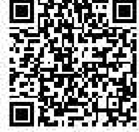

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd May, 2026
Pronounced on:03rd July, 2026

\+ O.M.P.(I) (COMM.) 129/2026 & I.A. 8254/2026

RAJEEV BEHL .....Petitioner

Through: Mr. Ashish Mohan, Sr. Advocate with Mr. Gaurav Gupta and Mr. Thakur Ankit Singh, Advs.
M: 9026272055
Email: ankit@satyaheadlegal.com

versus

BHUPESH KUMAR DHINGRA & ORS. .....Respondents

Through: Mr. Saurabh D. Karan Singh, Mr. Sridhar Jha, Mr. Prabhau Patel, Advocates
Mob: 9871042204
Email: office@smkpartners.in

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") seeking urgent interim protection in respect of the project known as *Capitol City Mall*, now *Emaya Mall*, situated at *Plot Nos. BG-1 and BG-2, Paschim Vihar, New Delhi"* ("**Subject Project**") developed through respondent no. 2 i.e., SS Con-Build Private Limited ("**SSCBPL**").

2. The relief sought in the present petition is principally for protection of the petitioner's claimed 50% share in the subject project. The petitioner seeks

orders restraining the respondents from creating any third-party rights, alienating, transferring, encumbering, leasing, licensing or otherwise dealing with 50% of the saleable area of the subject project. Furthermore, the petitioner seeks an order for maintenance of *status quo* in respect thereof during the pendency of the arbitral proceedings.

3. The petitioner has invoked the arbitration *vide* Legal Notice dated 18th February, 2026 under Clause 9 of the Memorandum of Understanding dated 20th September, 2011 ("***MOU-II***"), thus, the interim protection is sought pending commencement of arbitral proceedings.

4. It is to be noted that *vide* order dated 12th May, 2026, this Court had recorded that a petition for appointment of arbitrator under Section 11 of the Arbitration Act was being filed by the petitioner herein. Said petition has since been filed and is numbered as *ARB. P. 919/2026*, and is pending consideration.

5. The petitioner in the present case is one of the original promoters of the *Realtech Group of Companies* ("**Realtech Group**"), along with Mr. Yogesh Gupta and Mr. Pankaj Dayal. The Realtech Group controlled and managed various real estate ventures through several corporate entities, including, *Realtech Infrastructure Limited* ("**RIL**"). Furthermore, the respondent no. 1 is the promoter and shareholder of the B.K. Dhingra Group of Companies ("**Dhingra Group**"). The respondent no. 2 was incorporated in the year 2006, as a Special Purpose Vehicle, jointly owned and controlled by the Dhingra Group and the Realtech Group. The respondent no. 3 is an entity which is stated to be owned and controlled by respondent no. 1 and its family members.

6. As per the facts on record, the respondent no. 2, i.e., SSCBPL was formed as a Special Purpose Vehicle by the Dhingra Group and the Realtech Group for development of the subject project, on the land allotted by the

Delhi Development Authority ("**DDA**"). Admittedly, the Realtech Group collectively held 50% stake in the subject project through their shareholding and investment in respondent no. 2, while the remaining 50% stake was held by the Dhingra Group.

7. Thereafter, on 05th December, 2006, the Realtech Group formed RIL and all the investments in respondent no. 2 were made by the Realtech Group through RIL. It is the admitted position that substantial funds were infused into respondent no. 2 by RIL and respondent no. 1 towards acquisition of the land and development of the subject project.

8. It is a matter of record that the petitioner, along with Mr. Yogesh Gupta and Mr. Pankaj Dayal, were equal shareholders and promoters of RIL. However, due to some internal disputes, the constituents of RIL had entered into a Memorandum of Understanding dated 02nd June, 2011 ("**MOU-I**") for division of various business interests and projects amongst themselves. Pursuant to the same, under MOU-I, the subject project was allocated to the petitioner, while other projects were allotted to the remaining two promoters of the Realtech Group. The respondents herein were not signatories to the MOU-I.

9. Pursuant thereto, on 20th September, 2011, MOU-II was executed between the petitioner, respondent no. 1 and respondent no. 2, which acknowledged and recognised the petitioner as the representative of RIL in respect of its rights in SSCBPL and the subject project.

10. Thereafter, disputes arose amongst the constituents of RIL, regarding implementation of MOU-I and the matter was referred to arbitration before a Sole Arbitrator, Justice (Retd.) S.B. Sinha, former Judge Supreme Court of India. In the said proceedings, the petitioner, *inter alia*, sought declarations recognising him as successor to the rights of RIL in respondent no. 2,

including, rights pertaining to the shareholding and advances standing in the name of RIL.

11. During the pendency of the aforesaid arbitral proceedings, the petitioner requested respondent no. 2 to earmark and allot units corresponding to the interest which were to devolve upon him. Thereafter, certain units, occupying approximately 33,000 sq. ft. in the subject project, were leased to *M/s Total Properties Maintenance LLP*, an entity stated to be connected with the petitioner, by way of the Management and Maintenance Deed dated 14th September, 2015.

12. The said Deed was subsequently cancelled by respondent no. 2, *vide* Letter dated 03rd March, 2016. The said cancellation resulted in separate arbitral proceedings before Ld. Sole Arbitrator, Justice (Retd.) P.K. Bahri, Former Judge of this Court. The validity of the Deed dated 14th September, 2015, was upheld by the award dated 19th February, 2018.

13. Consequently, the Arbitral Award dated 28th January, 2018 was passed by Justice (Retd.) S.B. Sinha, adjudicating upon the disputes arising out of MOU-I. The said award recognised MOU-I as a valid and binding document and as per the case put forth by the petitioner, the same also vested the rights of Realtech Group in SSCBPL, with the petitioner.

14. During the arbitral proceedings, the petitioner and Mr. Pankaj Dayal entered into a Settlement Agreement dated 16th December, 2015. The said award has accepted and incorporated the Settlement Agreement, as a part of the Award.

15. Thereafter, the said Award was challenged under Section 34 of the Arbitration Act by Mr. Pankaj Dayal before this Court in *O.M.P. (COMM.) 449/2018*, wherein, the same was dismissed and the said award attained finality. However, it is to be noted that the parties, in the present petition, place divergent interpretations upon the said award.

16. It is the case of the petitioner that despite the crystallized rights of the petitioner, wherein, 50% share of the Realtech group in the subject project vests exclusively in the petitioner, the respondents have tried to divest the stake of the petitioner. Furthermore, a Divestment Agreement dated 18th January, 2018, was entered into by the respondent no. 2 and RIL, whereby, RIL is stated to have divested its stake and recovered the substantial part of its advances in respondent no. 2.

17. As per the said Divestment Agreement, 50% share of RIL in the subject project has been transferred to one Suridhi Commercial Infra Pvt. Ltd., respondent no. 3 herein, which is an entity owned and controlled by respondent no. 1. The petitioner disputes the validity and legality of the said agreement. The respondents, however, maintain that it was RIL which had 50% stake in the respondent no. 2 and not the petitioner, thus, the transaction was lawful and that the petitioner has no enforceable claim in respect thereof.

18. Since the petitioner is aggrieved by such transfer of 50% share of RIL to respondent no. 3, the petitioner has filed the present petition praying for directions to the respondents for maintaining *status quo* to restrain the respondents from alienating, encumbering or creating third party rights in respect of the petitioner's 50% share in the subject project.

