

# Nimitya Infotech Pvt Ltd vs The Axis Trustee Services Ltd on 18 November, 2021

In the Court of Shri Sanjiv Jain, District Judge,  
(Commercial Court-03), Patiala House Courts New Delhi

OMP (Comm) No. 323/2021

1. Nimitya Infotech Pvt Ltd.  
2A, Avenue Cassia,  
Westend Greens, Rajokari,  
New Delhi-110038

2. Bluebird Software Pvt Ltd,  
2A, Avenue Cassia,  
Westend Greens, Rajokari,  
New Delhi-110038

..... plaintiffs

versus

1. The Axis Trustee Services Ltd,  
Axis House, Bombay Dyeing Mills Compound,  
Pandurand Budhkar Marg,  
Worli, Mumbai-400025

2. Asia Pacific Private Credit Opportunities 1 Singapore Pte. Ltd  
Twenty Anson, 20 Anson Road, #18-01,  
Singapore 079912

3. SSG2 PTE, Ltd  
80 Raffles Place, #18-01,  
UOB Plaza, Singapore 048624

..... Defendants

Date of institution	:	24.08.2021
Date of reserving judgment	:	10.11.2021
Date of decision	:	18.11.2021

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ORDER

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1. The plaintiffs have filed the suit for declaration, perpetual and mandatory injunction praying for the following reliefs:

a. A decree of permanent injunction restraining the defendants, their agents,

servants, employees, assigns and all other persons acting on their behalf from approaching any person and / or lessee and / or customer of the plaintiffs. And/or;

b. A decree of permanent injunction restraining the defendants, their agents, servants, employees, assigns and all other persons acting on their behalf from issuing any statement and / or notice in the print media including newspapers, tele-media, or news channels in relation to or in any connected with the plaintiffs herein or any of their subsidiaries. And/or;

c. An order of mandatory injunction thereby directing the defendants to withdraw all statements and / or communications made mis-representing themselves to be the owners of the properties of the plaintiffs. And/or; d. Issue orders in the nature of mandatory injunction and / or any other nature restraining the defendants to work / act in a manner which undermines the valuation of properties to be sold / disposed off under the agreement and may resultantly cause an event of default in terms of the agreements entered into between the plaintiffs and the defendants; And/or e. Restrain the defendants to declare an event of default in terms of the agreement entered into between the parties and / or;

f. For a decree of declaration that the defendant nos. 2 & 3 are bound to follow the circular dated 07.06.2019 issued by the Reserve Bank of India (RBI);

g. For a decree of declaration that the defendant nos. 2 & 3 are bound by the circular dated 23.05.2019 issued by the RBI;

2. Succinctly, the facts as stated in the plaint are that the plaintiffs, are the group / subsidiary companies, involved in the business of acquiring, developing and leasing out commercial spaces to various entities. Defendant no. 1 is a trust authorized by the defendant nos. 2 & 3. Defendant nos. 2 & 3 are the private companies limited by shares incorporated under the laws of Singapore with their office at Singapore. Defendant nos. 2 & 3, the active investors in the Indian market, in an around mid December 2019 pursuant to the talks and negotiations, evaluated the assets and business prospects of the plaintiffs for investment in the plaintiffs companies / group companies / subsidiaries. They entered into a Debenture Trust Deed (DTD) dated 28.03.2019 and Debenture Subscription Agreement (DSA) dated 27.03.2019. In terms of the Debenture Trust Deed, plaintiffs issued 1824 secured, unrated, unlisted and redeemable non-convertible debentures of face value INR Rs. 10,00,000/- each for an aggregate amount of Rs. 182,40,00,000/-. Similarly, plaintiff no. 2 issued 1862 secured, unrated, unlisted and redeemable non-convertible debentures of face value INR Rs. 10,00,000/- each for an aggregate amount of Rs. 182,60,00,000/-. In terms of clause 3.1 & 3.2 of the Debenture Subscription Agreement, the amount / investment made by the defendant nos. 2 & 3 was to be used by the plaintiff for paying the outstanding amount of India Bulls and Allahabad Bank. In terms of schedule 4 (1) (1.3), the plaintiffs were required to maintain the occupancy rate in their premises as per schedule 8. It was stipulated that in an event of default, the Debenture Trustee may issue a written notice to the issuers and / or the obligors, the occurrence of event of default. Upon issuance of acceleration notice, the Debenture Trustee shall be entitled to exercise all or any of

