

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP- COM 193 OF 2025

SREI EQUIPMENT FINANCE LIMITED

vs.

BENGAL SHRISTI INFRASTRUCTURE DEVELOPMENT LTD.

For the Petitioner : Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Shaunak Ghosh, Adv.
Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.

For the Respondent : Mr. Samrat Sen, Sr. Adv.
Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Rishav Banerjee, Adv.
Mr. Soumalya Ganguli, Adv.
Mr. Nathaneal Buam, Adv.

Judgment Reserved on : 24.02.2026

Judgment Delivered on : 19.03.2026

Judgment Uploaded on : 19.03.2026

Shampa Sarkar, J.

1. This is an application for interim relief under section 9 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the said Act). Mr. Swatarup Banerjee, learned advocate for the petitioner, submitted that the petitioner had entered into a Rupee Term Loan

agreement dated April 2, 2019 with the respondent. The petitioner financed a sum of Rs. 273.48 crores to the respondent. Thereafter, various other agreements were also entered into between the parties, namely the Amendatory and Supplementary rupee loan agreement dated May 6, 2020, Arbitration Agreement dated April 2, 2019, Deed of Hypothecation dated May 16, 2019, the Amended and Restated Deed of Hypothecation dated May 6, 2020, and Declaration cum Undertaking dated May 6, 2020. All these agreements were interconnected and interlinked. Clause 2.1 of the Arbitration Agreement dated April 2, 2019, specifically provided that any dispute, difference or claim arising out of or in connection with the loan facility or any financing documents including, but not limited to the existence, validity, performance, interpretation, or termination or breach of any financing document, would be referred to arbitration, by the disputing parties in accordance with the terms of the financing document.

2. The arbitration agreement further stated that the arbitration shall be conducted by a sole arbitrator and the seat and venue of arbitration shall be Kolkata. According to Mr. Banerjee, the Rupee Term Loan Agreement, Amendatory and Supplementary Rupee Loan Agreement, the Deed of Hypothecation, Amended and Restated Deed of Hypothecation have specific covenants to the effect that, disputes and differences in respect of such agreements would be referred to arbitration, in accordance with the Arbitration Agreement dated April 2, 2019.

3. According to Mr. Banerjee, all the agreements were intrinsically connected with each other and the performance of the agreements were co-dependent. The respondent was liable to pay back the disbursed sum by six equal half yearly instalments, commencing at the end of the 10th year from the initial disbursement date as per clause 2.10.1 (a). The respondent was also liable to pay interest as agreed between the parties under clause 2.6.1 of the Schedule 1 of the Rupee Loan Agreement, till the time the petitioner would be entitled to receive the principal amount. The interest part was subsequently revised by way of an amendment to the Rupee Loan Agreement. It was further agreed between the parties that the property described in Schedule 1B of the Amended Rupee Loan Agreement dated May 6, 2020, would be mortgaged in favour of the petitioner upon taking a No Objection Certificate (NOC) from Asansol, Durgapur Development Authority, within a period of 60 days from grant of such No Objection Certificate.
4. Under the Amended Rupee Loan Agreement and the Declaration-cum-Undertakings, the respondent was also required to take consent from the petitioner before creating any third-party rights in respect of the mortgaged properties which were described in the Amended Rupee Loan Agreement under Schedule 1B thereof. The respondent was a Special Purpose Vehicle, which was constituted by way of a joint venture agreement dated December 11, 2000 between Shristi Infrastructure Development Corporation Limited and Asansol Durgapur Development Authority (ADDA). The respondent entered

into a Development Agreement on July 5, 2005 to develop a housing project over a piece of land measuring 74.97 acres at Kanyapur, Asansol. Mr. Banerjee submitted that, although the NOC from ADDA was required to be taken soon after the execution of the agreements and the mortgage of the units under the said project was to be created in favour of the petitioner within 60 days from receipt of the NOC, the same was not done. Apart from writing a letter on July 11, 2019, requesting ADDA to issue the NOC, no further steps were taken by the respondent to obtain the same. This lapse was a breach of the terms of the Rupee Term Loan Agreement. Mr. Banerjee submitted that, this was also an incident of default under the agreement.

