IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 222 OF 2025

Bank Of India ...Petitioner

Versus

1. B N Enterprise,
2. Mr. Mansukh Shah,
3. Mr. Aakash Shah,
4. Tulsidas Gopalji Charitable & Dhakleshwar Temple Trust

...Respondents

ASHWINI JANARDAN VALLAKATI

Digitally signed by ASHWINI JANARDAN VALLAKATI
Date: 2026.10.07 16:15:56 +0530

Mr. Ankit Lohia *a/w Mr. Siddha Pamecha, Mr. Jayant Jain, Mr. Amit Yadav, i/b Thodur Law Associates, for Petitioner.*

Mr. Abhinav Chandrachud, Counsel, *a/w Mr. Aadil Parsurampuria, i/b Mr. Yogesh Devnani, for Respondent Nos. 1 to 3.*

Mr. Ramashish S. Maurya, *for Respondent No. 4.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : OCTOBER 7, 2026

JUDGEMENT :

Context and Factual Background:

1. This Petition is filed by Bank of India ("***Bank***"), a nationalised bank, under Section 9 of the Arbitration and Conciliation Act, 1996 ("***the Act***"), for

interim protective measures pending commencement of arbitration. The Bank had a leased office from which its Mahalaxmi Branch was functioning, namely, 8A, Bhulabhai Desai Road, near Mahalaxmi Temple, Mumbai 400026. Currently, the branch functions from premises at Sambhav Tirth Co-operative Housing Society Ltd. at Bhulabhai Desai Road, Mumbai after vacating it to enable redevelopment.

2. The Bank seeks reimbursement of the transit rent it has already paid and to secure the future payment of transit rent for its temporary alternate accommodation, which it says Respondent No. 1, M/s B.N. Enterprises, a partnership firm ("***Developer***") undertook to bear and to secure its re-induction into the redeveloped building. Respondent Nos. 2 and 3, Mansukh H. Shah and Aakash M. Shah respectively, are partners of the Developer.

3. Respondent No. 4, The Tulsidas Gopalji Charitable and Dhakleshwar Temple Trust ("***TG Trust***"), is a public charitable trust registered under the Bombay Public Trusts Act, 1950. TG Trust is the owner of the Sanatorium Building at 8A, Bhulabhai Desai Road, near Mahalaxmi Temple, Mumbai 400026, which stands on land bearing C.S. No. 792 (part) of Malabar and Cumballa Hill Division, Mahalaxmi, Mumbai 400026, admeasuring about 1,292 sq. mtrs. out of a larger plot of about 6,043.54 sq. mtrs. ("***Subject Property***").

4. A registered Development Agreement dated August 26, 2014 between TG Trust and the Developer ("***Development Agreement***"), a Memorandum of Understanding dated March 30, 2022 ("***MOU***") executed between the Developer, TG Trust and the Bank; and an Agency Agreement dated December 4, 2021 between the Bank and the Court Receiver, High Court, Bombay ("**Agency Agreement**") lie at the heart of the controversy.

5. The Development Agreement entails grant of development rights by TG Trust to the Developer over the Subject Property. A power of attorney was executed in favour of the then partners of the Developer on the same date. These proceedings concern premises admeasuring 3,926 sq. ft., comprising the basement (about 979 sq. ft.) and the ground floor (about 2,947 sq. ft.) ("**Subject Premises**") situated on the Subject Property. The Bank is not a signatory to the Development Agreement.

6. The Subject Premises had been leased by the TG Trust to the Bank by a Lease Agreement dated October 5, 1964 covering a lease from September 1, 1962 for a term of 25 years. By Lease Deed dated June 4, 1991, the expired term was revived and renewed from September 1, 1987, for a further 25 years, until August 31, 2012. What transpired after expiry of the extended term on August 31, 2012 is in dispute between the Bank and TG Trust. The Bank has

appended copies of acknowledgements of rent said to have been paid to TG Trust from 1962 at Exhibit "A" to the Petition.

7. Clause 17 of the Development Agreement is the arbitration clause on which the Bank bases the captioned Petition while Clause 18 is the jurisdiction clause. They read as follows:

> *"17. Arbitration*
>
> ***In the event of any dispute or difference*** *arising hereunder* ***of whatsoever nature between the parties*** ***concerning the meaning or interpretation of this Agreement*** *or* ***the rights or obligations of the parties****, the same shall be* ***referred to Arbitration of Sole Arbitrator*** *who shall be a retired Judge of the Bombay High Court in case the parties to the dispute or difference agree upon one or otherwise in accordance with the provisions of the Arbitration and Conciliation Act, 1996. It is* ***agreed by both parties*** *that the Arbitration shall be in English language and shall be conducted at Mumbai.*
>
> *18. Jurisdiction.*
>
> *The Parties hereto agree that* ***the Courts at Mumbai only shall have jurisdiction in respect of all matters whatsoever arising out of this Agreement****."*
>
> ***[Emphasis Supplied]***

8. The redevelopment could not be completed within a period of three years as envisaged in the original sanction order of the Charity Commissioner granted to TG Trust. On the application of TG Trust made at the request of the Developer, the Charity Commissioner, by order dated April 1, 2017, extended the time limit for redevelopment by three years. That extension lapsed on April 1, 2020 without the redevelopment having been commenced. A fresh

extension was then sought by TG Trust by an application made on December 9, 2021, on revised terms of compensation offered by the Developer.

