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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13.04.2026
Judgment pronounced on: 29.05.2026

\+ O.M.P.(I) (COMM.) 138/2026

CONSCIENT INFRASTRUCTURE PVT. LTD. .....Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Anirudh Bakhru, Mr. Divyam Agarwal, Mr. Ayush Puri, Mr. Ranvir Singh Sisodia, Mr. Kanav Madnani and Mr. Siddhant, Advocates.

versus

MR. MAHESH KAPOOR & ANR. .....Respondent

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Manu Bajaj, Ms. Parul, Mr. Krishna Gambhir, Ms. Shreya Sethi and Ms. Riya Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, filed by **Conscient Infrastructure Pvt. Ltd.**[1] under Section 9 of the **Arbitration and Conciliation Act, 1996**[2] read with Section 151 of the **Code of Civil Procedure, 1908**[3], seeks certain *ad* interim reliefs and directions against **Mr. Mahesh Kapoor**

[1] Petitioner
[2] A&C Act
[3] CPC

and Mrs. Usha Kapoor[4].

2. The disputes between the parties are stated to arise out of an arrangement termed as **"Binding Heads of Terms of the Proposed Collaboration for Development of the land situated in the revenue estate of Village Aya Nagar, Mehrauli, Delhi (Jhankar Banquet)" dated 17.05.2023**[5], executed in relation to the development of the **land admeasuring approximately 6.76 acres situated at Revenue Estate Aya Nagar, Mehrauli, Delhi**[6].

3. By way of the present Petition, the principal relief sought is a restraint against the Respondents, their employees, agents, representatives, or any person acting on their behalf, from creating any lien, charge, encumbrance, or third-party interest of any nature whatsoever over the said Collaboration Land during the pendency of the proceedings.

4. The Petitioner further seeks an order restraining the Respondents from obstructing, interfering with, or otherwise impeding the Petitioner in the performance of its obligations arising under the Binding HoTs concerning the aforesaid Collaboration Land. In addition thereto, the Petitioner has prayed for *ad-interim ex parte* protection in terms of the aforementioned reliefs, with a further direction that such interim protection be continued upon issuance of notice to the Respondents.

5. With the consent of parties, this matter has been taken up for final disposal.

<u>FACTUAL MATRIX</u>:

6. The Petitioner is a private limited company incorporated under

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[4] Respondents
[5] Binding HoT
[6] Collaboration Land

the provisions of the Companies Act, 1956 and is engaged in the business of real estate development.

7. The Respondents, who are husband and wife, are the joint owners of the Collaboration Land. Being desirous of developing the said Collaboration Land, the Respondents approached the Petitioner for undertaking development thereof.

8. Pursuant thereto, the parties entered into discussions and negotiations in relation to the proposed development of the Collaboration Land, culminating in the execution of the Binding HoT.

9. Under the Binding HoT, the Respondents agreed to contribute the Collaboration Land, while the Petitioner was to undertake development of a Residential Group Housing Project / Mixed Land Use Project or any other permissible project as may be agreed between the parties. The Petitioner was vested with the responsibility for obtaining the requisite sanctions and approvals in relation to the proposed development.

10. The parties agreed to the revenue-sharing arrangement whereby 42.3% of the distributable revenue was to accrue to the Respondents and 57.7% to the Petitioner. Additionally, all project costs were to be borne by the Petitioner.

11. The Binding HoT further contemplated execution of a Definitive Collaboration Agreement upon receipt of sanctioned layout plans, subject to a maximum outer limit of 14 months from the date of the Binding HoT. Further, Clause R of the Binding HoT contained an arbitration agreement providing for reference of disputes to arbitration seated at Delhi.

12. The Respondents, while executing the Binding HoT, represented, *inter alia,* that they possessed a clear, marketable, and

unencumbered title to the Collaboration Land and that, apart from a disclosed dispute relating to the placement of an exit gate concerning M/s Fountainhead Motels Pvt. Ltd., no material litigation affecting the Collaboration Land subsisted.

13. Pursuant to the execution of the Binding HoT, it is the case of the Petitioner that it proceeded to undertake steps towards implementation of the proposed project, including preparation and submission of layout plans before the concerned authorities. The requisite fee for the same was deposited with the **Municipal Corporation of Delhi**[7] and the layout plans, duly signed by the Respondents, were submitted on 03.07.2023.

14. During the course of processing the approvals, certain additional requirements emerged, including procurement of approvals from the **Airports Authority of India**[8] and a No Objection Certificate from the Ministry of Defence, owing to the proximity of the Collaboration Land to an Air Force Station.

15. It further transpired that a substantial portion of the Collaboration Land fell within a specified distance from the Air Force Station. Consequently, the layout/building plans required revision and were thereafter resubmitted on 29.02.2024.

16. The Petitioner also undertook demolition of the existing structure operating under the name "Jhankar Banquet", which, according to the Petitioner, was necessary for facilitating inspection and processing by the relevant authorities. The Petitioner alleges that the said process was delayed on account of requests made by the Respondents for the postponement of demolition.

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[7] MCD
[8] AAI

17. The Petitioner further asserts that a pending dispute concerning the Collaboration Land involving M/s Fountainhead Motels Pvt. Ltd. also requires resolution during the subsistence of the Binding HoT. It is stated that the Petitioner was constrained to facilitate an amicable settlement, which was reached on 11.03.2024.

18. Subsequently, the parties executed a First Addendum dated 06.05.2024 extending the validity of the Binding HoT till 17.08.2024.

19. It is the case of the Petitioner that during the relevant period, the Standing Committee of the MCD, whose approval was necessary for sanction of the layout plans, remained non-existent for a substantial duration.

20. The Petitioner further relies upon the imposition of the Model Code of Conduct during various elections as having contributed to delays in the approval process.

21. Despite these impediments, the **Layout Scrutiny Committee, MCD**[9], comprising representatives of all concerned MCD departments and one representative of **Delhi Development Authority**[10], agreed to recommend the project proposal for development of the Collaboration Land as a Group Housing Project to the Standing Committee. This in-principle recommendation was made subject to the submission of a reverification report concerning certain areas under the recreational plan as per the Zonal Development Plan of Zone-J under MPD-2021.

22. On 18.05.2025, the parties executed a Second Addendum extending the validity of the Binding HoT till 17.08.2025. Under the said Addendum, the Petitioner made further payments to the Respondents and also agreed to pay a sum of Rs. 25 lakhs per month

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[9] LOSC
[10] DDA

during the extended period.

23. Thereafter, a Third Addendum dated 05.08.2025 came to be executed, extending the validity of the Binding HoT till 17.12.2025 on substantially similar terms.

24. It is the case of the Petitioner that on 20.10.2025, the Respondents' representative and son, Mr. Virat Kapoor, for the first time disclosed to the Petitioner the existence of two pending litigations concerning the Collaboration Land, being appeals filed under Section 185 of the Delhi Land Reforms Act, 1954. The said appeals were ultimately dismissed *vide* Judgment dated 18.12.2025.

25. Since the Third Addendum was nearing expiry, the Petitioner circulated a draft Fourth Addendum seeking further extension till 17.04.2026. According to the Petitioner, the Respondents suggested modifications to the draft and continued to assure the Petitioner that execution of the addendum was a mere formality.

26. It is the Petitioner's case that, notwithstanding non-execution of the Fourth Addendum, both parties continued to act in furtherance of the Binding HoT even after 17.12.2025. The Petitioner continued to pursue approvals with statutory authorities, including MCD and AAI, and claims to have kept the Respondents informed of such developments from time to time.

27. On 10.02.2026, representatives of both parties are stated to have jointly appeared before the Commissioner, MCD, in relation to the pending approvals concerning the project.

28. According to the Petitioner, by February, 2026, the process for sanction of the layout plans had substantially progressed and only final approval of the Standing Committee remained pending.

29. On 10.03.2026, the Respondents addressed a communication to

the Petitioner asserting that the Binding HoT had elapsed on 17.12.2025 and calling upon the Petitioner to reconcile financial aspects between the parties.

30. Thereafter, on 25.03.2026, the Respondents remitted an amount of Rs. 2,80,00,000/- to the Petitioner and reiterated their position that the Binding HoT had lapsed.

31. Apprehending the creation of third-party rights in respect of the Collaboration Land, the Petitioner issued public notices and thereafter addressed a detailed communication dated 27.03.2026, asserting that the Binding HoT continued to subsist and calling upon the Respondents not to deal with the Collaboration Land in derogation of the Petitioner's rights.

32. The Petitioner states that it has paid, in aggregate, a sum of approximately Rs. 8 Crores to the Respondents under the Binding HoTs and Addendums, comprising upfront payments of Rs. 3.12 Crores, further payments of Rs. 2.75 Crores, and monthly payments of Rs. 25 lakhs from 17.02.2025 to 17.03.2026, in addition to incurring substantial expenditure on consultants, professional fees, surveys, and approval costs over a period of approximately two and a half years.

33. In the aforesaid factual background, and in apprehension of imminent adverse consequences likely to prejudice its rights and interests, the present Petition under Section 9 of the A&C Act has been instituted seeking the grant of interim measures pending adjudication of the disputes between the parties.

SUBMISSIONS ON BEHALF OF THE PARTIES:

34. At the outset, learned senior counsel appearing on behalf of the Respondents would raise two broad preliminary objections to the maintainability of the present Petition. *Firstly*, it would be contended

that the Binding HoT neither constitutes a concluded nor a specifically enforceable contract in the eyes of the law. *Secondly*, it would be submitted that, in the absence of any *prima facie* enforceable contractual right, no interim protection as sought by the Petitioner can be granted under Section 9 of the A&C Act.

35. In respect of the *first contention*, learned senior counsel for the Respondents would contend that the Binding HoT does not constitute a complete, final and concluded contract capable of specific enforcement in law. It would be submitted that the Binding HoT merely records a preliminary commercial understanding between the parties while consciously contemplating execution of subsequent definitive documentation, *inter alia*, the proposed Collaboration Agreement.

36. It would be submitted that the structure, language and scheme of the Binding HoT itself demonstrate that the parties did not intend the said document to operate as the exhaustive repository of their rights and obligations. Learned senior counsel would contend that several material facets concerning implementation of the project, operational modalities, reciprocal obligations, regulatory compliances and commercial structuring were consciously left to be subsequently negotiated, crystallised and incorporated in the contemplated Collaboration Agreement.

