M/S Parth Infrapromotor Llp vs M/S Maverick Property Investments ... on 17 January, 2020

Author: B.Veerappa

Bench: B. Veerappa

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JANUARY, 2020

BEFORE

THE HON' BLE MR. JUSTICE B. VEERAPPA

CIVIL MISCELLANEOUS PETITION No.381/2019
C/W
CIVIL MISCELLANEOUS PETITION No.342/2019

IN CMP No.381/2019

BETWEEN:

M/S PARTH INFRAPROMOTOR LLP
CABIN NO.116, FIRST FLOOR,
CHURCHGATE CHAMBERS, PLOT NO.5,
NEW MARINE LINES, VITHALDAS
THACKERSEY MARG,
MUMBAI-400 020.
MAHARASHTRA
REPRESENTED BY ITS DESIGNATED PARTNER/
AUTHORIZED SIGNATORY
...PETITIONER

(BY SRI K.G. RAGHAVAN, SENIOR COUNSEL A/W
SRI BADRI VISHAL, ADVOCATE)

AND:

1. M/S MAVERICK PROPERTY INVESTMENTS PVT.LTD.,
PRESENTLY AT, NO.583, 1ST CROSS,
9TH MAIN, 1ST STAGE, OFF CMH ROAD,
INDIRANAGAR, BENGALURU-560038.
REPRESENTED BY ITS DIRECTOR
MR.B.P.KUMAR BABU.

2. M/S. TATA CONSULTANCY SERVICES LTD.,
TCS HOUSE, 21, D.S.MARG,

FORT, MUMBAI-400 001.

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REPRESENTED BY ITS DIRECTORS/
AUTHORISED SIGNATORY

ALSO HAVING OFFICE AT:
SJM TOWERS, NO.18,
SHESHADRI ROAD,
BENGALURU-560 009.

3. M/S. SATTVA DEVELOPERS PVT. LTD.,
4TH FLOOR, SALARPURIA WINDSOR,
NO.3, ULSOOR ROAD,
BENGALURU-560 042.
REPRESENTED BY ITS DIRECTORS/
AUTHORIZED SIGNATORY

...RESPONDENTS

(BY SRI DHYAN CHINNAPPA, SENIOR COUNSEL A/W
SRI ROHAN TIGADI, ADVOCATE FOR R1;
SRI S.V. GIRIDHAR, ADVOCATE FOR R2;
SRI K. SHASHIKIRAN SHETTY SENIOR COUNSEL A/W
MS. ANUPAMA BORDOLOI, ADVOCATE FOR R3)

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THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINT AN ARBITRATOR TO ADJUDICATE THE DISPUTE BETWEEN THE PETITIONER AND THE RESPONDENTS IN TERMS OF CLAUSE OF X (13.1) OF THE AGREEMENT TO SELL DATED 02.11.2011 AT ANNEXURE-F AND PASS SUCH OTHER ORDERS AS THIS HON'BLE COURT DEEMS FIT. IN THE INTEREST OF JUSTICE AND EQUITY.

IN CMP No.342/2019

BETWEEN:

M/S. SATTVA DEVELOPERS PRIVATE LIMITED
4TH FLOOR, SALARPURIA WINDSOR,
NO.3, ULSOOR ROAD,
BENGALURU-560042.
REPRESENTED BY ITS AUTHORIZED SIGNATORY
ASHWIN SANCHETI

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S/O LATE MANOHAR CHAND SANCHETI
AGED ABOUT 42 YEARS

...PETITIONER

(BY SRI K. SHASHIKIRAN SHETTY, SENIOR COUNSEL A/W
MS. ANUPARNA BORDOLOI)

AND:

1. M/S. MAVERICK PROPERTY INVESTMENTS PVT. LTD.,
NO.583, 1ST CROSS, 9TH MAIN,
1ST STAGE, OFF CMH ROAD,
INDIRANAGARA, BENGALURU-560038.
REPRESENTED BY ITS DIRECTOR,
MR.B.P.KUMAR BABU

2. M/S. TATA CONSULTANCY SERVICE LTD.,
TCS HOUSE, 21, D.S.MARG,
FORT, MUMBAI-400001

ALSO HAVING OFFICE AT:
SJM TOWERS, NO.18,
SHESHADRI ROAD,
BENGALURU-560009.

3. M/S. PARTH INFRAPROMOTER LLP
PRESENTLY CABIN NO.116, FIRST FLOOR,
CHURCHGARE CHAMBERS,
PLOT NO.5, NEW MARINE LINESM,
VITHALDAS THACKERSEY MARG,
MUMBAI 400020, MAHARASHTRA.
...RESPONDENTS

(BY SRI DHYAN CHINNAPPA SENIOR COUNSEL A/W
SRI ROHAN TIGADI, ADVOCATE FOR R1;
SRI S.V. GIRIDHAR, ADVOCATE FOR R2;
SRI K.G. RAGHAVAN, SENIOR COUNSEL A/W
SRI BADRI VISHAL, ADVOCATE FOR R3)

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THIS CIVIL MISCELLANEOUS PETITION IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO APPOINT AN ARBITRAL TRIBUNAL TO

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ADJUDICATE AND RESOLVE THE DISPUTES THAT HAVE ARISEN UNDER AGREEMENT TO SELL DATED 02.11.2011 (ANNEXURE F) BETWEEN THE PETITIONER AND THE RESPONDENTS ETC.

THESE CIVIL MISCELLANEOUS PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

These two Civil Miscellaneous Petitions are filed under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996, by M/s Parth Infrapromotor LLP (Vendor Party No.2) and M/s Sattva Developers Private Limited, (Vendor Party No.3) respectively, seeking appointment of sole arbitrator to adjudicate the dispute in terms of clause 13.1 of the Agreement to Sell dated 02.11.2011, vide Annexure-F, entered into between the Parties (vendors and purchaser).