5. Reference was made to the admission made by the respondent with regard to the fact that, it had sold and or leased out most of the flats constructed by under the project, in respect of which the petitioner had a security interest. The constitution of the company/respondent, was also diluted by including one Adhishakti Commercial Private Limited into the joint venture company. This fact was evident from the balance sheet filed on May 24, 2024, before the statutory authority. Such action of the respondent was also violative of the agreement executed between the petitioner and the respondent. The respondent could not have changed the constitution of the joint venture company without taking permission from the petitioner. The actions taken by the respondent were in derogation to the covenants of the Rupee Term Loan Agreement and the Amended Rupee Loan Agreement. The consequences of default which had been specifically provided for in

the Rupee Loan Agreement had been triggered on account of a breach of various terms and conditions of the agreement. Reference was made to the accounts of the respondent, especially for the financial years 2022-2023 and 2023-2024, to demonstrate that the respondent was running at a loss. Relying heavily on such aspects, Mr. Banerjee submitted that a, prima facie, case had been made out for interim protection, at least to the extent that a direction for creation of an Escrow Account should be passed by this court, in which the money received hence forth from sale or lease or rental of the properties/ flats/ units within the project., should be deposited and the advocates on record of the respective parties should be appointed as special officers to operate the said Escrow Account. In this way, the interest of the lender would be protected and the income and expenditure would be transparent. The petitioner would also be in a position to understand the financial health of the respondent.

6. Mr. Banerjee highlighted certain events which would indicate that the respondent, in connivance with ADDA had either sold out or leased out the flat, but avoided creating mortgage thereof, by causing postponement of issuance of the NOC by ADDA.
7. The consent of the petitioner was mandatory, in the event the constitution or management of the respondent was to be either altered or changed. The respondent had also written letters to the petitioner, requesting the petitioner to settle the entire dues for a paltry sum of Rs. 85 crores. The petitioner had reason to apprehended that the respondent would be admitted to CIRP at any stage, and the petitioner

would not be able to recover the entire claim. The claim would be then reduced to a meagre amount, as per the waterfall mechanism. This would cause great prejudice to the rights of the petitioner. At present the dues were more than Rs. 461.11 crores.

8. The fact that the respondent had been making payment of the interest in terms of the agreement, would not amount to compliance of the other terms. The obligations under the agreements could not be breached and consequently, the incidents and events of default should not be ignored by the Court. Under such circumstances, by a letter dated December 11 2024, the petitioner terminated the agreement entered into between the parties. The petitioner had also written several letters on and from June 11, 2021 till November 15, 2024, asking the respondents to comply with its obligations under the agreement, but the respondent failed to take notice of those letters. Apart from writing only one letter to ADDA, for a NOC, no other step had been taken by the respondent.

9. Reliance was placed on the decision of ***ESSAR House Private Limited Vs. Arcelor Mittal Nippon Steel India Limited*** reported in ***(2022) 20 SCC 178***, in support of the contention that, as the petitioner was able to demonstrate before the Court that protection should be given as the action of the respondents amounted to incidents of default, the petitioner was entitled to the interim relief as prayed for. Therefore, in the facts of the case, Mr. Banerjee urged that the same interim relief in terms of orders passed by this court in AP COM 110 of 2025 and AP COM 163 of 2025, should be granted. Such order would balance the

equities between the parties and the convenience and inconvenience of the parties would be evenly poised. Mr. Banerjee submitted that the money received from sale/lease/rent of the units were all Receivables of the petitioner, as described in the said agreement.

10. Mr. Samrat Sen, learned Senior Advocate appearing for the respondent submitted that the interim measures which the petitioner had prayed for in this application were in the nature of attachment. Such orders could not be passed in an interlocutory proceeding. The pleadings were insufficient and inadequate. They did not support the prayer for interim protection. Reference was made to the decision of **Sanghi Industrial Limited vs Ravin Cables Ltd. and Anr.** reported in **2022 SCC Online SC 1329**, in which the Hon'ble Apex Court elucidated the nature of the pleadings required to obtain a prayer for attachment. Distinguishing the decision cited by Mr. Banerjee in **ESSAR House Private Limited** (supra), Mr Sen contended that the Apex Court had held that while deciding a petition under Section 9 of the said Act, the court could not ignore the basic principles of the Code of Civil Procedure, i.e., prima facie case, balance of convenience and inconvenience and irreparable loss and injury. The petitioner was required to establish the existence of certain specific circumstances which would justify issuance of orders as prayed for. Reference was also made to the decision of **Brand Value Communications Limited Vs. ESKAY Video Pvt. Ltd.** reported in **AIR 2010 Cal 166**. Learned Advocate submitted that, although the petitioner was seeking an equitable relief, delay defeated such equity. The agreement was entered into in 2019 and amended in

