating

to the present dispute would be rendered infructuous, is also not apparent either from the pleadings or from the material placed on record. There is no averment, in the petition, that, if APIPL were to make further payments to APL, or to Vistra, it would be rendered financially incapable of liquidating its debts towards IHFL – assuming, that is, that these dues are found to be payable in the arbitral proceedings, which are yet to commence.

45. While it is true that, in a given case, Section 9 of the 1996 Act may be invoked even on a mere apprehension, that apprehension has to be real and substantial. It is always necessary for the Court to bear in mind the fact that the 1996 Act is intended to promote the arbitral institution, and the arbitral process, and not to enable courts to give interlocutory injunctions, even before arbitral proceedings commence, save and except in the rare and deserving cases. It is only, therefore, where it is practically, or otherwise, impossible to obtain succour from the arbitral process that, even prior to the process being set into motion, the Court affords “interim protection”. The importance of the use of the word “protection”, in Section 9, cannot be undermined. The intent of the provision is to protect the party to the arbitration agreement, who intends to invoke the agreement, from frustration of its claim, even before the arbitral Tribunal is able to address itself to it. Where, therefore, no case, manifesting such urgency, as would require the Court to step in at any incipient stage, even before the arbitral process is set in motion, is made out, no relief can be provided to the Section 9 applicant.

46. This Court has, in its judgement in *Avantha Holdings*⁹, observed thus, in this context:

24. Section 9 of the 1996 Act contemplates "interim measures, etc.", by the Court. The expression "etc.", used at the end of a definition clause has been held, in several decisions, to be required to be interpreted *noscitur a sociis* and *eiusdem generis* (the latter principle applying where the words, preceding the word "etc.", constituted a genus, and the former principle applying more universally, in all cases), the words preceding it.¹ Measures, put in place by the Court, in exercise of the jurisdiction vested by Section 9 has, therefore, to be in the nature of "interim measures". "Interim reliefs", held the Bombay High Court in *Bank of Maharashtra v. M. v. River Oghese*¹⁰ AIR 1990 Bom 107, "are granted to serve the temporary purpose of protecting the plaintiff's interest so that the suit is not frustrated".

25. The Court, while exercising its power under Section 9 of the 1996 Act, has to be acutely conscious of the power, vested in the arbitrator/arbitral tribunal, by Section 17 of the same Act. A reading of Section 9, and Section 17, of the 1996 Act, reveals that they are identically worded. The "interim measures", which can be ordered by the arbitral tribunal, under Section 17, are the very same as those which can be ordered by the Court under Section 9. It is for this reason that sub-section (3) of Section 9 proscribes grant of interim measures, by the Court, consequent on constitution of the arbitral tribunal, save and except where the Court finds that circumstances exist, which may not render the remedy, under Section 17, to be efficacious. The Court, while exercising jurisdiction under Section 9, even at a pre-arbitration stage, cannot, therefore, usurp the jurisdiction which would, otherwise, be vested in the arbitrator, or the arbitral tribunal, yet to be constituted. The Court is also required to ensure that Section 9 is not employed, by litigants, who feel that it is easier to obtain interim relief from a Court, rather than from an arbitrator or arbitral tribunal, to forum shop. Left unchecked, Section 9 is easily amenable to such misuse. While, in an appropriate case, the Court must not hesitate in ordering "interim measures", under Section 9, in judging whether a particular case is "appropriate" or not, the Court is required to do some tightrope walking. While the principles, to be borne in mind, while examining whether a case for ordering interim measures, under Section 9, exists or not, the same as those which govern Order 39 of the Civil Procedure Code, 1908,

¹⁰ AIR 1990 Bom 107

i.e. the existence of a prima facie case, the balance of convenience and the possibility of irreparable loss or prejudice, were interim relief not to be granted, apart from the consideration of public interest, evolved by later decisions, chiefly in ***Ramniklal N. Bhutta v. State of Maharashtra***¹¹ and ***Raunaq International Ltd. v. I.V.R. Construction Ltd.***¹².