I. FACTS OF THE CASE:

2. It is the case of the petitioners that on 09.04.2011, the 1st respondent-M/s Maverick Property Investments Pvt. Ltd., entered into Memorandum of Understanding with M/s Salarpuria Hi-Rise Pvt. Ltd. which is a group of M/s Sattva Developers Pvt. Ltd. for the purpose of development of 104 acres 2 guntas of land in various survey numbers of Thubarahalli and Siddapura of Varthur Hobli, Bengaluru East Taluk. On 01.07.2011, the M/s Maverick Property Investments Pvt. Ltd. and M/s Salarpuria Hi-Rise Pvt. Ltd., entered into a supplementary Memorandum of Understanding, wherein, permission was given to the 1st respondent- M/s Maverick Property Investments Pvt. Ltd. to sell 35 acres of land to 2nd respondent -M/s TATA Consultancy Service Limited. Therefore, on 15.07.2011, M/s Sattva Developers Pvt. Ltd., for the purpose of setting up an IT and ITES SEZ project entered into Memorandum of Understanding with the M/s TATA Consultancy Service Limited/2nd respondent. On 01.07.2011, the 1st respondent entered into Memorandum of Understanding with M/s Parth Infrapromotor LLP to purchase 35 acres of land at consideration of `4.5 crores per acre. M/s Parth Infrapromoter LLP entered into another Memorandum of Understanding dated 01.07.2011 with M/s Sattva Developers Pvt. Ltd., to purchase 35 acres of land for a sum of `6.50 crores per acre.

3. It is further contended that following the aforesaid understanding, Agreement to Sell was executed between the parties on 02.11.2011. Under clause VIII(a) of the said agreement, the 1st respondent-Maverick agreed to secure sale deeds in respect of 27 acres 10 guntas of land out of 35 acres to enable conveyance thereof in favour of 2nd respondent for total consideration of `195,38,25,000/-. The 1st respondent, after having claimed to have expertise in procurement of land and negotiating with land owners, has failed to procure the entire extent of land mentioned in the schedule property and sell the same to the 2nd respondent within the stipulated time as mentioned in the agreement, thereby, causing huge loss to the petitioner. Therefore, petitioners were compelled to issue legal notice dated 08.08.2019 against respondent Nos.1 and 2 under clause 13.1. On 04.09.2009, the 2nd respondent issued reply refusing to consent. The first respondent also issued untenable reply dated 07.09.2019 stating that the agreement to sell dated 02.11.2011 was no longer in existence having expired long ago and refused to meet the demands.

4. It is further contended that the 2nd respondent filed CMP No.320/2017 for appointment of an arbitrator, invoking clause 13.1 of the very agreement to sell dated 02.11.2011 and this Court, by the Order dated 23.11.2018, appointed a sole arbitrator and the arbitrator now proceeding with the matter in A.C.No.23/2019. Inspite of legal notice issued, the respondent Nos.1 and 2 have not come forward to comply the terms and conditions of the agreement. Therefore, the petitioners are before

this Court, for the relief sought for.

II. OBJECTIONS FILED BY THE 1ST RESPONDENT IN CMP No.381/2019.

5. The respondent No.1 in CMP No.381/2019 filed objections, denied the averments and contended that on 01.07.2011, petitioner entered into Memorandum of Understanding with the 3rd respondent whereby, it is agreed to sell the land purchased from the 1st respondent to the 3rd respondent. The petitioner has suppressed the Memorandum of Understanding entered into between the petitioner and respondents. As per the said Memorandum of Understanding, petitioner and 3rd respondent agreed to convey 27 acres 10 guntas. Clause 3 of the agreement to sell stipulated that execution and registration of sale deed was to be completed on or before 30.11.2011 and necessary change in land use under Karnataka Town and Country Planning Act, 1961, shall be completed by 31.01.2012. The first respondent was not the absolute owner of the schedule properties, but were in the process of procuring various lands by executing sale deeds from respective owners in relation to schedule properties. The 1st respondent, despite best efforts, could acquire only 25 acres 10 guntas for 2nd respondent's project. The land owners of remaining portion of schedule property refused to part with their lands parcels. The 1st respondent's inability to fully perform the agreement to sell was communicated to the 3rd respondent through e-mail dated 26.03.2013.

6. The petitioners further contended that CMP No.320/2017 filed by the 2nd respondent came to be allowed by this Court and the present Civil Miscellaneous Petitions filed are barred by limitation in view of the provisions of Section 43(1) of the Arbitration and Conciliation Act, 1996. Since no specific time is stipulated for filing application under Section 11 of the Arbitration and Conciliation Act, 1996, right to file such application is governed by Article 137 of schedule I to the Limitation Act, 1963. The said provision stipulates that an application for which no limitation is provided elsewhere in the Limitation Act, 1963, shall be filed within three years from the date on which the cause of action accrues. Therefore, the Civil Miscellaneous Petitions are liable to be dismissed. It is further contended that there are no subsisting rights, title or interest in relation to Agreement dated 02.11.2011 and therefore, the question of a dispute arising between the vendors inter se parties does not arise at all. Therefore, sought to dismiss the Civil Miscellaneous Petitions.

7. I have heard the learned counsel for the parties to the lis.

III. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PETITIONERS

8. Sri K.G.Raghavan, learned Senior Counsel for the petitioner in CMP No.342/2019 contended that under clauses-III, IV, V, VI, VIII(a),(c) and (p) of the Agreement clearly stipulates that the parties have agreed for settlement. Clause 12.1 and 12.2 of the Memorandum of Understanding dated 01.07.2011 clearly stipulates that there is agreement between the parties and in view of the provisions of Section 16(1)(a) r/w Section 11(6) of the Arbitration and Conciliation Act, 1996, the claim of the parties has to be adjudicated in terms of clause 13 of the Agreement to Sell dated 02.11.2011. Therefore, he sought to allow the Civil Miscellaneous Petitions.

9. In support of his contentions, learned Senior Counsel for the petitioner in CMP No.342/2019, relied on the following judgments.

(i) Godrej Industries Limited and others vs. Colin Mario Rebello and others reported in (2013)7 Bombay CR 55 (DB) para-

1,3,30,32,44,46,47, 48.

(ii) Geo Miller & Co. Pvt. Ltd. Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd., reported in 2019 SCC Online SC 1137, para- 9, 9.2., 10.1, 10.2 and 10.9.