37. Learned senior counsel would further submit that the Binding HoT neither transfers any present development rights nor creates any vested proprietary or contractual interest in favour of the Petitioner. Accordingly, the document merely contemplated a future collaborative framework subject to execution of further agreements and satisfaction of multiple contingencies.

38. In furtherance of the aforesaid submissions, learned senior counsel for the Respondents would place reliance upon the Judgement of this Court in ***Vijay Kumar vs. K.N. Chopra & Ors.***[11], to contend that where the foundational document itself contemplates execution of a subsequent Collaboration Agreement and leaves material stipulations for future negotiation and crystallisation, no concluded contract capable of specific performance comes into existence. A similar reliance would be placed upon the Judgement of this Court in ***Nikhil Kumar Anand vs. Hridey Vikram Bhatia & Ors.***[12].

39. In view of the foregoing submissions and the reliance placed, it would be submitted that the Binding HoT, viewed in its entirety, merely constituted a framework for future collaboration and not a final, concluded and immediately enforceable development agreement.

40. Learned senior counsel would, in this regard, specifically place reliance upon Clauses C, D, E, F, G and J of the Binding HoT to contend that crucial aspects concerning development obligations, implementation modalities, commercial structuring, regulatory compliances, timelines, approvals and operational responsibilities were left to be comprehensively worked out subsequently under the contemplated Collaboration Agreement.

41. Learned senior counsel would particularly emphasise upon Clause O(b) of the Binding HoT to contend that even the pricing and valuation mechanism concerning the apartments proposed to be allotted or sold had not attained finality. According to the learned senior counsel for the Respondents, certainty of consideration

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[11] 2000 SCC OnLine Del 162
[12] 2026 SCC OnLine Del 1089

constitutes an essential ingredient of a concluded agreement relating to immovable property and in the absence thereof, no enforceable agreement can be said to exist.

42. Learned senior counsel appearing on behalf of the Respondents, in furtherance of the aforesaid submissions, would place reliance upon the Judgement of this Court in ***Aggarwal Hotels (P) Ltd. vs. Focus Properties (P) Ltd***[13], to contend that where material and essential terms such as consideration, parties, timelines and implementation modalities remain uncertain or incomplete, no concluded agreement capable of specific performance can be said to come into existence.

43. Learned senior counsel would additionally submit that the continued circulation of draft addenda, proposed modifications and negotiations regarding revised commercial terms itself demonstrates the absence of *consensus ad idem* on several material aspects of the proposed arrangement.

44. It would thus be contended that the Binding HoT falls within the category of a mere "*agreement to agree*", lacking certainty on essential terms and consequently incapable of specific enforcement in law.

45. Learned senior counsel appearing on behalf of the Respondents would further contend that the present arrangement concerns a long-term and technically complex real estate development project involving continuous reciprocal obligations, procurement of statutory approvals, coordination with multiple regulatory authorities, construction obligations, commercial implementation and continuing operational supervision.

46. It would therefore be submitted that enforcement of such an

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[13] 1996 SCC OnLine Del 354

arrangement would necessarily require constant judicial supervision and monitoring over an indefinite duration, thereby attracting the prohibitions contemplated under Sections 14 and 41 of the **Specific Relief Act, 1963**[14].

47. In support of the aforesaid contention, learned senior counsel for the Respondents would place reliance upon the Judgment of the Hon'ble Supreme Court in ***Vinod Seth vs. Devinder Bajaj and Another***[15], to contend that arrangements involving continuing obligations, uncertain or indeterminate terms, and acts dependent upon future consensus between the parties are ordinarily not amenable to specific enforcement. In furtherance of the said submission, reliance would also be placed upon the Judgments of the Hon'ble Supreme Court in ***Gurbir Kaur vs. BDR Builders & Developers P. Ltd***[16], as well as the decision of this Court in ***Davender Kumar Sharma vs. Mohinder Singh & Ors.***[17].

48. To substantiate the further contention that agreements involving continuous obligations and requiring constant or ongoing supervision by the Court fall within the prohibitions contemplated under Sections 14(1)(b) and 14(1)(d) of the Specific Relief Act, learned senior counsel for the Respondents additionally would rely upon the Judgment of this Court in ***Prem Kumar Bansal vs. Ambrish Garg***[18], as also the Judgment of the Hon'ble Supreme Court in ***Her Highness Maharani Shantidevi P. Gaikwad vs. Savjibhai Haribhai Patel & Ors.***[19].

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[14] SRA
[15] (2010) 8 SCC 1
[16] 2017 SCC OnLine Del 7737
[17] 2012 SCC OnLine Del 3688
[18] 2015 SCC OnLine Del 8758
[19] (2001) 5 SCC 101

49. Learned senior counsel for the Respondents would further contend that the subsequent conduct of the parties itself demonstrates the absence of any concluded and enforceable contractual arrangement. Reliance in this regard would be placed upon the exchange of draft addenda, proposed modifications, negotiations concerning revised terms and discussions relating to future documentation, which, according to the Respondents, establish that the parties themselves did not treat the Binding HoT as a complete and final development agreement.

50. It would further be contended that the Respondents, *vide* communication dated 25.03.2026, elected to treat the arrangement between the parties as having come to an end and, in furtherance thereof, proceeded to refund the amounts received under the Binding HoT. According to the Respondents, such conduct clearly demonstrates that no concluded and subsisting contractual relationship survived between the parties, which could, in law, be made the subject matter of specific enforcement.

51. In respect of the *second aspect* concerning the assertion that interim relief under Section 9 of the A&C Act is not maintainable in the facts of the present case, learned senior counsel for the Respondents would submit that the present Petition under Section 9 of the A&C Act is thoroughly misconceived and amounts to an indirect attempt to secure specific performance of an alleged agreement which is itself incapable of enforcement in law.

52. Learned senior counsel would submit that once the final relief of specific performance itself is legally barred or seriously doubtful, interim relief preserving such alleged rights cannot be granted and that Section 9 of the A&C Act cannot be employed as a mechanism to

obtain, at an interlocutory stage, what would virtually amount to enforcement of the alleged contract itself.

53. In support of the aforesaid submissions, reliance would be placed upon the Judgement of the Hon'ble Supreme Court in ***Arvind Constructions Co. (P) Ltd. vs. Kalinga Mining Corporation & Ors.***[20], wherein the Hon'ble Supreme Court observed that exercise of powers under Section 9 of the A&C Act remains governed by well-recognised principles applicable to grant of interim injunctions and cannot be exercised *dehors* the restrictions contained under the SRA. To support this contention, further reliance would also be placed on the Judgement of the Hon'ble Supreme Court in ***Adhunik Steels Ltd. vs. Orissa Manganese and Minerals (P) Ltd.***[21].

54. Learned senior counsel would further submit that the reliefs sought by the Petitioner are squarely governed by settled principles underlying Order XXXIX Rules 1 and 2 of the CPC and Order XXXVIII Rule 5 of the CPC. It would be contended that the Petitioner has failed to establish the triple test warranting the grant of an interim injunction.

55. It would further be contended that the Petitioner is effectively seeking a freezing order and protection akin to attachment before any adjudication, without even satisfying the stringent requirements governing such relief. Learned senior counsel would submit that there is neither any pleading nor material demonstrating that the Respondents are attempting to alienate assets dishonestly or defeat any prospective arbitral award, and therefore no case under principles analogous to Order XXXVIII Rule 5 CPC is made out.

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[20] (2007) 6 SCC 798
[21] (2007) 7 SCC 125

56. Learned senior counsel appearing on behalf for the Respondents would place reliance upon the Judgement of the Division Bench of this Court in ***Ajay Singh vs. Kal Airways Pvt. Ltd. & Ors***[22], to contend that while the powers under Section 9 of the A&C Act are broad, the exercise thereof remains guided by well settled principles governing interim injunctions and protective orders under the CPC, including principles analogous to Order XXXVIII Rule 5 CPC.

57. ***Per contra***, learned senior counsel appearing on behalf of the Petitioner would vehemently contend that the Binding HoT constitutes a *"binding"*, as the nomenclature itself suggests, and a concluded commercial arrangement consciously entered into between commercial entities with full knowledge of their respective obligations and liabilities.

58. It would be submitted that the mere contemplation of the execution of a rather elaborate additional Collaboration Agreement at a subsequent stage does not dilute the binding nature of the obligations already crystallised under the Binding HoT. Learned senior counsel would contend that the law is well settled that where parties intend to be bound and essential commercial terms stand sufficiently settled, the contract does not become unenforceable merely because a formal document remains to be executed.

59. Learned senior counsel for the Petitioner would further submit that the Binding HoT specifically records the core commercial understanding between the parties, including identification of the Collaboration Land, the nature of the proposed development, the financial obligations *inter se* the parties, security deposit arrangements, exclusivity obligations, timelines and the overall

[22] 2017 SCC OnLine Del 8934

mechanism governing implementation of the project. It would therefore be urged that all foundational and essential terms stood sufficiently crystallised.

60. Learned senior counsel would further submit that Clauses C, D, E, F, G and J relied upon by the Respondents merely contemplate ancillary, procedural and implementation-related documentation necessary for operationalisation of the project and cannot be construed to mean that the foundational agreement itself was incomplete or non-binding.

61. Learned senior counsel for the Petitioner would submit that commercial arrangements, like the Binding HoT, involving large-scale real estate development necessarily require subsequent technical documentation, approvals, operational agreements and implementation modalities, none of which dilute the binding nature of the principal commercial arrangement already executed between the parties.

62. Insofar as Clause O(b) of the Binding HoT is concerned, learned senior counsel would contend that the Respondents are reading the said clause in isolation and *dehors* the overall scheme of the Binding HoT.

63. According to the Petitioner, the consideration framework and commercial mechanism between the parties stood sufficiently identified and determinable under the terms of the Binding HoT itself and therefore the agreement cannot be invalidated merely because every component of pricing had not been numerically finalised at the initial stage. It would also be submitted that in any real estate project of such magnitude, such intricacies are always left open to be decided in the future, closer to its completion and operation.