2020. Thereafter, the petitioner accepted the interest on the principal sum, without raising any objection or protest. The fact that the NOC had not been received from ADDA, was well known to the petitioner. As late as on December 11, 2024, a loan recall notice was issued. The parties had several meetings prior to issuance of the loan recall notice. The respondent accepted the payment of interest as per the repayment schedule. Reliance was placed on the decision of ***Future Corporate Resources Private Limited vs Edeweiss special opportunities Fund*** reported in ***(2022) SCC Online BOM 3744***. The attention of this court was drawn to a tabulation sheet attached to the affidavit-in-opposition, showing regular payment of instalments under the loan agreement.

11. Mr. Sen submitted that, from the tabulation sheet it would appear that even after the purported loan recall notice dated December 11, 2024 had been issued, the petitioner had accepted further payments towards the instalments which fell due on December 31, 2024, March 29, 2025, and June 30, 2025. Those payments were received as instalments, as per the repayment schedule and not on account of termination of the agreement, upon recall of the loan. Thus, the petitioner had waived the effect of termination of the agreement and was estopped from treating the agreement as terminated, on account of alleged events of default. Reference was made to the decision of ***B.L. Sreedhar Vs K.M. Munnireddy*** reported in ***(2003) SCC 355***.

12. Mr. Sen submitted that, there was no breach on the part of the respondent with regard to non-creation of the mortgage. The obligation of the respondent to create the mortgage in favour of the petitioner was

conditional i.e. upon obtaining NOC from ADDA. Reference was made to Clauses 3.1 and Clause 5.3.3 of the loan agreement. The condition could not be fulfilled, because ADDA had not issued the NOC and there was an arbitral proceeding between ADDA and the respondent. The petitioner was aware of the position and therefore entered into an Amended Loan Agreement on May 6, 2020, wherein the conditional mortgage clause was reiterated in clauses 4.1.6 and 4.1.7 of the Amended Loan Agreement. Further, under Clause 4.2.1, thereof, additional security had been given by the respondent in favour of the petitioner, in the form of a negative lien since the mortgage had not been possible. The performance of the agreement was not made conditional upon the respondent creating the mortgage. The agreement continued to be performed from April 2019 for a period of six years without any default and without any objections. The petitioner could not allege that there had been breach and even if there was a breach, the breach had been affirmed.

13. Reference was made to the decision of a **STOCZNIA GDANSKA SA Vs. Latvian Shipping Company and Ors.** reported in **(2002) EWCA CIV 889** and **Ganga Retreat and Towers Ltd. and Anr. vs State of Rajasthan** reported in **(2003) 12 SCC 91**.

14. Mr. Sen submitted that, any interim order restricting the operation of the respondent's bank account or restricting the use of the sale proceeds or rentals, would affect the business. As long as the instalments were being paid as per the schedule of repayment, the petitioner did not have any cause of action to approach the High Court for any interim relief. The respondent had been duly complying with the

obligations under the loan agreement and any interference with the usual course of business would adversely affect the respondents. Learned Advocate submitted that, change in the shareholding of the respondent would not in any way affect the agreement between the parties. The change in the shareholding was available on the portal of the Ministry of Corporate Affairs as also from the annual reports of the respondent. Those were public documents. There was no reason to allege suppression. The OTS proposal was issued without any prejudice, and only to prepay the dues at one go. In any event, the proposal failed sometime in November 2024, but the respondent continued to make payment of the instalments as per the loan agreement, without any default at any stage and the petitioner accepted the money. Thus, Mr. Sen prayed for dismissal of the application.

15. Considered the submissions of the respective parties. Some relevant facts are narrated in a nutshell for proper appreciation.