(iii) Cheran Properties Limited vs. Kasturi and Sons Limited and others reported in (2018)16 SCC 413, para-23

10. Sri Shashikiran Shetty, learned Senior Counsel for the petitioner in CMP No.381/2019, while adopting the arguments advanced by Sri K.G.Raghavan, learned Senior Counsel, contended that, in view of the inter se dispute between the parties, the matter has to be adjudicated in terms of clause 13.1 of the agreement to sell dated 02.11.2011. He further contended that the petitioner issued legal notice dated 08.08.2019 to respondent Nos.1 and 2. The 2nd respondent replied on 04.09.2019, vide Annexure-L. The first respondent replied on 07.09.2019, vide Annexure-M. Therefore, he sought to allow the Civil Miscellaneous Petitions.

11. In support of his contentions, learned Senior Counsel sought to rely on the following judgments:

(i) Duro Felguera, S.A vs. Gangavaram Port Limited reported in (2017) 9 SCC 729, para-59.

(ii) Olympus Superstructures Pvt. Ltd., vs. Meena Vijay Khetan and others reported in (1999) 5 SCC 651, para-30.

(iii) Chloro Controls India Private Limited vs. Severn Trent Water Purification Inc. and others reported in (2013) 1 SCC 641, para 72, 73.

(iv) Cheran Properties Limited vs. Kasturi and Sons Limited and others reported in (2018) 16 SCC 413, para-23.

(v) Mahanagar Telephone Nigam Ltd. Vs. Canara Bank and others reported in 2019 SCC Online SC 995, para-10.

IV. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE RESPONDENTS

12. Per contra, Sri Dhyan Chinnappa, learned Senior Counsel for respondent No.1 contended that both the Civil Miscellaneous Petitions are liable to be dismissed in view of clause 13.1 of the Agreement to Sell dated 02.11.2011. It does not envisage arbitration for the inter se dispute between the vendors. Hence, there is no arbitration agreement existing for appointment of sole arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 and the Civil Miscellaneous Petitions filed are barred by limitation. He further contended that under clause 13.1 of the Agreement to Sell dated 02.11.2011, only envisages settlement of dispute between purchaser on the one hand and the vendors on the other hand. Clause 1 of the Agreement to Sell stipulates that price of `195,38,25,000/- was payable by the purchaser to the vendor No.3. Thereafter, clause-2 of the Agreement to Sell stipulates time line and milestone on which purchaser would be liable to pay payment of consideration to the vendors. Clause-3 of the Agreement to Sell stipulates that execution of registration of sale by the vendors in favour of the purchaser to be completed on or before 30.11.2011. Clause -4 conversion has to be completed on or before 31.01.2012. Clause 4 of the agreement collective obligation of the vendors to purchase and clause -5 stipulates that vendors will collectively provides title due diligence procedure.

13. He further contended that clause 12 of the agreement to Sell enumerates consequence that would ensure as a result of breach of agreement. Clause 12.1 of the agreement dated 02.11.2011 stipulates that aggrieved party shall be entitled to enforce specific performance of contract and also recover costs, expenses and losses incurred by the aggrieved party. Clause 12.2 stipulates that in the event of vendors are unable to secure the entire extent of the schedule property, the purchaser is entitled to terminate the agreement and on such termination the vendors will refund the advance amounts paid under the agreement within 30 days of demand/intimation of termination. Under clause 12.3, it is agreed between the parties that any amounts which fall due to be paid to the purchaser by the vendor on termination the same shall be paid within 30 working days from the date of intimation of terminating the agreement. The said agreement clause makes it clear that the said agreement only envisage right of purchase on one hand and vendors collectively on the other. Therefore, he sought to dismiss the Civil Miscellaneous Petitions.

14. In support of his contentions, learned Senior Counsel sought to rely on the following judgments.

(i) Duro Felguera, S.A. vs. Gangavaram Port Limited reported in (2017)9 SCC 729, para-59 to the effect that after the Arbitration and Conciliation Act came into force, the Court not to find themselves only to determine whether there is arbitration agreement is in existence.

(ii) United India Insurance Company Limited and another vs. Hyundai Engineering and Construction Company Limited and others reported in (2018)17 SCC 607, (3 Judges) para 12, to the effect that, arbitration agreement will be deemed to be in existence if and only if the pre-conditions for activation of arbitration clause are fulfilled. Therefore, mere fact that there is arbitration clause in the agreement will not require reference of dispute to the arbitration.

(iii) Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions & Engineering Ltd. Reported in 2019 SCC Online SC 515, para- 37, to the effect that what was specifically under consideration was arbitration clause which would get activated only if insurer admits or accepts liability. Since on the fact it was found that insurer repeated claim though arbitration clause did exist, to speak in the policy it would not exist in law.

15. Sri Giridhar, learned counsel for the respondent No.2 in both the cases sought to dismiss the Civil Miscellaneous Petitions and contended that clause 10 of the agreement envisages specific performance between vendors on one side and purchaser on the other side. The respondent No.2 also filed CMP No.320/2017 which came to be allowed on 23.11.2018 against the vendors. The same has reached finality. Proceedings has been initiated by the arbitrator in A.C.No.23/2019. Both Sattva Developers Private Limited and Partha Infrapromotor LLP-petitioners herein, have filed objections before the learned Arbitrator and also filed counter claim. The learned Arbitrator proceeded to reject the counter claim. Therefore, filing of the present Civil Miscellaneous Petitions is an afterthought and not maintainable. He also referred to the provisions of Section 2(b) and 2(c) of the Indian Contract Act, 1872, the definition of 'promise', 'promisor' and 'promisee'. Section 42 of the Act stipulates 'Devolution of joint liabilities' and Section 43 of the Act stipulates that 'Any one of joint promisors may be compelled to perform' and contended that clause IX of the Agreement clearly indicates that Vendors. Clause X, (1)1.1, (2)2.1, 2.2, clause (4) 4.3, 4.4, 4.5, 4.6, 4.8, clause (6)6.1, clause (7) 7.1, 7.2, 7.3, clearly depicts the obligation of the vendors. Clause 12.1, 12.2 vendors vs. purchaser. He would further contended that petitions filed are barred by limitation. There is no separate agreements inter se between the vendors for arbitration.