9. The Bank identified the alternate premises referred to above, in the same vicinity. This property is *custodia legis* and in possession of the Learned Court Receiver of this Court, appointed in Suit No. 332 of 2013. With the permission of this Court, the Bank entered into the Agency Agreement on December 4, 2021, to occupy those premises for five years, that is until December 3, 2026, together with an Undertaking of the same date.

10. Under the Agency Agreement the Bank was required to place a security deposit of Rs. 50,40,000/- and to pay monthly rent/royalty of Rs. 8,40,000/-. Neither the Developer nor TG Trust is a party to the Agency Agreement or the connected Undertaking.

11. The MOU was executed thereafter, on March 30, 2022. On its face, it is a tripartite instrument: the Developer is described as the party of the First Part; TG Trust, represented by its authorised Trustee Ashok Laxmidas Bhansali pursuant to a resolution dated July 13, 2021, as the party of the Second Part; and the Bank as the party of the Third Part. The MOU records at Recital K, that pending consideration of such application, the Bank would *necessarily* have to be shifted to suitable alternate premises for the redevelopment to proceed, without naming which party was making the

representation. The Bank contends that the consensus arrived at between the Developer and TG Trust was represented to the Bank while TG Trust denies making any representation to the Bank. The stated object of the MOU, recorded in Recital L, is to record the terms and conditions for the rehabilitation and settlement of the Bank. Whether TG Trust is in truth a party to the MOU is being disputed. The clauses of the MOU principally relied upon by the Bank are Clauses 5, 10, 11, 13, 15 and 19.

12. Clause 5 reads as follows:

> *"5. It is further* ***agreed between the Developer and the Bank that the Developer shall enter into a separate agreement with the Bank****, after execution of Lease /Leave & License/Agency Agreement or any other legally binding Agreement between the Bank and its lessor/licensor/Agent* ***for alternate premises****. The* ***Developer, hereby acknowledges and agrees to bear expenses and make payment related to the rent only****. The* ***water and electricity charges pertaining to the alternate premises*** *where the Bank proposes to shift during the transition period* ***will have to be paid by the Bank alone****. For the sake of clarity, it is hereby agreed between the Developer and the Bank that with effect* ***from the date of taking actual possession of the alternate premises the Developer shall bear for and on behalf of the Bank the expenses of rent only*** *and* ***charges related to electricity, water, GST, Society maintenance charges including property tax etc. in respect of the temporary accommodation will have to be paid by the Bank*** *only* ***till the time the Bank is put into possession of the new premises after the completion of redevelopment of the Sanatorium Building****. The Bank will handover the vacant and peaceful possession of the said existing Premises to the TG Trust or to the Developer within 15 days upon receiving the Order of Extension for Redevelopment of the Second Schedule property including the Sanatorium Building*

from the Ld. Charity Commissioner."

[Emphasis Supplied]

13. Therefore, it is apparent that the expense of the rent was payable by the Developer under the MOU; other expenses and outgoings were to be paid by the Bank.

14. Clause 10 of the MOU reads as follows:

> *"10. It is further agreed and acknowledged by the* ***Developer that they will offer the New Premises on first priority to the Bank, and if the construction is to be completed in a phased manner, on first phase itself the New Premises will be allotted and the Bank will be re-inducted in the newly constructed premises subject to the terms and conditions contained herein****. As and when the New Premises for housing the branch premises is ready in the proposed new building, the same shall be communicated to the Bank immediately by the Developer and* ***Bank has to shift to the new premises only after receipt of the Occupancy Certificate****. It is clarified that* ***the allotment on rent or outright sale of the New Premises to the Bank shall only be out of the 60% entitlement of the Developer****."*
>
> ***[Emphasis Supplied]***

15. The Under Clause 10 of the MOU, it was clear that the Bank would be relocated into the Subject Property after redevelopment soonest and the Bank would get premises in lieu of the Subject Premises either on rent or on outright sale ("***New Premises***"). Any further sale was to come out of the sale component entitlement of the Developer.

16. Clause 11 of the MOU gives the Bank a right of first refusal in respect of the New Premises, and further clarifies that any settlement arrived at between the Bank and the Developer shall be without recourse against TG Trust, which "*shall not be liable or responsible for any of the obligations undertaken by the Developer under these presents*".

17. Clause 12 of the MOU (akin to Clause 10) provides that possession of the New Premises is to be handed over only after the Occupancy Certificate is obtained. Clause 13 of the MOU reads as follows:

> *"13. **It is agreed, accepted and acknowledged by the Developer and the Bank that the present MOU is being entered into between the Parties hereto on the premise that the Ld. Charity Commissioner shall grant to TG Trust extension of time for joint development of the said Plot once Fresh Extension Application is made by TG Trust**. **In the event, the Ld. Charity Commissioner does not grant extension** of time as contemplated herein, **the Developer shall be the solely responsible to discharge the obligation of granting alternative premises to the Bank in any place nearby the existing premises having clear road facing excluding the said Plot at its own cost and expenses to the Bank for the surrender of said Premises**. ... **In the event the Ld. Charity Commissioner grants extension** of time as prayed for in the Fresh Extension Application, and the Developer obtains IOD for the purpose of redevelopment, **TG Trust shall hand over possession of the said Premises to the Developer to enable the Developer to give the Bank option of lease or outright purchase as stated hereinabove**."*
>
> ***[Emphasis Supplied]***

18. What becomes clear, *prima facie*, is that the obligations owed to the Bank under the MOU to pay rent for alternate premises and to provide New Premises were obligations of the Developer owed to the Bank. Even the redeveloped premises that were to come to the Bank was to be from the Developer's sale component. TG Trust was kept out of these rights and obligations under Clause 11 of the MOU. However, TG Trust was obliged under Clause 13 of the MOU, to hand over possession of the Subject Premises to the Developer to enable the Developer to give the Bank the option of a further lease or an outright purchase.