16. The respondent is a joint venture. ADDA as the landowner had executed a development agreement dated July 5, 2004, with the respondent, for development of an integrated township within the limits of Asansol Municipal Corporation. Under the development agreement, the respondent was entitled to raise finance for developing the project. The agreement also provided that the land of ADDA could be mortgaged with the consent of ADDA for the purpose of securing loan facility. The petitioner and the respondent entered into the Rupee Term Loan Agreement, whereby, a loan facility of 273.48 crores was disbursed. The repayment of the principal amount was to commence from April 2029,

that is, at the end of the 10th year from the initial disbursement date. Interest was required to be paid on the principal from 2019. A schedule of payment in a tabular form has been annexed by the respondent in the affidavit-in-opposition, to demonstrate that the interest was being paid regularly from April 2019 and the payment continued. There was no default.

17. The loan was also to be secured by the respondent, inter alia, by an exclusive charge and or mortgage over ADDA's land, to be created within a period of 60 days from receipt of a NOC from ADDA. The respondent made a request to ADDA for grant of the said NOC, but the same was not given to the respondent. In view of the delay in issuance of the NOC, the respondent and the petitioner entered into a Amendatory and Supplementary Loan Agreement on May 6, 2020 in order to modify the security which had been provided under the loan agreement. Additional security was given by the respondent. The respondent admitted of not being able to create the mortgage in respect of the property. On August 28, 2023, the petitioner raised an objection with regard to the non-issuance of the no objection certificate by ADDA, for the purpose of creation of the mortgage. After two years therefrom, the petitioner approached this court, by filing an application under Section 9 of the said Act and has run a case of default, thereby pleading urgency for interim reliefs and protections.

18. Even after the loan recall notice was issued, the petitioner continued to accept payment in terms of the schedule of repayment. The bank records annexed by the respondent to the affidavit-in-opposition,

stand testimony to such fact. On account of several defaults committed by ADDA, including non-issuance of the NOC, the respondent was constrained to initiate an arbitration proceeding against ADDA. An arbitral award was also passed by the Arbitrator, a retired judge of this court.

19. The relevant portion of the said award are quoted below:-

“The respondent is also directed to issue NOC’s/permissions/approvals within a period of 4 weeks from the date of receipt of request for the same”

20. It appears that ADDA filed an application under Section 34 of the said Act, which is pending before the learned Commercial Court at Asansol. Thus, the default which the petitioner alleges to have been committed by the respondent, was unintentional and not deliberate. The respondent had already taken steps against ADDA, for the non-compliance of the clause in the development agreement which provided that, in the event the respondent availed of loan facilities from financial institutions, the land of ADDA could be mortgaged upon obtaining permission from ADDA. Thus, non-furnishing of the NOC by the respondent was not wilful default under the Rupee Loan Agreement and the Amendatory and Supplementary Rupee Loan Agreement. Moreover, even after the loan recall notice was issued by the petitioner, the respondent continued to service the loan by paying the interest in terms of the repayment schedule. The petitioner accepted the interest component in terms of the repayment schedule itself, without pointing out that the agreement had been terminated. This arrangement continued from 2019 to 2025, without any protest.

21. In **STOCZNIA GDANSKA SA** (supra), it was held that:-

“87. In my judgment, there is of course a middle ground between acceptance of repudiation and affirmation of the contract, and that is the period when the innocent party is making up his mind what to do. If he does nothing for too long, there may come a time when the law will treat him as having affirmed. If he maintains the contract in being for the moment, while reserving his right to treat it as repudiated if his contract partner persists in his repudiation, then he has not yet elected. As long as the contract remains alive, the innocent party runs the risk that a merely anticipatory repudiatory breach, a thing "writ in water" until acceptance, can be overtaken by another event which prejudices the innocent party's rights under the contract - such as frustration or even his own breach. He also runs the risk, if that is the right word, that the party in repudiation will resume performance of the contract and thus end any continuing right in the innocent party to elect to accept the former repudiation as terminating the contract.”

22. In the matter of **Ganga Retreat and Towers Ltd (supra)**, the

Hon'ble Apex Court held as follows:-

“45. In the present case, we have found as a fact that the appellants even after acquiring the knowledge of fact regarding reduction of FAR from 2.00 to 1.75 and that the land was not ceiling-free elected to affirm the contract by getting their plans approved with FAR 1.75 and started putting up construction. They started digging the foundations and continued to build even after knowing that the land was not ceiling-free. Thus, the reliance placed on the ratio of law laid down in Motilal Padampat Sugar Mills Co. Ltd. case [(1979) 2 SCC 409 : 1979 SCC (Tax) 144] is of no avail to the appellants.