16. Learned Counsel further contended that Sections 2(b) r/w Section 7 of the Arbitration and Conciliation Act, 1996 and Section 16 does not refer to inter se dispute. It confines only to parties to the agreement. Hence, he sought to dismiss the Civil Miscellaneous Petitions.

17. In support of his contentions, learned counsel relied upon the following judgments:

> (i) Reckitt Benckiser (India) Private Limited vs. Reynders Label Printing India Private Limited and another reported in (2019)7 SCC 62 refer to earlier four judgments relied upon by the learned counsel for the petitioners with regard to non parties, para-6, 12, 13.

(ii) Godrej Industries Limited and others vs. Colin Mario Rebello and others reported in (2013)7 Bombay CR 55 (DB)- para 4,6,8,9,11,12,13,20,25,28,30 and submits that in the absence of any separate agreements entered into between the vendors, the present Civil Miscellaneous Petitions are not maintainable.

V. THE POINTS FOR DETERMINATION:

18. In view of the rival contentions urged by the learned counsel for the parties, the points that arise for consideration are:

"(i) Whether Civil Miscellaneous Petitions filed by party Nos.2 and 3-vendors under the provisions of Sections 11(6) of the Arbitration and Conciliation Act, 1996, are maintainable to enforce clause 13 of the Agreement to Sell dated 02.11.2011 entered into between the vendors on the one part and purchaser on the other part?

(ii) Whether clause 13.1 of the Agreement to Sell dated 02.11.2011 contemplates resolution of inter se dispute among the vendors in the facts and circumstances of the case?"

VI. CONSIDERATION:

19. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties, perused the entire material on record and the judgments relied upon by the learned counsel for the parties, carefully.

20. It is the specific case of the petitioners-vendor party Nos.2 and 3 that the vendor party Nos.1, 2 and 3 have entered into a memorandum of understanding dated 09.04.2011 for the purpose of development of 104 acres 2 guntas of land in various survey numbers of Thubarahalli and Siddapura of Varthur Hobli, Bengaluru East Taluk for setting up an IT and ITES SEZ project and all the vendors-party Nos.1, 2 and 3, together with an understanding among them entered into an agreement to sell dated 02.11.2011 with the purchaser-respondent No.2- M/s TATA Consultancy Service Limited. In terms of clause VIII (a) of the said agreement, the 1st respondent- M/s Maverick Property Investments Pvt. Ltd., agreed to secure the sale deeds in respect of 21 acres 10 guntas of land out of 35 acres, in its favour to enable the conveyance thereof in respect of 2nd respondent-M/s TATA Consultancy Service Limited, for total consideration of `195,38,25,000/-. The 1st respondent, represented by its Director claimed to have expertise in procurement of land and negotiating with the land owners, but has failed to procure the entire extent of land in the schedule property to sell the same to the 2nd respondent within the time stipulated, thereby, causing huge loss to the petitioners and therefore, they were compelled to issue legal notice dated 06.08.2019, to the respondent Nos.1 and 2. The 2nd respondent replied refusing to give consent. The 1st respondent issued untenable reply contending that the agreement dated 02.11.2011 was no longer in existence and expired long back. It is further contended that the 2nd respondent filed CMP No.320/2017 for appointment of an arbitrator, invoking clause 13.1 of the agreement dated 02.11.2011 and this Court, by the Order dated 23.11.2018, appointed a sole arbitrator to adjudicate the dispute between the vendors and purchaser.

21. The substance of the objections filed by the respondent Nos.1 and 2 is that as per the Memorandum of Understanding, certain acts have to be done by the petitioners with regard to execution of sale deeds which has to be completed on or before 30.11.2011 and necessary change in respect of land use under the Karnataka Town and Country Planning Act, 1961, shall be completed by 31.01.2012 and the 1st respondent was not the absolute owner of the properties that was in the process of procuring various lands by executing sale deeds from the owners in relation to the schedule properties and despite of the best efforts made by the 1st respondent, it could acquire only 25 acres 10 guntas of land for the 2nd respondent's project. It is further contended that there is no

separate agreement inter se between the vendors to refer the matter for arbitration. Based on the very agreement dated 02.11.2011 between the vendors and purchaser, the 2nd respondent-purchaser already filed CMP No.320/2017 and this Court, by the Order dated 23.11.2018 appointed a sole arbitrator which has reached finality. Therefore, the Civil Miscellaneous Petitions filed under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996, are not maintainable.

22. In view of the aforesaid contentions of the learned counsel for the parties, the Court has to analyze the contents(clauses) of the agreement to sell dated 02.11.2011 in its entirety, to come to the conclusion whether the said agreement contemplates the arbitration clause among the vendors-party Nos.1,2 and 3 inter se dispute resolution under clause 13 of the agreement.

23. A careful perusal of the Agreement to Sell dated 02.11.2011 makes it clear that the petitioners-M/s Parth Infrapromotor LLP, M/s Sattva Developers Private Limited, and the 1st respondent-M/s Maverick Property Investments Pvt. Ltd., are called as party No.1, 2 and 3- vendors on the one part and 2nd respondent -M/s TATA Consultancy Service Limited is the purchaser on the other part.

24. Under clauses I, II, III, IV, V, VI and VIII of the Agreement to Sell refers to the obligations on the part of party Nos.1, 2 and 3-vendors, before entering into agreement with the 2nd respondent-purchaser. Clause IX stipulates that based on the representations in the Agreement to Sell, the vendors and purchaser are desirous of recording the agreement arrived at between them pursuant to the negotiations having been completed between them in terms thereof.