19. Learned Senior Counsel appearing on behalf of the petitioner has made the following submissions:

19.1 The petitioner has an established and crystallised interest in 50% of the rights, title and interest in respondent no. 2 and the subject project. The entitlement of the petitioner flows from MOU-I, executed amongst the constituents of the Realtech Group, which expressly confers the rights and title of RIL in the subject project with the petitioner. Furthermore, the entitlement of the petitioner flows from the subsequent MOU-II, executed between the petitioner, respondent no. 1 and respondent no. 2. Thereafter, the

Award dated 28th January, 2018, passed by Justice (Retd.) S.B. Sinha, explicitly records that the rights and interests of the Realtech Group in the said property, stand vested in the petitioner, and the said Award further directs the parties to perform their obligations as per MOU-I.

19.2 The present petition is not concerned with adjudication of the merits of the disputes between the parties. The scope of proceedings under Section 9 of the Arbitration Act is confined to preservation of the subject matter of arbitration, pending adjudication by the Arbitral Tribunal.

19.3 The petitioner's entitlement is independently acknowledged under MOU-II, which was executed by SSCBPL itself and it expressly recognised the petitioner as the sole person entitled to represent the rights and investments of the Realtech Group in the subject project. Reliance is also placed on pleadings filed on behalf of SSCBPL before the erstwhile Company Law Board in *Company Petition. 118/2012,* wherein, SSCBPL is stated to have acknowledged on affidavit that the rights of the Realtech Group in the subject project had fallen to the share of the petitioner pursuant to the settlement amongst the promoters.

19.4 Despite such acknowledgment, the respondents have, since 2015, adopted a series of fraudulent and collusive measures to defeat the petitioner's rights. The acts of the respondents, *inter alia*, include unilateral allotment of units in the mall in favour of RIL and respondent no.3, i.e., *Suridhi Commercial Infra Pvt. Ltd*., the petitioner's removal from the management of SSCBPL through allegedly illegal board actions, and assumption of control over RIL through alleged false and fabricated disclosures.

19.5 It is alleged by the petitioner that the Extraordinary General Meetings ("***EGMs***") dated 14th December, 2015, and 14th January, 2016, to remove the petitioner as the director of SSCBPL, were called without notice to the petitioner. It is also alleged by the petitioner that backdated filings were made

before the Registrar of Companies showing the petitioner's shareholding in SSCBPL as "*nil*", despite earlier statutory filings for the period between 2010-2015 reflecting the petitioner's shareholding of 8,33,333.

19.6 The principal instrument, through which the rights of the petitioner have been sought to be defeated, is the Divestment Agreement dated 18th January, 2018. The said Agreement was allegedly executed between RIL and respondent no. 3, a company stated to be controlled by respondent no.1 and his family members. Further, the said agreement is a sham transaction, inasmuch as it surfaced for the first time only on 16th July, 2019, with the reply of the respondents in *C.A. 699/2019* in C.*P. (IB) 13/*2016, and the same is unstamped, unregistered which records an allegedly grossly inadequate consideration of Rs. 27 crores for assets stated to be worth more than Rs. 250 crores. The said agreement was executed without any board resolution of SSCBPL or RIL and the consideration thereunder was paid to Mr. Yogesh Gupta, despite having no entitlement in the subject project as per the terms of MOU-I and the Award dated 28th January, 2018. Thus, these circumstances demonstrate that the said Agreement was executed only to place the project assets beyond the reach of the petitioner.

19.7 The respondents have consistently acted in breach of judicial orders. In this regard, reference is made to proceedings arising out of *Company Petition No. 13/2016* before the erstwhile Company Law Board and thereafter, before the National Company Law Tribunal ("***NCLT***") and National Company Law Appellate Tribunal ("***NCLAT***"), wherein *status quo* orders are stated to have operated in relation to the affairs of SSCBPL. Despite such orders, the respondents proceeded with transactions affecting the petitioner's claimed interest in the project, resulting in pending contempt proceedings. Further, violations of orders passed by this Court are stated to be under consideration in *CONT.CAS.(C) 758/2025* and *CONT.CAS.(C) 1656/2025*.

19.8 Furthermore, the Lease Restoration Order dated 25th November, 2024 and the consequent Conveyance Deed dated 20th December, 2024 executed by DDA in favour of SSCBPL are under challenge in *W.P.(C) 5470/2025*. Additionally, the respondents have filed multiple applications for early hearing in *W.P.(C) 6868/2023,* seeking removal of restrictions operating against registration and transfer of units in the mall, which demonstrates a continuing intention to alienate the project inventory pending adjudication of the disputes between the parties.

19.9 The conduct of the respondents demonstrates that the respondents are actively seeking to remove existing restraints operating against transfer of units in the project and that there exists a real and imminent apprehension of further alienation of the mall inventory. It is contended that if third-party rights are permitted to be created pending arbitration, the subject matter of the dispute would stand irreversibly altered and the petitioner would be compelled to pursue multiple proceedings against subsequent transferees, rendering the arbitral remedy ineffective.

19.10 Furthermore, the cause of action is continuing in nature. As per Clause 7 of MOU-II, the obligation to divide and deliver the respective shares in the subject project could arise only upon completion of the subject project and availability of marketable title. Further, as the Conveyance Deed executed on 20th December, 2024, and the knowledge thereof acquired by the petitioner on 08th September, 2025, constitute the relevant triggering events, along with the continuing acts of alleged alienation and acknowledgements reflected in subsequent financial statements, furnish recurring causes of action and, therefore, the present petition is not barred by limitation.

19.11 The respondent no. 3 is not a *bona fide* third-party, but forms part of the same corporate group controlled by respondent no. 1, and was directly involved in the impugned transactions, thus, the *Group of Companies doctrine*

applies in the present case, and the interim protection must extend equally against respondent no. 3 and any assets or inventory claimed through it.

20. *Per Contra*, the learned counsel appearing on behalf of the respondents has made the following submissions:

20.1 The petitioner has failed to establish a *prima facie* right in the subject project, and was never a shareholder of respondent no. 2 in his individual capacity. Further, he had merely been inducted as a nominee director representing RIL. Consequently, the petitioner cannot assert any independent proprietary or contractual rights in respondent no. 2 or its assets.

20.2 Furthermore, the validity and effect of MOU-I were disputed by other constituents of the Realtech Group, which resulted in arbitration culminating in the Award dated 28th January, 2018. The petitioner has deliberately relied only upon selective observations contained therein, while suppressing the operative portion of the Award. It is pertinent to note that in the said proceedings, the petitioner had specifically sought declarations recognising him as the successor-in-interest of RIL in respect of its shareholding and advances. However, the Ld. Sole Arbitrator had expressly refused the transfer of ownership of RIL's shareholding to the petitioner, and therefore, the petitioner cannot claim any enforceable rights flowing from the said Award.

20.3 The MOU-II cannot be read in isolation as it was executed on the basis of representations made by the petitioner that he had become entitled to the rights of RIL under MOU-I. Further, the continued validity and enforceability of MOU-II was contingent upon the petitioner establishing such entitlement. Thus, once the reliefs claimed by the petitioner under MOU-I were declined in arbitration, no independent rights survive under MOU-II.