26. That said, the mere satisfaction of these criteria does not, *ipso facto*, make out a case for ordering interim measures under Section 9. Additionally, the Court is also required to satisfy itself that the relief, being sought under Section 9, cannot await the constitution of the arbitral tribunal, or the appointment of the arbitrator, and the invocation, before such arbitrator or arbitral tribunal, of Section 17. Emergent necessity, of ordering interim measures is, therefore, an additional *sine qua non*, to be satisfied before the Court proceeds to grant relief under Section 9 of the 1996 Act. While passing orders under Section 9, therefore, the Court is required to satisfy itself that (i) the applicant, before it, manifestly intends to initiate arbitral proceedings², (ii) the criteria for grant of interim injunction, which apply to Order 39 of the CPC, stands satisfied, and (iii) circumstances also exist, which renders the requirement of ordering interim measures an emergent necessity, which cannot await a Section 17 proceeding, before the arbitrator, or arbitral tribunal. In assessing whether such an emergent necessity exists, or not, the Court would, essentially, have to satisfy itself that failure to order interim measures, under Section 9, would frustrate, or would render the recourse, to arbitration - which is yet to take place - futility.

Referring, thereafter, to the judgements of the Supreme Court in ***Adhunik Steels v. Orissa Manganese & Minerals (P) Ltd***¹³, ***Arvind Constructions v. Kalinga Mining Corporation***¹⁴, ***Firm Ashok Traders v. Gurmukh Das Saluja***¹⁵ and of this Court in ***Olex Facas Pvt Ltd v. Skoda Export Co. Ltd***¹⁶, the judgement goes on to hold thus:

¹¹ (1997) 1 SCC 134

¹² (1999) 1 SCC 492

¹³ (2007) 7 SCC 125

¹⁴ (2007) 6 SCC 798

¹⁵ (2004) 3 SCC 155

¹⁶ AIR 2000 Del 161

The categories of "interim measures", which could be directed under Section 9, stand specifically delineated in the provision itself. The Court can, under Section 9(i) appoint a guardian for the purposes of arbitral proceedings, (ii) direct preservation, interim custody or sale of the goods which are subject matter of the arbitration agreement, (iii) secure the amount in dispute in the arbitration, (iv) direct detention, preservation or inspection of any property or thing which is the subject matter of dispute in arbitration, or as to a breach any question may arise therein, (v) grant interim injunction or appoint a receiver and (vi) grant such other interim measure of protection as may appear to the court to be just and convenient. The ambit of sub-clause (ii)(e) of sub-section (1) of Section 9, which empowers the Court to grant "such other interim measure of protection as may appear to the court to be just and convenient"-specifically the ambit of the expression "just and convenient"-constitutes subject matter of the following enunciation of the law, by Banumathi, J. (as she then was), speaking for the High Court of Madras, in *V. Sekar v. Akash Housing*¹⁷:

"The purpose of Section 9 is to provide an interim measure of protection to the parties to prevent the ends of justice from being defeated. Section 9(2)(e) vests the Court with the power to grant such interim measures of protection as may be just and convenient. The jurisdiction under the "just and convenient" clause is quite wide in amplitude, but must be exercised with restraint. Interim measures are to be granted by the Court so as to protect the rights in adjudication before the arbitral tribunal from being frustrated. It does not allow the Court the discretion to exercise on restrained powers and frustrate the very object of arbitration."

47. The case set out in the petition, and persuasively vocalized before me by learned Senior Counsel, even at its highest, cannot, in my view, make out a case for pre-arbitral interlocutory interdiction under Section 9 of the 1996 Act, being based, as it is, entirely on

¹⁷ AIR 2011 Mad 110 : (2011) 3 Arb LR 327 (DB)

presumption, conjecture, and apprehensions devoid of requisite factual support.

48. In fact, the very basis of the premise, in the present case, appears to be misconceived. Repeated emphasis was made, during arguments, that APIPL should not be allowed to make any payment to anyone, including its group companies and other creditors, before it liquidates the debt due to IHFL.

