$~J

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 08.12.2025
Judgment pronounced on: 19 .02.2026

\+ **O.M.P. (I) (COMM) 330/2025, I.A. 20016/2025, I.A. 26706/2025**

PARSVNATH DEVELOPERS LIMITED & ORS. ...Petitioners

Through: Mr. Rajat Joneja, Mr. Manoranjan Sharma, Mr. Arpit Dwivedi, Mr. Karan Rajpurohit and Ms. Sakshi Kapoor, Advs.

versus

ASSET RECONSTRUCTION COMPANY INDIA LIMITED & ORS. ...Respondents

Through: Mr. Rajiv Nayar, Sr Adv., Mr. Dayan Krishnan, Sr. Adv. with Mrs Meghna Mishra, Mr Karan Luthra, Ms Ujjwala Gupta and Mr Shubham Madaan, Advs. Mr Siddharth Joshi, Adv.

\+

O.M.P. (I) (COMM) 367/2025

NOIDA MARKETING PRIVIATE LIMITED. …Petitioner

Through: Mr. Rajat Joneja, Mr. Manoranjan Sharma, Mr. Arpit Dwivedi, Mr. Karan Rajpurohit and Ms. Sakshi Kapoor, Advs.

versus

ASSET RECONSTRUCTION COMPANY INDIA LIMITED & ORS. … Respondents

Through: Mr Rajiv Nayar, Sr Adv., Mr. Dayan Krishnan, Sr. Adv. with

Mrs Meghna Mishra, Mr Karan Luthra, Ms Ujjwala Gupta and Mr Shubham Madaan, Advs. Mr Siddharth Joshi, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

O.M.P. (I) (COMM) 330/2025

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) seeking the following reliefs:

> *"a) Pass an interim Order staying the effect of Email dated 16.07.2025 issued by Respondent No. 1 whereby Respondent No. 1 has unilaterally rejected the Restructuring Proposal of the Petitioners and/or all actions arising therefrom;*
>
> *b) Pass an interim order restraining the Respondents, their employees, officers and agents from alienating or creating any third-party rights on the securities, guarantees and shares pledged by the Petitioners in favour of the Respondents under the Loan Agreements and/or taking any coercive steps qua the Petitioners and/or its assets;*
>
> *c) Pass an interim order restraining the Respondents from taking any action(s) qua Petitioner No.10 to 12, who have extended Personal Guarantees to secure the Amount payable to the Respondents;*
>
> *d) Pass an interim order staying the further proceedings in the revival application filed by Respondent No.1 under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, New Delhi;*

e) Pass an interim order restraining the Respondents from taking any coercive steps under the Loan Agreements, security documents or any other contractual arrangement;
f) Pass ad-interim ex-parte order in terms of prayer clause (a), (b), (c), (d) and (e) above;
…"

2. When the matter came up before this Court on 26.09.2025, this Court observed as under:-

"1. Without prejudice to the rights and contentions of the Petitioners, Mr. Tanmay Mehta, learned counsel for the Petitioners, on instructions, submits that in order to show the bona fides of the Petitioners, they will deposit a sum of Rs.75 crores in this Court within four weeks from today.

2. Mr. Rajiv Nayar, learned Senior Counsel appearing on behalf of Respondent No.1, on instructions, submits that a request will be made before National Company Law Tribunal, New Delhi, on 28.09.2025 when the petition filed under Section 7 of IBC, 2016 is listed, not to pass a final order since this Court is hearing the present petitions.

3. Let an affidavit be filed on behalf of the Petitioners on or before 06.10.2025, undertaking that a sum of Rs.75 crores will be deposited in this Court within four weeks from today.

4. List for further hearing on 17.10.2025."

3. The said order continued till 29.10.2025 when Mr. Nayar, learned senior counsel for respondent No. 1 on instructions stated that he is unable to extend the concession made on 26.09.2025.

4. Consequently, this Court on 29.10.2025 was pleased to direct as under:-

"1. Arguments heard in part.
2. On 26.09.2025, learned counsel for the respondent No.1 made a statement before this Court that a request would be made to the National Company Law Tribunal (NCLT) not to pass the final order since this Court is hearing the present petition.
3. Mr. Nayar, learned senior counsel for respondent No.1, states that he is unable to extend that undertaking any further.
4. Mr. Mehta, learned counsel for the petitioners, states that Rs. 75 crores will be deposited within 3 weeks from today.
5. I am of the view thatsince the matter has been heard at some length, it would be in the fitness of things that the interim order dated 26.09.2025 should continue till the next date of hearing. Additionally, on 26.09.2025, the interim order was passed on the assurance that the amount would be deposited within 4 weeks from the date of the order. Mr. Mehta, learned counsel for the petitioners, assures that the amount will be deposited within 3 weeks.
6. Hence, the directions in the order dated 26.09.2025 are continued till the next date of hearing.
7. List for further arguments on 22.11.2025."

5. The said order was challenged and the Division Bench in FAO (OS) (COMM)180/2025 while setting aside the order dated 29.10.2025 directed this Court to pass an appropriate order and thereafter in terms of the directions of the Division Bench, the matter has been taken up for hearing on 06.11.2025.

FACTUAL BACKGROUND AS PER THE PETITION

6. Petitioners and its group companies availed various loan facilities aggregating 4861.25 crores from respondent Nos. 2 and 3 for the

purposes of financing their real estate projects, out of which Rs. 4,153.26 crores were disbursed. The petitioners repaid a sum of about Rs. 4.696.01 crores including interest. Out of the disbursed amount, a sum of Rs. 394.36 Crores (grossed-up for TDS) was either deducted prior to disbursal or taken back immediately thereafter again, without any proper explanation or reconciliation. Despite having deducted and despite having charged a significant amount of Rs. 394.36 Crores (gross-up TDS), the respondent Nos. 2 and 3 have neither adjusted Rs. 394.36 Crores towards the total outstanding dues nor refunded the same to the petitioners along with applicable interest. Even thereafter the respondent Nos. 2 and 3 claimed that a sum of 489.32 crores was pending for payment.

7. The following chart shows the loan structure:

S. No.	Particulars	Amount (Cr.)
1.	Amount of Loans sanctioned	4,861.25
2.	Amount of Loans disbursed	4,153.26
3.	Amount of Principal Repaid	3,689.98
4.	Amount of Interest paid	1,006.03
5.	Principal outstanding as per Respondent No. 2 demand	463.28
6.	Interest Demanded by Respondent No. 2	26.04
7.	Amount of Upfront payments retained by respondent No. 2	394.36
8.	Interest on Upfront payments @ interest payable on respective loans till June	1054.92

	2024	
	Balance receivable from the Respondents (5+6-7-8)	959.97

SECTION 7 IBC PROCEEDINGS

8. In 2022, respondent No. 2 initiated proceedings under Section 7 of the Insolvency and Bankruptcy Act, 2016 (***"IBC"***) against the petitioners with the intent to coerce payment of disputed amounts; however, upon the petitioners demonstrating that all dues stood cleared and highlighting the respondent Nos. 2 and 3 contractual breaches, the proceedings were withdrawn and dismissed by the NCLT on 11.04.2022, followed by withdrawal of all recall notices on 20.04.2022 with an express admission of no outstanding dues.