25. Under clause X of the agreement stipulates that the vendors agree to sell and the purchaser agrees to purchase all that piece and parcel of converted lands in all measuring 27 acres 10 guntas comprised in several survey numbers, situated at Boobarahalli and Siddapura villages, Varthur Hobli, Bengaluru East Taluk, subject to the terms and conditions enumerated in the agreement, viz., (1) Price (2) Payment of Price (3) Time for Completion (4) Title/Vendors' obligations (5) Title due diligence procedure (6) Public notice (7) Possession (8) Title deeds (9) Expenses (10) Indemnity (11) Nomination (12) Consequences of Breach

26. A careful perusal of these terms and conditions/ clauses clearly depicts that the Agreement to Sell dated 02.11.2011 entered into between the vendors (party Nos.1, 2 and 3) on one side and purchaser-respondent No.2 on the other side.

27. In the event of any dispute with regard to agreement between the parties, Arbitration clause 13 has been provided, which reads as under:

> (13) "ARBITRATION:
>
> 13.1 In the event of there being any dispute with regard to this Agreement to Sell or Interpretation of any of the clauses hereof, the same shall be referred to a sole arbitrator. The arbitration shall be as per the provisions of Indian Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be Bangalore only and the language and proceedings shall be English only."

28. A careful perusal of the said arbitration clause clearly depicts that, in the event of there being any dispute with regard to this Agreement to Sell or Interpretation of any of the clauses hereof, the same shall be referred to a sole arbitrator and the arbitration shall be as per the provisions of Indian Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be Bangalore only and the language and proceedings shall be English only, has to be understood as between the parties to the agreement viz., vendors and purchaser.

29. In view of the contentions raised by the petitioners with vehemence that the arbitration clause refers to both inter se dispute and the dispute between the vendors and purchaser, it is profitable to understand the meaning of 'vendor' and 'purchaser'. VENDOR OXFORD DICTIONARY-a person or company offering something for sale, especially a trader in the street; the seller in a sale, especially of property.

BLACK'S LAW DICTIONARY- a seller, of real property.

PURCHASER OXFORD DICTIONARY- the action of buying; the acquisition of property by one's personal action rather than by inheritance BLACK'S LAW DICTIONARY-One who obtains property for money or other valuable consideration; a buyer.

30. The clause 1 of the Agreement to Sell dated 02.11.2011 stipulates that the amount of `195,38,25,000/- is payable by the vendor party No.3 to the purchaser. Clause 2 stipulates the timelines and milestones on which the purchaser would be liable to make payment of the consideration to the vendors. Clause 3 stipulates that the execution and registration of the sale deed by the vendors in favour of the purchaser has to be completed on or before 30.11.2011 and conversion of lands under the Karnataka Town and Country Planning Act, 2012, has to be obtained on or before 31.01.2012. Clause 4 sets out the collective obligations of the vendors to the purchaser to

(i) ensure good and marketable title with respect to the schedule property;

(ii) secure measurement of the schedule property by a qualified surveyor; and

(iii) secure conversion of the schedule property from agricultural to non-

agricultural residential use.

31. Clause 5 stipulates that the vendors will collectively provide the documents to the purchaser for conducting title due diligence. Clause 8 stipulates that the vendors should deliver original title deeds of the schedule property to the purchaser at the time of execution of sale deed. Clause 10 stipulates that the vendors have collectively undertaken to keep the purchaser indemnified against any defect in title or legal complications arising out of the Agreement to Sell dated 02.11.2011. Clause 12.1 stipulates that, in the event of either party to the agreement committing breach, the aggrieved party shall be entitled to enforce specific performance of the said contract. Under clause 12.2 prescribes that, in the event the vendors are unable to secure the entire extent of the schedule property, the

purchaser shall be entitled to terminate the agreement and on such termination, the vendors will refund the advance amounts paid under the agreement within a period of 30 working days of the demand/intimation of termination.

32. The aforesaid clauses indicate that the Agreement to Sell dated 02.11.2011 has been entered only between the vendors on the one side and the purchaser on the other side, and clause 13 which stipulates that "any dispute with regard to the agreement" has to be understood as, "the dispute between the vendors on one side and purchaser on the other side" and it not as the inter se dispute among the vendors (party Nos.1, 2 and 3).

33. Therefore, the contentions of the learned counsel for the petitioners that clause 13.1 stipulates to resolve the inter se dispute between the vendors along with purchaser cannot be accepted. Any agreement entered into between the parties, arbitration clause shall be confined only to the parties to the agreement and cannot be understood that the arbitration clause also applies among any dispute inter se between the vendors. Otherwise, it always creates room to deprive the purchaser to avail the benefit of arbitration clause and thereby, the ultimate scapegoat and sufferer will be the purchaser. If the Court encourages to understand that the arbitration clauses also applies to inter se dispute, then, there would be no meaning to the agreement to sell between the parties-the vendors and purchaser and there will be no end for litigations.

34. Under clause 15.1 of the agreement stipulates that, "this agreement constitutes the entire agreement between the parties, and supersedes all other agreements and understandings between the parties or any of them" and the same should be construed only for the vendors on one side and the purchaser on the other side, and not otherwise.

35. A careful reading of all the conditions and clauses including arbitration clause clearly depicts that there cannot be any scope of imagination that clause 13 for resolution of arbitration would apply to inter se dispute between the vendors. Therefore, the present Civil Miscellaneous Petitions filed under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of sole arbitrator are not maintainable and are liable to be dismissed. Under clause III, VI and VII refers to some Memorandum of Understanding between the vendors, if any. It is for the vendors to invoke the arbitration clause, if any, under the Memorandum of Understanding, separately and they cannot take advantage of clause 13.1 for arbitration under the Agreement to Sell dated 02.11.2011. On that ground also, the present Civil Miscellaneous Petitions are liable to be dismissed.

36. It is relevant to state at this stage that the present petitioners who are also parties to CMP No.320/2017 filed by the 2nd respondent- M/s TATA Consultancy Service Limited-purchaser, never raised any plea with regard to inter se dispute among the vendors which attracts clause 13.1 of the Agreement to Sell dated 02.11.2011 entered into between the vendors and purchaser. The order dated 23.11.2018 passed by this Court in the said Civil Miscellaneous Petition appointing sole arbitrator to adjudicate the dispute between the vendors and purchaser has reached finality.