20.4 Subsequently, the conduct of the petitioner itself demonstrates that the petitioner never interpreted the Award as vesting RIL's rights in him. The petitioner did not initiate enforcement proceedings for more than five years,

after the Award dated 28th January, 2018, became enforceable. The petitioner filed the petition being *OMP (ENF.) (COMM.) 140/2023* only in August, 2023. Additionally, the petitioner had also instituted a petition under Section 9 of the Arbitration Act, being *OMP(I)(COMM.) 259/2023* against RIL and its shareholders, seeking substantially similar reliefs to the present petition. The petitioner has failed to disclose that no interim protection was granted therein.

20.5 Furthermore, RIL divested its interest in respondent no. 2 under the Divestment Agreement dated 18th January, 2018 and received consideration in respect thereof. The petitioner admittedly became aware of the said transaction on 16th July, 2019. Despite such knowledge, the petitioner neither questioned the validity of the said Agreement, nor sought any substantive relief against it for several years. Thus, the petitioner, now cannot seek urgent interim protection on the basis thereof.

20.6 The primary rights of the petitioner, if any, could only be asserted against RIL and its shareholders and not against the respondents. It is a matter of record that RIL voluntarily divested its interest in favour of respondent no. 3 and received consideration, yet the petitioner has neither challenged the said transaction against RIL, nor sought appropriate reliefs against it.

20.7 Furthermore, the respondent no. 3, i.e., *Suridhi Commercial Infra Pvt. Ltd.*, was incorporated on 05th March, 2015 and was neither a signatory to MOU-I nor to MOU-II. The respondent no. 3 independently acquired RIL's interest under the Divestment Agreement dated 18th January, 2018, after making payments to RIL and it cannot be treated as a veritable party to the arbitration agreement, and thus, the invocation of the Group of Companies doctrine, is not satisfied in the present case.

20.8 The present claims are *ex facie* barred by limitation. The occupancy certificate for the Project was issued on 04th April, 2014, and the area

allegedly falling under the petitioner's share was leased on 14th September, 2015. The Lease Deed stood cancelled on 03rd March, 2016, and thereafter, the Divestment Agreement was executed on 18th January, 2018, and the petitioner admittedly acquired knowledge thereof on 16th July, 2019. The present proceedings, as well as the invocation of arbitration *vide* Legal Notice dated 18th February, 2026, have been initiated several years after the cause of action, if any, arose in favour of the petitioner. Thus, the present claims of the petitioner are barred by limitation.

20.9 The petitioner has failed to establish a *prima facie* case for interim protection as the claims of the petitioner, even if assumed to be maintainable, are incapable of being quantified in monetary terms. On the other hand, restraining respondent no. 3 from dealing with the commercial inventory of the said project would result in substantial business prejudice. The petitioner has adopted inconsistent positions before different forums and it seeks orders affecting numerous third-party allottees who have not been impleaded in the present petition. It is accordingly prayed that the present petition be dismissed with costs.

21. I have heard learned counsels for the parties and perused the record.

22. The present petition is under Section 9 of the Arbitration Act and has been filed after invocation of arbitration *vide* Legal Notice dated 18th February, 2026 under Clause 9 of Memorandum of Understanding dated 20th September, 2011 ("***MOU-II***"). It is to be noted that the jurisdiction under Section 9 of the Arbitration Act is confined to granting interim measures for preservation of the subject matter pending arbitration, in case the tests of *prima facie* case, balance of convenience and irreparable injury, are satisfied. It is pertinent to note that at this stage, the Court is not expected to finally adjudicate disputed questions *inter alia*, relating to title, interpretation of contractual documents, validity of transfers or allegations of fraud.

23. In this regard, this Court notes that the Supreme Court in the case of ***Arcelor Mittal Nippon Steel India Limited Versus Essar Bulk Terminal Limited, (2022) 1 SCC 712***, has unambiguously held that the purpose of Section 9 of the Arbitration Act is to ensure that the subject matter of the arbitration is preserved, so that arbitration proceedings are not rendered infructuous. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***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.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

24. Further, in the case of ***Ariat International Inc. Versus Sunglass Palace India Pvt. Ltd., 2025 SCC OnLine Del 9488***, this Court has held that jurisdiction of the Court under Section 9 of Arbitration Act is aimed at safeguarding and preserving the subject matter of arbitration, and the Court cannot adjudicate upon the merits of dispute, and grant final relief. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***15. The legal position with respect to Section 9 of the Act remains undisputed. The Supreme Court in the case of Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd. and Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd. has extensively dealt with the scope of intervention by the Courts while granting interim relief pending arbitration. It was reiterated that the jurisdiction of the Court under Section 9 of the Act is aimed at safeguarding and preserving the subject matter of the arbitration, so as to prevent frustration of the arbitral process and to ensure that the arbitral proceedings are not rendered otiose or inefficacious. It***

<u>was further observed that while exercising jurisdiction under Section 9 of the Act, the Court cannot adjudicate upon the merits of the dispute, grant final relief, extend contractual obligations, or direct specific performance.</u> *The relief is essentially preservative in nature and is governed by the settled principles of grant of temporary injunctions under Order XXXIX of the Civil Procedure Code, 1908 (hereinafter referred as 'the CPC') and the triple test of prima facie case, balance of convenience and irreparable harm.*

xxx xxx xxx

17. ***<u>Thus, the paramount object underlying the exercise of jurisdiction under Section 9 of the Act, inter alia, is the preservation and protection of the subject matter of the dispute, so as to maintain the equitable balance between the parties and to ensure that the arbitral proceedings are not rendered illusory.</u>***

xxx xxx xxx"

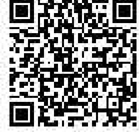
(Emphasis Supplied)

25. Thus, at the stage of Section 9 of the Arbitration Act, the Court is only required to examine: ***(i)*** whether the petitioner has disclosed a *prima facie* arbitral claim deserving interim protection; ***(ii)*** whether refusal of interim relief would result in irreparable harm to the petitioner or dissipation of the subject matter, and ***(iii)*** whether the balance of convenience favours preservation.

26. In the case of ***Adhunik Steels Ltd. Versus Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125***, the Supreme Court has held that where a *prima facie* case exists, and the subject matter of arbitration is in danger of being dissipated, interim protection must follow. Further, where there is a clear threat of alienation or dissipation of disputed property, Courts are justified in granting injunctions under Section 9 of the Arbitration Act. Thus, it has been held as follows:

"xxx xxx xxx

10. *Learned counsel for OMM Private Limited submitted that Section 9 leaves it to a party to approach the court for certain interim measures and it enables the court to pass orders by way of interim measures of protection in respect of the matters enumerated therein. Neither this section nor the Act elsewhere has provided the conditions for grant of such interim protection leaving it to the court to exercise the jurisdiction vested in it as a court to*

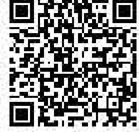


adjudge whether any protective measure is called for. In that context, neither the provisions of the Code of Civil Procedure nor the provisions of the Specific Relief Act can be kept out while the court considers the question whether on the facts of a case, any order by way of interim measure of protection should be granted. ***So, the court had necessarily to consider the balance of convenience, the question whether at least a triable issue arises if not the establishment of a prima facie case by the applicant before it and the other well-known restrictions on the grant of interim orders, like the principle that a contract of personal service would not be specifically enforced or that no injunction would be granted in certain circumstances as envisaged by Section 14 and Section 41 of the Specific Relief Act.*** *Thus, it was contended that grant of an injunction by way of interim measure to permit Adhunik Steels to carry on the mining operations pending the arbitration proceedings notwithstanding the termination of the contract by OMM Private Limited was not permissible in law.*