the powers to recover the amounts set out in clause 13.3 (c) and invoke the transaction securities created in accordance with the terms of the documents including the guarantee. The repayments / obligations of the plaintiffs in terms of the trust deed and subscription agreement were defined as detailed in para 15. The payment of the outstanding principals and redemption of the debentures was to be done in accordance with clause 9.3 of the agreement as detailed in para 15 i.e. Rs. 65,00,00,000/- on first scheduled redemption date or Rs. 80,00,00,000/- by the sale of property no. 2, Rs. 125,00,00,000/- on second scheduled redemption date or Rs. 110,00,00,000/- by sale of property no. 1, 2 & 3 and the outstanding amount at the time of final redemption date. The plaintiffs had to repay the amount after the sale of their properties, which fact was communicated by the defendants vide mail dated 31.12.2020 to the plaintiffs.

3. It is alleged that on 14.07.2021, the plaintiffs through reliable sources came to know that the defendants have been approaching various persons and / or business entities and / or companies representing themselves to be the owners of various properties owned by the plaintiffs / group companies with an offer for disposal and / or sale of properties and / or creating third party right over the properties, thus maligning the image and / or reputation of the plaintiffs, so as to cause wrongful loss to them with the sole object to take control and / or invoke the security and / or guarantee in terms of clause 14 of the trust deed. It is alleged that the said act is being done by the defendants with an intention to ensure that the plaintiffs may not be able to fulfill their occupancy milestones, which may result an event of default in terms of the agreement. It is further alleged that the said act is in direct contravention of clause 36 of the Trust Deed.

4. It is stated that few of the agreed covenants in the agreement and deed could not keep pace with the agreed benchmarks due to the pandemic, hence, in line with the RBI covid restructuring circular followed by K. V. Kamath Committee Report, plaintiffs requested the defendants for restructuring of the exposure but their request was turned down taking the stand that they are not covered within the ambit of RBI. It is alleged that the defendants in continuation of their coercive policies have been approaching their present / prospective tenants and instigating them to cancel the rental agreements and spreading false rumors about their credentials in the local markets to sabotage their business operations. They have created a situation, where, their present lessees are expressing their intention to vacate the premises and the prospective lessees are not taking the premises on lease. It is stated that plaintiffs as a result thereof are not able to achieve the occupation milestones as mentioned in the deed / agreement. It is alleged that the illegal conduct of the defendants have affected their goodwill, which conduct is unethical, unfair and unlawful. The estimated loss, they have suffered is more than 35% of the value of their assets.

5. The plaintiffs have valued the suit for the purposes of jurisdiction at Rs. 10,00,000/- and have alleged the purported loss to the tune of Rs. 28,00,000/-.

6. The defendants contested the suit and filed the written statement taking the objections that this Court does not have jurisdiction over the subject matter; the plaintiffs have suppressed the material facts and documents, made material misrepresentations and have not come before this Court with unclean hands with the sole intention to harass the defendants and avoid their obligations under the agreement; the plaint does not disclose any cause of action against the defendants; and the plaint

deserves to be dismissed in limine.

7. It is alleged that the plaintiffs have deliberately failed to disclose that defendant nos. 2 & 3 are the secured creditors of the plaintiffs. The plaintiffs and other obligors have infact mortgaged certain properties in favour of defendant no. 1 for the benefit of defendant nos. 2 & 3 for securing the due repayment of amounts payable under the Subscription Agreement. They have failed to disclose that as on 24.08.2021, they are in default of Rs. 521,86,80,784/-. They have not even disclosed the notices / EOD notices issued by the defendants.

8. It is stated that the plaintiffs were bound to value the suit as per sub Section (c) of Section 12 of the Commercial Courts Act 2015 since the reliefs sought by them are in relation to the immovable properties. As per the valuation report commissioned by the plaintiffs, their value is 817.89 crores i.e. more than 2.0 crores. It is alleged that the plaintiffs have arbitrarily undervalued the suit for Rs. 10,00,000/- without any cogent reasons.