9. Despite this, respondent Nos. 2 and 3 again issued notices dated 30.01.2023 and unilaterally enhanced interest without reconciliation of accounts, release of securities, or issuance of NOCs, which the petitioners duly objected to. Thereafter, loan recall notices dated 01.09.2023 were issued, and although in a meeting held on 14.09.2023 the respondent Nos. 2 and 3 agreed to keep the recalls in abeyance, they acted in bad faith by filing a fresh Section 7 petition (C.P. (IB) No. 690/ND/2023).

10. Upon being confronted with their own defaults and payments made by the petitioners under protest and duress, the said Section 7 petition was disposed of by the NCLT *vide* order dated 01.02.2024. In parallel, respondent No. 2 had also filed a Section 9 petition under the Act,

which was disposed of by the order dated 20.12.2023, referring disputes to arbitration and treating the petition as one under Section 17; nevertheless, respondent Nos. 2 and 3 subsequently sought to withdraw the arbitral proceedings on 20.04.2024.

PRESENT DISPUTE

11. Towards the end of 2024, the parties commenced settlement talks and numerous agreements/documents were exchanges between the parties. During this period, respondent Nos. 2 and 3 assigned the entire loan exposure of the petitioners to respondent No. 1, Asset Reconstruction Company (India) Limited (***"ARCIL"***) through an Assignment Agreement.

12. Following the assignment, fresh settlement negotiations were initiated between the petitioners and respondent No. 1, which culminated in a mutual understanding that the entire outstanding loan exposure of the Parsvnath Group would be settled for an aggregate amount of ₹750 Crores already negotiated with respondent Nos. 2 and 3 earlier. Out of this, petitioner No. 1 was to pay ₹310 Crores, while the remaining amount was to be paid by other group entities.

13. In pursuance of the said understanding, respondent No. 2 withdrew the pending insolvency proceedings filed under Section 7 of the IBC on 17.02.2025. On the same day, the petitioners handed over two demand drafts as part of the settlement consideration totalling to 75 crores.

14. Demonstrating their bona fides and commitment to the settlement, the petitioners made total payments aggregating to ₹125 Crores (including 75 crores) on the strength of the assurances given by respondent No. 1

that the restructuring and settlement would be formalised shortly and all disputes would stand amicably resolved.

15. Pursuant to the mutual understanding, the petitioners submitted a detailed restructuring proposal to the respondent No.1 *vide* letter dated 26.03.2025 and an email dated 19.06.2025. It is the case of the petitioners that the said proposal was consistent with earlier discussions and included a clear roadmap for final closure, timelines, and payment schedules. Multiple meetings were held between the parties, and further drafts were exchanged to finalise the restructuring documentation. The same was also recorded in Order dated 17.02.2025 of the NCLT and 30.04.2025 of the High Court.

16. In furtherance of the same, and acting in good faith, the petitioners withdrew their pending Section 9 petition before this Hon'ble Court, relying on the representations of the respondent No. 1.

17. However, respondent No. 1, *vide* email dated 16.07.2025, unilaterally withdrew from the settlement process, stating that it would not proceed with the restructuring and would instead take action in accordance with law.

18. Hence, the present petition to preserve the subject matter of the arbitral dispute.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1

19. Mr. Rajiv Nayar and Mr. Dayan Krishnan, learned senior counsels for the respondent No. 1, at the outset, objected to the maintainability of the petition and presented a four-fold submission, which is as follows:

No Arbitration Agreement Exists

20. It is argued, that the petition is not maintainable as an Arbitration Agreement must be in writing under Section 7 of the Act. Consequently, no arbitration agreement can arise from the alleged oral agreement relied upon by the petitioners. Even otherwise, the Draft Restructuring Agreement does not contain any arbitration clause.

21. Further, the arbitration clause in the Loan Agreement cannot be invoked, as there is no specific incorporation of the same into the Draft Restructuring Agreement; a general reference is insufficient in law. On the contrary, Clause 7(b) of the Draft Restructuring Agreement expressly confers jurisdiction on the Courts at New Delhi, and Clause 7(m) provides that its terms shall prevail over the Loan Agreements, clearly evincing an intention not to arbitrate.

22. Additionally, the Draft Restructuring Agreement extends beyond the petitioners' Loan Agreements and covers multiple entities like PDL, Noida, Enormity and Congenial, rendering the arbitration clauses in the individual Loan Agreements inapplicable to the present disputes.

No Concluded Contract Between the parties

23. The second limb of the argument is based on the premise that there is no Contract between the parties, and if this Court were to grant Prayer A, of the petitioners, which is seeking stay of email dated 16.07.2025, then the same would be in the nature of a mandatory injunction at an interim stage and will lead to creation of a contract where none exists.

24. Learned Senior Counsels submit that it is settled law that a concluded contract requires certainty of terms and *consensus ad idem*, the burden of establishing which lies squarely on the petitioners. Even assuming that the parties had arrived at an agreement, any post-agreement

negotiations would be relevant to determine whether such agreement continued to subsist or stood rescinded.

25. In this context, they bring my attention to the impugned email communication dated 16.07.2025, issued by respondent No. 1, which was in response to the email dated 04.06.2025 whereby the petitioners had circulated a "revised draft" of the restructuring agreement seeking the concurrence of respondent No. 1. However, *vide* email dated 16.07.2025, respondent No. 1 rejected the proposal forwarded by the petitioners.

26. It is also stated that the petitioners' pleaded case was of an alleged oral Agreement; however, in rejoinder, they impermissibly shifted their case to contend that an email dated 30.12.2024 constituted an "offer" and a court-recorded statement on 17.02.2025 amounted to "acceptance". This new case, being contrary to their own pleadings, is liable to be rejected.

27. Even otherwise, it is stated the undisputed correspondence post-17.02.2025 demonstrates continuous negotiations spanning several months, including exchange of proposals, drafts, counter-drafts and open issues, culminating in rejection of the proposal on 16.07.2025. It is argued that this conclusively shows that there was neither a concluded contract nor any subsisting settlement, rather, any prior understanding, assuming it existed, stood rescinded. The Draft Restructuring Agreement itself is inchoate, with all essential terms, settlement amount, repayment schedule, interest and securities left blank, thereby negating any *consensus ad idem.*

28. Additionally, it is submitted that the petitioners' failure to make any payment beyond Rs.125 crores under the alleged payment schedule further belies their claim of a concluded settlement. Their attempt to alternately rely on the email/order as a concluded contract and the Draft Restructuring Agreement when confronted with non-payment amounts to approbation and reprobation. In such circumstances, neither specific performance nor interim relief under Section 9 of the Act can be granted.