37. Admittedly, the present petitioners have participated in A.C.No.23/2019 before the learned Arbitrator and also filed objections and counter claim to the said proceedings. The learned Arbitrator, by the Order dated 07.09.2019, did not entertain the counter claim and observed that the counter claim will stand out side the pleadings of the 2nd respondent- M/s Maverick Property Investments Pvt. Ltd., for the purpose of framing of the issues with liberty to the 2nd respondent to resort to appropriate proceedings in accordance with law. The said order has reached finality.

38. In view of the Order passed by the learned Arbitrator, the present Civil Miscellaneous Petitions filed by the present petitioners who are party Nos.2 and 3- vendors under the agreement dated 02.11.2011 is an afterthought and therefore, they are not entitled to any relief before this Court in exercise of powers under Section 11(6) of the Arbitration and Conciliation Act, 1996.

39. The Hon'ble Supreme Court, while considering the provisions of Sections 7, 11(4), 11(6) r/w 11(6-A) (with effect from 23.10.2015) of the Arbitration and Conciliation Act, 1996, in the case of United India Insurance Company Limited and another vs. Hyundai Engineering and Construction Company Limited and others reported in (2018)17 SCC 607 (3 Hon'ble Judges) , at paragraphs 12, 13, 15 and 16, it is held as under:

> 12. From the line of authorities, it is clear that the arbitration clause has to be interpreted strictly. The subject Clause 7 which is in pari materia to Clause 13 of the policy considered by a three-Judge Bench in Oriental Insurance Co.

Ltd. [Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd., (2018) 6 SCC 534 :

> (2018) 3 SCC (Civ) 484] , is a conditional expression of intent. Such an arbitration clause will get activated or kindled only if the dispute between the parties is limited to the quantum to be paid under the policy. The liability should be unequivocally admitted by the insurer. That is the precondition and sine qua non for triggering the arbitration clause. To put it differently, an arbitration clause would enliven or invigorate only if the insurer admits or accepts its liability under or in respect of the policy concerned. That has been expressly predicated in the opening part of Clause 7 as well as the second paragraph of the same clause. In the opening part, it is stated that the "(liability being otherwise admitted)". This is reinforced and restated in the second paragraph in the following words:
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> "It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this Policy."

Thus understood, there can be no arbitration in cases where the insurance company disputes or does not accept the liability under or in respect of the policy.

13. The core issue is whether the communication sent on 21-4-2011 falls in the excepted category of repudiation and denial of liability in toto or has the effect of acceptance of liability by the insurer

under or in respect of the policy and limited to disputation of quantum. The High Court has made no effort to examine this aspect at all. It only reproduced Clause 7 of the policy and in reference to the dictum in Duro Felguera [Duro Felguera S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] held that no other enquiry can be made by the Court in that regard. This is misreading of the said decision and the amended provision and, in particular, misapplication of the three-Judge Bench decisions of this Court in Vulcan Insurance Co. Ltd. [Vulcan Insurance Co. Ltd. v. Maharaj Singh, (1976) 1 SCC 943] and in Oriental Insurance Co. Ltd. [Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484]

15. In view of the above, it must be held that the dispute in question is non-arbitrable and Respondents 1 and 2 ought to have resorted to the remedy of a suit. The plea of Respondents 1 and 2 about the final repudiation expressed by the appellants vide communication dated 17-4- 2017 will be of no avail. However, whether that factum can be taken as the cause of action for institution of the suit is a matter which can be debated in those proceedings. We may not be understood to have expressed any opinion either way in that regard.

16. Accordingly, we allow this appeal and set aside the impugned judgment [Hyundai Engg. and Construction Co. Ltd. v. United India Insurance Co. Ltd., 2017 SCC OnLine Mad 31862] and order and further dismiss Original Petition No. 537 of 2017 filed by Respondents 1 and 2 before the High Court of Judicature at Madras, with liberty to the said respondents to take recourse to a civil suit for mitigation of its grievances, if so advised. We are not expressing any opinion either way on the merits of the issues to be answered in the said proceedings.

40. The Honb'le Supreme Court, while considering the provisions of Section 7, 11(5), 11(6),11(6-A), 11(9), and 11(12)(a) of the Arbitration and Conciliation Act, 1996, in the case of Reckitt Benckiser (India) Private Limited vs. Reynders Label Printing India Private Limited and another reported in (2019)7 SCC 62, at paragraphs, 6, 12 and 13, held as under:

> 6. Be that as it may, reverting to the averments in the application under consideration, it is mentioned that the dispute arises out of the agreement dated 1-5-2014, executed between the applicant and Respondent 1, but Respondent 2 has been impleaded because it is the parent/holding company of Respondent 1. The agreement, in the form of Clause 13 ["13.

Dispute Resolution13.1. Prior to the beginning of any arbitration process the parties hereby undertake to attempt in good faith to resolve any dispute by way of negotiation between senior executives of the parties who have authority to settle such dispute. A copy of any Escalation Notice shall be given to the Regional Senior Vice- President (or equivalent person of seniority) of each party or their affiliates (which copy shall state that it is an Escalation Notice pursuant to this Agreement). Provided, however, that the negotiations shall be completed within thirty (30) days of the date of the Escalation Notice or within such longer period as the parties may agree in writing prior to the expiration of the initial thirty day period.13.2. In the event the dispute is not resolved within a period of 30 days from the commencement of such dispute, the dispute shall be referred to arbitration and the parties shall mutually appoint a sole arbitrator who shall conduct the

proceedings in accordance with the Indian Arbitration Act, 1996 as amended from time to time or any re-enactment thereof. The arbitration shall be held in Delhi and the proceedings shall be conducted in English.13.3. The existence of a dispute with respect to this Agreement between the parties shall not relieve either party from performance of its obligations under this Agreement that are not the subject of such dispute."] contains an arbitration agreement between the parties. In terms of Clause 9 ["9. Indemnity9.1. The supplier and the supplier group shall indemnify RB against any claims, losses, damages and expenses howsoever incurred or suffered by RB (and whether direct or consequential or economic loss) arising out of or in connection with(i) defective workmanship, quality or materials;(ii) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture, or supply of the products; and(iii) negligent performance or failure or delay in performance of the terms of this Agreement by this supplier.9.2. Supplier shall indemnify and hold harmless RB and their respective officers, directors, agents, and employees against any and all claims:(i) Arising out of an alleged breach of the terms and conditions of other provision of this Agreement.(ii) Based upon any allegations that the material produced by RB using product was defective (including, but not limited to, manufacturing or refining defects);These provisions shall survive termination or expiry of this Agreement."] thereof, Respondent 2 has assumed the liability to indemnify the applicant in case of any loss, damage, etc., caused to the applicant on account of acts and omissions of Respondent 1. Respondent 2 is an integral party to the stated agreement which contains an arbitration agreement in the form of Clause 13.2. The applicant has relied upon emails exchanged which, according to the applicant, provide the record of an arbitration agreement within the meaning of Section 7(4)(b) of the Act.