9. It is alleged that this Court does not have territorial jurisdiction on the subject matter as the mortgaged properties are situated beyond the territorial jurisdiction of this Court. Although, the Debenture Subscription Agreement and Debenture Trust Deed have been signed at New Delhi and the agreement provides that the Courts of New Delhi have the jurisdiction over any disputes but it is settled law that the parties cannot by agreement confer jurisdiction on the Court, when it lacks the inherent jurisdiction to decide the matter. In this case, registered office of defendant no.1 is at Mumbai, defendant nos. 2 & 3 are in Singapore, the mortgaged properties are situated in Gurugram, Punjabi Bagh and Rajokri and none of these documents were executed within New Delhi District, as such, no part of cause of action arose within the New Delhi District.

10. It is alleged that this suit is completely bereft of material particulars. The plaintiffs have failed to specify, which property they are referring to in the plaint or when, where and to whom the defendants purportedly represented that they are the owners of the properties. The plaint only contains the vague allegations and bald statements. It is alleged that sole intention of the plaintiffs is to embroil the defendants into frivolous litigation, so as to cause defendants not to take steps under the agreement / deed with regard to the defaults committed by them.

11. It is alleged that the plaintiffs have defaulted on multiple occasions and there has been insolvency proceedings against them. The promoters of the plaintiffs have been classified as defaulters by CIBIL. It is stated that the defendants had disbursed Rs. 365.0 crores as detailed in para 3, which the plaintiffs had acknowledged vide mail dated 30.03.2019. The debentures were issued and allotted to defendant nos. 2 & 3 as detailed in para 35. It is alleged that the plaintiffs failed to meet their obligations under the agreement and continuously breached the terms. The plaintiffs then requested defendant nos. 2 & 3 to restructure the facility to enable them to make the payments for which they held several rounds of discussions with the plaintiffs to offer possible solutions but nothing materialized on account of the plaintiffs non committal attitude. The plaintiffs then vide email dated 24.12.2020 requested the defendants to assist them in selling certain mortgaged properties and finding lessees for them. It is stated that role of the defendant nos. 2 & 3 was limited to setting up meetings / introduction with the sales agents solely on a good faith and

they never took the responsibility of selling / leasing out the mortgaged properties, which vested with the plaintiffs and obligors alone. It is alleged that the plaintiffs had to meet their payment obligations for principal payments due on 30.03.2020 and 30.03.2021 and cash coupon payments due on 30.06.2020, 30.09.2020, 31.12.2020, 31.03.2021 and 30.06.2021 but they continued to be in default. It is alleged that the defendant no. 1 accordingly sent notices on 27.07.2020, 08.12.2020, 20.01.2021 and 21.05.2021, notifying the plaintiffs of their failure to meet their payment obligations under the subscription agreement. The defendants had also sent the identical notices but the plaintiffs did not make the payments. Defendant no. 1 then on the instructions of defendant nos. 2 & 3 issued a composite default notice and event or default notice (EOD) on 16.08.2021 as detailed in para 45 and then issued a notice dated 14.08.2021 in terms of clause 13.2 of the deed calling upon the plaintiffs to make the payment as detailed in para 46 but the plaintiffs failed to make the payment and as on 24.08.2021 an amount of Rs. 521,86,80,784/- became due. Defendant no. 1 then filed the proceedings under Section 7 of IBC 2016 for initiating corporate insolvency resolution process, which are pending. Defendant no. 1 also invoked the personal and corporate guarantee by sending a notice dated 24.08.2021 and filed the proceedings under Section 7 of IBC for corporate insolvency resolution process of SNG for failure to repay the amount in default by the plaintiffs.