64. It would further be contended that even assuming certain

ancillary aspects remained to be operationalised subsequently, the same would not render the entire arrangement void or unenforceable where the essential commercial framework and reciprocal obligations already stood concluded between the parties.

65. Learned senior counsel would additionally place considerable reliance upon the subsequent conduct of the parties to demonstrate that both sides consistently treated the Binding HoT as a valid, operative and subsisting commercial arrangement.

66. In this regard, reliance would be placed upon the execution of multiple addenda extending the validity and operation of the Binding HoT from time to time, which, according to the Petitioner, unequivocally establishes that the parties themselves proceeded on the admitted footing that the arrangement was binding and enforceable.

67. Learned senior counsel would further submit that the Petitioner continuously acted upon the arrangement and discharged its obligations thereunder, including making substantial payments and pursuing approvals and clearances for development of the Collaboration Land over a prolonged period extending nearly thirty months.

68. It would further be submitted that even immediately prior to expiry of the third addendum, a draft fourth addendum for further extension was exchanged between the parties and assurances were extended on behalf of the Respondents that execution of the formal addendum was merely procedural in nature.

69. Learned senior counsel would further contend that the Respondents themselves continuously acted in furtherance of the Binding HoT till as late as February, 2026, by participating in meetings with authorities, signing documents submitted before

statutory authorities and negotiating terms of the proposed fourth addendum, thereby unequivocally acknowledging the continued subsistence and binding nature of the arrangement.

70. Learned senior counsel for the Petitioner would place particular reliance upon the Respondents' own communication dated 25.03.2026, wherein the Respondents themselves expressly acknowledged:

(i) The Heads of Terms dated 17.05.2023;

(ii) The extensions granted through multiple addenda;

(iii) The subsisting arrangement between the parties over an extended duration; and

(iv) Refund of the security deposit in terms of the Heads of Terms itself.

71. Learned senior counsel would therefore submit that the Respondents, having consciously acted upon the Binding HoT over a substantial duration, having derived benefits thereunder and having permitted the Petitioner to incur substantial expenditure and undertake extensive development-related activities, cannot now be permitted to approbate and reprobate by contending that the arrangement was non-binding or incomplete.

72. It would further be contended that the Respondents' plea regarding uncertainty of terms is clearly an afterthought, raised only after substantial performance had already taken place on both sides, and the project had reached an advanced stage of approvals and implementation.

73. Learned senior counsel appearing on behalf of the Petitioner would further submit that the Binding HoT was not a mere exploratory commercial understanding, but in fact created and

transferred valuable and enforceable commercial and development rights in favour of the Petitioner, although falling short of formal conveyance of title.

74. Learned senior counsel would further contend that the mere fact that legal title in the property was not immediately conveyed does not denude the Binding HoT of enforceability. It would further be submitted that development and collaboration arrangements frequently operate upon conferment of valuable development and commercial rights without immediate transfer of ownership/title and are routinely recognised as specifically enforceable.

75. In support of the aforesaid submissions, learned senior counsel for the Petitioner would place heavy reliance upon the Judgement of this Court in ***Grovy India Ltd. v. Balbir Singh***[23], to contend that where a development agreement creates valuable rights in favour of the developer in the property or constructed area, such arrangements are capable of specific enforcement. It would further be submitted that where an owner parts with valuable incidents of ownership and confers substantive development rights upon a developer, it would be difficult to hold that such an agreement is incapable of specific performance.

76. It would additionally be argued that the Binding HoT expressly contemplated execution of further definitive documents only in furtherance and implementation of rights already created thereunder and not as a condition precedent to creation of such rights.

77. Learned senior counsel would therefore submit that the Binding HoT created valuable proprietary and commercial interests in favour of the Petitioner capable of protection and enforcement in law and

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[23] 2021 SCC OnLine Del 4783

consequently constitutes a valid and enforceable substratum for the grant of interim protection under Section 9 of the A&C Act.

78. Learned senior counsel would further contend that the Respondents' objections founded upon Sections 14 and 41 of the SRA are wholly misconceived and proceed upon a restrictive pre-amendment understanding of the law.

79. It would be submitted that, after the enactment of the Specific Relief (Amendment) Act, 2018, the legislative scheme substantially tilts in favour of the enforcement of commercial contracts and limits the refusal of specific performance to narrowly construed statutory exceptions.

80. In support of the aforesaid submissions, learned senior counsel appearing on behalf of the Petitioner would place reliance upon the Judgement of the Division Bench of this Court in ***Global Music Junction Pvt. Ltd. v. Shatrughan Kumar @ Khesari Lal Yadav***[24], to contend that the legislative intent post-2018 fundamentally favours enforcement of consciously negotiated commercial obligations and contractual certainty.

81. Learned senior counsel, placing reliance upon the said judgment, would submit that, prior to the amendment, damages constituted the ordinary rule while specific performance was treated as an exception; however, the amended statutory framework reverses the said position by substantially tilting the law in favour of specific enforcement, subject only to limited statutory exceptions.

82. It would be contended that after deletion of the unamended Section 14(1)(a) of the SRA, the mere availability of monetary compensation can no longer constitute a standalone ground to refuse

[24] 2023 SCC OnLine Del 5479

specific performance and therefore, the Respondents' submission that the Petitioner may be relegated to damages is contrary to the post-amendment statutory framework recognised in the aforesaid Judgement.

83. Learned senior counsel would additionally submit that the present dispute concerns valuable development rights in immovable property and a unique commercial opportunity incapable of adequate monetary compensation and therefore preservation of the contractual arrangement becomes necessary pending adjudication through arbitration.

84. Learned senior counsel would thus contend that the Binding HoT is fully capable of specific enforcement and consequently constitutes a valid substratum for the grant of interim protection under Section 9 of the A&C Act. It would be contended that the jurisdiction conferred under Section 9 of the A&C Act is broad, equitable and intended to preserve the efficacy of arbitral proceedings by safeguarding the subject matter of dispute pending adjudication before the learned Arbitral Tribunal.

85. Learned senior counsel would submit that Section 9 of the A&C Act expressly empowers the Court to grant such interim measures as may appear "*just and convenient*" and therefore the provision is intended to secure the ends of justice and preserve the substratum of arbitration. It would be contended that once a *bona fide* arbitral dispute and a *prima facie* contractual relationship are demonstrated, the Court possesses ample jurisdiction to grant protective reliefs necessary to prevent the frustration of arbitral proceedings.

86. It would further be contended that the Court, while exercising jurisdiction under Section 9 of the A&C Act, is not finally

adjudicating the maintainability of a claim for specific performance or conclusively determining the enforceability of the underlying contract, all of which properly fall within the domain of the learned Arbitral Tribunal.

87. The Petitioner would further contend that the existence of disputes regarding completeness, enforceability or interpretation of the Binding HoT cannot by itself disentitle a party from seeking interim protection under Section 9 of the A&C Act, particularly where refusal of protection would result in frustration of arbitral proceedings or irreversible alteration of the subject matter.

88. Learned senior counsel would additionally submit that the Respondents are incorrectly seeking to equate the present proceedings with a prayer for attachment before judgment under Order XXXVIII Rule 5 CPC. It would be contended that the present Petition fundamentally seeks preservation of the contractual and commercial substratum forming the subject matter of arbitration and not recovery of a money claim simpliciter.

89. Learned senior counsel would further submit that while the Court may be guided by the underlying principles governing Orders XXXVIII and XXXIX CPC, the powers under Section 9 of the A&C Act are not constricted by rigid technical limitations applicable to ordinary civil proceedings.

90. To fortify the aforesaid submissions, learned senior counsel for the Petitioner placed heavy reliance upon the recent pronouncement of this Court in ***GTL Infrastructure Ltd. v. S.C. Wadhwa and Sons (HUF)***[25], contending that the powers under Section 9 of the A&C Act are inherently broad and expressly encompass such orders as are

[25] 2025 SCC OnLine Del 2081

necessary to preserve and protect the subject matter of arbitration.

91. It would further be contended that denial of interim protection at this stage would render the arbitral proceedings nugatory and irreversibly prejudice the Petitioner, whereas the grant of interim protection would merely preserve the subject matter pending adjudication by the learned Arbitral Tribunal.

92. Learned senior counsel appearing on behalf of the Petitioner would submit that time was never intended to constitute the essence of the Binding HoT executed between the parties. It would be contended that the nature of the transaction, the conduct of the parties and the subsequent exchanges *inter se* the parties clearly demonstrate that the timelines contemplated under the Binding HoT were merely facilitative and directory in nature and not intended to automatically extinguish rights upon expiry thereof.

93. It would further be contended that the execution of successive addenda extending the validity and operation of the Binding HoT itself constitutes a clear indication that strict adherence to timelines had consciously been waived by the parties. Learned senior counsel would submit that had time truly been intended to be of the essence, there would have been no occasion for repeated extensions, continuing negotiations or further performance after expiry of the original timelines.

94. It would further be contended that the Respondents themselves continued acting in furtherance of the Binding HoT even beyond the original timelines, including participating in meetings with statutory authorities, negotiating further extensions and exchanging draft documentation. Learned senior counsel would therefore submit that the Respondents, by their own conduct, unequivocally acknowledged

the continued subsistence of the arrangement and are consequently precluded from contending that the Binding HoT stood extinguished merely by efflux of time.

95. In support of the aforesaid submissions, learned senior counsel appearing on behalf of the Petitioner would place reliance upon the Judgment of the Hon'ble Supreme Court in ***Hind Construction Contractors v. State of Maharashtra***[26] to contend that the question whether time constitutes the essence of a contract is fundamentally one of intention to be gathered from the contract as a whole and the conduct of the parties.

96. Learned senior counsel would further place reliance upon the Judgment of the Hon'ble Supreme Court in ***N. Srinivasa v. Kuttukaran Machine Tools Ltd***[27] to contend that in agreements concerning immovable property and allied development arrangements, time is ordinarily not regarded as the essence of the contract unless expressly and unequivocally stipulated otherwise.