Bar on Civil Courts for proceedings falling under IBC

29. The third limb of the argument of learned senior counsels, deals with express bar of Civil Courts under Sections 231 and 238 of the IBC from granting injunctions restraining proceedings initiated by a financial creditor under Section 7 of the IBC. While the petitioners' claim for specific performance may lie elsewhere, no civil court can interdict or stay duly instituted IBC proceedings before the NCLT.

30. Any injunction restraining proceedings before the NCLT would be barred by Section 41(b) of the Specific Relief Act, 1963 and would impermissibly restrain respondent No.1 from pursuing its statutory remedies.

Prayers are in teeth of legal remedies present under SARFAESI and RDB Act

31. The last leg of the respondent No. 1's submission is that the injunctions sought in the prayers of the petition effectively restrains respondent No.1 (a secured creditor) from exercising its statutory recovery powers under the SARFAESI Act, 2002 and the Recovery Of Debts And Bankruptcy Act, 1993 (***"RDB Act"***). Enforcement actions and

objections thereto are exclusively governed by these special enactments, which constitute a complete code and confer sole jurisdiction on the DRT, expressly barring civil court injunctions.

32. Learned senior counsels' state that the dispute, being one of recovery and quantification of dues, squarely falls within the domain of the RDB Act. Even assuming any independent counter-claim exists, no interim relief can interdict recovery proceedings provided by a statute.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

Existence of a Concluded Contract

33. Mr. Tanmaya Mehta, learned counsel for the petitioners, submits that in the present case, the parties had arrived at a settlement through a Composite Restructuring Agreement, which was negotiated and finalised after extensive discussions between the parties. The said settlement was duly accepted by the respondent No. 1, who also acted upon it; hence, a concluded and binding contract came into existence between the parties.

34. To buttress his argument, he states that the petitioners, by email dated 30.12.2024, made an offer proposing a settlement schedule, expressly conditioned upon payment of ₹125 crores by March 2025. The respondent No. 1 accepted the said offer subject to the same contingency, and upon the petitioners remitting ₹125 crores on 17.02.2025, the condition precedent stood fulfilled, thereby resulting in a concluded and enforceable contract.

35. As per him, the existence and implementation of the contract is further evidenced by the respondents' acceptance of the said amount, the joint recording of settlement in the order dated 17.02.2025 passed by the

NCLT, the consequential vacation of the interim status quo order dated 21.10.2024, and the subsequent recording of the settlement by this Court *vide* order dated 30.04.2025. He states, these acts constitute unequivocal acceptance by conduct and clearly demonstrate that the parties gave full effect to the offer dated 30.12.2024, leaving no manner of doubt that a binding contract stood concluded between them.

36. He further states that on 04.06.2025, the petitioners shared the Draft Composite Restructuring Agreement detailing the restructured payment obligations and the agreed mechanism for monetization of group assets. This was followed by a reiteration on 19.06.2025 of respondent No.1's readiness and willingness to pay, along with securities and an updated payment schedule, culminating in a meeting on 09.07.2025 where the date for execution of the documents was fixed for 16.07.2025, evidencing that all material terms stood crystallized. It is his submission that the respondent No. 1 has failed to place on record any correspondence showing that the petitioners' email dated 04.06.2025 was ever declined.

37. Despite this, respondent No. 1 unilaterally withdrew from the settlement without justification, compelling the petitioners to approach this Court, with the existence and effect of the concluded settlement being matters to be finally decided in arbitration.

38. He also states that it is a settled principle that execution of formal documentation is not a *sine qua non* for contract formation, and absence of agreement on formal documentation does not negate an otherwise concluded contract. In the present case, upon fulfilment of the contingency by payment of ₹125 crores on 17.02.2025, the

settlement stood concluded and became operative, and thereafter the parties proceeded not on the basis of negotiations but on the footing that a binding settlement had been arrived at. Reliance is place on *Trimex International v. Vedanta, (2010) 3 SCC 1* and *Kollipara Sriramulu v. T, Aswatha, 1968 SCC OnLine SC 87.*

Existence of an Arbitration Clause

39. Mr. Mehta, learned counsel, further states that it is undisputed that all the original Loan Agreements contain an arbitration clause, including Clause 22(a), which provides for reference of all disputes arising out of or in connection with the loan documents to arbitration. The relevant portion of Clause 22 of the Loan Agreements reads as under:

> *"This Loan Documents is/shall be governed by Indian Laws and the Court mentioned in Schedule-1 hereunder shall have exclusive jurisdiction relating to any matter/issue under or pursuant to the Loan Documents. Notwithstanding anything to the contrary:*
>
> *a. if any dispute/disagreement/differences ("Dispute") arise between the Parties (including any Obligor(s)) during the subsistence of the Loan Documents and/or thereafter, in connection with, inter alia, the validity, interpretation, implementation and/or alleged breach of any provision of the Loan Documents, jurisdiction or existence/appointment of the arbitrator or of any nature whatsoever, then, the Dispute shall be referred to a sole arbitrator who shall be appointed by the Lender only. It is expressly agreed that in any circumstance, the appointment of the sole arbitrator as*

aforesaid shall be and shall always deemed to be the sole means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of the arbitration shall be New Delhi and the arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 (or any statutory re-enactment thereof for the time being in force) and shall be in the English language. The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law."

40. It is also submitted that at the stage of a petition under Section 9 of the Act, the Court is only required to prima facie satisfy itself as to the existence of an arbitration agreement, and not to undertake any detailed inquiry into the scope or arbitrability of the disputes. Questions as to whether the disputes fall within the ambit of the arbitration clause involve complex factual issues and are exclusively within the domain of the Arbitral Tribunal. Reliance is placed on *SBI General Insurance Co. Ltd. v. Krishh Spinning, 2024 SCC OnLine SC 1754.*

41. He further submits that the question of whether the arbitration clause contained in the earlier Loan Agreements has been superseded or novated by any subsequent arrangement is a matter for the Arbitral Tribunal to determine and cannot be conclusively adjudicated at this preliminary stage.

42. Learned counsel also emphasises that a signed agreement is not required where the parties have acted upon the terms of a draft

agreement by conduct; such conduct is sufficient to infer the existence of a valid arbitration agreement by incorporation or reference. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Inox Wind Limited v. Thermocables Limited, (2018) 2 SCC 519* wherein it was held that incorporation by reference is legally permissible and binding when the parties have demonstrated intent through performance.