46. Relying upon a decision of this Court in Ningawwa v. Byrappa Shiddappa Hireknrabar [AIR 1968 SC 956 : (1968) 2 SCR 797] it was contended by Shri Shanti Bhushan, learned Senior Counsel that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the parties defrauded, unless it is avoided, the transaction is valid. Further, drawing a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof, it was argued that in the case of the former the transaction is void while in the case of the latter it is merely voidable. It was also urged that the appellants could avoid the transaction at any time. In our view, this judgment is of no assistance to the appellants as on facts we have found that the

default committed by the respondent State, if any, stood condoned by the appellants.

47. In either case, we find that the appellants are not entitled to any relief in the realm of the law of contracts. In spite of having acquired knowledge of the true facts assuming that there was any mistake or misrepresentation to begin with and having learnt that the title which was sought to be conferred on them by the respondents was not such full title as they had contemplated it to be, they proceeded to have the sale deed executed and registered in their favour, seeking extensions of time and paying interest for the period of delay in payment. The contract stood accomplished into a demise and the transaction ended. It is writ large that the appellants had elected to stand by the contract by digging the land, sinking the basement and raising about 9 floors above, investing crores of rupees. They have by their own conduct rendered the position irreversible and restitution impractical. We have not been shown any law or authority based whereon the appellants may annul and avoid a concluded contract and fix liability on the respondents for the cost of their construction which they have voluntarily chosen to raise in spite of being aware of all the relevant facts and circumstances.”

23. Apart from the financial assistance obtained from the petitioner, the respondent has relied on documents to show that funds had been obtained from various home buyers and allottees in order to complete the development project. Any interim order restricting the use of the money collected from outsiders, upon sale/lease of the units or flats, will hinder the ongoing project. The business and goodwill will suffer. There is not cogent evidence on the face of the record which leads this court to assume that if an award is passed in favour of the petitioner, the same cannot be executed against the respondents and the award will be frustrated and/or defeated.

24. In the matter of **Sanghi Industries (supra)**, the Hon'ble Apex Court held as follows:-

“4. Having heard learned counsel appearing on behalf of the respective parties and in the facts and circumstances of the case, more particularly, when the bank guarantees were already invoked and the amounts under the respective bank guarantees were already paid by the bank much prior to the Commercial Court passed the order under Section 9 of the Arbitration Act, 1996 and looking to the tenor of the order passed by the Commercial Court, it appears that the Commercial Court had passed the order under Section 9(ii)(e) of the Arbitration Act, 1996 to secure the amount in dispute, we are of the opinion that unless and until the pre-conditions under Order XXXVIII Rule 5 of the CPC are satisfied and unless there are specific allegations with cogent material and unless prima-facie the Court is satisfied that the appellant is likely to defeat the decree/award that may be passed by the arbitrator by disposing of the properties and/or in any other manner, the Commercial Court could not have passed such an order in exercise of powers under Section 9 of the Arbitration Act, 1996. At this stage, it is required to be noted that even otherwise there are very serious disputes on the amount claimed by the rival parties, which are to be adjudicated upon in the proceedings before the arbitral tribunal.

5. The order(s) which may be passed by the Commercial Court in an application under Section 9 of the Arbitration Act, 1996 is basically and mainly by way of interim measure. It may be true that in a given case if all the conditions of Order XXXVIII Rule 5 of the CPC are satisfied and the Commercial Court is satisfied on the conduct of opposite/opponent party that the opponent party is trying to sell its properties to defeat the award that may be passed and/or any other conduct on the part of the opposite/opponent party which may tantamount to any attempt on the part of the opponent/opposite party to defeat the award that may be passed in the arbitral proceedings, the Commercial Court may pass an appropriate order including the restrain order and/or any other appropriate order to secure the interest of the parties. However, unless and until the conditions mentioned in Order XXXVIII Rule 5 of the CPC are satisfied such an order could not have been passed by the Commercial Court which has been passed by the Commercial Court in the present case, which has been affirmed by the High Court.”