97. Learned senior counsel would therefore submit that the Respondents are precluded, both in law and equity, from contending that the Binding HoT stood frustrated, extinguished or rendered unenforceable merely upon expiry of timelines, particularly when the Respondents themselves continued acting in furtherance of the arrangement over a prolonged period of time.

98. ***In rebuttal to the submissions made by the learned counsel for the Petitioner***, learned senior counsel appearing for the Respondents would submit that the timelines stipulated under the Binding HoT constituted an integral and commercially fundamental component of

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[26] (1979) 2 SCC 70
[27] (2009) 5 SCC 182

the arrangement and, therefore, time was clearly intended to be of the essence of the contract.

99. It would be contended that the Binding HoT itself contemplated execution of definitive agreements, fulfilment of reciprocal obligations and achievement of specified milestones within stipulated periods. According to the Respondents, the very incorporation of successive timelines and validity periods demonstrates that the parties intended expeditious culmination of the transaction and not an indefinite or open-ended commercial arrangement.

100. Learned senior counsel would further submit that the necessity of repeated extensions and addenda itself establishes that adherence to timelines was treated as material by the parties. It would be argued that had time not been significant, there would have been no occasion for repeated formal extensions of the Binding HoT from time to time.

101. It would additionally be contended that the transaction concerns a large-scale commercial real estate development involving substantial financial exposure, market fluctuations, regulatory compliance, and evolving third-party interests, where commercial certainty and timely performance constitute the very substratum of the arrangement. In support of the aforesaid submissions, learned senior counsel appearing on behalf of the Respondents would place reliance upon the Judgment of the Hon'ble Supreme Court in ***Desh Raj & Ors. vs. Rohtash Singh***[28].

102. Learned senior counsel appearing on behalf of the Respondents would further place reliance upon the Judgement of the Hon'ble Supreme Court in ***Saradamani Kandappan vs. S. Rajalakshmi &***

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[28] (2023) 3 SCC 714,

Ors.[29], to contend that the traditional presumption that time is not ordinarily of the essence in immovable property transactions stands considerably diluted in modern commercial transactions involving escalating property values and commercial certainty.

103. Learned senior counsel would submit that despite repeated extensions and opportunities, the Petitioner failed to fulfil material obligations contemplated under the Binding HoT, including finalisation of definitive documentation and compliance with commercial obligations within the agreed timelines. According to the Respondents, a party repeatedly failing to adhere to agreed timelines cannot subsequently seek equitable protection under Section 9 of the Act.

104. It would further be contended that the Binding HoT itself contemplated execution of a definitive Collaboration Agreement and related documentation within stipulated periods and, therefore, the arrangement remained contingent upon successful crystallisation of the contemplated transaction within the agreed timeframe. Upon failure thereof, no enforceable right survived in favour of the Petitioner.

<u>ANALYSIS</u>:

105. This Court has heard the learned senior counsel appearing on behalf of the parties and, with their able assistance, perused the material placed on record and the Judicial precedents passed across the Bar.

106. At the outset, this Court notes that it is conscious of the limited compass of its jurisdiction under Section 9 of the A&C Act. The

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[29] (2011) 12 SCC 18

power conferred thereunder is interim and protective in nature, intended to preserve the subject matter of the arbitration and to safeguard the efficacy of the arbitral process. At this stage, the Court is required only to examine whether the well-settled parameters governing the grant of interim relief, *namely*, the existence of a *prima facie* case, the balance of convenience, and the likelihood of irreparable injury, stand satisfied for the purposes contemplated under Section 9 of the A&C Act. In ***ArcelorMittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***[30], the Hon'ble Supreme Court has expounded upon the contours of such jurisdiction in the following terms:

> "**88.** Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject-matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value.
> **89.** The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking interim relief.
> **90.** It could, therefore, never have been the legislative intent that even after an application under Section 9 is finally heard, relief would have to be declined and the parties be remitted to their remedy under Section 17.
> **91.** When an application has already been taken up for consideration and is in the process of consideration or has already been considered, the question of examining whether remedy under Section 17 is efficacious or not would not arise. The requirement to conduct the exercise arises only when the application is being entertained and/or taken up for consideration. As observed above, there could be numerous reasons which render the remedy under Section 17 inefficacious. To cite an example, the different arbitrators constituting an Arbitral Tribunal could be located at far away places and not in a position to assemble immediately. In such

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[30] (2022) 1 SCC 712.

> a case, an application for urgent interim relief may have to be entertained by the Court under Section 9(1)."
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> ***(emphasis supplied)***

107. This Court is not presently called upon to render a final adjudication on the enforceability of the Binding HoT, nor to conclusively determine whether the Petitioner would ultimately be entitled to a decree of specific performance, as such issues would appropriately fall within the exclusive domain of the learned Arbitral Tribunal. The scope of the present examination is, therefore, confined to assessing whether, upon application of the settled triple test governing grant of interim measures, an arguable and *bona fide* arbitral claim exists warranting preservation of the subject matter pending adjudication of the disputes through arbitration.

108. The principal objection raised on behalf of the Respondents is that the Binding HoT is neither a concluded nor specifically enforceable contract and consequently cannot constitute the substratum for the grant of interim protection. This Court is, however, unable to accept the aforesaid submission.

109. A perusal of Clauses B, C, D, E, F, G and J of the Binding HoT *prima facie* demonstrates that the parties had consciously identified the Collaboration Land, recorded the broad development framework, stipulated reciprocal obligations, financial commitments, security deposit arrangements, exclusivity obligations and implementation structure governing the project. The Binding HoT, therefore, cannot at this stage be reduced to a mere exploratory arrangement or unenforceable expression of future intent.

110. The contention of the Respondents that the Binding HoT merely contemplated execution of a future Collaboration Agreement and therefore lacked contractual finality also does not commend

acceptance at this stage. Commercial transactions of the present nature, particularly large-scale real estate development arrangements, frequently contemplate subsequent technical and operational documentation. The mere existence of a contemplated future Collaboration Agreement does not, *ipso facto*, obliterate obligations already crystallised *inter se* the parties. The contemplated Collaboration Agreement appears intended to operationalise and elaborate the commercial framework already agreed upon under the Binding HoT rather than create obligations for the first time.

111. In this context, reference may be made to the decision of the Supreme Court in ***Trimex International FZE Ltd. Dubai v. Vedanta Aluminium Ltd., India***[31], wherein the Hon'ble Supreme Court recognised that even in commercial transactions contemplating execution of further formal documentation, a binding and enforceable contractual arrangement may nevertheless emerge if the essential commercial terms stand crystallised and the conduct of parties demonstrates *consensus ad idem*. The Hon'ble Supreme Court observed that the mere fact that a formal contract remained to be executed would not, by itself, negate the existence of a concluded arrangement.

112. The Hon'ble Supreme Court, in the said decision, further observed that commercial parties may consciously agree to be bound immediately while deferring certain ancillary or implementation aspects for later formalisation and that a contract cannot be treated as non-binding merely because a subsequent detailed agreement was contemplated.

113. The principles enunciated in ***Trimex International*** (*supra*) lend

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[31] (2010) 3 SCC 1

support to the Petitioner's contention that the Binding HoT constituted a binding commercial arrangement notwithstanding contemplation of a subsequent Collaboration Agreement. The relevant paragraphs thereof read as follows:

> "**49.** In the light of the details which have been extracted in the earlier paragraphs, I am unable to accept the stand of the respondent. It is clear that if the intention of the parties was to arbitrate any dispute which arose in relation to the offer of 15-10-2007 and the acceptance of 16-10-2007, the dispute is to be settled through arbitration. Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialled by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialled.
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> **52.** The Court of Appeal in ***Pagnan S.p.A. v. Feed Products Ltd. [(1987) 2 Lloyd's Rep 601 (CA)]*** , Lloyd's Law Reports at p. 619 observed as follows:
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> > "It is sometimes said that the parties must agree on the essential terms and that it is only matters of detail which can be left over. This may be misleading, since the word 'essential' in that context is ambiguous. If by 'essential' one means a term without which the contract cannot be enforced then the statement is true : the law cannot enforce an incomplete contract. If by 'essential' one means a term which the parties have agreed to be essential for the formation of a binding contract, then the statement is tautologous. If by 'essential' one means only a term which the Court regards as important as opposed to a term which the Court regards as less important or a matter of detail, the statement is untrue. It is for the parties to decide whether they wish to be bound and, if so, by what terms, whether important or unimportant. It is the parties who are, in the memorable phrase coined by the Judge, 'the masters of their contractual fate'. Of course, the more important the term is the less likely it is that the parties will have left it for future decision. But there is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later. It happens every day when parties enter into so-called 'heads of agreement'."
>
> The above principle has been consistently followed by the English courts in ***Mamidoil-Jetoil Greek Petroleum Co. SA v. Okta Crude Oil Refinery AD, (2001) 2 All ER (Comm) 193***, Lloyd's Law

Reports at p. 89; ***Wilson Smithett & Cape (Sugar) Ltd. v. Bangladesh Sugar and Food Industries Corpn. [(1986) 1 Lloyd's Rep 378]***, Lloyd's Law Reports at p. 386. In addition, Indian law has not evolved a contrary position. The celebrated judgment of Lord Du Parcq in ***Shankarlal Narayandas Mundade v. New Mofussil Co. Ltd. [AIR 1946 PC 97]*** makes it clear that unless an inference can be drawn from the facts that the parties intended to be bound only when a formal agreement had been executed, the validity of the agreement would not be affected by its lack of formality."

(emphasis supplied)

114. The aforesaid conclusion is further reinforced by the subsequent conduct of the parties themselves. The material placed before this Court reflects that multiple addenda/extensions were admittedly executed, extending the operation of the Binding HoT over a substantial duration. Significant payments were admittedly made by the Petitioner. Meetings were held with statutory authorities. Documents and draft addenda continued to be exchanged *inter se* the parties even proximate to the alleged termination communication dated 25.03.2026, which itself acknowledges the Binding HoT, the extensions granted thereunder and the subsisting commercial arrangement between the parties over an extended period.