11. It is true that Section 9 of the Act speaks of the court by way of an interim measure passing an order for protection, for the preservation, interim custody or sale of any goods, which are the subject-matter of the arbitration agreement and such interim measure of protection as may appear to the court to be just and convenient. The grant of an interim prohibitory injunction or an interim mandatory injunction are governed by well-known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was dehors the accepted principles that governed the grant of an interim injunction. *Same is the position regarding the appointment of a receiver since the section itself brings in the concept of "just and convenient" while speaking of passing any interim measure of protection. The concluding words of the section, "and the court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it" also suggest that the normal rules that govern the court in the grant of interim orders is not sought to be jettisoned by the provision.* ***Moreover, when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by the Act. On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under Section 9 of the Act.***

xxx xxx xxx

21. It is true that the intention behind Section 9 of the Act is the issuance of an order for preservation of the subject-matter of an arbitration agreement*. According to learned counsel for Adhunik Steels, the subject-matter of the arbitration agreement in the case on hand, is the mining and lifting of ore by it from the mines leased to OMM Private Limited for a period of 10 years and its attempted abrupt termination by OMM Private Limited and the dispute before the arbitrator would be the effect of the agreement and the right of OMM Private Limited to terminate it*

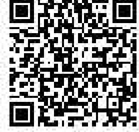


prematurely in the circumstances of the case. So viewed, it was open to the court to pass an order by way of an interim measure of protection that the existing arrangement under the contract should be continued pending the resolution of the dispute by the arbitrator. May be, there is some force in this submission made on behalf of Adhunik Steels. But, at the same time, whether an interim measure permitting Adhunik Steels to carry on the mining operations, an extraordinary measure in itself in the face of the attempted termination of the contract by OMM Private Limited or the termination of the contract by OMM Private Limited, could be granted or not, would again lead the court to a consideration of the classical rules for the grant of such an interim measure. Whether an interim mandatory injunction could be granted directing the continuance of the working of the contract, had to be considered in the light of the well-settled principles in that behalf. ***Similarly, whether the attempted termination could be restrained leaving the consequences thereof vague would also be a question that might have to be considered in the context of well-settled principles for the grant of an injunction. Therefore, on the whole, we feel that it would not be correct to say that the power under Section 9 of the Act is totally independent of the well-known principles governing the grant of an interim injunction that generally govern the courts in this connection. So viewed, we have necessarily to see whether the High Court was justified in refusing the interim injunction on the facts and in the circumstances of the case.***

xxx xxx xxx"

(Emphasis Supplied)

27. Likewise, in the case of ***Essar House Private Limited Versus Arcellor Mittal Nippon Steel India Limited, (2022) 20 SCC 178***, the Supreme Court elaborated upon the scope of Section 9 of the Arbitration Act. It was held that Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. It was held that the Court is required to see whether the applicant for interim measure has a good *prima facie* case, whether the balance of convenience is in favour of interim relief being granted, as prayed for and whether the applicant has approached the Court with reasonable expedition. Thus, it was held as follows:



"xxx xxx xxx

> ***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 5CPC.***
>
> ***49.** **Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending arbitral award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail**.*

xxx xxx xxx"

(Emphasis Supplied)

28. In the present case, the urgent interim protection is sought with respect of the Project known as *'Capitol City Mall/Emaya Mall'* situated at *Plot Nos. BG-1 and BG-2, Paschim Vihar, New Delhi*, developed through respondent no. 2, i.e., SSCBPL.

29. The claim of the petitioner in the subject project is founded on a series of inter-connected documents and proceedings and the same cannot be characterised as unsupported. The MOU-I dated 02nd June, 2011 records the separation arrangement amongst the promoters and equal shareholders of the Realtech Infrastructure Limited ("***RIL***"), namely Mr. Rajeev Behl (petitioner herein), Mr. Yogesh Gupta and Mr. Pankaj Dayal. As per MOU-I, the Capitol City Mall/ Emaya Mall Project was allocated to the petitioner.

30. In pursuance thereof, MOU-II was executed between the petitioner, respondent no. 1 (B.K. Dhingra and Group) and respondent no. 2 (SSCBPL). The Agreement records the investment of approximately Rs. 50.47 crores by RIL in SSCBPL and recognises the petitioner as the person entitled to represent and realise the interest of RIL in the subject project.

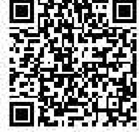
31. Thereafter, disputes arose between the promoters of RIL *qua* MOU-I, which formed the subject matter of arbitral proceedings before Justice (Retd.) S.B. Sinha. The Arbitral Award dated 28th January, 2018 records that the rights of the RIL in the subject project stand vested with Mr. Rajeev Behl ('**RB**'), the petitioner herein. Reference in this regard may be made to the relevant portion of the Award, which reads as under:

> *"xxx xxx xxx*
>
> *95. It is true that the MoU does not contain any annexures specifically marked as such.*
>
> *It also does not contain any schedule as such.*
>
> *RB, however, contends that page 34 of the MOU contains all the annexures, being Annexures 1, 2 and 3. The said page contains the respective signatures of all the parties. They have also in their own handwritings put their names above the estimated valuation of the projects titled 1) Paschim Vihar 2) City Emporio and 3) FBT -IT Copia.*
>
> ***Indisputably Paschim Vihar has fallen to the share of RB, Citi Emporio has fallen to the share of PD and FBT- IT Copia has fallen to the share of YG.***
>
> *xxx xxx xxx*
>
> ***356. So far as issue of Shree Garg Properties is concerned in terms of the MOU dated 02.06.2011 the right title of the Real tech Group in the Property capital City Mall, Paschim Bihar Being developed by M/s SS Conbuild Ltd. stands vested with RB as has been acknowledged by PD in the settlement entered into by and between him and RB.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

32. Furthermore, it is a matter of record that the said Award upholds MOU-I as a valid and binding document, directs performance of obligations to the signatories under MOU-I and incorporates the Settlement Agreement dated 16th December, 2015 between the petitioner, Mr. Rajeev Behl and Mr. Pankaj Dayal. It is noted that the said Award was upheld by this Court in *O.M.P. (COMM.) 449/2018* by order dated 29th October, 2018 and the same has attained finality.