49. There are, in my view, two fundamental fallacies in the submission. Firstly, there is, as on date, no debt due from APIPL to IHFL. At best, IHFL only has a claim against APIPL. That claim cannot be equated with a debt simplicitor. The entitlement, of IHFL, to the amount claimed is, admittedly, dependent on IHFL succeeding in its stand that APIPL had committed Events of Default under the Loan Agreements. APIPL, for its part, denies the allegation. I am unable to concur with Mr. Nayar, when he submits that, in the communication dated 12th January, 2021, in response to the Loan Recall Notices issued by IHFL, APIPL admitted the occurrence of the Events of Default. The mere comment, in the said communication, that IHFL could have exercised its option in August 2019, when the CIRP was ordered to be initiated cannot, in my view, be read as an unequivocal admission, by APIPL, of the occurrence of any Event of Default. No case, therefore, for any direction, to IHFL, to prioritise the said claim over all other payments which it may seek to make to any other entity, can be said to exist. At this stage, it cannot be presumed that the claim of IHFL would necessarily succeed. The

claim is, in any event, inchoate, and cannot, therefore, be accorded greater priority over other payment which APIPL may seek to make to any other creditor or its own group companies.

50. Secondly, the law does not recognise any such concept of “priority of debts”, where the creditors are private parties. There is no principle, known to law, which can compel APIPL to liquidate, in the first instance, the debt due to IHFL – assuming, *arguendo*, that any such debt exists – before making any payment to any other party. Learned Senior Counsel for the petitioner have not been able to draw my attention to any decision, enunciating such a principle. It is not as though APIPL is prioritizing unsecured, over secured, debts. No such case has, moreover, been either pleaded or pressed before me. I find substance, in the submission of Mr. Sandeep Sethi, that, in the absence of any covenant in any of the Loan Agreements requiring APIPL to refrain from making payments to any other entity before it liquidates the claims of IHFL, it is for APIPL to decide how to manage its financial affairs. Section 9 of the 1996 Act cannot be used as a vehicle to impose, on a private commercial entity, a mandamus, regarding the manner in which it should deal with its monies. Nor can it be used, in my view, as a basis for any direction, to a party, to prioritise one debt over another. All that can be done under Section 9, is to grant interim protection, subject to the Section 9 applicant making out a case that, were such protection not to be granted, its claim may be frustrated at a later point of time. At the cost of repetition, it merits emphasis that IHFL has not placed once scintilla of material, on record, from which the Court could draw the inference

that, were APIPL to effect payments under the MoU dated 14th January, 2021, the claim of IHFL against APIPL would stand the danger of being frustrated. A mere apprehension is expressed in that regard. That, however, in my view, is insufficient to galvanize Section 9 of the 1996 Act into action.

51. Mr. Sethi has, moreover, pointed out those securities, in the form of immovable property, valued in excess of ₹ 4563 crores, stood provided by Respondents 12 to 26. This, submits Mr. Sethi, is far in excess of IHFL's exposure in the present case which, even as per the petitioner, was in the region of ₹ 1327 crores. The interests of the petitioner, therefore, submits Mr Sethi, stand more than adequately secured. In response, all that Mr. Nayar has submitted is that the security of ₹ 4563 crores was in respect of all loans advanced to the Ambience group. The petitioner has itself provided, with the petition, a tabular representation of the various securities provided, against the loans advanced by IHFL (Annexure A to this judgement). When one works out, from the said tabular statement, values of the securities, provided against each of the loans, the following position emerges:

Date of Agreement	Borrowers	Loan Amount (₹)	Total Amount with respect to security furnished (in ₹ crores)
28 th November, 2018	(1) APIPL	165,00,00,000	1760 +1662.50 +807.18