19. Clause 15 of the MOU is also noteworthy and provides as follows:

> *Developer and TG Trust state that* ***at the time of execution of this MOU there is no dispute/litigation of any nature pending with respect to the Development Agreement, or with respect to the title /ownership of the said Plot****. It is further clarified that* ***upon grant of extension of time by the Ld. Charity Commissioner as stated hereinabove, there will be no legal impediment for allotting New Premises on lease or outright sale in the proposed new building to the Bank subject to the terms and conditions recorded in the Development Agreement****.*
>
> ***[Emphasis Supplied]***

20. Notably, the MOU contains no arbitration clause. Clause 19 of the MOU provides as follows:

> *"19. The* ***stamp duty and registration charges of this MOU, if any, will be paid solely by Bank*** *herein and* ***the other parties to this MOU shall not be liable*** *to bear the*

*same. **This MOU** has been executed at Mumbai, the property is situated at Mumbai and hence it **is subject to the jurisdiction of the Courts of Law at Mumbai**."*

[Emphasis Supplied]

21. On March 31, 2022, one day after the MOU was executed, a sum of Rs. Rs. 25,00,000/- was paid to the Bank towards the security deposit for the alternate branch premises. While there was an inconsistency between the Petition (Paragraph 6.12 stated that TG Trust paid it) and the Rejoinder (Exhibit B thereto clearly indicates it was paid by the Developer), the payment is evidently by the Developer.

22. The Bank has been paying rent/royalty, GST and society charges to the Court Receiver for the period starting from May 1, 2022 in terms of the orders of this Court, and has debited those amounts to a suspense account pending reimbursement (Receipts are at Exhibit "I" to the Petition). The Bank's branch was shifted to the alternate premises on August 3, 2022 and it continues there till date.

23. By order dated April 27, 2022 the Charity Commissioner granted the extension sought for the development of the Subject Property. According to the Bank, the extension was for three years and expired on April 27, 2025, and no Intimation of Disapproval ("***IOD***") has been obtained and redevelopment has not proceeded. Transit rent not having been paid by the Developer, the Bank issued legal notice dated December 10, 2022. Two meetings followed, on

February 8, 2023 and March 9, 2023. According to the Bank, the Developer promised at those meetings to clear the dues by March 16, 2023. TG Trust denies having attended either meeting.

24. A further legal demand notice dated January 8, 2024 was issued through the Bank's advocates on record to all four Respondents, calling upon them to reimburse the amount then said to be outstanding, and to pay Rs. 8,40,000/- per month thereafter. The Bank also sought production of the original property tax receipts of the old premises failing which to pay the balance security deposit of Rs. 25,00,000/-.

25. The Bank states that a total of Rs. 2,01,67,981.82, inclusive of the security amount of Rs. 25,00,000/-, stands debited to its suspense account on account of rent/royalty paid for the alternate premises, and remains unreimbursed.

26. During the pendency of the Petition, the Bank's advocates addressed two letters, both dated June 13, 2025, to the Developer with copies to TG Trust and to the concerned government and police authorities, seeking inspection of the old premises in view of the condition of the building. Neither has responded.

Contentions of Parties:

27. I have heard Mr. Ankit Lohia, Learned Advocate on behalf of the Bank, Mr. Abhinav Chandrachud on behalf of the Developer and Mr. Ramashish S. Maurya on behalf of TG Trust. With their assistance, I have examined the record. There has been a significant efflux of time since the matter was heard, but no party has sought to have the matter released, and instead a request was made to have the order released expeditiously.

28. In a nutshell, the Developer has resisted this Section 9 Petition on the ground that there is no arbitration agreement between the Developer and the Bank. This is the core contention with the Developer choosing not to respond on merits, confining itself to this preliminary objection. TG Trust has contended that it is not obliged to the Bank at all and that it is ring-fenced from any obligations to the Bank, all of which are to flow from the Developer. On the issue of privity to the arbitration agreement, TG Trust is aligned with the Developer and objects to the Bank securing any protective measures in the Section 9 jurisdiction.

29. The Bank contends that the Development Agreement and the MOU are inextricably interconnected, with the MOU amending the Development Agreement, both serving one composite objective, namely, the redevelopment of the Subject Property and setting out the terms on which the Bank would be

given the New Premises in consideration for vacating the Subject Premises. Therefore, the Bank contends, the arbitration agreement must necessarily cover the connected disputes under the MOU, signed by both the Bank and TG Trust.

30. The Developer has contended that Clause 17 of the Development Agreement is confined to disputes between the Developer and TG Trust and that too on matters under the Development Agreement. Therefore, Section 8 is not attracted; TG Trust is not a party to the MOU; and no interim relief can be granted since no final relief could be had in arbitration.