12. It is stated that the plaintiffs failed to maintain the occupancy rate as per schedule 8 of the agreement in relation to the rental contract of Udhyog Vihar, thus, committed the breach. The defendants had issued several notices to the plaintiffs for payment defaults. It is stated that the plaintiffs / obligors in response to their letter dated 18.05.2021 had responded by an email dated 20.05.2021 inter alia admitting that there was a default in making scheduled payments and assured that the payments would be made by lease rentals obtained from the lease of Punjabi Bagh property to a third party namely Kids Clinic India Pvt Ltd. It is stated that the plaintiffs had already mortgaged the Punjabi Bagh property in favour of defendants in terms of the agreement thus were not permitted to lease any of the mortgaged properties to the third party without the prior consent from the defendants. This fact was brought to the notice of the plaintiffs by the defendants vide mail dated 01.06.2021 but the plaintiffs vide mail dated 08.06.2021 defended their action stating that leasing of property would not create any third party rights in the property. It was stated that rental income would be realized to service the redemption payment due to them. It is stated that the plaintiffs did not provide the copy of the lease deed to them but the defendants somehow managed to obtain the same and came to know that prior to the execution of Kids Clinic Lease Deed, the owners of the Punjabi Bagh Property namely Sanjeev Mahajan and Anita Rani Manajan had executed another lease deed dated 03.01.2021 in favour of NPPL, group company of plaintiffs for a period of 10 years without disclosing it to the defendants. It is stated that in the Kids Clinic Lease Deed, they had falsely represented that they are the absolute owners of the property and the title is free from encumbrances and claims. It is stated that the lease rental amount and security deposit collected from Kids Clinic under the lease deed were deposited in the account of NPPL. This shows that they had intention to divert monies to the group companies and not to repay the amounts to the defendants.

13. It is stated that the plaintiffs allegations, that defendants misrepresented themselves to the owners of the properties, are false. The plaintiffs have produced an undated and evidently a false document. No such representations were ever made by the defendants and the documents relied

upon by the plaintiffs are false. They never approached the potential / current lessees of the properties nor instigated them to cancel the rental agreements nor spread false rumors to sabotage the business of the plaintiffs. They also questioned about the genuineness and authenticity of undated document from Sagar Properties and the mail of the plaintiffs to the third party. They denied that they had represented themselves to be the owners of the properties and maligned the image of the plaintiffs to sabotage their business operations.

14. It is stated that RBI circulars as referred in the prayer clause (f) & (g) of the suit are not applicable to the defendant nos. 2 & 3 as they are the foreign portfolio investors registered with SEBI. Para 3 of the circular dated 07.06.2019 sets out the applicability of the circular. It is applicable to the Schedule Commercial Banks, All India Terms Financial Institutions, Small Finance Banks and Non Banking Financial Companies.

Similarly, the circular dated 23.05.2019 is addressed to the Scheduled Commercial Bank, All India Terms Financial Institutions, Small Finance Banks and Non Banking Financial Companies and does not refer to the Foreign Portfolio Investors. Further, these circulars are not mandatory in nature and can be applied by the lenders at their discretion. It is stated that the defendants never breached the confidentiality obligations under the trust deed, nor approached the parties nor informed them of the transactions nor prevented the plaintiffs from achieving the milestones and their allegations are vague and baseless. It were rather the plaintiffs who had approached the defendant nos. 2 & 3 and requested them to find suitable lessees and / or buyers for their properties and thereby waived off the confidentiality.

15. It is alleged that the prayers set out by the plaintiffs are completely vague. They are not based on any cause of action and are completely devoid of merit. The plaintiffs have made vague and unsubstantiated statements. They have not specified which communication, they are referring to in the prayer nor they have filed any such documents along with the plaint. It is stated that defendants never made any such statement representing themselves to the owners of the properties and the other properties of the plaintiffs. The plaintiffs prayer for injunction against the defendants from undermining the value of the property is absurd on the face of it, as these properties are mortgaged with the defendants as security for the due repayment of amounts disbursed to the plaintiffs under the debenture subscription agreement and undermining the value of the properties would only go against the defendant's interests. It is alleged that the plaintiffs have been clearly in default of payment obligations under the debenture subscription agreement and debenture trust deed and the defaults have even been admitted by them. The prayer clause (e) for seeking an injunction restraining the defendants from declaring an event of default in terms of the agreements between the parties has become infructuous as the defendants have already declared an event of default under the debenture subscription agreement and debenture trust deed by notice dated 16.08.2021 i.e. before the suit was filed.