43. Lastly, it is submitted that the issue as to whether the arbitration clause contained in an earlier agreement stands superseded or novated is a matter to be determined by the Arbitral Tribunal, and cannot be adjudicated at the stage of proceedings under Section 9 of the Act

Bar on Jurisdiction by NCLT under Section 63 and 231 of IBC

44. Mr. Mehta, learned counsel, submits that the jurisdiction of a civil court under Section 9 of the CPC is wide and can be excluded only by express statutory bar or by necessary implication. Such exclusion, he contends, must be construed strictly and only to the extent of the powers specifically conferred upon the Tribunal under the relevant statute. According to him, it is therefore essential to first examine the scope and ambit of the authority vested in the NCLT under the IBC, and thereafter determine whether the reliefs sought in the present petition fall within that statutory domain.

45. He also argued that the NCLT, being a creature of statute, exercises limited and circumscribed powers and is not competent to grant declaratory reliefs, enforce specific performance of a concluded settlement agreement at the instance of a borrower, or entertain independent claims, cross-claims, set-offs, or unliquidated counter-claims by a debtor against a creditor.

46. It is further contended that the IBC does not envisage a borrower approaching the NCLT as a petitioner in order to agitate such disputes, nor does it provide a mechanism for adjudication of substantial defences or counter-claims in insolvency proceedings, which are summary in nature. In such circumstances, where issues fall outside the statutory jurisdiction of the NCLT, the civil court's jurisdiction under Section 9 CPC remains intact. Reliance is also placed on the principle that courts may grant anti-suit or anti-tribunal injunctions to prevent abuse of insolvency proceedings, and that the statutory bars under Sections 63, 231 and 238 of the IBC or Section 41 of the Specific Relief Act, 1963 would not operate where the relief sought lies beyond the competence of the NCLT.

Applicability of Section 41(b) of Specific Relief Act, 1961

47. Mr. Mehta, learned counsel, submits that Section 41(b) of the Specific Relief Act, 1963 does not bar the relief sought by the petitioners because the provision applies only to *courts* and not to *tribunals* like the NCLT. The NCLT is a statutory tribunal, subordinate to this Court, and is not empowered under the IBC to entertain borrower-initiated claims or counterclaims, making its proceedings entirely creditor-centric. Interpreting "Court" to include tribunals would be contrary to the plain language of the statute and would leave the petitioners without any effective remedy, resulting in irreversible prejudice.

Present Proceedings are not barred under SARFAESI and RDB Act

48. Mr. Mehta, learned counsel, states that the present petition is not barred by the SARFAESI Act, 2002 or the RDB Act, as the dispute does not

concern recovery under the original loan agreements but arises from a subsequent settlement which allegedly novated those agreements.

49. This settlement, said to be evidenced by the email dated 30.12.2024 read with the draft restructuring agreement, was substantially acted upon, including payment of Rs.125 crores and withdrawal of IBC proceedings. The principal relief sought is specific performance of this settlement, which, according to the petitioners, falls outside the statutory domain of SARFAESI and the RDB Act. It is argued that these statutes provide enforcement mechanisms and do not bar recourse to civil or arbitral remedies, particularly when no independent forum exists for a borrower to institute a primary claim.

50. It is further contended that there was no default in relation to the proposed deposit of Rs.75 crores as recorded in Order dated 26.09.2025, as the obligation was contingent and the relevant order was subsequently set aside. Lastly, it is stated that the settlement contemplated reciprocal, step-by-step performance: the respondent No.1 was first required to release securities and grant no-objection for sale of assets, failing which the petitioners cannot be held responsible for non-adherence to the payment schedule.

ANALYSIS AND FINDINGS

51. I have heard learned senior counsels/counsels for the parties and perused the material on record.

52. Before adverting to the merits of the present petition it is important to address the maintainability aspect.

53. The first issue that arises for consideration is whether the present petition, insofar as it seeks interim reliefs, is maintainable under

Section 9 of the Act. The respondent No.1 has questioned the maintainability of the petition on the ground that the claims are covered under the IBC and the SARFAESI Act, which provide for adjudication by specialised tribunals, and that the reliefs sought would effectively interdict proceedings under those statutes.

54. Even assuming, for the sake of argument, that the petitioners' case is accepted at face value and that the dispute falls outside the purview of such specialised tribunals and is otherwise capable of being determined by this Court, the threshold requirement under Section 9 still remains to be satisfied. At the prima facie stage, the Court must first be satisfied about the existence of an arbitration agreement between the parties.

55. It is well settled that the scope of inquiry under Section 9 cannot be broader than that under Section 11 of the Act. Therefore, applying the same test, the Court must, at the outset, ascertain the existence of a valid and binding arbitration agreement before proceeding to consider the grant of any interim relief.

Existence of an Arbitration Agreement

56. It is a settled position of law that the Court under Section 9 of the Act is to preserve the substratum of the arbitral dispute. Additionally, the Court at Section 9 stage is only required to see a *prima facie* case. The Court at Section 9 stage is not required to go into detailed hearing of the parties and give findings on fact which can only be given by the Arbitral Tribunal after recording detailed evidence and going through the documents. What needs to be seen by this Court at this stage is whether an Arbitration Agreement exists between the parties.

57. In ***SBI General Insurance Co. Ltd. (supra)*** it was observed as under:

"96. *Thus, the position after the decisions in Mayawati Trading [Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714 : (2019) 4 SCC (Civ) 441] and Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] is that ordinarily, the Court while acting in exercise of its powers under Section 11 of the 1996 Act, will only look into the existence of the arbitration agreement and would refuse arbitration only as a demurrer when the claims are ex facie frivolous and non-arbitrable.*

…

(iii) What is the effect of the decision of this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re on the scope of powers of the Referral Court under Section 11 of the 1996 Act?

97. *...Some of the relevant observations made by this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] are extracted hereinbelow: (SCC pp. 95-97, paras 190 & 196-97)*

> *"190. ... However, the effect of the principle of competence-competence is that the Arbitral Tribunal is vested with the power and authority to determine its enforceability. The question of enforceability survives, pending the curing of the defect which renders the instrument inadmissible. By appointing a tribunal or its members, this Court (or the High Courts, as the case may be) is merely giving effect to the principle enshrined in Section 16. The appointment of an Arbitral Tribunal does not necessarily mean that the*

agreement in which the arbitration clause is contained as well as the arbitration agreement itself are enforceable. The Arbitral Tribunal will answer precisely these questions.

***

196. The corollary of the doctrine of competence-competence is that courts ***may only examine whether an arbitration agreement exists*** *on the basis of the prima facie standard of review. The nature of objections to the jurisdiction of an Arbitral Tribunal on the basis that stamp duty has not been paid or is inadequate is such as cannot be decided on a prima facie basis. Objections of this kind will require a detailed consideration of evidence and submissions and a finding as to the law as well as the facts. Obligating the court to decide issues of stamping at the Section 8 or Section 11 stage will defeat the legislative intent underlying the Arbitration Act.*

197. The purpose of vesting courts with certain powers under Sections 8 and 11 of the Arbitration Act is to facilitate and enable arbitration as well as to ensure that parties comply with arbitration agreements. The disputes which have arisen between them remain the domain of the Arbitral Tribunal (subject to the scope of its jurisdiction as defined by the arbitration clause). The exercise of the jurisdiction of the courts of the country over the substantive dispute between the parties is only possible at two stages:

(a) If an application for interim measures is filed under Section 9 of the Arbitration Act; or

(b) If the award is challenged under Section 34.