	(2)	Raj Singh Gehlot		+168.20
	(3)	Rockstar Buildcon Pvt Ltd		+109.97 = 4507.85
28 th November, 2018	(1)	APIPL	20,54,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Raj Singh Gehlot		
	(3)	Vijeta Properties Pvt Ltd		
28 th November, 2018	(1)	APIPL	154,46,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Raj Singh Gehlot		
	(3)	Vijeta Properties Pvt Ltd		
28 th November, 2018		APIPL	245,00,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
28 th November, 2018		APIPL	55,00,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
29 th June, 2018	(1)	APIPL	148,00,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Rockstar Realty Pvt Ltd		
28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Hitech Towers Pvt Ltd		

28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Rockstar Realty Pvt Ltd		
28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Caitriona Towers Pvt Ltd		
28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Bigboss Realty Pvt Ltd		
28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Greentech Colonizers Pvt Ltd		
28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Supervalley Buildtech Pvt Ltd		
11 th September, 2020	(1)	APIPL	95,00,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Rockstar Realty Pvt Ltd		
28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +807.18 +168.20 +109.97 = 2845.35
	(2)	Master Buildwell Pvt Ltd		

28 th November, 2018	(1)	APIPL	25,10,86,600	1760 +807.18 +168.20 +109.97 = 2845.35
	(2)	Ambience Power Projects Pvt Ltd		
29 th June, 2018	(1)	APIPL	14,25,00,000	1760 +1662.50 +807.18 +168.20 +109.97 +55.44 +55.44 = 4618.73
	(2)	Bigboss Realty Pvt Ltd		
11 th September, 2020	(1)	APIPL	180,00,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Bigboss Realty Pvt Ltd		
11 th September, 2020	(1)	APIPL	170,00,00,000	1760 +1662.50 +807.18 +168.20 +109.97 = 4507.85
	(2)	Hitech Towers Pvt Ltd		

52. It is apparent, from a bare glance at the above table, that each of the loans, advanced by IHFL to APIPL and its co-borrowers, stands secured by securities valued far in excess of the loan amounts. The mere fact that each security may secure more than one loan does not detract from the fact that all loans stand adequately secured. IHFL has not chosen to aver, or contend, that the values of the securities have diminished in any manner. *For that matter, no plea, that the securities are insufficient, either, figures, either in the pleadings or in the arguments addressed at the bar.* This, additionally, serves to discountenance the “apprehension”, expressed by IHFL, that, were

interim protection, as prayed, not granted, the arbitral proceedings may stand frustrated.

53. Learned Senior Counsel Mr. Nayar and Mr. Maninder Singh pressed, into service, the principle that the right of the creditor, to proceed against the principal debtor, and the pledgors/guarantors/obligors, is independent. As a proposition of law, there is no gainsaying this legal position. As such, contends learned Senior Counsel, the existence of adequate securities, pledged by Respondents 12 to 26, is no fetter to the right of IHFL to proceed against APIPL, or seek protective measures against APIPL, qua the amounts owed by it to IHFL.

54. This submission, in my view, really begs the issue, and proceeds by overlooking the fundamental position that Section 9 of the 1996 Act is not a provision for recovery of amounts due to the applicant. The question is not, therefore, whether the rights of IHFL, to proceed against APIPL, and against the other entities who have provided securities for the loans advanced to APIPL, exist independently, or not. What has to be seen is whether, when the loans advanced to APIPL stand more than sufficiently secured by the securities provided against the said loans, even if by third parties, a situation justifying pre-arbitral interim measures of protection, within the meaning of Section 9 of the 1996 Act, can be said to exist. In my view, the answer has necessarily to be in the negative.

55. In view of the above, it is not necessary for this Court, at least at this *ad interim* stage, to enter into the issue of whether any Event of Default had, or had not, been committed by APIPL. Ideally, this is an aspect which would have to be considered by the Arbitral Tribunal, to be constituted in accordance with the Loan Agreements. Suffice it to state that the *ad interim* request, of IHFL, for a restraint, against APIPL, from making any payments, to its group companies or any other entity, till it liquidates the amount forming subject matter of the claim of IHFL against APIPL, cannot, *prima facie*, be granted.