16. The plaintiffs filed the rejoinder stating that the lease deed in respect of Punjabi Bagh Property was executed in February 2021 on the basis of various discussions held by the parties, wherein, permission was granted by the defendants and the intimation in this respect was sent to Sh. Neeraj Seth, Managing Director of the defendants. The plaintiffs had also written a letter to Kids Clinic

India Pvt Ltd to deposit the lease amount in the escrow account maintained by the parties. It is stated that the lease deed was handed over to Dhruv Aggarwal, representative of the defendants on 02.04.2021 during his visit to their office. It is stated that this Court has territorial jurisdiction to entertain this suit. The agreement / deed were entered between the parties at New Delhi, hence, in terms of Section 20 (c) of CPC, this Court has jurisdiction to decide this suit.

17. I have heard the arguments advanced by Sh. Kumar Anurag Singh, Ld. Counsel for the plaintiffs and Sh. T. K. Ganju, Senior Advocate assisted by Sh. Prateek Kumar, Ld. Counsel for the defendants.

18. Ld. Counsel for the plaintiffs reiterated what has been stated in the plaint. He stated that two agreements namely Debenture Trust Deed and Debenture Subscription Agreement were entered into between the parties, whereby, plaintiffs had issued 1824 and 1826 debentures respectively having a face value of Rs. 10,00,000/- each. The amount was disbursed by the defendant no. 2 & 3 to the plaintiffs of which, defendant no. 1 is a trustee. The repayment was to be made by the plaintiffs, as per schedule 10 & 11 of the agreement and the payment of coupon amount was dependent on the occupancy to be maintained by plaintiffs in their properties and the coupon / interest amount was to be serviced every three months starting from June 2019, from the money to be received by the plaintiffs from their lease assets. The payment of redemption amount was dependent on selling of the properties of the plaintiffs. The dispute arose when the plaintiffs came to know that the defendants have been contacting the lessees of the plaintiffs and telling them that the properties of the plaintiffs are up for liquidation and / or being sold at a discounted price. Ld. Counsel stated that the defendants created a situation, where, lessees of the plaintiffs were pressurized the plaintiffs to reduce the rent amount and the future lessees were not willing to take the premises on lease citing reasons of uncertainty in case the plaintiffs go into liquidation. Ld. Counsel stated that as per the agreement, the defendants were duty bound not to disclose the contents / nature of transactions between them to any third party but in this case, the defendants in violation of the agreement contacted the present and prospective lessees of the plaintiffs informing them about the transactions, which, considerably undermined the value of the properties.

19. Ld. Counsel stated that the plaintiffs have approached this Court with limited prayers to restrain the defendants from doing any act, which would undermine the value of the properties of the plaintiffs, and / or approaching any person / lessee / customer of the plaintiffs, which the defendants in their reply have impressed upon that they have neither done any such act nor intend to do the same. Ld. Counsel stated that the plaintiffs have annexed all the mail transaction documents in the suit. Ld. Counsel stated that the factum of mortgaging the properties of the plaintiffs or default on their part is not at all relevant for adjudication of the suit. The mortgage was of the nature of simple mortgage and the defendants have never taken the possession of the mortgaged properties from the plaintiffs. The plaintiffs are the legal owners of the properties.

20. Ld. Counsel stated that the present suit is not in respect of default but for restraining the defendants from acting as the owners of the properties or carrying out any communication with the clients / customers of the plaintiffs to undermine the value of the properties. Ld. Counsel stated that the plaintiffs business got the worst affected due to Covid 19 pandemic, as a result, it could not achieve the occupational milestones. Ld. Counsel referred the mails dated 22.05.2020, 31.12.2020,

05.01.2021 and 04.01.2021 and contended that the defendants themselves had stated that the value of the properties have been decreasing. Ld. Counsel stated that the defendants in the instant case have failed to understand the purpose and the reliefs prayed for in the present suit.

21. Ld. Counsel for the defendants per contra argued that value of the properties in the present suit is more than Rs.

2,00,00,000/- and the suit is thus outside the pecuniary jurisdiction of this Court. Initially, the plaintiffs had claimed that they have suffered loss upto Rs. 280.0 crores and valued the suit at Rs. 1,00,000/- but they amended the suit to bring it within the pecuniary jurisdiction of this Court by stating that the loss suffered was Rs. 28,00,000/- and the value of the suit for the purposes of court fee and jurisdiction is Rs. 10,00,000/-, which amendment was allowed by this Court vide order dated 26.07.2021. Ld. Counsel stated that conduct of the plaintiffs shows that their valuation is completely arbitrary and bears no relations to the purported claims under the suit. Ld. Counsel referred the case of Bharat Sanchar Nigam Ltd Vs. All India Bharat Sanchar Nigam Executives Association (2006) 130 DLT 195, Maiden Pharmaceuticals Ltd Vs. Wockhardt 2008 SCC OnLine Del 804 and Wockhardt Veterinary Ltd Vs. Raj Medicos, 1998 RLR 353 to contend that pecuniary jurisdiction has to be determined based on the substance in the plaint and the same cannot be arbitrary.