...

(c) Judicial interference under the 1996 Act

110. *The parties have been conferred with the power to decide and agree on the procedure to be adopted for appointing arbitrators. In cases where the agreed upon procedure fails, the courts have been vested with the power to appoint arbitrators upon the request of a party, to resolve the deadlock between the parties in appointing the arbitrators.*

…

113. *The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*

114. *The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.*

115. *The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.*

(Emphasis added)

58. A conspectus of the aforesaid judgment establishes that judicial intervention at the pre-arbitral stage is narrowly circumscribed. Whether under Section 8, Section 11, or even while considering interim relief under Section 9, the Court is not required to undertake a detailed adjudication on disputed questions of fact or on the substantive merits of the claims. The enquiry is confined to a prima facie examination of the existence of an arbitration agreement in terms of Section 7 of the Act. All contentious issues touching upon enforceability, validity, jurisdiction, stamp duty, accord and satisfaction, or other defences are to be determined by the Arbitral Tribunal in exercise of its kompetenz–kompetenz under Section 16 of the Act. The legislative intent, as reinforced by the 2015 Amendment, is to minimise judicial interference and to ensure that arbitration is facilitated rather than stultified by prolonged preliminary scrutiny.

59. Mr. Mehta, learned counsel, has vehemently contended that the scope of enquiry under Section 9 of the Act is limited to examining the *prima facie* existence of an arbitration agreement and that this Court cannot adjudicate upon the scope or ambit of the arbitration clause at this stage. In support of this submission, reliance has been placed on the judgments of the Hon'ble Supreme Court in ***Cox & Kings Ltd. v. SAP India (P) Ltd.,*** **(2024) 4 SCC 1;** ***SBI General Insurance Co. Ltd. (supra),*** **and** ***ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd., (2025) 9 SCC 76***. It is urged that at this stage, the Court is only required to determine the existence of an arbitration agreement and ought not to undertake a detailed or expansive inquiry into disputed questions.

60. The aforesaid principles, however, would apply only after the Court arrives at a prima facie finding that a valid and binding arbitration agreement exists between the parties.

61. Therefore, the first issue before this Court is not the scope or applicability of the arbitration agreement, but its very existence. The petitioners' stand, however, is not entirely clear. While at one place it is suggested that the original Loan Agreements stood novated, at other places the case appears to be one of alteration of terms of the existing loan documents. Even otherwise, assuming arguendo that the petitioners intend to set up a case of novation, such contention does not prima facie inspire confidence. For a novation to take place, a new agreement must come into existence after negotiations, which substitutes and replaces the earlier agreement, rendering the previous contract no longer binding on the parties. The effect of novation, as recognised under Section 62 of the Indian Contract Act, 1872 is that the original contract stands completely discharged and becomes void and unenforceable upon being substituted by a new contract.

62. It is also difficult to reconcile the petitioners' stand that, on the one hand, the original contracts stood novated by a fresh arrangement which, admittedly, was only a draft agreement and did not contain any arbitration clause, and yet, on the other hand, for disputes arising out of the alleged draft restructuring exercise, the petitioners seek to invoke the arbitration clause contained in the original loan agreements. If the original agreements stood novated, the arbitration clause contained therein would also cease to have effect; conversely, if the original

agreements continue to subsist, the plea of novation cannot be sustained.

63. The petitioners' case further appears inconsistent and shifting. At different stages, it has oscillated from an alleged oral settlement, to a draft restructuring proposal communicated by email and projected as the new agreement, and thereafter to the contention that the email dated 30.12.2024 constituted an offer and that a statement made by counsel for respondent No. 1, as recorded in the order dated 17.02.2025, amounted to acceptance, thereby resulting in a concluded contract. Such shifting stands seriously undermine the plea of a clear and binding agreement between the parties.

64. While this Court is conscious of the position that questions relating to novation of an arbitration clause may ultimately fall within the domain of the Arbitral Tribunal that stage arises only after the foundational requirement is met. At the threshold, the petitioners must prima facie establish the existence of an arbitration agreement. In that context, the submission that an arbitration clause has been incorporated by reference requires closer scrutiny before any further relief can be considered.

65. Mr. Mehta, learned counsel, has argued at length that the Original Arbitration Clause has been incorporated by reference, I cannot agree. The law on incorporation of Arbitration Clause is well settled. In ***Elite Engg. &Construction (Hyd.) (P) Ltd. v. Techtrans Construction India (P) Ltd., (2018) 4 SCC 281,*** it was held as under:

> ***"14.*** *In M.R. Engineers and Contractors (P) Ltd. case [M.R. Engineers and Contractors (P) Ltd. v. Som Datt Builders*

Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , this Court considered the true intent and scope of Section 7 of the Act which deals with "arbitration agreement". Relevant portion of Section 7 reads as under: (SCC p. 703, para 13)

> *"13. ... '**7. Arbitration agreement**.—(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*
>
> ***
>
> *(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.' "*
>
> *(emphasis in original)*

15. *As per sub-section (5), an arbitration clause contained in an independent document can also be imported and engrafted in the contract between the parties, by reference to such independent document in the contract, even if there is no specific provision for arbitration. However, the Court noted that (SCC p. 703, para 13) such a recourse can be adopted only "if the reference is such as to make the arbitration clause in such document, a part of the contract." This interpretation to sub-section (5) of Section 7 was elaborated in the following manner: (M.R. Engineers case [M.R. Engineers and Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , SCC pp. 703-04, paras 14-16)*

> *"14. The wording of Section 7(5) of the Act makes it clear that a mere reference to a document would not have the effect of making an arbitration clause from*

that document, a part of the contract. The reference to the document in the contract should be such that shows the intention to incorpo*rate the arbitration clause contained in the document, into the contract. If the legislative intent was to import an arbitration clause from another document, merely on reference to such document in the contract, sub-section (5) would not contain the significant later part which reads: 'and the reference is such as to make that arbitration clause part of the contract', but would have stopped with the first part which reads:*

*'**7. (5)** The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing….'*

15. Section 7(5), therefore, requires a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause could be read as a part of the contract between the parties. But the Act does not contain any indication or guidelines as to the conditions to be fulfilled before a reference to a document in a contract can be construed as a reference incorporating an arbitration clause contained in such document into the contract. In the absence of such statutory guidelines, the normal rules of construction of contracts will have to be followed.

16. There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the

contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract."

(emphasis in original)

16. *After some further discussion on this aspect with reference to the existing case law as well as extracts from Russell on Arbitration, the Court summed up the position as under: (M.R. Engineers case [M.R. Engineers and Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 : (2009) 3 SCC (Civ) 271] , SCC p. 707, para 24)*

"24. The scope and intent of Section 7(5) of the Act may therefore be summarised thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:

(1) the contract should contain a clear reference to the documents containing arbitration clause,

(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(3) the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration

clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general

conditions of contract will apply to the contract between the parties.""