33. The petitioner has further relied upon the reply filed by SSCBPL, respondent no. 2 herein, through respondent no. 1 in *Company Petition No. 118/2012* before the erstwhile Company Law Board, wherein, it was stated by the respondent no. 2 that pursuant to the separation arrangement, the rights of RIL in the subject project had fallen to the share of Mr. Rajeev Behl and that he alone could claim *locus standi* in respect thereof. The relevant portion of the said reply, is reproduced as under:

> *"xxx xxx xxx*
>
> *18. That it is submitted with great respect that the petitioner has no locus standi to file the present petition as in any case in lieu of the MOU dated 02/06/2011* ***and in terms of the settlement arrived between the promoters-Directors of the "Realtech Group", being (1) Mr. Yogesh Gupta-Petitioner, (2) Mr. Rajiv Behl and (3) Mr. Pankaj Dayal the shares held by the Realtech Group or for that matter the shares held by the company "Realtech Infrastructure Ltd." stands transferred for all intents and purposes to one of the promoters namely Mr. Rajiv Behl. It would be pertinent to mention herein briefly that*** *…………*
>
> *xxx xxx xxx*
>
> *(a)* ***That the petitioner along with Mr. Rajiv Behl and Mr. Pankaj Dayal were the founding promoters, directors and shareholders of the Realtech Group which comprises of the following companies namely:***
>
> ***(i) Realtech Infrastructure Limited,*** *(ii) Realtech Construction Private Limited, (iii) Realtech Projects Private Limited, (iv) Realtech Maintenance Services Private Limited, (v) Realtech Sports Academy Private Limited, (vi) Realtech Facilitators Private Limited, (vii)Realtech promoters Private Limited, (viii) Realtech Developers Private Limited, (ix) Realtech Heights Private Limited, (x) Realtech Skiers Private Limited, (xi) Vivid Builders Private Limited, (xii)* ***S.S.Con Build Private Limited,*** *(xiii) Dove Infrastructure Private Limited, (xiv) Pacific Sports Academy Private Limited.*
>
> ***(b) That these promoter-Directors are partners in equal proportions of the Real tech Group and due to certain differences the parties have parted their own ways as per the MOU dated 02/06/2011, wherein the current ongoing Real Estate projects being under the construction by the Realtech Group being Capitol City Mall, Paschim Vihar, New Delhi, City Emporio Mall, 143-A, Industrial Area, Purv Marg, Chandigarh and I.T. Park, Sector 37, Faridabad,***



<u>Haryana was distributed amongst Mr. Rajiv Behl, Mr. Pankaj Dayal and Mr. Yogesh Gupta respectively.</u>

(c) ***<u>That in view of the separation of the parties and the rights of the Realtech Group now falling under the share of Mr. Rajiv Behl, it could have been Mr. Behl, who could have any locus to file the present petition.</u>***

xxx xxx xxx"

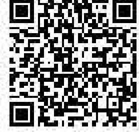
(Emphasis Supplied)

34. The aforesaid documents, when read holistically and collectively, demonstrates that the petitioner has raised a *bona fide* and arguable claim requiring adjudication. As noted hereinabove, at the stage of Section 9 of the Arbitration Act, this is sufficient to constitute a *prima facie* case without entering into the merits of the underlying dispute or recording any final finding on ownership.

35. At this stage, it is noted that the respondents have raised the following objections:

a) The petitioner never acquired RIL's interest in SSCBPL. It is the case of the respondents that MOU-I merely provides for the manner in which the properties of RIL are to be distributed among the promoters of RIL, while being silent on the entitlement of each party. Furthermore, the Award dated 28th January, 2018 does not declare the petitioner as the successor-in-interest of RIL in SSCBPL. The said Award refuses to transfer ownership of advances of RIL to the petitioner.

b) The MOU-II was executed by the respondents, only on the representation of the petitioner that MOU-I has been accepted by RIL as well as Mr. Yogesh Gupta and Mr. Pankaj Dayal. Thereafter, MOU-I was objected by the promoters subsequently and it became subject matter of arbitration between the parties. Since, the reliefs under MOU-I were declined by the Award, therefore, MOU-II automatically becomes unenforceable.

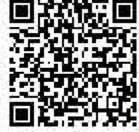


c) It is RIL which has divested its interest in favour of respondent no. 3 under the Divestment Agreement dated 18th January, 2018 and received back the advances paid by RIL to respondent no. 3. Therefore, the petitioner has a valid cause of action against RIL and not the respondents.

d) The cause of action arose on 18th January, 2018 when the respondent no. 3 entered into a Divestment Agreement. Even if it is assumed that the petitioner learnt about the said Divestment Agreement on 16th July, 2019 (as it is claimed by the petitioner), still, the present claims of the petitioner are barred by limitation.

36. It is pertinent to note that all the objections raised by the respondents are disputed issues. The petitioner has challenged the validity of Divestment Agreement as being backdated, inadequately stamped and unsupported by shareholder approval or any board resolution of SSCBPL or RIL. Likewise, there is a serious dispute regarding the interpretation of *paragraph 356* and *paragraphs 432-441* of the Arbitral Award. There are disputed questions raised as to whether the said Award recognises the contractual and quasi-partnership rights of the petitioner *qua* the subject project, and whether the said Award refuses to declare petitioner as the successor-in-interest of RIL in SSCBPL or left this question for the appropriate forum to decide.

37. On the issue of limitation, this Court notes the submission of the petitioner that the petitioner has invoked arbitration on the basis of Clause 9 of MOU-II and it submits that Clause 7 of MOU-II governs the final division and delivery of the respective 50% share in the subject project. As per the petitioner, the obligation to divide and deliver under the said Clause, accrues only upon the *"completion of the said project"*. Therefore, it is submitted that Clause 7 of MOU-II became enforceable only upon execution of the Conveyance Deed dated 20th December, 2024 between DDA and SSCBPL, which came to petitioner's knowledge only on 08th September, 2025.



38. Now, whether this contention is ultimately correct is a matter for the Arbitral Tribunal to decide. Additionally, the petitioner alleges that the respondents have engaged in continuing acts of fraud and alienation extending to year 2024-25. Each act of the respondents constitutes a fresh cause of action and therefore, the present petition is within the statutory period of limitation. The petitioner has also relied upon continuing acknowledgements in the balance sheets of SSCBPL.

39. Thus, the submissions of both the parties make it evident that the issue of limitation is a mixed question of law and fact and it is closely intertwined with disputed questions of cause of action, interpretation of contracts and continuing acknowledgements of the respondents.

40. It is therefore apparent that none of the objections/issues, as raised by the respondents, can be conclusively determined in proceedings under Section 9 of the Arbitration Act. These issues require leading of evidence and detailed examination of MOU-I, MOU-II, the Arbitral Award dated 28th January, 2018, the Settlement Agreement, the alleged Divestment Agreement, contemporaneous balance sheets and ROC filings. The Court cannot enter into the merits of these objections at the stage of the Section 9 petition.

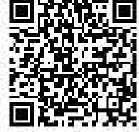
41. At this stage, it would be relevant to refer to the judgment of the Supreme Court in the case of ***ITW Signode India Ltd. Versus Collector of Central Excise, (2004) 3 SCC 48***, wherein, the Supreme Court has held that the issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including, jurisdictional objections are to be decided by the arbitrator. The principles as laid down equally apply to a petition under Section 9 of the Arbitration Act. As noted hereinabove, an arbitrator is yet to be appointed in the present case and petition with regard thereto, is still

pending consideration. The relevant paragraph from the said judgment is extracted as below:

> *"xxx xxx xxx*
>
> *69. **<u>The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein.</u>** The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter no show-cause notice in terms of Rule 10 could have been issued.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

42. Likewise, in the case of ***Uttarakhand Purv Sainik Kalyan Nigam Limited (UPNL) Versus Northern Coal Field Limited***, **(2020) 2 SCC 455**, the Supreme Court was dealing with the issue of limitation in the context of a Section 11 application for the appointment of an arbitrator. The Court laid down the general principle that limitation is a mixed question of fact and law. It was laid down that the issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Although, the judgement is pertaining to Section 11 of the Arbitration Act, the general principle laid down in this ruling is applicable to petitions under Section 9, as well. Thus, it was held as follows:

> *"xxx xxx xxx*
>
> ***7.12. <u>The legislative intent underlying the 1996 Act is party autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the Arbitral Tribunal.</u>***
>
> ***7.13<u>. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference stage, the issue of limitation would require to be decided by the arbitrator. Sub-section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, "including any objections" with respect to the existence or</u>***



validity of the arbitration agreement. Section 16 is as an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including jurisdictional objections are to be decided by the arbitrator.