22. Ld. Counsel reiterated what has been stated in the written statement and contended that the plaintiffs have suppressed the material facts and documents with respect to their various defaults under the agreement and trust deed including the fact that they are in default of an aggregate amount of more than Rs. 520.0 crores due and payable to the defendants and the various securities provided in favour of defendant no. 1 for the benefit of defendant nos. 2 & 3 to secure repayment of amounts payable under the agreement including mortgage of the properties. They have also tried to characterize the transaction as an investment. Ld. Counsel stated that the plaintiffs in the email dated 24.11.2020, 04.01.2021 and 14.01.2021 had in fact requested the defendant nos. 2 & 3 to assist them in finding lessees / buyers for their properties.

23. Ld. Counsel further argued that the plaintiffs have suppressed from the Court about the defaults committed by them in repayment. They are in default of an aggregate amount of more than Rs. 520.0 crores due and payable to the defendants under DSA and DTD. They have not made any payments since 15.04.2020 for which, defendants have issued several notices. Ld. Counsel argued that the defendants failed to maintain the occupancy milestones as per clause 5.2 of the agreement and unauthorizedly leased Punjabi Bagh Property making false representation that there is no encumbrance on the property. Further, lease rentals from the property were never deposited with the defendants and remained deposited in the account of NPPL, the company of the plaintiffs. Ld. Counsel contended that the plaint is bereft of material particulars. It only contains the vague allegations and bald statements. Ld. Counsel stated that this suit has been filed as counter blast to the notices issued by the defendants. Ld. Counsel stated that the plaintiffs are desperate to escape from their liability and have filed this suit to cause the defendants into not taking any action under the DSA / DTD or applicable laws.



24. Ld. Counsel contended that the plaintiffs have made vague and unsubstantiated claims that defendants are causing under valuation of the properties and representing themselves to be the owners of the properties. The letter relied upon by the plaintiffs purportedly from Sagar Properties is an undated document and not on the letter head. Ld. Counsel stated that the defendants deny the genuineness and authenticity of the said letter. Email dated 24.07.2021 relied upon by the plaintiffs is an email written by themselves making baseless allegations and cannot be the proof of their case.

25. I have given my thoughtful consideration to the rival contentions, perused the documents referred by the counsels for the parties and the case laws supra.

26. Section 7 of the Court Fees Act 1870 provides computation of fees payable in certain suits. Section 7 (iv) provides that the amount of fee payable under this Act in the suits (c) for a declaration decree and consequential relief, (d) for an injunction, (e) for easements, (f) for accounts, shall be computed according to the amount at which the relief sought is valued in the plaint and in all such suits, the plaintiff shall state the amount at which he values the relief sought. It was held in the case of Sathappa Chettiar VS. Ramanathan Chettiar, AIR 1958 SC 245 that the question of Court fee must be decided having regard to the averments made in the plaint itself and the contentions raised in the written statement or the final decision of merits cannot affect the same. In the case of Commercial Aviation & Travel Co. Vs. Vimal Pannalal, AIR 1988 SC 1636, it has been held that paragraph (iv) of Section 7 of the Act gives a right to the plaintiff in any of the suits mentioned in the clauses of that paragraph to place any valuation that he likes on the relief he seeks, subject, however to any rules made under section 9 of the Suit Valuation Act and the court has no power to interfere with the plaintiff's valuation.