(Emphasis supplied)

66. A bare reading of the above mentioned conditions clearly show that in case of incorporation the arbitration clause has to be specifically incorporated and there cannot be a general reference. The Hon'ble Supreme Court categorically held that a mere reference to another document containing an arbitration clause does not *ipso facto* result in incorporation of the arbitration clause contained therein. The reference must be clear, specific, and must unequivocally demonstrate the intention of the parties to incorporate the arbitration clause as a part of the contract.

67. Tested on the aforesaid settled principles, the contention of the petitioners cannot be sustained. The reliance placed on Clause 7(i) of the Draft Restructuring Agreement to contend that the arbitration clause from the original Loan Agreements stands incorporated is misplaced. Clause 7(i) reads as under:

"Unless otherwise stated herein, all the terms and conditions of the Assigned Facility Documents and/or the Transaction Documents shall remain unchanged and in full force and effect and shall continue to remain applicable and binding on the Parties."

68. A plain reading of Clause 7(i) reveals that it is in the nature of a general clause. It neither makes any specific reference to the arbitration clause contained in the original Loan Agreements nor evinces an intention to

incorporate the same into the Draft Restructuring Agreement. Such a general reference falls squarely within the category of references which, as held in ***Elite Engg. & Construction (supra)***, is insufficient to incorporate an arbitration clause.

69. Significantly, Clause 7(i) itself is prefaced with the expression "unless otherwise stated herein", thereby indicating that where the Draft Restructuring Agreement provides separately for any matter, such provision of the Draft Restructuring Agreement would prevail. This position is further fortified by Clause 7(m), which stipulates:

> *"In the event of conflict between the terms of this Agreement and the provisions of the Restructuring Documents, the provisions of this Agreement shall prevail in relation to the matters set out herein."*

70. A conjoint reading of Clauses 7(i) and Clause 7(m) clearly demonstrates that the Draft Restructuring Agreement is intended to operate as a self-contained instrument to the extent of matters expressly provided therein.

71. More importantly, Clauses 7(a) and 7(b) of the Draft Restructuring Agreement contains an independent dispute resolution framework, which reads as under:

> *"(a)Governing Law: This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India.*
>
> *(b)Jurisdiction: The Parties hereby agree that this Agreement shall be subject to the exclusive jurisdiction of courts situated in New Delhi."*

72. The presence of a jurisdiction clause, consciously agreed to by the parties, is wholly inconsistent with any intention to submit disputes arising under the Draft Restructuring Agreement to arbitration. Had the parties intended to incorporate the arbitration clause from the original Loan Agreements, the same would have found explicit reflection in the jurisdiction clause of the Draft Restructuring Agreement.

73. The same is in line with the reasoning of ***NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd., (2024) 7 SCC 174.*** The relevant paragraphs read as under:

> *"**29.** As already discussed hereinabove, when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.*
>
> ***30.*** *We are of the considered view that the present case is not a case of "incorporation" but a case of "reference". As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the LoI, which is also a part of the agreement, makes it amply clear that the redressal of the dispute between NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone."*
>
> ***(Emphasis added)***

74. The above mentioned case was further relied in ***Deepa Chawla v. Raheja Developers Ltd., 2024 SCC OnLine Del 4489*** wherein the Court refused to refer the parties to arbitration and held as under:

> *"**23.** Further, the judgment of NBCC (supra) in para 12 clearly stipulates that under sub-section (5) of section 7 of the Arbitration and Conciliation Act, 1996 a conscious acceptance by way of a specific reference of the arbitration*

clause is required. In the present case, clause 9 of the Second Agreement categorically contains that this agreement shall have an overall overriding effect over the Flat Buyer's Agreement, including the settlement of any dispute, meaning thereby that there is a specific exclusion of the arbitration clause for settlement of any dispute. Both the parties have agreed to the said clause and therefore cannot at this stage seek a remedy that they have waived of by way of this express condition in the Second Agreement."

75. In view of the above, I have no hesitation in holding that there is neither a specific reference nor a clear intention to incorporate the arbitration clause from the original Loan Agreements into the Draft Restructuring Agreement. On the contrary, the express conferment of exclusive jurisdiction on the Courts at New Delhi unequivocally negates any intention to arbitrate.

Existence of a Concluded Settlement Agreement

76. The fulcrum of the petitioners' case stems from the fact that there was a valid settlement entered into between the parties by way of the Draft Restructuring Agreement and now the respondent No. 1 cannot step away from its obligations effected under the Draft Restructuring Agreement.

77. A bare perusal of the record shows as follows:

S. No.	EMAIL	PARTICULARS
1.	26.03.2025	Petitioner No. 1 shared the settlement proposal with Respondent No. 1.
2.	29.03.2025	
3.	09.04.2025	Reminder emails from Petitioner No. 1 requesting

		Respondent No. 1 to revert with the draft of the Settlement Agreement.
4.	14.04.2025	Petitioner No. 1 proposed an All Party Call to discuss and finalize documents at the earliest.
5.	22.04.2025	Respondent No. 1 sought clarity in relation to the properties to be mortgaged by Petitioner No. 1.
6.	22.04.2025	Petitioner No. 1 gave its comments to the points made in Respondent No. 1 e-mail dated 22.04.2025.
7.	05.05.2025	Respondent No. 1 requested a joint call to discuss points relating to the proposed property.
8.	25.05.2025	Respondent No. 1 attached a draft composite restructuring agreement with comments and scheduled nothing entity wise draft can follow once finalized and stated the certain open points require discussion over a call.
9.	25.05.2025	Petitioner No. 1 stated that they will revive and revert and requested the final schedules and enable simultaneous revive of the agreement and schedules to avoid further delay.
10.	28.05.2025	Petitioner No. 1 shared the revised draft of the agreement with comments and changes.
11.	30.05.2025	Respondent No. 1 shared preliminary/working draft of the schedules with the note that the schedules are yet to be finalized and subject to internal approval.

12.	04.06.2025	Petitioner No. 1 shared the revised draft restructuring agreement.
13.	16.07.2025	Respondent No. 1 rejected the restructuring proposal.