12. In the backdrop of the averments in the application and the correspondence exchanged between the parties adverted to by the applicant, it is obvious that the thrust of the claim of the applicant is that Mr Frederik Reynders was acting for and on behalf of Respondent 2, as a result of which Respondent 2 has assented to the arbitration agreement. This basis has been completely demolished by Respondent 2 by stating, on affidavit, that Mr Frederik Reynders was in no way associated with Respondent 2 and was only an employee of Respondent 1, who acted in that capacity during the negotiations preceding the execution of agreement. Thus, Respondent 2 was neither the signatory to the arbitration agreement nor did have any causal connection with the process of negotiations preceding the agreement or the execution thereof, whatsoever. If the main plank of the applicant, that Mr Frederik Reynders was acting for and on behalf of Respondent 2 and had the authority of Respondent 2, collapses, then it must necessarily follow that Respondent 2 was not a party to the stated agreement nor had it given assent to the arbitration agreement and, in absence thereof, even if Respondent 2 happens to be a constituent of the group of companies of which Respondent 1 is also a constituent, that will be of no avail. For, the burden is on the applicant to establish that Respondent 2 had an intention to consent to the arbitration agreement and be party thereto, maybe for the limited purpose of enforcing the indemnity Clause 9 in the agreement, which refers to Respondent 1 and the supplier group against any claim of loss, damages and expenses, howsoever incurred or suffered by the applicant and arising out of or in connection with matters specified therein. That burden has not been discharged by the applicant at all. On this finding, it must necessarily follow that Respondent 2 cannot be subjected to the proposed arbitration proceedings. Considering the averments in the application under consideration, it is not necessary for us to enquire into the fact as to which other constituent of the group of companies, of which the

respondents form a part, had participated in the negotiation process.

13. Suffice it to observe that Respondent 2 was never involved in the negotiation process concerning the stated agreement dated 1-5-2014. On this finding, the application must fail as against Respondent 2 and as a consequence whereof, the provisions for making reference to the sole arbitrator, on the assumption that it is an international commercial arbitration, cannot be taken forward. As Respondent 1 is a company having been established under the provisions of the Indian Companies Act and having its registered office in India, the applicant can pursue its remedy against Respondent 1 for appointment of a sole arbitrator to conduct arbitration proceedings, as a domestic commercial arbitration.

41. The judgment relied upon by Sri K.G.Raghavan, learned Senior Counsel for the petitioners, in the case of Godrej Industries Limited and others vs. Colin Mario Rebello and others reported in (2013)7 Bombay CR 55 (DB). It was a case filed under Section 9A of the Arbitration and Conciliation Act and the Court granted temporary injunction. Against the said Order, the aggrieved party filed Appeal No.331/2012 and other appeals. The Division Bench of the Bombay High Court, confirmed the temporary injunction granted by the learned single Judge and at paragraph-30 of the said judgment, it is held that, "As we have indicated earlier, a detailed interpretation of this Memorandum of Understanding will be the subject matter of the Arbitration and we would leave the detailed scrutiny to the Arbitrator", and at paragraphs 32 and 33, it is held as under:

> 32. First question is whether the parties are still bound by the MoU. The petitioners have asserted that the MoU continues to operate and is binding on all the parties. A reply has been filed on behalf of Godrej in which it is acknowledged and asserted that the MoU is subsisting and binding on all the parties.

Thus we proceed on the premise that the MoU subsists and continues to bind the parties.

33. The petitioners have based their case on the negative covenant contained in Clause 16. It is the contention of Godrej Industries that Clause 16 does not operate against Godrej Industries, but it is for the benefit of Godrej. Clause 16 reads as under-

(16). "The parties hereto agree and undertake that till the Company goes public and or its shares are listed in any recognized stock exchange, the parties shall not sell, alienate, dispose off or transfer or create any interest or right in a third party rights in any shares registered in their respective names or in which they have a beneficial interest. It is clarified that nothing herein will restrict the transfer among the designated nominees/limited nominees defined hereinabove".

Both sides have advanced argument as to the interpretation of the words "the Parties hereto" in the above clause. The "Parties hereto" in its plain meaning will mean all the parties to the agreement. The Agreement is signed by Godrej and the Minority Shareholders individually. The MoU uses different terms, such as, 'Party', 'Parties hereto', 'Party of the First Part' and 'Party of the Second Part'. Thus, different phrases are employed through the MoU. In Clause 16 the only phrase employed is "Parties hereto". We have adverted to this aspect in detail later in the judgment while

construing clause 28 which also uses the same phraseology i.e. 'parties hereto'. At this place we only refer to our conclusion on this aspect that 'parties hereto' means all parties, which includes Godrej as well. It cannot be said that Clause 16 is not meant to operate against Godrej. This Clause is wide enough to include the shares registered in the name of Godrej and the shares in which they claim beneficial interest. Clause 16 will operate as against all the signatories to the MoU including Godrej.