7.14. In the present case, the issue of limitation was raised by the respondent Company to oppose the appointment of the arbitrator under Section 11 before the High Court. Limitation is a mixed question of fact and law. In ITW Signode (India) Ltd. v. CCE [ITW Signode (India) Ltd. v. CCE, (2004) 3 SCC 48] a three-Judge Bench of this Court held that the question of limitation involves a question of jurisdiction. The findings on the issue of limitation would be a jurisdictional issue. Such a jurisdictional issue is to be determined having regard to the facts and the law. *Reliance is also placed on the judgment of this Court in NTPC Ltd. v. Siemens Atkeingesellschaft [NTPC Ltd. v. Siemens Atkeingesellschaft, (2007) 4 SCC 451], wherein* ***it was held that the Arbitral Tribunal would deal with limitation under Section 16 of the 1996 Act. If the tribunal finds that the claim is a dead one, or that the claim was barred by limitation, the adjudication of these issues would be on the merits of the claim. Under sub-section (5) of Section 16, the tribunal has the obligation to decide the plea; and if it rejects the plea, the arbitral proceedings would continue, and the tribunal would make the award. Under sub-section (6) a party aggrieved by such an arbitral award may challenge the award under Section 34.*** *In Iffco Ltd. v. Bhadra Products [Iffco Ltd. v. Bhadra Products, (2018) 2 SCC 534 : (2018) 2 SCC (Civ) 208]* ***this Court held that the issue of limitation being a jurisdictional issue, the same has to be decided by the tribunal under Section 16, which is based on Article 16 of the Uncitral Model Law which enshrines the kompetenz principle.***

xxx xxx xxx"

(Emphasis Supplied)

43. It is a matter of record that the disputes concerning the petitioner, the respondents, and Mr. Yogesh Gupta and Mr. Pankaj Dayal, with respect to the subject project, have been pending before multiple judicial forums over several years and have not attained *quietus*. The multiplicity of proceedings, between the aforementioned parties, has been listed out as under:

a) Proceedings arising from the Arbitral Award dated 28th January, 2018 are pending before this Court in *OMP (ENF.)(COMM.)140/2023*.

b) Appeals concerning the affairs and shareholding of SSCBPL are pending before the NCLAT in *Company Appeal (AT) No. 275/2024*, where orders dated 29th August, 2024 and 02nd September, 2024 directing maintenance of *status quo*, have been relied upon by the petitioner.

(i) The relevant portion of the order dated 29th August, 2024, passed by NCLAT, is reproduced as under:

> *"xxx xxx xxx*
>
> ***29.08.2024:*** *This appeal is filed by the appellant under Section 421 of the Companies Act, 2013 against the order dated 23.08.2024 passed by the National Company Law Tribunal, Bench II, New Delhi dismissing the petition filed by the appellant on the ground that the petition is not maintainable and that the appellant was never a shareholder of SS Con-Build Pvt Ltd (Respondent herein) and the shares were being held by Realtech Infrastructure Pvt Ltd (hereinafter referred as RIL).*
>
> *xxx xxx xxx*
>
> *11. But on the other hand it is submitted by the learned counsel for the Respondent that presently there is no property left with Respondent No.1 as the same has been sold and further that there is no shareholding of the appellant in Respondent No.1 company. Admittedly thereafter allegations are made that the shareholding of the appellant has been depleted/diminished and that contempt petition has already been filed on various grounds by the appellant against Respondent herein.* ***In any case, considering the submissions made above while issuing the notice to the Respondent we direct Status Quo be maintained in respect of the share position as also the properties of Respondent No.1 company as on the date of the judgement passed by the Ld. NCLT. However, Respondent No.1 is directed to file an affidavit qua the submissions made by him in respect of the position of shareholding as also the subject property of the petition****. The affidavit be filed prior to the next date of hearing.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

(ii) The relevant portion of order dated 02nd September, 2024 passed by NCLAT, is reproduced as under:

> *"xxx xxx xxx*
>
> ***02.09.2024:*** *At this stage it is the submission of the Learned Counsel for the Respondent the Appellant is misinterpreting the*

order dated 29.08.2024 and threatening the allottees by sending emails. ***We have already passed an order for maintenance status quo as on the date of judgment of the Ld. NCLT. Both the parties to abide by the order passed by this Tribunal. Let an affidavit be filed by the Respondent as response to para 11 of the order dated 29.08.2024 and the Respondent shall also file reply to this appeal. Both these responses be filed within four weeks from today.*** *Rejoinder, if any, may be filed within three weeks thereafter. List this appeal on* ***12.11.2024.***

xxx xxx xxx"

(Emphasis Supplied)

(c) The Conveyance Deed dated 20th December, 2024, executed in favour of SSCBPL is itself under challenge in *W.P.(C) 5470/2025* before this Court, wherein, the cancellation of the erstwhile Perpetual Lease Deed has been objected.

(d) The petitioner has also relied upon orders passed in *W.P.(C) 6868/2023*, alleging repeated attempts by the respondents by filing applications to seek early disposal and vacation of restraints relating to registration and dealings with the property.

(e) Additionally, allegations regarding registration of documents and restoration of the lease have led to proceedings being *W.P.(Crl.) 844/2025*.

44. Thus, without expressing any opinion on the correctness of these allegations, the multiplicity of proceedings demonstrates that disputes concerning the title, management and alienation of the subject project, continue to subsist and are actively contested. It is relevant herein that if, during the pendency of arbitration, further third-party rights are created in respect of the remaining mall inventory, enforcement of any eventual arbitral award may become substantially more complicated and may expose the successful party to multiple independent proceedings against subsequent transferees. Therefore, there is a genuine need to preserve the subject matter pending arbitration to ensure that the arbitral process is not reduced to an ineffective exercise.

45. The petitioner seeks protection of claimed 50% entitlement in the subject project based on MoU-II, the Arbitral Award dated 28th January, 2018, the Settlement Agreement incorporated therein, and subsequent acknowledgements. Whether those documents ultimately confer enforceable proprietary rights is a matter for arbitration, however, they disclose a *prima facie* claim warranting preservation.

46. The petitioner has specifically alleged that respondent no. 2 and respondent no. 3 have in the past, undertaken transactions affecting the subject project through the alleged Divestment Agreement dated 18th January, 2018 and subsequent allotments/transfers. These allegations have been disputed by the respondents, however, the respondents themselves have taken the stand that substantial inventory has already been sold or allotted. If that be the case, permitting further transfers during the pendency of arbitration would only compound the complexity of the dispute and potentially multiply claims involving additional third parties. Preservation of the remaining subject matter would, therefore, minimise future complications rather than create prejudice.

47. An order maintaining the *status quo* would not finally determine ownership or validate the petitioner's interpretation of MoU-I, MoU-II or the Arbitral Award. It would merely preserve the existing factual position until the Arbitral Tribunal adjudicates the parties' rival claims. In contrast, refusal of protection may permit further alteration of the subject matter and frustrate effective enforcement of any eventual award. Accordingly, the comparative inconvenience appears to favour maintaining the existing state of affairs and restraining further creation of third-party rights, rather than allowing the subject matter of the dispute to undergo further irreversible changes pending arbitration.