27. In the instant suit, the plaintiffs have not sought declaration of any right but have prayed for the reliefs of injunction as referred in para 1 (a), (b), (d) & (e) above, for directing the defendants to withdraw all statements / communications made mis-representing themselves to be owners of the properties of the plaintiffs or to work / act in a manner which undermines the valuation of the properties or restrain them to declare an event of default in terms of the agreement and for declaration that the defendant nos. 2 & 3 are bound to follow the circulars dated 07.06.2019 & 23.05.2019 issued by the Reserve Bank of India. Admittedly, when the plaintiff had initially filed the suit, they had valued the suit for the purposes of Court fee and jurisdiction at Rs. 1,00,000/- but in order to bring the suit within the pecuniary jurisdiction of the Commercial Court, they enhanced the value from Rs. 1,00,000/- to Rs. 10,00,000/-. In the instant case, they have not sought any relief qua the loss allegedly suffered by them. Section 7 (iv) of the Court Fees Act gives right to the plaintiff in the suit mentioned in the clauses of that paragraph to place any valuation that he likes on the reliefs, he seeks and this Court has no power to interfere with the plaintiff's valuation. Section 8 of the Suits Valuation Act 1887 provides that where the suits other than those referred to in the Court Fees Act 1870, Section 7, paragraphs V, VI & IX and paragraph X, clause (d), Courts fees are payable ad valorem under the Court fees Act, 1870, the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same. It was held in the case of Gopal Chandra Jena Vs. Sri. Laxmi Narayan Bijo Maura Alava, AIR 1990 Ori 98 that in the light of the suits under Section 7 (iv) of the Court fees Act, 1970, this provision provides that the value as determinable for the computation of Court fee and the value for the purposes of jurisdiction shall be

the same. The former determines the value of the later, to be precise, it is not vice versa in any circumstances. The plaintiff has an option to make his own valuation. In the present case, the plaintiffs have prayed for directing the defendants to make any statement mis- representing themselves to be the owners of the properties of the plaintiffs. They have not prayed that they be declared as the owners of the properties. They have only mortgaged the properties with the defendants as securities in terms of the Debenture Trust Deed and Debenture Subscription Agreement by taking money to repay the dues of India Bulls and Allahabad Bank. That being the position, the plaintiffs have properly valued the suit for the purposes of court fees and this Court has pecuniary jurisdiction to adjudicate this suit.

28. Now coming to the territorial jurisdiction of this Court, Section 20 of the CPC provides that every suits shall be instituted in the Court within the local limits of whose jurisdiction, (a) the defendant actually and voluntarily resides or carries on business or personally works for gain or (c) the cause of action, wholly or in part, arises.

29. Admittedly, the defendants are the residents of Mumbai / Singapore or they carry on business or work for gain at Mumbai / Singapore but the Debenture Trust Deed dated 28.03.2019 and Debenture Subscription Agreement dated 27.03.2019 were executed at New Delhi within the jurisdiction of this Court i.e. New Delhi District. One of the properties mortgaged by the plaintiff is situated at Rajokri, which also falls within the jurisdiction of New Delhi District. Since, part of the cause of the action arose within the jurisdiction of New Delhi District, so this Court has territorial jurisdiction to try and adjudicate this suit.

30. In the instant case, the plaintiffs have mainly claimed the reliefs for restraining the defendants from approaching any person and / or lessee and / or customer of the plaintiffs; from issuing any statement and / or notice in the print media including newspapers, tele-media or news channels in relation to or in any way connected with the plaintiffs or any of their subsidiaries; for directing the defendants to withdraw all statements and / or communications made misrepresenting themselves to be the owners of the properties of the plaintiffs; and / or restraining the defendants to work / act in a manner, which undermines the valuations of the properties to be sold / disposed of under the agreement or may cause an event of default in terms of the agreement entered into between them; restraining the defendants from declaring an event of default in terms of the agreement entered into between the parties and / or for declaration that defendant nos. 2 & 3 are bound to follow the circulars dated 07.06.2019 and 23.05.2019 issued by the Reserve Bank of India (RBI). They have alleged that they are unable to meet their payment obligations because of the illegal, malicious and vexatious acts of the defendants. They have not prayed for restraining the defendants from initiating any legal proceedings qua recovery of their legitimate dues / amount. I may mention that the defendants have already initiated the legal proceedings before the NCLT under Section 7 of IBC 2016 qua failure of the plaintiffs to repay the amounts.