31. TG Trust also contends that the MOU may be tripartite, but all it has done is grant development rights and none of the assurances held out to the Bank are owed by TG Trust. The Agency Agreement and the connected Undertaking too do not entail TG Trust as a party. Therefore, it is contended that the Bank having left the Subject Premises was purely a bargain between the Bank and the Developer.

32. The Bank contends it has been lessee of the Subject Premises since September 1, 1962 under the 1964 and 1991 Leases, which subsist and that rent has been paid regularly. TG Trust admits the former lease but says both terms expired – the first on September 1, 1987 and the second on August 31, 2012 with no renewal. TG Trust contends that it has neither demanded nor

accepted rent and the Bank's own statements of account are of no avail, and that the Bank has overstayed its welcome without any rights, thereby losing privity to claim through TG Trust.

33. The Bank contends that TG Trust and the Developer have colluded, seeking to deprive the Bank of its rights as a lessee and are in continuing breach of the Development Agreement read with the MOU, depriving the Bank of its rights flowing from them.

34. According to the Bank, Clause 5 of the MOU fixes the Developer's liability from August 3, 2022 when it shifted out of the Subject Premises and that beyond the Rs. 25,00,000/- deposited, nothing has been paid. Even the IOD has not been obtained and the Charity Commissioner's approvals have been extended and expired with nothing being done. The Developer contends that the consideration for paying rent was the handing over of vacant and peaceful possession of the Subject Premises, which the Bank has not done, and therefore, there is no obligation to pay rent.

35. The Developer also presses the delay in approaching the Court for reliefs under Section 9 to be granted. The Developer contends that arbitration has never been invoked in the three years since the arrears are said to have begun, showing no intent to arbitrate but intending only to short-circuit the recovery. Section 9 is exceptional and no urgency is shown, and yet reliefs in

the nature of final relief are sought. The Bank counters this by contending Section 9 is available pending invocation and constitution of the tribunal. The Bank contends that it had acted in good faith on assurances held out at the two meetings held on February 8, 2023 and March 9, 2023, pursuant to the Bank's legal notice dated December 10, 2022.

36. TG Trust contends that the trustees are not separately impleaded and that the Bank has dishonestly attempted to extract money from a public charitable trust and to defame the trustees, and seeks damages in response to the Section 9 Petition.

Analysis and Findings:

37. The core issue to consider arises from the contention that the Bank is not a signatory to the Development Agreement, which alone contains an arbitration clause. The MOU, to which the Bank is a signatory and under which its monetary claim arises, contains no arbitration agreement. The Bank therefore invokes the jurisdiction of the Section 9 Court on two bases: *first*, that it is a person claiming through or under TG Trust within the meaning of Section 8(1) of the Act; and *second*, that the Development Agreement and the MOU are interconnected agreements executed to achieve a common commercial goal, so that the arbitration agreement in Clause 17 of the Development Agreement extends to disputes arising under the MOU.

38. I have examined the record. The Development Agreement between TG Trust and the Developer clearly records at Recital (f) the two lease deeds and that the Bank has continued to occupy the Subject Premises despite the expiry of the lease and intimation that further extension would not be provided due to alleged non-payment of dues towards taxes and water charges requiring vacation of the demised premises. Further Recital (m) records that TG Trust *is getting a negligible amount towards lease rental* from the Bank, which is consistent with the contention of the Bank that it is paying the rental amount to TG Trust as set out in Exhibit A to the Petition.

39. Clause 3 of the Development Agreement grants development rights to the Developer on an *as is where is* basis. Clause 3.4 of the Development Agreement requires due prior consultation with TG Trust for the Developer to settle with the tenants on behalf of TG Trust. Clause 3.5 of the Development Agreement empowers the Developer to negotiate with the Bank and resolve the terms on which the Bank would vacate the premises and arrive at an appropriate arrangement or agreement, with no liability on this count accruing against TG Trust. Lest there be any doubt about whether Clause 3.5 is an authorisation of the Developer as an agent of TG Trust or as a principal, Clause 3.6 of the Development Agreement clarifies that the "*authorisation*" of the Developer to deal with tenants and occupants is co-terminus with the Development Agreement.

40. Therefore, what is clear is that TG Trust was clearly aware of the entitlements claimed by tenants and occupants such as the Bank and *authorised* the Developer to engage with them. The grant of the authority only points to the Developer being given the power to deal with and agree to modify the relationship between TG Trust and such persons and such authority would only last if the Development Agreement were alive. If the Development Agreement did not last, it would follow that the relationship would continue between TG Trust and such persons including the Bank. That apart, what is clear is that the *subject matter* of the Development Agreement clearly includes engaging with Bank and resolving the rights of the Bank, which TG Trust has acknowledged is paying lease rentals and that such lease rental payments are low and inadequate.