78. From the above, it is clear that the Draft Restructuring Agreement was still being negotiated, with the respondent No. 1. There was no *consensus ad idem* between the parties, as the essential terms of the proposed contract had neither been finalised nor mutually agreed upon. In fact, several material particulars were left blank, clearly demonstrating that the parties had not arrived at a concluded and binding Agreement. The important conditions which are left blank are reproduced as under:

> *"The Borrower(s), Obligor(s)-Loan(s), Issuer and/or the Obligor(s)-Debentures hereby jointly and severally, irrevocably and unconditionally admit, acknowledge, declare, confirm, reaffirm and agree that:*
>
> *a. the Borrower(s) has borrowed the Assigned Debt 1 from the Assignor 1 which was assigned and transferred to the Lender in term of the Assignment Agreement 1.*
>
> *b. the Borrower(s) has borrowed the Assigned Debt 2 from the Assignor 2 which has been assigned and transferred to the Lender in terms of the Assignment Agreement 2.*
>
> *c. The Issuer has validly issued the Debentures under the Transaction Documents;*

d. there is no outstanding commitment to invest by the Debenture Holder(s) with respect to the Debentures (or any part thereof);

e. the various transaction documents and Loan Documents executed by the Borrower(s) and Obligor(s)-Loan(s) for availing the Assigned Debt 1 and Assigned Debt 2 or any part thereof from Assignor 1 and Assignor 2, respectively including the Assigned Security Documents (as defined hereinafter) are valid, enforceable and binding on the Borrower(s) and Obligor(s)-Loan(s) jointly and severally and the Lender shall be fully entitled thereto, as the Assignee of the Assigned Debts. The said documents as modified by this Agreement are hereinafter collectively referred to as "Assigned Facility Documents".

f. there is no outstanding commitment to lend further or disburse in respect of the Assigned Debt 1, the Assigned Debt 2 and/or the Assigned Debts;

g. the Borrower(s) and Obligor(s)-Loan(s), jointly and severally, owe to the Lender, in respect of the Assigned Debt 1; (i) an aggregate amount of Rs. _____/- (Rupees _____ Only) as on _____, 2025 (including principal outstanding, overdue interest, default interest, accrued interest, other charges) due and payable to the Assignor 1 as also further interest, default interest and other charges from _____, 2024 together with underlying security interest, guarantees, benefits, all right title and interest thereto, (collectively, "Assigned Debt Dues 1") and (ii) an aggregate amount of Rs. _____/- (Rupees _____ Only) as on _____, 2025 (including principal outstanding, overdue interest, default interest, accrued interest, other charges) due and payable to the

Assignor 2 as also further interest, default interest and other charges from _____, 2025 together with underlying security interest, guarantees, benefits, all right title and interest thereto, (collectively, "Assigned Debt Dues 2") and that the same is free of and without any set-off, right of set-off, adjustment, claim, counter-claim, condition, demur or protest The Assigned Debt Dues 1 and Assigned Debt Dues 2 are hereinafter collectively referred to as "Assigned Debt Dues". The Assigned Debt Dues are mentioned in detail in Schedule I hereunder.

h. the Assigned Debt Dues 1 are and shall continue to be duly secured and guaranteed in favour of Lender with the mortgage, hypothecation and guarantees executed, the security interests created on the properties, as mentioned in Part – I of Schedule V hereto (hereinafter collectively referred to as "Assigned Security Interest 1"); and the Assigned Security Interest 1 are in full force and effect and shall continue to be fully valid, enforceable and effective in favour of the Lender till the Final Restructured Amount…

…

1.3 It is agreed that in consideration of amicable resolution of all the disputes between the Parties and as restructuring only with respect to the Assigned Debt Dues and Debentures Obligations, the Parties have agreed that the Borrower(s), Issuer and/or the Obligor(s) shall perform the following actions ("Restructuring Actions") in a timely manner, time being of essence:

(a) on or before [●], the Borrower(s) and/or the Obligor(s) shall pay the Final Restructured Amount along with an interest calculated at the rate of [●] per annum payable

monthly (with effect from April 01, 2025) in the manner and as per the timelines set forth in Schedule IV hereunder ("Composite Payment Schedule");

(b) on or before [●], the Borrower(s), Issuer and/or the Obligor(s) create and/or perfect the Assigned Security Interests and existing securities mentioned in Part III of Schedule V hereunder in favour of the Lender and/or the Debenture Holder(s) ("Security Perfection"); and

(c) on or before [●], the Borrower(s), Issuer and/or the Obligor(s) create charge/mortgage over and perfect the additional securities mentioned in Schedule VI hereunder in favour of the Lender and/or the Debenture Holder(s) ("New Security").

…

1.8 Simultaneous with the Execution Date, the Parties hereby agree to take necessary steps to withdraw litigations more particularly mentioned in Annexure A attached herewith.. Further, subject to there being no default under this Agreement, the Parties hereby agree that no fresh litigation shall be initiated by the Parties against each other with respect to the Assigned Debt Dues and/or the Debentures during the subsistence of this Agreement. Also any notices issued by the Parties against each other shall be kept in abeyance and no adverse action shall be taken on the same by the respective Party during the subsistence of this Agreement. i) Time is of the essence. Without prejudice to the rights and remedies available to the Lender under the Assigned Facility Documents, the Debenture Holder(s) under the Transaction Documents, this Agreement, applicable laws and/or otherwise, the restructuring under this Agreement is valid till [●] ("Long Stop Date"). The said Loan Stop Date may be extended by the Lender and/or the Debenture Holder(s), in their sole and absolute

discretion for a period of _____days only and not beyond that. and in the event, the Borrower(s), Issuer and/or the Obligor(s) at anytime: a) fail to remit/pay the Final Restructured Amount in the manner provided under this Agreement; b) and/or
c) fail to or commit default in performance of the Restructuring Actions;"

79. At this juncture, it is apposite to revisit the fundamental principles governing the formation of a contract. In ***Rutu Mihir Panchal v. Union of India, 2025 SCC OnLine SC 974***, it has been held as under:

"10.3. An agreement enforceable by law is a contract.In turn, every promise and every set of promises forming part of the consideration for each other, is an agreement. And then, when, at the desire of the promisor, the promisee ... has done…something, such act is called consideration. A proposal, when accepted, becomes a promise. Finally, when a person signifies to another his willingness to do anything… with a view to obtaining his assent it is a proposal. While this is the involution of formation of a contract, evolution in its making is evident when a proposal, as defined, becomes a promise and when such a promise is espoused by consideration it becomes an agreement and if that agreement is enforceable in law, it becomes a contract. Between evolution and involution, lies the essential core, the consideration, without which there is no agreement, and if there is no agreement, there is no contract."

80. Applying these settled principles to the facts of the present case, this Court finds merit in the submission advanced on behalf of the respondent No. 1 that the petitioners have failed to demonstrate that the

proposals allegedly submitted by them ever crystallised into a promise through absolute and unqualified acceptance, as mandatorily required under Section 7 of the Indian Contract Act, 1872.

81. The material placed on record reveals that the parties were engaged in continuous negotiations till the very end. Significantly, the last communication relied upon by the petitioners is their email dated 04.06.2025, which reads:

> *"Dear Sir – Attached please find the draft settlement agreements, alongwith details of securities, litigation matters and payment schedule for perusal."*

82. The very language employed particularly the description of the documents as "Draft Settlement Agreements" and their submission "for perusal" indicates that the proposal was still in a tentative and negotiable stage. This was followed by a rejection from the respondent No. 1. Such correspondence, far from evidencing a concluded contract, demonstrates that the terms were under active consideration and had not attained finality.