115. In particular, the addenda executed between the parties reflect repeated extensions of the Binding HoT coupled with continuing financial obligations undertaken by the Petitioner. The material placed on record further *prima facie* demonstrates that substantial payments, including payments of Rs. 1 Crore, Rs. 1.75 Crores and continuing monthly payments, were admittedly made by the Petitioner under the arrangement. The record additionally reflects continuing meetings and interactions with statutory authorities, including MCD, DDA and AAI, in furtherance of the proposed development project. *Prima facie*, such prolonged and consistent conduct is difficult to reconcile with the

Respondents' present contention that the arrangement was merely exploratory or non-binding in nature.

116. The conduct of the parties, therefore, militates against the Respondents' present contention that the arrangement was merely tentative or non-binding.

117. Further, the reliance placed by the Respondents upon the decisions in ***Vinod Seth*** (*supra*), **Gurbir Kaur** (*supra*), **Vijay Kumar** (*supra*), ***Prem Kumar Bansal*** (*supra*), ***Davender Kumar Sharma*** *(supra)* and similar authorities also does not persuade this Court to decline protection at this interlocutory stage. These decisions principally arose in materially distinguishable factual contexts where the agreements under consideration were found to be vague, incomplete, lacking in consensus on essential contractual terms, or otherwise incapable of implementation owing to the absence of clarity regarding the nature of obligations undertaken by parties, or where the specific performance would require continuous supervision of the Court.

118. *Prima facie,* the present case stands on an entirely different footing. The Collaboration Land herein stands specifically identified. The Binding HoT records the broad development framework, revenue-sharing arrangement, reciprocal obligations, financial commitments, exclusivity stipulations and implementation structure governing the project. More importantly, the material placed on record *prima facie* demonstrates prolonged and consistent performance of the arrangement by both sides through execution of multiple addenda, admitted payments running into several crores, continued engagement with statutory authorities, exchange of draft Collaboration Agreements and continuing negotiations over an extended duration. Therefore, this

is not a case involving a wholly indeterminate, uncertain or non-existent arrangement incapable of arbitral enforcement.

119. Further, whether the Binding HoT ultimately satisfies all requirements necessary for the grant of final relief of specific performance is itself a matter requiring fuller examination before the learned Arbitral Tribunal. At the present stage, this Court is only required to examine whether the Petitioner has disclosed a *bona fide* and arbitral claim warranting preservation of the subject matter pending adjudication.

120. This Court is of the considered view that the Binding HoT herein cannot, at this stage, be said to be so uncertain, nebulous or unworkable as to render the Petitioner's claim *ex facie* frivolous or incapable of arbitral consideration. The project land, being the Collaboration Land, stands identified. The commercial relationship between the parties stands admitted. Payments under the arrangement are admitted. The parties admittedly acted upon the arrangement over a prolonged period. Therefore, this is not a case where the Petitioner seeks enforcement of a wholly inchoate or non-existent understanding.

121. Further, this Court cannot overlook the significant legislative shift brought about by the Specific Relief (Amendment) Act, 2018, which fundamentally altered the jurisprudential approach governing the enforcement of commercial contracts. As noticed by the Division Bench of this Court in ***Global Music*** (*supra*), the amended statutory framework now substantially tilts in favour of enforcement of contractual obligations, subject only to limited and narrowly construed statutory exceptions.

122. The pre-amendment position, wherein specific performance was viewed as an exceptional and discretionary remedy while damages

constituted the ordinary rule, has undergone substantial dilution pursuant to the 2018-Amendment. The legislative intent underlying the amendment unmistakably reflects a conscious policy shift towards strengthening contractual sanctity, ensuring commercial certainty, and promoting greater confidence in the enforceability of agreements, particularly in the context of modern commercial and infrastructure transactions. The relevant portion of the said judgment reads as follows:

> "*AMENDMENT ACT, 2018 HAS MADE SPECIFIC PERFORMANCE OF A CONTRACT A GENERAL RULE RATHER THAN AN EXCEPTION. THE LEGISLATIVE SHIFT IS TOWARDS STRONGER ENFORCEMENT OF CONTRACTS.*
>
> **29.** Specific performance is an equitable relief given by the Court to enforce against a defendant the duty of doing what he agreed by the contract to do. It was in the process of a search for effective remedial action that Specific Relief emanated from the Equity Courts in England. Sir Edward Fry in his, *A Treatise on the Specific Performance of Contracts, 6th Edn.* states "*The only remedy at common law for the non-performance of a contract was in damages…. The common law treats as universal a proposition which is for the most part, but not universally true, namely, that money is a measure of every loss. The defeat of justice which arose from this universality of the common law principle was met and remedied in certain cases by the jurisdiction of Courts of Equity to compel specific performance.*"
>
> **30.** The principles built up by successive Chancellors of England in this branch of law were borrowed by the Indian Courts and served to enrich the Indian Law. The Specific Relief Act of 1877 was modelled on the draft New York Civil Code of 1862 and embodied in it the relevant doctrines evolved by the Courts of Equity in England. The Act of 1877 was not exhaustive. For decades this Act was subjected to judicial interpretations which revealed many deficiencies and lacunae.
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> **31.** On the recommendations of the Law Commission's Ninth Report, the Specific Relief Act, 1963 was brought into force. The Act, 1963 as originally enacted, conferred wide discretionary powers upon the Courts to decree specific performance and to refuse injunction etc. As a result of wide discretionary powers, the Courts in majority of cases awarded damages as a general rule and granted specific performance as an exception.

32. However, it was recently felt that the Act, 1963 is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that were needed for the overall development of the country. India also did not fare well in the international rankings in 'Enforcement of Contracts' and 'Ease of Doing Business'. The World Bank in its 'Ease of Doing Business' 2018 report ranked India at 100 out of 190 countries. In 'Enforcement of Contracts', India was ranked at 164 out of 190 countries as per World Bank Doing Business indicators.

33. Accordingly, with the intent of promoting public interest, 'Ease of Doing Business' and to provide an effective remedy to parties who have suffered loss due to breach or non fulfilment of a contract, the Government of India appointed an Expert Committee under the Chairmanship of Mr. Anand Desai.

34. Acting on the recommendations of the said Committee, the Government of India decided to amend the Act, 1963 prospectively (See***: Katta Sujatha Reddy v. Siddamsetty Infra Projects Private Limited, (2023) 1 SCC 355***). The Statement of Objects and Reasons of the Specific Relief (Amendment) Act, 2018 (hereinafter be referred to as 'Amendment Act, 2018') is reproduced hereinbelow:—

> "STATEMENT OF OBJECTS AND REASONS
>
> The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. It contains provisions, inter alia, specific performance of contracts, contracts not specifically enforceable, parties who may obtain and against whom specific performance may be obtained, etc. It also confers wide discretionary powers upon the courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the courts in majority of cases award damages as a general rule and grant specific performance as an exception.
>
> 2. The tremendous economic development since the enactment of the Act have brought in enormous commercial activities in India including foreign direct investments, public private partnerships, public utilities infrastructure developments, etc.; which have prompted extensive reforms in the related laws to facilitate enforcement of contracts, settlement of disputes in speedy manner. It has been felt that the Act is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that are needed for the overall development of the country.
>
> 3. In view of the above, it is proposed to do away with the wider discretion of courts to grant specific performance and to make specific performance of contract a general

rule than exception subject to certain limited grounds. Further, it is proposed to provide for substituted performance of contracts, where a contract is broken, the party who suffers would be entitled to get the contract performed by a third party or by his own agency and to recover expenses and costs, including compensation from the party who failed to perform his part of contract. This would be an alternative remedy at the option of the party who suffers the broken contract. It is also proposed to enable the courts to engage experts on specific issues and to secure their attendance, etc.

4. A new section 20A is proposed for infrastructure project contracts which provides that the court shall not grant injunction in any suit, where it appears to it that granting injunction would cause hindrance or delay in the continuance or completion of the infrastructure project. The Department of Economic Affairs is the nodal agency for specifying various categories of projects and infrastructure sub-sectors, which is provided as Schedule to the Bill and it is proposed that the said Department may amend the Schedule relating to any such category or sub-sectors.

5. Special courts are proposed to be designated to try suits in respect of contracts relating to infrastructure projects and to dispose of such suits within a period of twelve months from the date of service of summons to the defendant and also to extend the said period for another six months in aggregate, after recordings reasons therefor. The Bill seeks to achieve the above objectives…"

35. It is settled law that a speech made by a mover of the bill explaining the reasons for introducing the bill can certainly be referred to for ascertaining the mischief sought to be remedied and the object and the purpose of the legislation in question. In ***Kalpana Mehta v. Union of India, (2018) 7 SCC 1***, the Supreme Court has held as under:—

"125. In ***K.P. Varghese v. CIT, (1981) 4 SCC 173 : 1981 SCC (Tax) 293***, the Court, while referring to the Budget Speech of the Minister, ruled that speeches made by Members of legislatures on the floor of the House where a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision. But the Court made it clear that the speech made by the mover of the Bill explaining the reasons for introducing the Bill can certainly be referred to for ascertaining the mischief sought to be remedied and the object and the purpose of the legislation in question. Such a view, as per the Court, was in consonance with the juristic thought not only in the western countries but also

in India as in the exercise of interpretation of a statute, everything which is logically relevant should be admitted. Thereafter, the Court acknowledged a few decisions of this Court where speeches made by the Finance Minister were relied upon by the Court for the purpose of ascertaining the reason for introducing a particular clause.

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134. From the aforesaid, it clear as day that the Court can take aid of the report of the Parliamentary Committee for the purpose of appreciating the historical background of the statutory provisions and it can also refer to committee report or the speech of the Minister on the floor of the House of Parliament if there is any kind of ambiguity or incongruity in a provision of an enactment.

xxx xxx xxx

144. It is worthy to note here that there is an intrinsic difference between parliamentary proceedings which are in the nature of statement of a Minister or of a Mover of a Bill made in Parliament for highlighting the purpose of an enactment or, for that matter, a Parliamentary Committee report that had come into existence prior to the enactment of a law and a contestable/conflicting matter of "fact" stated in the Parliamentary Committee report. It is the parliamentary proceedings falling within the former category of which courts are enjoined under Section 57, clause (4) to take judicial notice of, whereas, for the latter category of parliamentary proceedings, the truthfulness of the contestable matter of fact stated during such proceedings has to be proved in the manner known to law."