41. A clear pointer is that TG Trust cannot deny *prima facie*, without leading evidence, that TG Trust has treated the Bank as a lessee and not as a squatter or gratuitous licensee. Evidence would need to be led to answer the question as to whether a lessee of over 50 years who continues to pay lease rental with the lessor accepting it, although with a grouse that it is inadequate, can legitimately deny receipt of lease rentals. Moreover, without undertaking any eviction proceedings or adopting other due process of law to remove the Bank despite the view that the expired leases would not be renewed and yet continuing to accept the rental amounts at the rate set out in the expired lease,

and also giving limited and co-terminus authorisation to the Developer with obligation of consultation with TG Trust, it is hard to treat the Bank purely as a trespasser. The very fact that the Bank finds such a prominent articulation in the Development Agreement would indicate that subject matter of the Development Agreement clearly included in its remit the manner of dealing with the Bank's continued occupation of the Subject Premises with lease rental being paid that is perceived to be below market rental value. This is not to say that TG Trust cannot take steps to evict the Bank but it underlines the fact that dealing with the Bank was one of the key features of the Development Agreement which led to the execution of the tripartite MOU and therefore, TG Trust is cannot simply stand away from the conjoint import of these two instruments.

42. Clause 7.4 of the Development Agreement again records that cost of re-housing the Bank and other tenants would have to flow from the 60% entitlement of the Developer and the 40% entitlement of TG Trust cannot be dipped into for this purpose. Likewise, the benefits of such settlement would also belong to the Developer. In short, the terms were a stop-loss provision to ring-fence TG Trust from the cost and liability of settling with tenants and lessees but all within the ambit of being co-terminus with the Development Agreement. In other words, if there was no development taking place pursuant to the Development Agreement, the tenants would remain TG Trust's

liability and the free run given to the Developer was only for purposes of the redevelopment.

43. Clause 7.5 of the Development Agreement provides that notwithstanding the termination of the Development Agreement, the Developer shall be solely liable and responsible to settle and re-house the claims of tenants and occupants even while Clause 3.6 of the Development Agreement provides for a co-terminus authorisation to engage. The latter can potentially be read as covering the right to engage and the former would be a provision dealing with financial implications of the outcome of such engagement. Be that as it may, Clause 7.6 of the Development Agreement is a special provision that concerns how the Bank would be dealt with. It leverages the Bank's rights to ensure that IOD is obtained – possession of the Subject Premises may be taken only after obtaining IOD – and provision of new premises to the Bank can be done only after the Occupation Certificate is obtained. The Developer was required to clarify to the Bank that any settlement with the Bank was subject to ensuring there was no "future recourse" by the Bank to TG Trust.

44. In this light, it is quite clear, at least at this *prima facie* stage, that dealing with Subject Premises, which are an integral part of the Subject Property that is subject matter of the Development Agreement, is a deeply

intertwined and integral element of the bargain between the parties. It is in operation of this bargain that the parties went on to execute the MOU with the Bank. Evidently, on the face of the record, the MOU is a tripartite instrument between the Bank, the Developer and TG Trust. For TG Trust's contention that the MOU is a bipartite agreement in the sense that the obligations relating to the Bank are those owed only by the Developer, would at best have to be subject matter of a final adjudication after examining the evidence. At this stage what needs to be considered is whether there is subject matter commonality between the Development Agreement and the MOU, to make the Bank a veritable party to the Development Agreement thereby giving it privity to the arbitration agreement.

45. In my view, there is a clear and strong *prima facie* case of an inextricably interwoven subject matter commonality between the Development Agreement and the MOU. Without the Development Agreement, there is no question of the MOU. The terms on which the Developer would deal with problems posed by the Bank to TG Trust's property was set out in the Development Agreement and the MOU is an outcome of operating the Development Agreement. Therefore, when one looks at whether the MOU necessarily flows from the Development Agreement and whether the MOU was envisaged by the Development Agreement, there is a strong pointer of deep interconnection between the two. The recitals of the MOU make it

abundantly clear that "the parties" (which includes TG Trust) acknowledge that settling the Bank's interests is vital for the redevelopment, in light of which they renegotiated their own terms with "*all the parties*" executing the MOU.

46. I have already set out above the terms of the MOU. Clearly, this was a mutually beneficial and interconnected bargain among all three parties. One could have considered that the MOU not having an arbitration agreement is a distinct and separate bargain necessitating a separate arbitration agreement, but it is hard to take that view since the MOU entails an updated and supplemental bargain that flows from the Development Agreement. Under Clause 13, the surrender of the Subject Premises by the Bank was a surrender to TG Trust, which enables TG Trust to hand over the same to the Developer. Clause 15 of the MOU goes a step further to confirm that at the stage of executing the MOU there is no dispute and there would be no impediment to giving the redeveloped premises to the Bank subject to the terms and conditions of the Development Agreement. Clearly, this also strongly brings the bargain struck by the parties with the Bank within the ambit of contemplation of disputes, and the terms and conditions of the Development Agreement is what the relationship was subjected to.

47. I am unable to hold that the Bank is a rank third party unconnected to the Development Agreement containing the arbitration agreement. The very operation of Clause 15 of the Development Agreement is a sharp pointer to the contrary. Yet, there can be no doubt that the jurisdictional question and the existential doubt raised over the arbitration agreement would fall within the domain of the jurisdiction of the Arbitral Tribunal under Section 16 of the Act. The question for the Section 9 Court to consider is whether pending such decision, what measures would best protect and preserve the subject matter of the arbitration agreement, when *prima facie*, the Section 9 Court is of the view that the arbitration agreement is attracted.