31. The defendants in the written statement have clearly stated that they never mis-represented themselves to be the owners of the properties in question; they have never made any such representation nor have approached the potential / current lessees of the properties instigating them to cancel the rental agreements nor have spread the false rumors to sabotage the business of

the plaintiffs. They have also questioned the genuineness of undated document allegedly from Sagar Properties and the mail of the plaintiff to the third party and denied about the authenticity of the same. They have also denied having maligned the image of the plaintiffs. They have stated that the RBI circulars as referred in prayer clause (f) &

(g) of the suit are not applicable to the defendant nos. 2 & 3 as they are the foreign portfolio investors registered with SEBI. Para 3 of the circular dated 07.06.2019 clearly sets out the applicability of the circular. It is applicable to the Schedule Commercial Banks, All India Terms Financial Institutions, Small Finance Banks and Non Banking Financial Companies. Similarly, the circular dated 23.05.2019 is addressed to the Scheduled Commercial Bank, All India Terms Financial Institutions, Small Finance Banks and Non Banking Financial Companies and does not refer to the Foreign Portfolio Investors. Further, these circulars are not mandatory in nature and can be applied by the lenders at their discretion. The defendants have stated that they never breached the confidentiality obligations under the trust deed, nor approached the parties nor informed them of the transactions nor prevented the plaintiffs from achieving the milestones. They have stated that it were rather the plaintiffs who had approached and requested them to find suitable lessees and / or buyers for some of their properties and thereby waived off the confidentiality. The counsel for the defendants have also reiterated these submissions in his arguments. Further, the plaintiffs have not specified which communication, they have referred to in the prayer. The defendants have stated that the properties have been mortgaged by the plaintiffs with them as a security for the due repayment of amounts disbursed to them under the agreement, rather, undermining the value of the properties would go against their interest. They have also stated that the prayer qua restraining them from declaring an event of default in terms of the agreement has already become infructuous as the defendants have already declared an event of default under the agreement / deed by notice dated 16.08.2021 i.e. before filing of this suit.

32. The counsel for the plaintiffs has submitted that the plaintiffs have approached this Court with the limited prayers to restrain the defendants from doing any act, which would undermine the valuation of the properties of the plaintiffs or to approach any person / lessee / customer of the plaintiffs, which the defendants in their reply have impressed upon that they have neither done any such act nor have intention to do so.

33. Looking into the submissions made by the defendants and the plaintiffs and in view of submissions / averments made in the written statements viz a viz, the prayers in the plaint, there are no triable issues and nothing survives in the present suit. No cause of action survives in the favour of the plaintiffs and against the defendants. The defendants have already initiated the legal proceedings against the plaintiffs by invoking the jurisdiction of NCLT. They have never disputed about the ownership of the plaintiffs in respect of the above properties. They have clearly denied that they have approached the potential / current lessees of the properties and instigated them to cancel the rental agreements or they have mis-represented themselves to be the owners of the properties or have maligned the image of the plaintiffs to sabotage their business operations. They have also denied the content of the undated document from Sagar Properties. They have stated that they never breached the confidentiality obligations under the trust deed nor approached the parties nor informed them of the transactions nor prevented the plaintiff from achieving the milestones.

They have rather alleged that the plaintiffs had approached them to find suitable lessees / buyers for some of their properties and thus waived off the confidentiality clause. They have given unequivocal and clear statement that they never tried to undermine the valuation of the properties. They have rather stated that the properties are mortgaged with them as security for due repayment of amounts disbursed to the plaintiffs under the agreement and undermining the value of the properties would go against their interests. The prayer qua restraining the defendants from declaring an event of default in terms of the agreement has already become infructuous as the defendants have already declared an event of default under the agreement / deed by notice dated 16.08.2021 i.e. before filing of this suit.

34. Having considered all the facts and circumstances in totality, no cause of action survives in favour of the plaintiffs and against the defendants. Law provides that the Court may give a summary judgment against the plaintiff or the defendant on a claim, if it considers that the plaintiff has no real prospect of succeeding on the claim or there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

35. For the foregoing discussions, the suit of the plaintiffs is dismissed as there are no triable issues nor the cause of action survives in favour of plaintiffs and against the defendants.

36. No orders as to costs.

37. File be consigned to Record Room.

Announced in open court today i.e. 18th of November 2021 (Sanjiv Jain) District Judge (Commercial) - 03 Patiala House Courts, New Delhi