36. The then Minister of Law and Justice and the Minister of Electronics and Information Technology, Sh. Ravi Shankar Prasad while moving the Amendment Act, 2018 explained its rationale as under:-

"Shri Ravi Shankar Prasad : Sir, may I just explain the rationale for this Bill? The Specific Relief Act was enacted in the year 1963. And, the Act clearly stated that damages and monetary compensation shall be the norm and a specific relief shall be an exception. So much so that under Section 41 of the Act, no injunction could be granted in the event an errant party tries to run away. You take damages. Now, Sir, with the passage of time, infrastructure has become a big issue in India. A lot of money is coming and investment is coming. And, many of them ultimately partake of the contracts which are relevant as far as the Specific Relief Act is concerned. Now, Sir, in many cases, errant parties or deviant parties, they are creating problems. Whenever the parties used to go to the

court, they say, "No specific performance, you take money". It was also impacting our standing in the Ease of the Doing Business. Therefore, ultimately, it was thought that this matter requires to be addressed. And, ultimately, a three-member Committee of eminent people was formed and that Committee recommended - there were people from the law firms; there were people from the industry - that this requires proper amendment. And, therefore, we came with an amendment. What is the purport of the amendment which we are seeking to move today? It is basically threefold. First and foremost, now, a specific performance shall be the rule and damages has been exception. So, we have reversed the entire focus of the Bill from 1963 to 2017-18…."

37. From the aforesaid, it is apparent that the primary intent behind the Amendment Act, 2018 is to introduce greater certainty in the enforcement of contracts and consequently improve India's ranking in 'Enforcement of Contracts' and 'Ease of Doing Business'.

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39. This Court is of the view that by virtue of the changes brought about by the Amendment Act, 2018, the Courts will now grant specific performance unless the claim for relief is barred under limited grounds prescribed in the statute. This change is aimed at providing greater protection of contractual expectations by ensuring that a non-defaulting party can obtain the performance it bargained for. The Amendment Act, 2018 intends to discourage errant parties who may deem it more viable to breach a contract than perform it, as the cost of damages may still be less than the cost of the performance.

40. The Amendment Act, 2018 has also brought the Indian Specific Performance Act in line with the UNIDROIT Principles of International Commercial Contracts, as it aspires to achieve harmonization in international law governing commercial contracts.

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42. Consequently, the Amendment Act, 2018 has changed the nature of specific relief from an equitable, discretionary remedy to a statutory remedy. It has made specific performance of a contract a general rule rather than an exception."

(emphasis supplied)

123. This Court also takes note of the Report dated 26.05.2016 submitted by the Expert Committee constituted under the Chairmanship of Mr. Anand Desai, which formed the foundational

basis for the 2018 Amendment to the SRA.

124. The Committee emphatically underscored that enforcement of contractual obligations ought to be treated as the general rule, and refusal of specific performance or injunctive relief should remain confined only to limited and specifically enumerated exceptions. The Committee specifically recommended that specific performance and injunctions should no longer be treated as exceptional remedies, but ought ordinarily to be made available to a promisee seeking enforcement of contractual rights, whether before courts, tribunals, or arbitral forums.

125. The said Report further emphasized that judicial interference through discretionary refusal of such reliefs should remain minimal and restricted to clearly identifiable statutory grounds. Significantly, the Committee also recognized that where a party seeks specific performance, its contractual interests ought not to be defeated merely by passage of time during adjudicatory proceedings, and therefore appropriate interim protections should be available to preserve the subject matter pending final adjudication. The relevant portion of the said report reads as follows:

> "**11.6 Changes suggested**
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> It is therefore necessary to explore whether specific performance and injunction should be available as normal, routine and usual remedies to a promisee who seeks to have them. It is also necessary to explore in what manner can a promisee be assured of the benefit of performance to the extent that he has been promised under his contract.
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> Three major changes are suggested:-
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> (i) Specific performance and injunction should no longer be an exceptional remedy, but should be available to any promisee who seeks these reliefs, whether through courts,tribunals, or in arbitration. Interference with these remedy in exercise of discretionary powers of the court should be minimal, and on specific grounds only.

(ii) If the promisor refuses or fails to perform his promise, the promisee should be entitled get the performance completed through a third party, at the cost of the promisor.

(iii) Where a promisee seeks specific performance, his interests should not be prejudiced by passage of time during litigation. His interests should be protected by appropriate interim orders.

11.7 Amendments proposed

The amendments proposed are broadly as given below, and are dealt with in detail later:

(i) Both remedies of specific performance and Injunction when sought for breach of contract, will no longer be exceptional remedies. Section 10 to be amended accordingly.

(ii) A court can refuse these remedies only on the stated grounds. Such grounds in the current Sections 14 and 20 are merged into one section, l.e. Section 14. It is expressly stated that these remedies shall not be refused on any other grounds. These remedies shall no longer be discretionary.

(iii) A new relief of 'compensation pursuant to substituted performance' is created in new section 20A.

(iv) Title of Chapter II to be changed to 'Enforcement of Contracts' to accommodate all these remedies, and other consequential amendments."

126. In the backdrop of the legislative history and the underlying object of the 2018-SRA amendment, this Court is of the considered opinion that the enforcement of contracts now constitutes the general rule rather than the exception. Consequently, the submission advanced on behalf of the Respondents that the Binding HoT is *ex facie* unenforceable under Sections 14 and 41 of the SRA cannot, at this *prima facie* stage, be accepted in absolute terms.

127. Whether the nature of the obligations contemplated under the Binding HoT attracts the prohibitions contained under Section 14(b) of the SRA, or whether the relief sought is barred under Section 41(h) of the SRA, are issues which would necessarily require a detailed factual examination and evidentiary appreciation, an exercise more appropriately undertaken in arbitral proceedings and not within the

limited jurisdiction presently being exercised under Section 9 of the A&C Act.

128. This court is of the considered opinion that once the statutory framework itself favours enforcement of contractual obligations, the exceptions restraining such enforcement cannot be expansively construed at the threshold stage so as to defeat the very subject matter of arbitration. Mere invocation of Sections 14 or 41 of the SRA, without a clear and unimpeachable demonstration that the case squarely falls within the statutory prohibitions, cannot by itself compel the Court, at a *prima facie* stage, to decline protective interim measures. The Court, while exercising jurisdiction under Section 9 of the A&C Act, is only required to undertake a limited and tentative examination to ascertain whether an arguable arbitral claim exists, warranting preservation of the subject matter pending adjudication.

129. In the facts and circumstances of the present case, this Court does not, at this stage, find such overwhelming or absolute weight in favour of the Respondents' contention so as to conclusively hold that Sections 14 and 41 of the SRA completely bar enforcement of an agreement of the present nature. The Respondents' objections, though raising issues requiring consideration, are matters which remain open for a detailed adjudication before the learned Arbitral Tribunal. At this interim stage, this Court is therefore unable to hold that the Binding HoT is so manifestly unenforceable in law that no interim protection whatsoever can be granted for safeguarding the subject matter of the arbitral proceedings pending final adjudication.

130. As is well established, at the stage of considering a Petition under Section 9 of the A&C Act, the Court is not required to finally determine the ultimate enforceability of the underlying contract or

conclusively adjudicate the entitlement of parties to specific performance. It is sufficient if the material placed on record discloses a *bona fide* and substantial arbitral claim requiring preservation pending adjudication before the learned Arbitral Tribunal. Whether the Petitioner ultimately succeeds in obtaining specific performance or any other substantive relief would necessarily fall for determination in arbitral proceedings upon appreciation of evidence and contractual material.

131. Equally unpersuasive is the Respondents' submission that the Petition effectively seeks final relief at the interim stage. The relief sought by the Petitioner is essentially preservative in nature. The Petitioner seeks maintenance of the contractual and commercial substratum pending adjudication before the learned Arbitral Tribunal. The same cannot, in the facts of the present case, be equated with the grant of a final decree of specific performance.

132. The decisions in ***Adhunik Steels Ltd.*** (*supra*), ***Arvind Constructions*** (*supra*) and ***Ajay Singh*** (*supra*), in fact, recognise the broad and equitable nature of jurisdiction under Section 9 of the A&C Act, albeit guided by settled principles governing interim reliefs. There can be no quarrel with the proposition that the Court must test the matter on the touchstone of a *prima facie* case, *balance of convenience* and *irreparable injury*. However, those very principles, in the considered view of this Court, operate in favour of the Petitioner in the peculiar facts of the present matter.

133. In this regard, reference may also be made to the decision of the Supreme Court in ***Essar House Private Limited v. Arcellor Mittal***

Nippon Steel India Ltd[32], wherein the Hon'ble Supreme Court reiterated that while exercising jurisdiction under Section 9 of the A&C Act, the Court is not strictly constrained by the rigours of the CPC and possesses broad equitable powers to secure the efficacy of arbitral proceedings and preserve the subject matter of arbitration.

134. The Hon'ble Supreme Court further observed that the Court exercising jurisdiction under Section 9 of the A&C Act ought not to refuse interim protection merely on technicalities and that the Court must adopt a course which advances the ends of justice and safeguards the efficacy of arbitral proceedings. The relevant observations, as made in the said judgment, read as follows:

> "**38.** In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of CPC. At the same time, the power of the Court to grant relief is not curtailed by the rigours of every procedural provision in CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of CPC.
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> ***
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> **44.** In ***Jagdish Ahuja* v. *Cupino Ltd.*, 2020 SCC OnLine Bom 849**, the Bombay High Court correctly summarised the law in para 6 extracted hereinbelow : (SCC OnLine Bom)
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> > "*6*. As far as Section 9 of the Act is concerned, it cannot be said that this Court, while considering a relief thereunder, is strictly bound by the provisions of Order 38 Rule 5. As held by our Courts, the scope of Section 9 of the Act is very broad; the court has a discretion to grant thereunder a wide range of interim measures of protection "as may appear to the court to be just and convenient", though such discretion has to be exercised judiciously and not arbitrarily. The court is, no doubt, guided by the principles which civil courts ordinarily employ for considering interim relief, particularly, Order 39 Rules 1 and 2 and Order 38 Rule 5; the court, however, is not unduly bound by their texts. As this Court held in ***Nimbus Communications Ltd.* v. *BCCI*, 2012 SCC OnLine Bom 287** (per D.Y. Chandrachud, J.), as the learned Judge then was), the court, whilst exercising power under Section 9,

[32] (2022) 20 SCC 178

'must have due regard to the underlying purpose of the conferment of the power under the court which is to promote the efficacy of arbitration as a form of dispute resolution'. The learned Judge further observed as follows : (SCC OnLine Bom para 24)

'*24.* … Just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code of Civil Procedure, 1908, the rigours of every procedural provision in the Code of Civil Procedure, 1908 cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case.' "

***

48. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 CPC."