Conclusion

56. The prayer for *ad interim* relief is accordingly rejected.

57. Issue notice in OMP (I) (Comm) 29/2021. As the dispute involves stakes in excess of ₹ 500 crores, it requires to be decided expeditiously. Response, therefore, be positively filed within four weeks with advance copy to learned Counsel for the petitioner, who may file rejoinder, thereto, within two weeks thereof. List as the first item for disposal at the end of the board, subject to part heard matters, if any, on 10th May, 2021.

58. No extension of time, for filing reply or rejoinder, would be granted, and default in compliance with the above time lines would result in forfeiture of the right to do so.

59. Observations contained in this order are intended only to dispose of prayer (e), for *ad interim* relief in terms of prayers (c) and (d) (as was pressed during arguments by learned Senior Counsel). They do not propose to express any final opinion on any of the other prayers in the petition, or even on the entitlement of the petitioner, at the stage of final hearing of the Section 9 petition, to the reliefs sought therein.

C. HARI SHANKAR, J.

MARCH 23, 2021

HJ

No .	Security document	Date of security document	Security Provider	Particulars of security provided	Loan agreements in respect of which the security has been provided	Estimated value	Whether the security has been provided in respect of other loan of Ambience group companies with Indiabulls
1	DOH	DOH:- 30/09/2020	Ambience Projects and Infrastructure Private Limited	Project Creacions on Land admeasuring 14.82 Acre situated at Sec -22 Gurgaon`	1. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr 2. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170 3. Loan Agreement dated 11.09.2020 between Rockstar Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 95	appx Rs 1760 Cr.	Yes
2	DOH	DOH:- 30/09/2020	Ambience Projects and Infrastructure Private Limited	Project Creacions on Land admeasuring 14.82 Acre situated at Sec -22 Gurgaon`	1. Loan Agreement dated 28.11.2018 between Rockstar Buildcon Private Limited and IHFL for an aggregate amount of INR 165 Cr 2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr 3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr 4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr 5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr 6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr 7.Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr	appx Rs 1760 Cr.	Yes

3	DOH	DOH:- 23/07/2020	Ambience Projects and Infrastructure Private Limited	Project Creacions on Land admeasuring 14.82 Acre situated at Sec -22 Gurgaon`	<p>1.Loan Agreement dated 28.11.2018 between Rockstar Realty Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p> <p>2. .Loan Agreement dated 28.11.2018 between Caitriona Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p> <p>3..Loan Agreement dated 28.11.2018 between Greentech Colonizers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p> <p>4..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p> <p>5..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p> <p>6..Loan Agreement dated 28.11.2018 between Hitech Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p> <p>7..Loan Agreement dated 28.11.2018 between Master Buildwell Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p> <p>8.Loan Agreement dated 28.11.2018 between Ambience Power Projects Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.</p>	appx Rs 1760 Cr.	Yes
4	DOH, D&A, MC	D&A:- 26/06/2019 DOH:- 25/06/2019 MOE:- 26/06/2019	Prime Commercial Private Limited	Land admeasuring 16.62 Acres situated in the revenue estate of Village Nathupur, Tehsil & District Gurgaon, Haryana	<p>1. Loan Agreement dated 28.11.2018 between Rockstar Buildcon Private Limited and IHFL for an aggregate amount of INR 165 Cr</p> <p>2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr</p> <p>3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr</p> <p>4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr</p> <p>5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr</p> <p>6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr</p> <p>7.Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr</p>	1662.50 Cr	Yes