83. At best, the record suggests that there was some broad understanding or a semblance of agreement on certain aspects. However, there was no *consensus ad idem* on the essential terms and conditions of the proposed restructuring arrangement. The essential elements relating to securities, payment schedules and other material conditions were still being deliberated upon and were subject to further modification.

84. On the contrary, the email dated 16.07.2025 issued by respondent No. 1 constitutes a clear and unequivocal rejection of the proposal put forth

by the petitioners. Consequently, no binding contract or enforceable promise was ever concluded or executed by respondent No. 1 in relation to the alleged settlement of default, as claimed by the petitioners in the present petition.

85. The reliance placed by learned counsel for the petitioners on ***Trimex International FZE Ltd. (supra)*** and ***Kollipara Sriramulu (supra)*** to contend that non-finalisation of formal contract documentation does not negate the existence of a binding agreement, is misplaced and clearly distinguishable on facts.

86. In both the aforesaid decisions, the Hon'ble Supreme Court held that execution of a formal or definitive agreement may, in a given case, be a mere formality where the essential and fundamental terms of the contract have already been conclusively agreed upon between the parties, and the intention to be bound is evident from unimpeachable material on record. The Court found that there was *consensus ad idem* on all vital terms, and what remained was only the formal embodiment of the concluded bargain.

87. The present case stands on an entirely different footing. There is no clear, or undisputed material to demonstrate that the essential terms of the alleged settlement including the amount payable, the schedule and time period for repayment, the rate of interest, and the identification and treatment of secured properties had been finally agreed upon. On the contrary, the material on record indicates that these aspects were still under negotiation and subject to further discussion and documentation.

88. In the absence of a concluded agreement on the fundamental terms, and in view of the continuing negotiations reflected in the draft restructuring proposal, the ratio of the aforesaid judgments does not advance the petitioners' case.

89. At this stage, Mr. Krishnan, learned senior counsel, also makes a valid argument regarding the consequences of granting prayer A. He states that in case the same is granted, it would lead to creation of an Agreement by the Court which is barred under law, as the same would be forcing specific performance of the draft restructuring proposal. He places reliance on ***Mayawanti v. Kaushalya Devi, (1990) 3 SCC 1***, which reads as under:

> *"**8.** In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation."*

(Emphasis added)

90. I am in agreement with the aforesaid contention. This Court cannot, in exercise of its jurisdiction, grant what would in effect amount to specific performance of a contract, particularly when the material on record demonstrates that the terms were still under negotiation and had not attained finality. A party cannot, through judicial intervention, compel the other side to enter into a contract which never came into existence in the eyes of law. To grant such relief would be to overlook one of the fundamental essentials of a binding contract, namely, *consensus ad idem.*

91. Further, it is a settled law that this Court under Section 9 of the Act cannot direct specific performance of a contract. Under Section 9 the Court is only required to preserve the subject matter.

92. In ***Pink City Expressway (P) Ltd. v. National Highways Authority of India, 2022 SCC OnLine Del 1816***, the Court held as under:

> *"19. Law on the scope of interference in a Section 9 petition is no longer res integra. The learned Single Judge has held that the prayer made by the Appellant in the Section 9 petition cannot be granted as that would amount to extending the contract contrary to the decision dated 29.04.2022. It is well-settled that powers under Section 9 can only be exercised for preservation of the subject matter of the dispute till the decision of the Arbitral Tribunal and cannot be extended to directing specific performance of the contract itself. The learned Single Judge has in this context relied on the judgment of the Division Bench in C.V. Rao (supra) and in our view rightly so. Reliance was also placed on the judgment of another Division Bench in DLF Ltd. (supra). We find no infirmity in the prima facie view that*

directing the Respondent to extend the contract for a further period, beyond 14 months extension granted, would amount to granting specific relief of the contract and is beyond the scope of the powers of the Court under Section 9 of the Act. For a ready reference, we may allude to para 40 of the judgment in DLF Ltd. (supra), as follows:—

> *"40. In C.V. Rao v. Strategic Port Investments KPC Ltd. 2014 SCC OnLine Del 4441, this Court had held that while exercising jurisdiction under Section 9 of the A&C Act, the Court cannot ignore the underlying principles which govern the analogous powers conferred under Order XXXIX Rules 1 & 2 CPC and Order XXXVIII Rule 5 CPC. Not only is the court required to be satisfied that a valid arbitration agreement existed between the parties, but the powers under Section 9 of the A&C Act could be exercised only for orders of an interim measure of protection in respect of the matters specified in Section 9 (ii)(a) to (e) of the A&C Act. In other words, the orders must relate to preservation of the property, which is the subject matter of the dispute, till the Arbitral Tribunal decides the same. The scope of relief under Section 9 of the A&C Act cannot be extended to directing specific performance of the contract itself.""*

(Emphasis added)

93. In view of the aforesaid, it is evident that specific performance of a contract cannot be granted in proceedings under Section 9. The petitioners, by way of this petition, in effect, seek enforcement of an alleged understanding, despite there being no concluded and binding contract between the parties. Such a relief would amount to directing

specific performance and compelling the parties to enter into or continue a contractual arrangement, which is impermissible in law. This Court cannot, in exercise of its powers under Section 9, compel the creation of a binding contract where none exists as mentioned earlier.

94. In the absence of a concluded agreement, the foundational basis for the reliefs sought in the present petition collapses. Accordingly, on these foundational facts alone, the petition is liable to fail.

CONCLUSION

95. In view of the above discussion, the other submissions advanced by the petitioners namely, that the NCLT is not an efficacious forum, and that the grant of relief would not amount to foreclosing the respondent No.1's rights under the SARFAESI Act, 2002 do not require adjudication in the present case. These issues are left open to be considered in an appropriate case.

96. Consequently, the question of granting an anti-suit or anti-tribunal injunction, or of pre-empting proceedings under the SARFAESI Act, 2002 does not arise. To enter into an examination of those issues, in the absence of even a prima facie finding regarding the existence of an arbitration agreement, would be a purely academic exercise. This Court declines to undertake such an exercise at this stage.

97. In view of the reasons above interim recorded on 26.09.2025 stands vacated, and the said petition is also dismissed.

98. Pending applications, if any, also stand disposed of.

O.M.P (I) (COMM) 367/2025

99. As both the parties are ad idem that O.M.P (I) (COMM) 367/2025 will be covered by the decision in O.M.P. (I) (COMM) 330/2025, as it arises from an identical and substantially similar factual matrix.

100. In view of the above, O.M.P (I) (COMM) 367/2025 is also dismissed.

101. Pending applications, if any, also stand disposed of.

JASMEET SINGH, J

FEBRUARY 19, 2026/DE