48. The redevelopment is the subject matter of the arbitration agreement. The role of the Bank and its entitlements in law form an integral element of the subject matter of the arbitration agreement. The *ex facie* tripartite MOU cannot be brushed aside as a bipartite contract – to even accept the contention of TG Trust that it is bipartite in the teeth of the tripartite instrument would necessitate interpretation of the MOU read with the Development Agreement and that too after evidence is recorded. At this *prima facie* stage, no reasonable mind can hold that the MOU is bipartite. That said, the absence of an explicit arbitration agreement in the MOU is a silence that is filled in by Clause 15 of the MOU, which records that there would be no impediment in getting the Bank the new premises subject to the terms of the Development

Agreement. In other words, *prima facie*, the Developer and TG Trust held out to the Bank that the terms of the Development Agreement are available and enable the provision of the new redeveloped premises to the Bank.

49. TG Trust's contentions about the Bank would require one to treat the latter as *persona non grata* – virtually as a trespasser and interloper who has no connection at all with the Subject Property. This is difficult to accept. The Bank has been a lessee for over 50 years and the fact that the Bank is paying lease rentals that TG Trust does not consider to be commensurate with market rentals is an explicit and express fact confirmed in writing by TG Trust in the Development Agreement. After the redevelopment could not be completed within the deadline permitted by the Charity Commissioner, the Development Agreement was extended by the MOU, this time comprehensively including the Bank into the bargain and making it subject of the terms and conditions of the Development Agreement, which includes the arbitration agreement in Clause 17 of the Development Agreement. Pursuant to the MOU, alternate premises were identified and Rs. 25,00,000/- was paid by the Developer – all consistent with the MOU, which is inextricably connected to the Development Agreement. In fact, meetings were also held between the Developer and the Bank and such participation by the Developer, while ring-fencing TG Trust from liability, was but only because of the authorisation by TG Trust to negotiate with the Bank. All of this cannot be brushed aside as not deeply

connected to the subject matter of the Development Agreement. If anything, it shows inequitable conduct against the Bank.

50. Needless to reiterate, it is still open to TG Trust and the Developer to invoke Section 16 and call upon the Arbitral Tribunal to rule on its own competence and jurisdiction on the basis of the existential doubts over the arbitration agreement. That itself would present mixed questions of fact and law and may necessitate evidence to be led. Such an exercise is in the domain of the Arbitral Tribunal. What the Section 9 Court has to see is whether one can wish out of hand the potential role of the Bank as a veritable party to the arbitration agreement and from the factual matrix on hand, I am not persuaded to hold that the Bank can simply not be treated as a veritable party.

51. Not only is there subject matter commonality, but also the transactions covered by the Development Agreement and the MOU are one comprehensive composite interwoven whole. The performance of one depends on the performance of the other. It is prima facie held out that the MOU would operate only on the basis of the operation of the Development Agreement. After holding out such promise to the Bank and luring it into executing the MOU and vacating the Subject Premises, when there is a demonstrable default, equities are not against the Bank but are in favour of protecting the Bank. The criteria declared in ***Cox and Kings***[1] as factors to be borne in mind

1 Cox and Kings Ltd. v. SAP India (P) Ltd. – ***(2024) 4 SCC 1***

are all met in the instant case on a *prima facie* basis – the mutual intent of the parties, the relationship of the non-signatory to a signatory, the commonality of subject matter, the composite nature of the transactions and the performance of the contract.

52. Another judgement of the Supreme Court in ***Adavya Projects***[2] further builds on ***Cox and Kings*** – the following extracts from the summary of conclusions would suffice:

> *"60.3. The relevant consideration to determine whether a person can be made a party before the arbitral tribunal is if such a person is a party to the arbitration agreement.* ***The arbitral tribunal must determine this jurisdictional issue in an application under Section 16 by examining whether a non-signatory is a party to the arbitration agreement as per Section 7 of the ACA.***
>
> *60.4.* ***In the facts of the present appeal, respondent nos. 2 and 3 are parties to the arbitration agreement in Clause 40 of the LLP Agreement despite being non-signatories****. Their* ***conduct is in accordance with and in pursuance of the terms of the LLP Agreement****, and hence,* ***they can be made parties to the arbitral proceedings****."*
>
> ***[Emphasis Supplied]***

53. In the matter in hand, there is strong *prima facie* evidence of the mutual intention of the non-signatory Bank to be bound with the signatories, TG Trust and the Developer to the Development Agreement discernible from the record. This weighs more in favour of the arbitration being maintainable than against

---

2 Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd. and Others – ***2025 SCC OnLine SC 806***

it. In the peculiar facts of this case, it is reasonable to hold *prima facie* that a non-signatory party who is referred to all over the agreement containing the arbitration clause, after being lured into a bargain on the strength of the agreement containing the arbitration clause, cannot be lightly deprived of its privity as a veritable party. Leaving the final decision on veritable party to the Arbitral Tribunal for consideration under Section 16 of the Act, the Section 9 Court must take note of the strong *prima facie* case in favour of the non-signatory being a veritable party and consider what protection would be appropriate pending arbitration. Therefore, the usual contention ordinarily made, namely, that a non-signatory third party can be dragged into an arbitration but such third party cannot invoke arbitration would not apply or resonate in the peculiar factual matrix of this case. Where a veritable party who is a non-signatory has been given the comfort of the bargain covered by the arbitration agreement, it stands to reason that such third party is one claiming through the parties to the arbitration agreement. The very bargain in the MOU that is dependent on the Development Agreement is one authorised by TG Trust, and that too under the very Development Agreement containing the arbitration agreement.