5	DOH, D&A, MC	D&A:- 24/07/2020 DOH:- 23/07/2020 MOE:- 24/07/2020	Prime Commercial Private Limited	Land admeasuring 16.62 Acres situated in the revenue estate of Village Nathupur, Tehsil & District Gurgaon, Haryana	1. Loan Agreement dated 28.11.2018 between Rockstar Realty Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 2. .Loan Agreement dated 28.11.2018 between Caitriona Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 3..Loan Agreement dated 28.11.2018 between Greentech Colonizers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 4..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 5..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 6..Loan Agreement dated 28.11.2018 between Hitech Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.	1662.50 Cr	Yes
6	DOH, D&A, MC	D&A:- 01/10/2020 DOH:- 30/09/2020 MOE:- 01/10/2020	Prime Commercial Private Limited	Land admeasuring 16.62 Acres situated in the revenue estate of Village Nathupur, Tehsil & District Gurgaon, Haryana	1. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr 2. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170 3. Loan Agreement dated 11.09.2020 between Rockstar Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 95	1662.50 Cr	Yes
7	DOH, D&A, MC	D&A:- 01/10/2020 DOH:- 30/09/2020 MOE:- 01/10/2020	RSG Housing & Finance Private Limited	Land admeasuring 5.1501 Acres and 5.31 Acre situated in the revenue estate of Village Nathupur, Tehsil Gurugram, Haryana	1. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr 2. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170 3. Loan Agreement dated 11.09.2020 between Rockstar Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 95	807.18 Cr	Yes

8	DOH, D&A, MC	D&A:- 24/07/2020, DOH:- 23/07/2020 , MOE:- 24/07/2020,	RSG Housing & Finance Private Limited	Land admeasuring 5.1501 Acres and 5.31 Acre situated in the revenue estate of Village Nathupur, Tehsil Gurugram, Haryana	1.Loan Agreement dated 28.11.2018 between Rockstar Realty Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 2. .Loan Agreement dated 28.11.2018 between Caitriona Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 3..Loan Agreement dated 28.11.2018 between Greentech Colonizers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 4..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 5..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 6..Loan Agreement dated 28.11.2018 between Hitech Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 7..Loan Agreement dated 28.11.2018 between Master Buildwell Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 8.Loan Agreement dated 28.11.2018 between Ambience Power Projects Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.	807.18 Cr	Yes
9	DOH, D&A, MC	D&A:- 26/06/2019 DOH:- 25/06/2019 MOE:- 26/06/2019	RSG Housing & Finance Private Limited	Land admeasuring 5.1501 Acres and 5.31 Acre situated in the revenue estate of Village Nathupur, Tehsil Gurugram, Haryana	1. Loan Agreement dated 28.11.2018 between Rockstar Buildcon Private Limited and IHFL for an aggregate amount of INR 165 Cr 2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr 3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr 4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr 5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr 6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr 7.Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr	807.18 Cr	Yes

10	DOH, D&A, MC	D&A:- 01/10/2020, DOH:- 30/09/2020 MOE:- 01/10/2020	Ambience Infrastructure Developers Private Limited	Land measuring 3.9937 and 3.6562 Acres situated in the revenue estate of Village Lakhtnaula(Nakhtnoul), Sector 82, District Gurgaon, Haryana	1. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr 2. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170 3. Loan Agreement dated 11.09.2020 between Rockstar Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 95	168.20 Cr	Yes
11	DOH, D&A, MC	D&A:- 06/10/2020 DOH:- 05/10/2020 MOE:- 06/10/2020	Ambience Infrastructure Developers Private Limited	Land measuring 3.9937 and 3.6562 Acres situated in the revenue estate of Village Lakhtnaula(Nakhtnoul), Sector 82, District Gurgaon, Haryana	1. Loan Agreement dated 28.11.2018 between Rockstar Buildcon Private Limited and IHFL for an aggregate amount of INR 165 Cr 2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr 3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr 4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr 5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr 6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr 7. Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)	168.20 Cr	Yes