48. It is pertinent to note that the petitioner asserts entitlement to 50% ownership and rights over the subject project, and not only to monetary

compensation arising out of contractual breaches. Such an interest cannot always be adequately compensated by damages, especially, where successive third-party rights may be created.

49. Considering the pendency of the Section 11 petition, and on account of the past conduct of the respondents, seen along with the disputed questions of facts, this Court is of the *prima facie* view, that there is a possibility that respondents may part with the ownership shares claimed by the petitioner, and thus, interim protection is liable to be granted, for the limited purpose till an arbitrator is appointed for adjudication of disputes between the parties.

50. On a holistic assessment, the petitioner has established a *prima facie* arbitral claim warranting interim protection. The disputes raised by the parties require detailed examination in arbitration and cannot be conclusively adjudicated in proceedings under Section 9 of the Act. At the same time, the apprehension expressed by the petitioner regarding further alienation of the subject property cannot be brushed aside. Accordingly, without expressing any opinion on the merits of the rival claims, it can be concluded that the material on record supports the grant of interim protective measures, restraining creation of third-party rights in respect of the disputed interest in the said property pending arbitration.

51. Furthermore, this Court takes note of the objection raised by the respondents that respondent no. 3 is not a party to the document containing the arbitration clause. The question of respondent no. 3 being a veritable party to arbitration, despite being a non-signatory to MOU-I, or MOU-II, falls within the ambit and jurisdiction of the Arbitral Tribunal, and cannot be decided conclusively under jurisdiction of this Court while adjudicating a petition under Section 9 of the Arbitration Act.

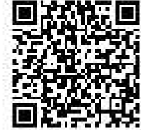
52. However, in this regard, it is to be noted that respondent no. 3 is a family-owned company of respondent no. 1. There are only two directors

of respondent no. 3, i.e., Mr. BK Dhingra and Mr. Balvinder Singh. Since respondent no. 3 is an entity which is owned and controlled by respondent no. 1 and its family members, it is pertinent to note that respondent no. 1 is a signatory to MOU-II dated 20th September, 2011, in which Clause 9 contains the arbitration agreement. Further, it is also to be noted that assets having been transferred in favour of respondent no. 3 on the basis of the Divestment Agreement dated 18th January, 2018, the assets are in possession of respondent no. 3.

53. Law in this regard is very clear that the scope of power of a Court under Section 9 of the Arbitration Act is not limited to parties to an arbitration agreement. The Court has the authority to issue interim directions even against a third party. The Courts have recognised time and again that the purpose of Section 9 of the Arbitration Act is to aid arbitration between the parties. The interim orders passed by the Court are with regard to subject matter of arbitration and thus, while exercising power under Section 9 of the Arbitration Act, relevant directions can also be passed against a non-signatory to the arbitration agreement.

54. Thus, in the case of ***Blue Coast Infrastrucutre Development Pvt. Ltd. Versus Blue Coast Hotels Ltd. and Another, 2020 SCC OnLine Del 1897***, it was held as follows:

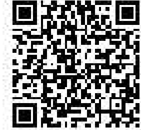
> *"xxx xxx xxx*
>
> ***25.*** *Respondent No. 1, as noticed above, did not file its reply and has more or less taken a neutral stand. The question posed by Respondent No. 2 is the scope and sweep of Section 9 Proceedings qua a non-party and a non-signatory to an Arbitration Agreement. Bombay High Court in the case of Girish Mulchand Mehta (supra), relied upon by Respondent No. 2 itself, held as under:—*
>
>> ***"12. The next question is whether order of formulating the interim measures can be passed by the Court in exercise of powers under Section 9 of the Act only against a party to an Arbitration Agreement or Arbitration Proceedings. As is noticed earlier, the jurisdiction under Section 9 can be invoked only by a party to the Arbitration Agreement. Section 9, however, does not limit the jurisdiction of the***



> ***<u>Court to pass order of interim measures only against party to an Arbitration Agreement or Arbitration Proceedings; whereas the Court is free to exercise same power for making appropriate order against the party to the Petition under Section 9 of the Act as any proceedings before it. The fact that the order would affect the person who is not party to the Arbitration Agreement or Arbitration Proceedings does not affect the jurisdiction of the Court under Section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject matter of the Arbitration Agreement."</u>***

<u>26. In Gatx India Pvt. Ltd. v. Arshiya Rail Infrastructure Limited, 2015 VAD (Delhi) 190, this Court again examined the legal position regarding the power of a Court under Section 9 of the Act to issue interim orders against third parties to the Arbitration. The Court clearly drew a distinction between Section 9 of the Act and Section 17 of the Act and the powers of the Court and an Arbitral Tribunal thereunder respectively. It was held that unlike Section 17 of the Act which specifically allows for measures to be directed only against parties to the Arbitration, there is nothing in Section 9 of the Act which restricts the power of a Court from passing orders against non-signatories to the Arbitration Agreement.</u> *The Court did notice that there was a divergence of opinion of this Court on the maintainability of a petition under Section 9 of the Act against the third party and referred to a few of those judgments in which divergent views were taken. The Court then referred to another judgment of this Court in the case of Value Advisory (supra), which has been relied upon by the Petitioner in this case and has been noticed in the earlier part of this judgment. Relevant paras of the judgment in Gatx India (supra) are as under:—*

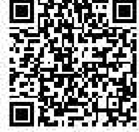
> ***<u>"66. While the section explicitly provides that only a party to the arbitration agreement can apply to the court for interim measures, it does not say against whom any such relief can be claimed. Unlike section 17 which specifically allows for measures to be directed only against parties to arbitration, there is nothing in section 9 which expressly restricts a court from passing orders against non-signatories to arbitration agreement. Pertinently, there has been a divergence of opinion in this Court on the aspect of maintainability of a petition under section 9 of the Act against a third party.</u>*** *On one hand, there are cases where the learned single judges of this court have endorsed the view that section 9 of the Act is applicable only inter se/between the parties to the arbitration agreement…."*
>
> *67. In Value Advisory Services v. ZTE Corporation, OMP no. 65/2008 decided on 15.07.2009, learned single judge after considering numerous conflicting judgments of single-judge benches of the High Court, inter-alia, concluded that:*



"13. A conspectus of the judgments aforesaid on Section 9 would show that the court in each case has made the observation with regard to maintainability/applicability of Section 9 qua third parties depending upon facts of each case and depending upon feasibility of the order sought/required therein. In my view, no general principle of maintainability/applicability or non-maintainability/non-applicability can be laid down. It will have to be determined by the court in the facts of each case whether for the purpose of interim measure of protection, preservation, sale of any goods, securing the amount in dispute, an order affecting a third party can be made or not.

14. In my view, if as a general rule it is laid down that in exercise of power under Section 9, no direction can be issued to parties not parties to agreement containing an arbitration clause or not parties to arbitration proceedings, the same will hamper the efficacy of the said provision. Under Clause (i) thereof, the guardian to be appointed may not be such a party; similarly the goods under Clause (ii)(a) may be or may be required to be in custody of or delivered to or sold to such third parties-further orders against such third parties may also be required in connection with such sale; under Clause (ii)(b) the amount to be secured may be in the form of money payable or property in hands of such third party - the scope cannot/ought not to be restricted to securing possible with orders against parties to arbitration only. Similar examples can be given with respect to other clauses also."