54. In this light, the jurisdiction clause in the MOU alluding to jurisdiction of Mumbai courts, can reasonably be read as a pointer to Section 9 Court being a court in Mumbai rather than a pointer that the arbitration agreement in the

Development Agreement was positively displaced. The strong interconnected veritable privity of the Bank to the arbitration agreement in the Development Agreement cannot be brushed aside in the specific facts of this case.

55. Privity to the Agency Agreement has no relevance to the question on hand. All that it evidences is that alternate premises were found by the Bank. If anything, the Agency Agreement underlines the fact that the security deposit payment based on the bargain contracted in the Agency Agreement was funded initially by the Developer, consistent with the obligation in the MOU in order to implement the Development Agreement. Exhibit B to the Rejoinder by the Bank clearly shows that the Developer paid Rs. 25,00,000/-to the Bank. Without an actual bargain in hand, there would have been no need for the Developer to pay Rs. 25,00,000/- and if anything, this links neatly to demonstrating how the parties understood the provision of alternate accommodation to the Bank pending extension permission from the Charity Commissioner, as contracted under the MOU, which in turn was contracted only to ensure that the Development Agreement ran its course. The MOU was founded on the authorisation by TG Trust co-terminus with the Development Agreement to negotiate the terms of resettlement of the Bank to make the Development Agreement run its course. To turn around and treat this inter-linked flow of instruments as being disjointed and irrelevant to the larger

composite and common subject matter would be highly illogical and arbitrary in the flow of the equitable jurisdiction under Section 9 of the Act.

56. This then leads to the subsidiary questions of whether, arbitration not yet having been invoked, the requisite urgency for relief as sought under Section 9 is made out – particularly in terms of the manner in which reliefs are sought. While I am satisfied that the Section 9 jurisdiction, which is meant to preserve and protect the subject matter of the arbitration agreement cannot be brushed aside (indeed without undermining a final view on jurisdiction which lies with the Arbitral Tribunal under Section 16 of the Act) whether reliefs sought are interim at all and how it can be moulded to make it sensible and commercially logical is the burden of the Section 9 Court.

57. Indeed, at this stage, in my view, it cannot be contended that a deposit must be directed. The Bank has a monetary claim to make but more than protecting its financial interests, what deserves consideration for interim protection is its entitlements, clearly recognised in the Development Agreement, which is dealt with in the MOU. I am not inclined to direct any deposit of funds at this stage, also factoring in the institutional scale and size of the Bank and the fact that the Development Agreement not having been acted upon could most likely lead to its termination, and with it the authorisation of the Developer to resolve TG Trust's problems with the Bank

coming to an end. Instead, what is at grave risk are the rights of the Bank, which have been duly noted and dealt with by TG Trust and the Developer in the provisions of the Development Agreement and the MOU, as articulated above. That apart, the manner of pleadings and conduct of these parties in these proceedings point to a grave risk to the Bank with these parties literally washing their hands off the Bank after having secured the Bank's departure from the Subject Premises.

58. Therefore, I am inclined to direct that in any redevelopment of the Subject Property, the Developer shall ensure that an area not less than the area of the Subject Premises shall be preserved by the Developer from its 60% sale component, without prejudice to this minimum reservation being enhanced by any factor of FSI enhancement that may come about in terms of any sanctioned plan that may be developed. At this stage, without even an IOD in hand, TG Trust and the Developer have managed to contrive a vacation of the Subject Premises – all on the strength of the Development Agreement read with the MOU. Therefore, if the Development Agreement were to run its course, the Bank's interests must be protected.

59. It is likely that the Developer and TG Trust may do nothing on the redevelopment for the foreseeable future and also not terminate the Development Agreement. In that eventuality, preservative measures would

need to be considered. I leave that consideration to the Arbitral Tribunal. Evidently, the Arbitral Tribunal can only be formed under Section 11 of the Act considering the outright denial of existence of privity to the arbitration agreement by the Developer and TG Trust. Therefore, I have to put the Bank to terms on invocation of arbitration and the filing of a Section 11 Application. If the Bank does not file a Section 11 Application within a period of three months from the upload of this Order on the Court's website, the protective measure granted hereby would stand vacated. If such Section 11 Application is filed, the protection by way of the reservation of redeveloped area would continue until the Arbitral Tribunal, when eventually appointed at any stage of the Section 11 proceedings, has had occasion to consider the continuation, dilution, enhancement or vacation of such interim relief.

Summary of Conclusions:

60. To summarise:

A] I am unable to agree that there is any case for an outright denial of privity of the Bank as a veritable party to the arbitration agreement in Clause 17 of the Development Agreement. On the contrary, the subject matter commonality and the composite nature of the bargains struck in the Development Agreement and the MOU make out a strong case for existence of the Bank's privity to the arbitration agreement rather than

the absence of such privity;

B] The aforesaid finding is without prejudice to the Arbitral Tribunal's statutory power to consider the question of jurisdiction and competence under Section 16 of the Act;

C] Whether TG Trust owes anything to the Bank under the MOU is a wrong question to ask because TG Trust is the owner of the relationship with the Bank, and in that capacity, it has authorised the Developer to solve the problematic relationship TG Trust has with the Bank. Such authorisation is co-terminus with the Development Agreement in light of Clause 3.6 of the Development Agreement, and by executing the tripartite MOU, TG Trust has blessed the arrangement between the Developer and the Bank, taking care to ensure that there is no financial liability on TG Trust. The absence of financial liability does not wash away the strained and problematic legal relationship between TG Trust and the Bank, which can only be solved by adjudication of evidence;