12	DOH, D&A, MC	D&A:- 06/10/2020 DOH:- 05/10/2020 MOE:- 06/10/2020	Ambience Infrastructure Developers Private Limited	Land measuring 3.9937 and 3.6562 Acres situated in the revenue estate of Village Lakhnoula(Nakhnoula), Sector 82, District Gurgaon, Haryana	1. Loan Agreement dated 28.11.2018 between Rockstar Realty Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 2. .Loan Agreement dated 28.11.2018 between Caitriona Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 3..Loan Agreement dated 28.11.2018 between Greentech Colonizers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 4..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 5..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 6..Loan Agreement dated 28.11.2018 between Hitech Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 7..Loan Agreement dated 28.11.2018 between Master Buildwell Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 8.Loan Agreement dated 28.11.2018 between Ambience Power Projects Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.	168.20 Cr	Yes
13	DOH, D&A, MC	D&A:- 01/10/2020 DOH:- 30/09/2020 MOE:- 01/10/2020	Rockstar Infratech Private Limited	Land admeasuring 22 Kanals and 1 Marla (i.e 2.75625 Acres) situated in the village Mullahera, Tehsil and District Gurugram , Haryana,	1. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr 2. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170 3. Loan Agreement dated 11.09.2020 between Rockstar Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 95	109.97 Cr	Yes

14	DOH, D&A, MC	D&A:- 06/10/2020 DOH:- 05/10/2020 MOE:- 06/10/2020	Rockstar Infratech Private Limited	Land admeasuring 22 Kanals and 1 Marla (i.e 2.75625 Acres) situated in the village Mullahera, Tehsil and District Gurugram , Haryana,	1. Loan Agreement dated 28.11.2018 between Rockstar Buildcon Private Limited and IHFL for an aggregate amount of INR 165 Cr 2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr 3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr 4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr 5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr 6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr 7. Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)	109.97 Cr	Yes
15	DOH, D&A, MC	D&A:- 06/10/2020 DOH:- 05/10/2020 MOE:- 06/10/2020	Rockstar Infratech Private Limited	Land admeasuring 22 Kanals and 1 Marla (i.e 2.75625 Acres) situated in the village Mullahera, Tehsil and District Gurugram , Haryana,	1. Loan Agreement dated 28.11.2018 between Rockstar Realty Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 2. .Loan Agreement dated 28.11.2018 between Caitriona Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 3..Loan Agreement dated 28.11.2018 between Greentech Colonizers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 4..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 5..Loan Agreement dated 28.11.2018 between Supervalley Buildtech Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 6..Loan Agreement dated 28.11.2018 between Hitech Towers Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 7..Loan Agreement dated 28.11.2018 between Master Buildwell Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr. 8.Loan Agreement dated 28.11.2018 between Ambience Power Projects Private Limited, APIPL and ICFL (Further assigned to IHFL) for an aggregate amount of INR 25 Cr.	109.97 Cr	Yes

16	DOH, D&A, MC	D&A:-24-07-2020 DOH:- 23-07-2020 MOE:-24-07-2020	Armaan Buildcon Private Limited	land Admeasuring 15.74 acres situated in Village Akbarpur Barota and Jathedi, Tehsil & Distt. Sonapat, Haryana owned by M/s. Armaan Buildcon Private Limited	1.Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)	55.44 Cr	No
17	DOH, D&A, MC	D&A:-24-07-2020 DOH:- 23-07-2020 MOE:-24-07-2020	Greenvalley Realtors Private Limited	Land admeasuring 12.54 acre situated in Village Akbarpur Barota and Jathedi, Tehsil & Distt. Sonapat, Haryana owned by M/s. Greenvalley Realtors Private Limited.	1.Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)		No
18	Pledge Agreement	30-09-2020	Pledge on shares of Rockstar Infratech Private Limited held by Shekhar Singh and Surender Singh	Pledge on shares of Rockstar Infratech Private Limited held by Shekhar Singh and Surender Singh	1. Loan Agreement dated 28.11.2018 between Rockstar Buildcon Private Limited and IHFL for an aggregate amount of INR 165 Cr 2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr 3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr 4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr 5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr 6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr 7.Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr) 8. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr 9. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170	N.a	Yes