Ultimately, at paragraph -41, the Order passed by the learned single Judge, with regard to injunction, was confirmed, which reads as under:

> 41. Thus, the negative covenant binds Godrej as well and the argument that the petitioners have committed breaches of the MoU do not impress us. In any case, all these points will be gone into in detail during the arbitration proceedings. Thus, we are in agreement with the learned single Judge that the petitioners had established that they had a prima facie case based on the MoU and that there is enough prima facie material to show that the negative covenant regarding dealing with the shares till the Company is registered or the Company is listed on the Stock Exchange is applicable to all the signatories to the MoU.
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> 42. The said judgment has been passed in a case for grant of injunction under Section 9A of the Arbitration and Conciliation Act, 1996 and the same is not applicable to the facts and circumstances of the present Civil Miscellaneous Petitions filed seeking appointment of Arbitrator under Section 11(6) of the said Act.
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> 43. The other judgment relied upon by the learned Senior Counsel for the petitioners in the case of Geo Miller & Co. Pvt. Ltd. Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd. Reported in 2019 SCC Online SC 1137, is with regard to limitation in filing the Civil Miscellaneous Petition. This Court has no quarrel with the law laid down by the Hon'ble Supreme Court in the said case. But, in the present case, this Court has taken a view that the above Civil Miscellaneous Petitions are filed to enforce the arbitration clause 13 of the Agreement to Sell dated 02.11.2011 is not maintainable. The judgment relied upon by the learned Senior Counsel is no way helpful to the present petitioners' case.
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> 44. The another judgment relied upon by the learned Senior Counsel for the petitioners in the case of Cheran Properties Limited vs. Kasturi and Sons Limited and others reported in (2018)16 SCC 413, is a case where the transaction is with group of companies intended to facilitate fulfillment of a mutually held intent between the parties, where the circumstances indicate that the intent is to bind both signatories and non-signatories, and the effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory. This Court has no quarrel with the law laid down by the Hon'ble Supreme Court considering the provisions of Sections 7 and 36 of the Arbitration and Conciliation Act, 1996. Admittedly, in the

present Civil Miscellaneous Petitions the main issue is, whether the Arbitration clause 13 of the Agreement to sale dated 02.11.2011 applies to inter se dispute between the vendors. The judgment relied upon by the learned Senior counsel has no application to the facts and circumstances of the present case.

45. Sri Shashikiran Shetty, learned Senior Counsel for the petitioner in CMP No.342/2019 relied upon the judgment in the case of Duro Felguera, S.A. vs. Gangavaram Port Limited reported in (2017)9 SCC 729 wherein, it is held that, "the scope of the power under Section 11(6) of the Arbitration and Conciliation Act, 1996, was considerably wide in view of the decisions of SBP and Co. and Boghara Polyfab. This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists-nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected".

Again, this court has no quarrel with the law laid down by the Hon'ble Supreme Court in the facts and circumstances of the said case. Admittedly, in the present case, there is no arbitration clause existing in the agreement to sell dated 02.11.2011, to resolve the inter se dispute between the vendors. Therefore, the said judgment has no application to the facts and circumstances of the present case.

46. Another case relied upon by the learned Senior Counsel is, Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and others reported in (1999) 5 SCC 651, wherein it has been held that, 'harmonising two different arbitration clauses in two related agreements between the same parties-where the disputes and differences in connection with the main agreement and also disputes in respect of "any other matter in any way connected with" the subject matter of the main agreement exist, the situation would be governed by the general arbitration clause in the main agreement, under which, disputes "connected" therewith can be referred to the same arbitral tribunal". Admittedly, in the present case, there is no separate agreement between the vendors and there is no arbitration clause to resolve the inter se dispute between the vendors. The arbitration clause in the agreement to sell dated 02.11.2011 provides to resolve the dispute between the vendors on one side and the purchaser on the other side. Therefore, the said judgment has no application to the facts and circumstances of the present case.

47. Another case relied upon by the learned Senior Counsel is, Chloro Controls India Private Limited. Vs. Severn Trent Water Purification Inc. and others reported in (2013)1 SCC 641, is a case that evolves the principle that a non-signatory party could be subjected to arbitration provided, these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, 'intention of the parties' is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties. Admittedly, in the present case, the agreement to sell dated 02.11.2011 entered into between the vendors on one side and purchaser on the other side and clause 13.1 of the agreement clearly stipulates that, 'in the event of there being

any dispute with regard to this agreement to sell or interpretation of any of the clauses hereof, the same shall be referred to a sole arbitrator'. It does not mean inter se dispute between the vendors, in view of the order dated 23.11.2018 passed by this Court, in CMP No.320/2017 filed by M/s TATA Consultancy Service Limited against the present petitioners and others, wherein, a sole arbitrator has been appointed. Therefore, the judgment relied upon by the learned senior counsel has no application to the facts and circumstances of the present case.

48. Learned Senior Counsel also relied upon the judgment in the case of Mahanagar Telephone Nigam Ltd. Vs. Canara Bank and others reported in 2019 SCC Online SC 995 has no application to the facts and circumstances of the present case.

VII CONCLUSION

49. For the reasons stated above, the first point raised for consideration in the present Civil Miscellaneous Petitions has to be answered in the negative holding that the Civil Miscellaneous Petitions filed by the party Nos.2 and 3-vendors under the Agreement to sell dated 02.11.2011-petitioners, under Section 11(6) of the Arbitration and Conciliation Act, 1996, are not maintainable and accordingly, the point No.2 is also answered in the negative holding that clause 13.1 of the Agreement to Sell dated 02.11.2011 does not contemplate resolution of inter se dispute among the vendors, by reading the entire Agreement with the object and spirit of the agreement.

VIII. RESULT/DECISION

50. In view of the aforesaid reasons, the petitioners in both the Civil Miscellaneous Petitions have not made out any case to grant the relief sought for, in exercise of powers under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996. Accordingly, the Civil Miscellaneous Petitions are dismissed.

51. However, liberty is reserved to the petitioners to take recourse to invoke the arbitration clause, if any, entered into between them (inter se) under the Memorandum of Understanding or to a Civil Court for mitigating their grievances, if so advised, in accordance with law.

52. In crafting this judgment, the erudition of learned counsel for the parties, Sri K.G.Raghavan, Sri Shashikiran Shetty, Sri Dhyan Chinnappa, learned Senior Counsel and Sri S.V.Giridhar, learned counsel, in discharging their role as Officers of the Court is appreciated and placed on record.

Sd/-

JUDGE kcm