71. Undoubtedly, section 9 provides that the court shall have the same powers for making interim orders under section 9 as a civil court has for the purpose of, and in relation to, any proceedings before it, and the powers of a civil court in this regard are very wide. The civil courts as and when required, and deemed appropriate in the facts and circumstances of a particular case have been making interim orders in respect of third parties, such as : interim injunction restraining third party-banks from honouring bank guarantees; attaching defendant's monies/property in hands of third party trustee, debtor, agent etc; restraining third party-subsequent transferee/person claiming rights in suit property from disposing of the same, and the like. As a corollary, the power of the court to issue interim orders under section 9 cannot be confined only to the parties to arbitration agreement. However, a significant parameter inherent in section 9, for exercise of this power against a non-signatory to arbitration agreement, is that the purpose of section 9 is to aid arbitration between the parties thereto, and the interim orders there under have to be with regard to subject matter of arbitration/in connection with the arbitral proceedings. In this context, it is relevant to draw a distinction between orders granting interim relief against a party to the arbitration agreement which incidentally



<u>affects a third party, on one hand, and orders granting relief directed against a third party, on the other. While the former is ordinarily acceptable as being within the scope of section 9, the power with respect to the latter should be exercised sparingly</u>. *For instance, an order appointing a third party as a receiver or guardian of a minor/person of unsound mind is not an order against the third party, or detrimental to its rights as such. Rather, it is a relief granted to the petitioner in support of the arbitral proceedings and affects the party to the arbitration agreement. Similarly, when a subsequent transferee, or a person claiming title under a party to arbitration is ordered to maintain status quo, or not to dispose of property which is subject matter of arbitration, it is again ancillary to arbitral proceedings in as much, as, it is for protection of the subject matter of arbitration that the order is passed. An injunction, or order of attachment with respect to the properties belonging to/monies owed to a party to arbitration, but in hands of a third party for/on behalf of the said party, is effectively a relief against the said party, which incidentally affects the third party. Pertinently, it is expressly provided in the CPC that attachment before judgment shall not affect the prior existing rights of third parties in the property of the defendant sought to be attached. Injunction against a third party bank from honouring a bank guarantee is consequential to interim relief of restraining a party from encashing the same against the petitioner. To sum up, the court may issue interim orders against the third parties to arbitration only in exceptional circumstances which are such that denial thereof might frustrate the petitioner's rights in arbitration; defeat the very object of arbitration between the parties thereto; render the arbitration proceedings infructuous; lead to gross injustice; and/or, leave the petitioner remediless, depending on facts of each case"*

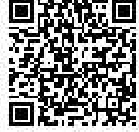
<u>27. Reading of Section 9 of the Act as well as the judgments in Value Advisory (supra) and Gatx India (supra) makes it clear that the scope of power of a Court under Section 9 of the Act is not limited to parties to an Arbitration Agreement and the Court can issue interim directions even against a third party. The distinction between the powers under Section 9 of the Act and Section 17 of the Act has a clear rationale. An Arbitrator is a creature of the contract between the parties and therefore cannot venture outside the contract to issue directions to parties who are non-parties to the Arbitration Agreement. This limitation is not applicable to a Court exercising power under Section 9 of the Act.</u>

xxx xxx xxx

<u>29. The proposition in my view is well settled and can hardly be debated. Thus, on the legal proposition Mr. Sethi is right that it cannot be contended by Respondent No. 2 that in no case interim directions can be passed against a non-party to the Arbitration Agreement, under Section 9 of the Act.</u>

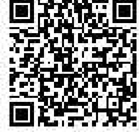
xxx xxx xxx"

(Emphasis Supplied)



55. Likewise, holding that merely because a party is non-signatory does not at the stage of Section 9 petition denude the Court of its jurisdiction to grant protective relief in aid of arbitration and that the issues regarding applicability of the Group of Companies doctrine are to be examined by the Arbitral Tribunal, this Court in the case of ***Morgan Securities and Credits Pvt. Ltd. Versus BPL Limited and Others, 2026 SCC OnLine Del 4477***, held as follows:

> *"xxx xxx xxx*
>
> ***81. In this regard, reference may be made to the decisions of the Supreme Court in Cox and Kings (supra) and Interplay Between arbitration agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re (supra), wherein it was authoritatively held that the applicability of the group of companies doctrine is a fact-intensive exercise requiring examination of multiple relevant factors, including the role of the non-signatory entities in the underlying transaction, the composite nature of the transaction, the conduct of the parties, their mutual intention, and the degree of their participation in the performance, negotiation, or termination of the contractual arrangement.***
>
> ***82. It is also pertinent to note that the aforesaid judgments recognise the width and scope of the jurisdiction conferred upon the Arbitral Tribunal under Section 16 of the A&C Act to determine all questions touching upon its own jurisdiction. Such jurisdiction would necessarily include examination of the Respondents' objections concerning the arbitrability of the disputes, the maintainability of claims against non-signatories, the applicability of the group of companies' doctrine, the nature and extent of participation of Respondents 2 and 3 in the underlying transaction, as well as all other allied and incidental jurisdictional objections sought to be raised before this Court.***
>
> ***83. At this stage, therefore, this Court does not deem it appropriate to conclusively adjudicate upon such disputed and mixed questions of fact and law, particularly when the statutory framework under Section 16 of the A&C Act specifically empowers the learned Arbitral Tribunal to undertake such an examination in accordance with law.***
>
> *xxx xxx xxx*
>
> ***86. Consequently, the mere objection raised by Respondents 2 and 3 on the basis of their non-signatory status does not, at this stage, denude this Court of its jurisdiction to grant protective relief in aid of Arbitration.***
>
> ***87. Accordingly, the interim protection granted under Section 9 of the A&C Act shall continue to operate until commencement of the arbitral proceedings or until varied by the learned Arbitral Tribunal in exercise of***



its powers under Section 17 of the A&C Act. Insofar as the proceedings under Section 11 are concerned, this Court does not consider it either necessary or appropriate to conclusively determine whether Respondents 2 and 3 are bound by the arbitration agreement, the said issue being left open for consideration by the learned Arbitral Tribunal, if and when the occasion so arises, in accordance with law.

xxx xxx xxx"

(Emphasis Supplied)

56. Considering the detailed discussion hereinabove, this Court is of the firm opinion that the petitioner has established a *prima facie* case in his favour. Further, balance of convenience lies in favour of the petitioner and if further third-party rights in the subject project are created, the same would cause irreparable injury and prejudice to the petitioner.

57. Accordingly, the respondents herein, their directors, officers, agents, assigns or any person claiming through or under them, are restrained from creating any third-party rights in respect of 50% of the total saleable area of the subject project, i.e., *Capitol City Mall*, now *Emaya Mall*, situated at *"Plot Nos. BG-1 and BG-2, Paschim Vihar, New Delhi.*

58. It is made clear that the observations made herein are *prima facie* in nature for the purpose of deciding the present petition. Nothing contained herein shall be construed as an expression of opinion on the merits of the disputes between the parties. The Arbitral Tribunal shall decide all the issues independently, uninfluenced by any observations made herein.

59. The present petition, along with the pending application is disposed of in the aforesaid terms.

MINI PUSHKARNA
(JUDGE)

JULY 03,2026
c