19	Pledge Agreement	30-09-2020	Pledge on shares of Ambience Infrastructure Developers Private Limited held by Surbhi Gehlot, Sheela Gehlot, Shahista Gehlot, M/s. Aman Holdings Private Limited, M/s. Aman Growth Funds Private Limited, M/s. Nutan Growth Funds Private Limited and M/s. Rajsheela Growth Funds Private Limited	Pledge on shares of Ambience Infrastructure Developers Private Limited held by Surbhi Gehlot, Sheela Gehlot, Shahista Gehlot, M/s. Aman Holdings Private Limited, M/s. Aman Growth Funds Private Limited, M/s. Nutan Growth Funds Private Limited and M/s. Rajsheela Growth Funds Private Limited	<p>1. Loan Agreement dated 28.11.2018 between Rockstar Bundcon Private Limited and IHFL for an aggregate amount of INR 165 Cr</p> <p>2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr</p> <p>3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr</p> <p>4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr</p> <p>5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr</p> <p>6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr</p> <p>7. Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)</p> <p>8. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr</p> <p>9. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170</p>	N.a	Yes
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20	Pledge Agreement	30-09-2020	Pledge on 51% shares of APIPL held by M/s. Ambience Private Limited and Mr. Raj Singh Gehlot	Pledge on 51% shares of APIPL held by M/s. Ambience Private Limited and Mr. Raj Singh Gehlot	<p>1. Loan Agreement dated 28.11.2018 between Rockstar Bundcon Private Limited and IHFL for an aggregate amount of INR 165 Cr</p> <p>2. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 154.46 Cr</p> <p>3. Loan Agreement dated 28.11.2018 between Vijeta Properties Private Limited and IHFL for an aggregate amount of INR 20.54 Cr</p> <p>4. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 245 Cr</p> <p>5. Loan Agreement dated 28.11.2017 between APIPL and IHFL for an aggregate amount of INR 55 Cr</p> <p>6. Loan Agreement dated 29.06.2018 between Rockstar Realty Private Limited, APIPL and IHFL for an aggregate amount of INR 148 Cr</p> <p>7. Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)</p> <p>8. Loan Agreement dated 11.09.2020 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 180 Cr</p> <p>9. Loan Agreement dated 11.09.2020 between HITECH TOWERS PRIVATE LIMITED, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 170</p>	N.a	Yes
21	Pledge Agreement	27-07-2020	Pledge on shares of Greenvalley Realtors Private Limited held by Surbhi Gehlot, Sheela Gehlot , Shahista Gehlot , M/s. Aman Holdings Private Limited , M/s. Aman Growth Funds Private Limited, M/s. Nutan Growth Funds Private Limited and M/s. Rajsheela Growth Funds Private Limited	Pledge on shares of Greenvalley Realtors Private Limited held by Surbhi Gehlot, Sheela Gehlot , Shahista Gehlot , M/s. Aman Holdings Private Limited , M/s. Aman Growth Funds Private Limited, M/s. Nutan Growth Funds Private Limited and M/s. Rajsheela Growth Funds Private Limited	<p>1. Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited , Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)</p>	N.a	Yes

22	Pledge Agreement	27-07-2020	Pledge on shares of Armaan Buildcon Private Limited held by Surbhi Gehlot, Sheela Gehlot, Shahista Gehlot, M/s. Aman Holdings Private Limited, M/s. Aman Growth Funds Private Limited, M/s. Nutan Growth Funds Private Limited and M/s. Rajsheela Growth Funds Private Limited	Pledge on shares of Armaan Buildcon Private Limited held by Surbhi Gehlot, Sheela Gehlot, Shahista Gehlot, M/s. Aman Holdings Private Limited, M/s. Aman Growth Funds Private Limited, M/s. Nutan Growth Funds Private Limited and M/s. Rajsheela Growth Funds Private Limited	1. Loan Agreement dated 29.06.2018 between Bigboss Realty Private Limited, Ambience Projects and Infrastructure Private Limited and IHFL for an aggregate amount of INR 150 Cr (Further reduced to Rs.14.25 Cr)	N.a	No
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