135. The aforesaid principles, when applied to the facts of the present case, *prima facie* justify preservation of the contractual and commercial substratum pending arbitral adjudication. The Petitioner has demonstrated the existence of a substantial and *bona fide* arbitral dispute arising from a commercial arrangement acted upon over a prolonged duration. In such circumstances, this Court would be failing in its duty under Section 9 of the A&C Act if, pending arbitral adjudication, irreversible third-party rights are permitted to be created so as to render the arbitral proceedings infructuous or ineffectual.

136. Insofar as the issue regarding time being of the essence is concerned, this Court is also unable, *prima facie*, to accept the Respondents' submission that the Binding HoT automatically stood extinguished upon expiry of the stipulated timelines.

137. Undoubtedly, the decisions in ***Saradamani Kandappan*** (*supra*) and ***Desh Raj*** (*supra*) emphasise that courts must accord due

significance to timelines in modern commercial transactions involving immovable property. There can be no dispute with the said proposition. However, the said Judgements themselves recognise that the question remains one of contractual intention gathered from the entirety of the arrangement and the conduct of the parties.

138. In the present case, the repeated execution of addenda/extensions, the admitted continuation of negotiations, the continued participation of both sides in pursuing approvals and the exchange of further drafts even after expiry of earlier timelines *prima facie* demonstrate that the parties themselves never treated the arrangement as automatically extinguished upon expiry of the original periods.

139. Significantly, the material placed before this Court reflects that negotiations, exchanges of draft addenda and discussions concerning continuation of the project admittedly continued even after expiry of earlier timelines. *Prima facie*, such conduct evidences that the parties themselves treated the timelines as extendable and the arrangement as subsisting notwithstanding expiry of earlier periods contemplated under the Binding HoT. Significantly, the Binding HoT does not appear, *ex facie*, to contain any automatic termination or forfeiture mechanism extinguishing rights immediately upon expiry of timelines.

140. At this stage, therefore, whether time ultimately constituted the essence of the contract is a matter requiring fuller examination before the learned Arbitral Tribunal and cannot be conclusively determined against the Petitioner in proceedings under Section 9 of the A&C Act.

141. Reference may also be made to the decision of the Supreme

Court in ***B. Santoshamma v. D. Sarala***[33], wherein the Hon'ble Supreme Court, while considering the scope of specific enforcement of agreements concerning immovable property, reiterated the significant shift brought about by the 2018-SRA amendment and emphasised that courts must adopt a purposive and meaningful interpretation so as to prevent a defaulting party from defeating contractual rights by its own wrongful conduct. The Hon'ble Supreme Court further recognised that agreements concerning immovable property create valuable enforceable rights and that a contracting party cannot be permitted to frustrate the agreement by creating third-party complications during the subsistence of contractual obligations. The relevant observations read as follows:

> "**70.** After the amendment of Section 10 of the SRA, the words "specific performance of any contract may, in the discretion of the court, be enforced" have been substituted with the words "specific performance of a contract shall be enforced subject to …". The court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of Section 11, Section 14 and Section 16 of the SRA. Relief of specific performance of a contract is no longer discretionary, after the amendment.
>
> **71.** An agreement to sell immovable property, generally creates a right in personam in favour of the vendee. [[Ed. : The Supreme Court in ***V.K. Sreedharan v. Chandramaath Balakrishnan, (1990) 3 SCC 291***, on a harmonious construction of Section 40 Part II and Section 54 TPA and Section 91 of the Trusts Act, 1882, held that the vendee under an antecedent agreement to sell gets a good title in equity despite subsequent attachment of the seller's property, and this equitable proprietary interest created by the antecedent agreement to sell can be enforced in priority over the rights of a subsequent judgment-creditor. The ruling in ***V.K. Sreedharan*** case has been followed by the Supreme Court in ***Rajender Singh v. Ramdhar Singh, (2001) 6 SCC 213***. The equitable property right created by an agreement for sale binds the seller and other third persons, except bona fide transferees without notice of the prior agreement for sale. This principle is statutorily recognised in Section 19(b) of the Specific Relief Act, 1963.In fact, the

[33] (2020) 19 SCC 80

Transfer of Property Act, 1882 itself envisages a dual structure of property at law and in equity, as can be seen from Section 5 thereof. Section 5 TPA inter alia provides that a "transfer of property" means "an act by which a living person conveys property … to himself". This express possibility of a transfer to oneself was brought about by the 1929 Amendment to the TPA. This amendment seems to make it clear that the TPA itself contemplates a dual structure of property and ownership in India being the same as that in England: of legal estates and equitable estates. This is because it is only in the case of a trust that the concept of transfer of property to oneself makes any sense, for in case of a trust, where the settlor appoints himself the sole trustee, he, in his capacity as the settlor, transfers the legal ownership of the trust property to himself in his capacity as the sole trustee and transfers equitable or beneficial ownership to the beneficiaries of the trust. This is because a "transfer to oneself" is only possible if one transfers the legal estate to oneself, and the beneficial or equitable estate to another. It has been so held by a three-Judge Bench of the Supreme Court in ***Tulsidas Kilachand v. CIT, (1961) 3 SCR 351***. In respect of an agreement to sell, Section 91 of the Trusts Act, 1882 read with the definition of "trust" in Section 2(c) of the Specific Relief Act, 1963, appears to create a constructive trust in respect of the property which is the subject-matter of(Ed. note contd.)the agreement to sell, with the seller/subsequent transferees as constructive trustee holding the legal estate in the sale property on trust for the vendee who is the cestui que of such trust. The vendee is the holder of the beneficial estate in equity in the sale property under such trust. When it is stated that "an agreement to sell immovable property, generally creates a right in personam in favour of the vendee", it would appear that this pertains to the nature of obligations owed by the trustee holding the legal title to the property, to the beneficiary who holds the beneficial estate in equity. It is often said that "equity acts in personam": this probably is with reference to the nature of the obligation owed by the trustee to the beneficiary. However, the beneficial estate created by an agreement to sell, as explained in ***V.K. Sreedharan v. Chandramaath Balakrishnan, (1990) 3 SCC 291*** and ***Rajender Singh v. Ramdhar Singh, (2001) 6 SCC 213***, does exhibit a proprietary character, though in equity.This equitable proprietary character of the rights created by an agreement to sell is further evidenced in the following cases. In ***Hill Properties v. Union Bank of India, (2014) 1 SCC 635***, a share certificate in a housing company being the equivalent of a contract for sale, was held to create a "species of property" or "species of interest", which was further held to be a mortgageable interest. In ***Lakshmi v. E. Jayaram, (2013) 9 SCC 311***, the lessee of the vendee under a contract for sale, thus in fact a lessee in equity with no legal title, was held to have the right to maintain an action for a perpetual injunction against the transferor/legal title holder of the

property from interfering with the possession of the lessee in equity. In ***CIT v. Podar Cement, (1997) 5 SCC 482***, it was held that a vendee under an agreement to sell was liable to pay capital gains tax on his interest as the same was proprietary in nature. In ***Saraswati Devi v. DDA, (2013) 3 SCC 571***, the interest of the highest bidder in auction of immovable property but before sale had been executed i.e. at the stage of a contract for sale, was held to be an interest in property susceptible to acquisition by the State.The above cases appear to establish that the rights of a vendee exhibit an equitable proprietary character i.e. a near complete in rem character. There is one key difference between legal property rights, estates or interests and equitable property rights, estates or interests. Legal property rights exhibit a complete or total in rem character without exception i.e. they bind the whole world or third parties or subsequent transferees without exception regardless of notice, knowledge or consent. Equitable property rights mirror legal property rights, but exhibit a near complete in rem character i.e. with an exception: equitable property rights bind the whole world or third parties or subsequent transferees except bona fide transferees for consideration without notice of the prior equitable proprietary interests. For a more detailed analysis see the Editorial note in ***Venigalla Koteswaramma v. Malampati Suryamba, (2021) 4 SCC 246***, at pp. 252-256.]] The vendee acquires a legitimate right to enforce specific performance of the agreement.

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87. Section 12 of the SRA is to be construed and interpreted in a purposive and meaningful manner to empower the Court to direct specific performance by the defaulting party, of so much of the contract, as can be performed, in a case like this. To hold otherwise would permit a party to a contract for sale of land, to deliberately frustrate the entire contract by transferring a part of the suit property and creating third-party interests over the same.

88. Section 12 has to be construed in a liberal, purposive manner that is fair and promotes justice. A contractee who frustrates a contract deliberately by his own wrongful acts cannot be permitted to escape scot-free.

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89. After having entered into an agreement for sale of 300 sq yd of land, with her eyes open, and accepted a major part of the consideration (Rs 45,000 out of Rs 75,000) it does not lie in the mouth of the vendor to contend that the contract should not have specifically been enforced in part, in respect of the balance 200 sq yd meters of the suit land which the vendor still owned. It is patently obvious that the vendor did not disclose any earlier agreement to the vendee, as discussed above. The agreement in

writing dated 21-3-1984, does not bear reference to any earlier agreement, as noted above."