D] *Prima facie*, the Developer's obligation to fund the Bank's transit rent has been triggered and indeed by its own conduct, the Developer has paid the sum of Rs. 25,00,000/- towards the initial security deposit and has defaulted thereafter. This is not a pure bipartite dispute between the Developer and the Bank but a dispute that is composite among the parties, since the Developer has only acted pursuant to the

authorisation granted by TG Trust to the Developer to strike a bargain with the Bank co-terminus with the Development Agreement;

E] On urgency and the necessity to direct deposit of funds, I am not inclined to use the Section 9 jurisdiction and instead I leave it to the Arbitral Tribunal to fashion whatever interlocutory arrangement appeals to it under Section 17 of the Act, even while it may consider a challenge under Section 16 of the Act, if mounted before it. However, the Bank is at grave risk of being treated as a persona non grata despite being lured to part with the Subject Premises on the strength of the Development Agreement; with no progress in the development and yet, the Developer and TG Trust in one voice, it is untenable to treat the Bank like a trespasser with no interest in the Subject Property despite its occupation of the Subject Premises being articulated extensively and dealt with all across the Development Agreement and the MOU, leading to the Agency Agreement being brought into existence and the Developer even funding a portion of payment that the Bank had to make for the alternate accommodation; and

F] Therefore, it is necessary to ensure that the Developer does not part with, alienate, or create any third-party interest of any nature whatsoever over at least such portion of the redeveloped premises that is equivalent to the area of the Subject Premises occupied by the Bank at

the time of execution of the Development Agreement, without prejudice to enhancement of such area by any factor of FSI enhancement thereafter, and before vacating the Subject Premises on August 3, 2022 in good faith reliance on the obligations contained in the MOU;

G] To ensure that the matters are not kept in a limbo, it would be appropriate to direct TG Trust to apply to the Charity Commissioner for an extension of time for implementation of the redevelopment within a period of three months from today. If such an application is made, then until a decision by the Charity Commissioner, there can be no cloud over extension of the Development Agreement. If no such application is made, it would be a pointer to TG Trust not being really interested in pursuing the redevelopment with the Developer as contracted under the Development Agreement.

61. Meanwhile to ensure full access to information so that the parties can engage in well-informed litigation, all parties shall be entitled to jointly conduct an inspection of the Subject Property in general and the Subject Premises in particular, since no demolition would have been undertaken without an IOD. Such inspection shall be provided by the Developer and TG Trust to the Bank within two weeks from today. Should such inspection not be provided, the Bank shall be entitled to approach the Learned Court Receiver pursuant to this Order to ensure oversight and supervision for conduct of such

inspection, if necessary, with police protection. The deadline to approach the Court Receiver for such assistance shall commence from the expiry of two weeks from today if inspection has not been provided by then and the inspection under the oversight of the Court Receiver shall be conducted within two weeks of the Bank approaching the Court Receiver.

Summary of Directions:

62. The directions issued in this Order are listed below:

A] In the redevelopment of the Subject Property, the Developer shall reserve, out of its 60% sale component, an area not less than the area of the Subject Premises, namely about 3,926 sq. ft. comprising the basement admeasuring about 979 sq. ft. and the ground floor admeasuring about 2,947 sq. ft. This minimum reservation is without prejudice to its enhancement by any factor of FSI enhancement that may come about under any sanctioned plan. The Developer shall not part with, alienate, encumber or create any third-party interest of any nature whatsoever in respect of the area so reserved;

B] TG Trust shall, within three months from the date of upload of this Order on the Court's website, apply to the Charity Commissioner for extension of time for implementation of the redevelopment;

C] The Developer and TG Trust shall provide the Bank a joint

inspection of the Subject Property in general and the Subject Premises in particular within two weeks from the date of upload of this Order on the Court's website. If inspection is not so provided, the Bank shall be at liberty to approach the Learned Court Receiver of this Court, who shall oversee and supervise the conduct of such inspection, if necessary, with police protection, and such inspection shall be conducted within two weeks of the Bank approaching the Court Receiver;

E] The Bank shall, within three months from the date of upload of this Order on the Court's website, invoke arbitration and file an application under Section 11 of the Act. If it does not do so, the protective measures at [A] above shall stand vacated without further reference to this Court. If it does, those measures shall continue until the Arbitral Tribunal, as and when constituted, has had occasion to consider their continuation, dilution, enhancement or vacation;

F] No deposit of funds is directed. Such measures are left to be agitated before the Arbitral Tribunal under Section 17 of the Act;

G] This Order will not preclude the Developer and TG Trust to apply to the Arbitral Tribunal under Section 16 of the Act, questions as to the existence of the arbitration agreement and the Bank's privity to it; and

H] Nothing in this Order shall be construed as a final expression of opinion on the existence of the arbitration agreement, on the status of

the Bank as a party to it, or on the merits of the claims and defences of any party, all of which shall be decided uninfluenced by the *prima facie* views expressed herein.

63. The Section 9 Petition is ***finally disposed of*** in the aforesaid terms.

64. In the peculiar facts of the case, there shall be no order as to costs, deferring consideration of costs for this round of litigation to the Arbitral Tribunal, as and when it is constituted.

65. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]