25. The request for moratorium was made by the respondent pursuant to the RBI circular dated May 23, 2020. The fact that the respondent requested a moratorium, does not indicate that the respondent will not be in a position to repay the loan. The respondent

has regularly serviced the interest payment as per the terms of the agreement. The respondent has consistently demonstrated its willingness to comply with its obligations. The requirement to create a debt service reserve or Escrow Account, in my prima facie view, is a penal action which should not be invoked without any default in the repayment schedule. The prayer of Mr. Banerjee for creation of an extra mechanism or a separate account to be operated solely by the special officers (learned advocates on record for the parties), in my, prima facie view, will amount to interference with the terms and conditions of the Rupee Loan Agreement as also Amendatory and Supplementary loan Agreement. The repayment schedule is still being honoured by the respondent and the repayment of the principal amount does not start before 2029. Moreover, delay defeats equity. The petitioner accepted the interest from 2019 to 2026 and approached this court after two years from raising an objection to the delay in obtaining a NOC from ADDA.

26. In the matter of ***Future Corporate Resources (supra)***, the Hon'ble Apex Court held as follows:-

53. This takes us to very old principle well known to common law jurisdiction : *delay defeats equity*. There may be a class of cases where delay may be excused or overlooked or even treated as acquiescence, and, in a given case, mere delay will not prevent a court from passing an order if the circumstances are sufficiently strong to so demand. But in a case such as this, we see no explanation at all anywhere in the Plaint for the delay between September 2020 until June 2022. That is a period of nearly two years. We are only told that in this time, the Plaintiffs were securing ever increasing guarantees (although there is no claim on guarantees) and that they had also obtained thereafter a mortgage of the Acropolis Mall. But that is surely a factor that must taken into account *against* the Plaintiffs. As we noted, if, after the sale, there is security then the claim presented to a Court for an injunction must be restricted to that portion that is

left unsecured or is beyond the provided security. Nobody today knows what that amount is. It is surely for the Plaintiffs to tell us what amount is left unsecured, and which is likely threatened by some form of dissipation or loss. Of this, we have nothing.

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57. To put it differently, we intervene, and we believe justifiably, because in our view, the operative portion of the impugned order is disproportionate to the cause made out. It was much wider than could reasonably have been granted on the facts and circumstances of the case. As we noted earlier, had Edelweiss, Ecap and IDBI been stymied from making any realisations at all, then a full spectrum order may certainly have been called for. That not being the case, there being this unsatisfactorily explained or even unexplained delay on the part of the Plaintiffs, and there being too a crucial discord and imprecision in quantifying the debt left unsecured, we believe that the interim order ought to have been more narrowly tailored than it was. The differential between the mortgage security cover and the claimed debt is both crucial and determinative at this ad-interim stage.

27. Relevant clauses of the agreement are quoted below to appreciate the issues:-

2.6 Interest

2.6.1 The Borrower shall pay to Lender Interest at the rate and in the manner and on the date(s) as mentioned in Schedule I, plus the Spread (if any), on the Loans outstanding from time to time on the Interest Payment Date. The payment of interest shall commence on the first Interest Payment Date falling immediately after the Disbursement Date.

The general conditions applicable to determination and payment of Interest are set out in Schedule I hereto.

2.6.2 The Borrower shall also pay default interest on all other monies paid/sums expended by the Lender under this Agreement and the other Financing Documents in accordance with Article 2.7.1 below, calculated from the date of payment of such amounts by Lender till such time the Borrower repays/reimburses the lender in respect thereof.

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2.10 Repayment of the Loans

2.10.1 (a) The Loan Facility shall be repaid in 6 (six equal half yearly installments commencing at the end of 10th (tenth) year from the Initial Disbursement Date

(b) Amounts repaid by the Borrower shall not be re-borrowed.

(c) If, for any reason, the Loans after the final Disbursement is less than the amount of the Loan Facility, the amounts of Repayment Installments of the Loans shall stand reduced proportionately but shall be payable on the dates as specified in the Repayment Schedule.

(d) In respect of the Loans, no intimation shall be given to the Borrower regarding its obligation to pay the Interest and Repayment Installments regularly on their respective Due Dates. The Borrower agrees it shall be entirely its responsibility to ensure prompt and regular payment of the Loans and the Interest and all other amounts payable by the Borrower to the Lender in respect of the Loans, on the respective Dues Dates and in the manner provided in this Agreement and the other Financing Documents.