142. This Court also finds merit in the submission advanced on behalf of the Petitioner that the Binding HoT *prima facie* created valuable commercial and development rights. The arrangement was not a mere construction contract *simpliciter*. The Petitioner was to derive identifiable commercial entitlements linked to the development of the project. The decision in ***Grovy India*** (*supra*) *prima facie* supports the proposition that development arrangements conferring valuable commercial entitlements and incidents of ownership may constitute specifically enforceable rights. The relevant portion of the said judgment reads as follows:

> "**4.** The dispute relates to a Property Development Agreement ("PDA"), dated 14th January, 2020, executed between the plaintiff and the defendant. The defendant has admitted this document….
>
> ***
>
> **17.** The plaintiff has, in this suit, sought specific performance of the PDA and thereby a direction to the defendant to hand over peaceful possession of the suit property to the plaintiff, produce the original property papers, handover all the executed documents, and further execute all such other necessary documents to fulfil the contemplated terms of the PDA. Additionally, a direction to the defendant, to have the mortgage, in respect of the suit property, redeemed, has also been sought.
>
> ***
>
> **69.** The Court was, therefore, in **Vinod Seth**[2], dealing with a vague, imprecise and oral agreement. A reading of the decision makes it clear that the difficulty which, in the opinion of the Court, would arise in attempting specific performance of such an undocumented agreement was one of the main considerations which compelled the Supreme Court to agree with the view of this Court that the agreement was incapable of specific performance.
>
> 70. In appreciating the law enunciated in **Vinod Seth**[2], the Court cannot, in my view, proceed unmindful of the nature of the controversy, and, especially, the agreement, which was before the Supreme Court. Judgements of courts, including the Supreme Court, it is trite, are not to be treated as analogous to Euclid's

theorems, and followed blindly, without appreciating the fact-situation in which they came to be rendered.

71. ***Sushil Kumar Agarwal*:**

72. As against this, ***Sushil Kumar Agarwal***, also by a Bench of two Hon'ble Judges of the Supreme Court, involved a suit for specific performance of a written development agreement. It is unnecessary to delve into the specifics of the disputes in that case. Suffice it to reproduce paras 18, 19 and 24.3 of the report, which read as under:

> "**18.** *When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.*
>
> 19. In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. *But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area.* There are various incidents of ownership in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from its possession and enjoyment. The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it. [**B. Gangadhar v. B.G. Rajalingam, (1995) 5 SCC 238**, para 6]. Ownership denotes the relationship between a person and an object forming the subject-matter of the ownership. It consists of a complex of rights, all of which are rights in rem, being good against the world and not merely against specific persons. There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. [**Swadesh Ranjan Sinhav. Haradeb Banerjee, (1991) 4 SCC 572**]. An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in

essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third-party rights in the property or the construction to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in law. *In development agreements of this nature, where an interest is created in the land or in the development in favour of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed.* For example, the developer may have evicted or settled with occupants, got land which was agricultural converted into non-agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third-party rights in favour of flat purchasers in the proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. *This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature of the agreement in each case and the rights created under it.*

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24.3. In order to determine the exact nature of the agreement signed between the parties, the intent of the parties has to be construed by reading the agreement as a whole in order to determine whether it is an agreement simpliciter for construction or an agreement that also creates an interest for the builder in the property. *Where under a development agreement, the developer has an interest in land, it would be difficult to hold that such an agreement is not capable of being specifically enforced.*"

(Italics and underscoring supplied)

73. Where, therefore, as in the present case, the agreement is not merely for development or construction on the property, but also envisages valuable rights enuring, in favour of the developer, in the constructed edifice, the Supreme Court itself holds, unequivocally, that it would be difficult to treat the agreement as incapable of specific performance.

74. The requirement of precision, in the construction contract, as a pre-condition for its enforceability, is relatable to the erstwhile Section 14(3)(c)(iii) of the Specific Relief Act. That requirement no longer figures on the statute book, after the amendment of

> Section 14 by the 2018 Amendment Act. In my *prima facie* opinion, lack of precision in the construction agreement can no longer be regarded, by itself, as a sufficient disqualification to its enforceability by specific performance. Else, it would be re-introducing, by a side wind, the consideration in the erstwhile Section 14(3)(c)(iii), which the legislature has consciously removed from the statute. Such an exercise is necessarily to be eschewed, as it would militate against the legislative intent.
>
> **75.** The sequitur would, therefore, be that a construction contract can no longer be regarded as incapable of specific performance merely because its terms are imprecise or vague. If, however, owing to such imprecision or vagueness, any direction for specific performance would require continuous supervision by the Court, that would, even now, render the agreement incapable of specific performance by virtue of Section 14(b). For that, however, the Court would have to arrive at a finding that, owing to the imprecision of the agreement, or for any other reason, any direction for specific performance would require continuous supervision by the Court. In the scenario of Section 14 as it exists today, and without the support of the erstwhile Section 14(3)(c) and its various clauses, this would, in almost every case, be arguable at the very least.
>
> 76. *Prima facie*, in view of the above legal position, I am unable to convince myself to hold, *prima facie*, that the defendant has been able to make out a case of the PDA being incapable of specific performance, by operation of Section 14(b) of the Specific Relief Act, as would justify vacation of the interim direction to maintain status quo in respect of the suit property."

143. For the reasons already recorded hereinabove, this Court is satisfied that the Petitioner has succeeded in establishing a strong *prima facie* arbitral claim warranting protection and preservation pending adjudication of disputes before the learned Arbitral Tribunal. The existence of the Binding HoT, the repeated extensions granted thereto, the admitted payments exchanged between the parties, the continuing negotiations, and the overall contemporaneous conduct of the parties collectively indicate that serious and substantial triable disputes arise for adjudication in arbitration. At this stage, the material placed on record discloses the existence of a bona fide and arguable contractual dispute which cannot be summarily rejected in

proceedings under Section 9 of the A&C Act.

144. The claims asserted by the Petitioner cannot, at the present stage, be characterised as illusory, speculative, vexatious, or wholly devoid of an enforceable legal substratum. On the contrary, the material presently available *prima facie* demonstrates that the disputes raised by the Petitioner are neither sham nor frivolous, but involve substantive questions requiring fuller examination on facts and law before the learned Arbitral Tribunal. This Court, while exercising its limited jurisdiction at the interim stage, is therefore unable to hold that the Petitioner's claims are *ex facie* untenable so as to deny protective relief altogether.

145. This Court is further of the considered view that if interim protection is declined at this stage and the Respondents are permitted to create irreversible third-party rights, alienate interests, or fundamentally alter the commercial nature and character of the project during the pendency of arbitral proceedings, the arbitral process itself may stand seriously prejudiced and frustrated. In such an eventuality, any award that may ultimately be rendered in favour of the Petitioner could be rendered ineffective, illusory, or incapable of meaningful enforcement. Conversely, the grant of interim protection at this stage merely serves to preserve the existing state of affairs and safeguard the subject matter of arbitration pending final adjudication. Such protection neither results in a final determination of rights nor causes irretrievable prejudice to the Respondents, whose rights and contentions shall remain open to be adjudicated before the learned Arbitral Tribunal in accordance with law.

146. In this context, reference may also be made to the decision of the Supreme Court in ***Maharwal Khewaji Trust (Regd.), Faridkot v.***

Baldev Dass[34], wherein the Hon'ble Supreme Court emphasised that ordinarily, during pendency of proceedings, courts ought to preserve the existing status of immovable property and should not permit alteration of the nature of the property or creation of complications capable of frustrating the ultimate adjudicatory process. The Apex Court observed that unless exceptional circumstances are made out, the nature and status of the property ought to be preserved so as to avoid multiplicity of proceedings and irreversible prejudice to the party ultimately found entitled thereto. The relevant observations, as made in the said judgment, read as under:

> "**10.** Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored."

147. The Court is also guided by the principle recognised in ***GTL Infrastructure*** (*supra*) that Section 9 of the A&C Act is intended to preserve the efficacy of arbitral proceedings and the Court must adopt

[34] (2004) 8 SCC 488

the course carrying the lower risk of injustice. The relevant portion of the said judgment reads as follows:

> "**17.** It is apparent from the above that the powers of the court to order interim measures of protection under Section 9 of the A&C Act are wide and are not confined solely to orders that can be passed under Order XXXIX Rules 1&2 of the Civil Procedure Code, 1908. However, the court would be guided by the principles underlying the said Code. Clearly, such orders would also extend to granting the relief, if such relief is admissible on admitted facts."

148. The disputes arising between the parties concern valuable development rights in relation to immovable property and a unique commercial opportunity which, by its very nature, may not be capable of exact or complete restitution through monetary compensation alone. The subject matter of the dispute possesses distinct commercial and proprietary attributes, and any irreversible alteration thereto, or creation of third-party rights during the pendency of arbitral proceedings, may result in consequences incapable of being adequately remedied merely by an award of damages. In such circumstances, even if the Petitioner were ultimately to succeed before the learned Arbitral Tribunal, the prejudice occasioned by a fundamental change in the character of the project or alienation of rights therein may render the eventual arbitral award ineffective or incapable of meaningful enforcement.

149. Conversely, this Court is of the considered view that the interests of the Respondents can be sufficiently protected and balanced by imposing appropriate safeguards and conditions aimed at preserving the equities between the parties during the pendency of the arbitration. Grant of interim protection, therefore, would not result in irreparable injustice to the Respondents, particularly when suitable conditions can be moulded by the learned Arbitral Tribunal at the

relevant stage, if necessary, to ensure that neither party derives an undue advantage pending final adjudication of their respective rights and claims before the learned Arbitral Tribunal.

DECISION:

150. Accordingly, having regard to the peculiar facts and circumstances of the present case, this Court is of the considered opinion that interim protection deserves to be granted in favour of the Petitioner so as to preserve the subject matter pending adjudication of disputes through arbitration.

151. Accordingly, the Respondents are restrained from creating any third-party rights, alienating, encumbering, transferring, or otherwise dealing with the Collaboration Land in any manner prejudicial to the rights and interests claimed by the Petitioner under the Binding HoT, till such stage as may be considered appropriate upon an application being moved by either of the parties before the learned Arbitral Tribunal in accordance with law.

152. It is clarified that all observations recorded herein are purely *prima facie* in nature and have been made solely for the purposes of adjudication of the present petition under Section 9 of the A&C Act. Nothing contained herein shall be construed as an expression on the merits of the disputes between the parties, nor shall the same prejudice the rights, claims, defences, or contentions of either party before the learned Arbitral Tribunal, which shall adjudicate the disputes independently and uninfluenced by any observations made hereinabove.

153. The present Petition, along with pending Application(s), if any, stands disposed of in the above terms.

154. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 29, 2026/sm/DJ