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3.1 The Obligation of the Borrower shall be secured by way of :-

3.1.1. An exclusive first charge on the Mortgaged Property under the Mortgage Documents;

3.1.2. Charge by way of Hypothecation on Receivable under the Deed of Hypothecation;

3.1.3. Exclusive charge over the Debt Service Reserve created and maintained by the Borrower with the Lender or in such other manner as may be advised by the Lender.

(The security specified in this Article 3.1 is referred to as the "Security" which shall include any further or additional Security Interest created in terms of Article 3.4 hereof)

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3.3 Each of the Security Providers shall have obtained written clearances, consent of the relevant parties/ authorities for creation, perfection and maintenance of the Security mentioned in Article 3.1 hereinbefore.

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4.1 Representation of the Borrower:

The Borrower hereby represents that:-

(iii) As on the Agreement Date, the Borrower has [no subsidiary (direct or indirect)].

(IV) All authorizations as are necessary for the execution of the Financing Documents s are in full force and effect.

(V) The Borrower have obtained all applicable Clearances prior to or on the Agreement Date in connection with:

(a) The execution, delivery and performance of the Financing Documents;

and

(b) The legality, validity, binding effect or enforceability thereof.

No further compliances and Clearances are required in connection with:

(a) The execution and delivery of any Financing Documents,

(b) The legality, validity, binding effect or enforceability thereof.

(VI) The Borrower does not have any outstanding Security Interest or obligation to create any Security Interest on or with respect to any of its properties, revenues or assets other than Permitted Security Interest.

4.2 Reliance

The Borrower represents and warrants that each of the representations in Article 4.1 above is true and correct in all material respects as of the Agreement Date and that none of them omits to state any matter, which makes any of such representations misleading in any material respect.

4.5 Good Title

The Borrower and the Security Providers possess valid right, title and interest over the property, assets and revenues on which they grant or purport to grant Security Interests) pursuant to the Security Documents which have been executed as of the date this representation is made or deemed to have been made or repeated, in each case free and clear of any encumbrance/ Security Interest (other than Permitted Security Interest) and the Borrower further confirms that the Security Interests) created or expressed to be created under or pursuant to the Security Documents is legal, valid, binding and enforceable.

* * *

* * *

5.3.3 Creation/ Perfection of Security

The Borrower shall no later than 60 (sixty) days from the date of receipt of No Objection Certificate from the Asansol Durgapur Development Authority (“ADDA”) have created and perfected the Security including mentioned in Article 3.1.1.

The Borrower shall no later than 30 (thirty) days from the Initial Disbursement Date have created the Security mentioned in Article 3.1.2 and Article 3.1.3.

28. The correspondence annexed to the application also indicate that the issue of one time proposal was being considered by the petitioner. Only because the one time settlement, upon payment of Rs. 85 crores was made by the respondent at some stage, the Court cannot presume that there is a chance that the respondent will fail to pay the principal amount due or not adhere to the repayment schedule. Such assumption of the court would be futuristic and speculative.

29. The decision of this Court in AP COM 110 of 2025 was rendered under different circumstances. There was a default in payment of interest for four years. Paragraphs 6 and 14 of the said order are quoted below:-

“6. The existence of an Arbitration clause is not in dispute. The non-payment of interest component after November 2021 is also not in dispute. Consequence of non-payment are provided in the agreement. The fact that the petitioner issued a loan recall notice is also not in dispute. Upon enforcing the Acceleration clause, all monies under the loan agreement became due and payable. Prima facie, the petitioner has made out an arguable claim.

* * *
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14. Having heard learned counsel for the respective parties, this Court is satisfied that the interest component payable as per the loan recall notice has been secured. The petitioner has already taken possession of the mortgaged property at New Town and has proceeded for sale. The reserve price kept by the petitioner, as per its own valuation, is above Rs.97 crores. With regard to the other outstanding, the calculation is subject to the final decision of the learned Arbitrator, on evidence. However, the petitioner has made out an arguable case with regard to the effect of Acceleration under the relevant clause of the agreement and the principal becoming payable upon termination of the agreement. Thus, protection of amounts payable under the agreement, is necessary Accordingly, this Court directs that if any flat under Receivables III is sold or any other money is received in respect of those flats, the sale proceeds or money

received shall be deposited in a designated account. For such purpose, the learned Advocates-on-record of each of the parties shall act as Joint Receivers. They will open a savings account in any Nationalized Bank, which will be the designated account. This arrangement will continue for a period of three months. Within such time, the petitioner shall take steps for appointment of an Arbitrator and pray for interim orders before the learned Arbitrator. With regard to the sale of the flats under Receivables II, over which the petitioner has a second charge, it is directed that, in case the respondents sell any of those 57 flats, henceforth, the details of the sale and details of the proceeds received therefrom, and the account in which those were being deposited, shall be informed to the learned Joint Receivers. This arrangement will also continue for a period of three months as well and the petitioner shall be at liberty to approach the learned Arbitrator for further interim orders. If the Tribunal is not constituted within the period of three months, the petitioner may seek interim reliefs before this court, if the situation so demands, strictly in accordance with law.”

30. In AP COM 163 of 2025 also default in payment of interest had occurred. The relevant paragraph are quoted below:-

“6. The existence of an Arbitration clause is not in dispute. The non-payment of interest component after November 2021 is also not in dispute. Consequence of nonpayment are provided in the agreement. The fact that the petitioner issued a loan recall notice is also not in dispute. Upon enforcing the Acceleration clause, all monies under the loan agreement became due and payable. Prima facie, the petitioner has made out an arguable claim.

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13. Having heard learned counsel for the respective parties, this Court is satisfied that the interest component payable as per the loan recall notice has been secured. The petitioner has already taken possession of the mortgaged property at New Town and has proceeded for sale. The reserve price kept by the petitioner, as per its own valuation, is above Rs.97 crores. With regard to the other outstanding, the calculation is subject to the final decision of the learned Arbitrator, on evidence. However, the petitioner has made out an arguable case with regard to the effect of Acceleration under the relevant clause of the agreement and the principal becoming payable upon termination of the agreement. Thus, protection of amounts payable under the agreement, is necessary. Accordingly, this Court directs that if any flat under Receivables III is sold or any other money is received in respect of those flats, the sale proceeds or money

received shall be deposited in a designated account. For such purpose, the learned Advocates-on-record of each of the parties shall act as Joint Receivers. They will open a current account in any Scheduled Bank, which will be the designated account. The same account as will be opened in compliance of the order passed in AP COM 110 of 2025 will be the designated account. This arrangement will continue for a period of three months. Within such time, the petitioner shall take steps for appointment of an Arbitrator and pray for interim orders before the learned Arbitrator. With regard to the sale of the flats under Receivables II, over which the petitioner has a second charge, it is directed that in case the respondents sell any of those 57 flats, henceforth, the details of the sale and details of the proceeds received therefrom, and the account in which those were being deposited, shall be informed to the learned Joint Receivers. This arrangement will also continue for a period of three months as well and the petitioner shall be at liberty to approach the learned Arbitrator for further interim orders. If the Tribunal is not constituted within the period of three months, the petitioner may seek interim reliefs before this court, if the situation so demands, strictly in accordance with law.”

31. Taking note of the defaults committed, this Court directed that if flats/units under the Receivables were sold or money was received in respect of such flats, the sale proceeds received shall be deposited in a designated account. The learned Advocate on record for each of the parties would act as joint receivers. They would open a current account with any scheduled bank, which would be the designated account and the arrangement would continue for a period of three months, and the petitioner would be at liberty to take steps for appointment of an arbitrator.

32. The facts of the cases referred to by Mr. Banerjee, to support his prayer for similar orders are distinguishable. Considering the balance of convenience and inconvenience and the irreparable loss and injury, this court is of the view that an order requiring the respondent to deposit all sale proceeds and rentals in a separate Escrow Account, to be operated

by special officers to be appointed by the Court, would amount to interfering with the regular course of business of the respondent. This court has come to a, prima facie, finding that there is no incident of default at this stage, which would necessitate urgent interim reliefs. The petitioner is at liberty to take steps for appointment of an arbitral tribunal and pray for interim orders. The factum of sale or lease of flats/units henceforth, and all bookings of flats or units henceforth under the project shall be informed to the petitioner by the respondent. The quantum of money received from such sale/lease shall also be disclosed to the petitioner by the respondent.

33. AP-COM 193 of 2025 is accordingly disposed of.

34. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)