Godrej Properties Limited vs Frontier Home Developers Pvt. Ltd & Ors. on 3 April, 2025

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ ARB.A (COMM.) 61/2024 and I.A. 46759/2024

GODREJ PROPERTIES LIMITED
HAVING ITS REGISTERED OFFICE AT:
GODREJ ONE, 5TH FLOOR, PIROJSHANAGAR,
EASTERN EXPRESS HIGHWAY,
VIKHROLI (EAST), MUMBAI-79

REGIONAL OFFICE AT:
3RD FLOOR, UM HOUSE, TOWER A, PLOT NO. 35,
SECTOR 44, GURUGRAM, HARYANA 122002

....APPELLANT

(Through: Dr. Abhishek Manu Singhvi, Sr. Advocate with Mr.Ashish Dholakia, Sr. Advocate, Mr. Sudhir Makkar, Sr. Advocate, Mr. Manik Dogra, Sr. Advocate along with Ms. N. Kohli, Mr. Kapil Madan, Mr. P.V Aggarwal, Vinit Trehan, Mr. Deepanshu Khanna and Mr. Yash Srivastava Advs.)

Versus

1. FRONTIER HOME DEVELOPERS PVT. LTD
   6/81, WEA, PADAM SINGH
   ROAD, KAROL BAGH,
   NEW DELHI 110005

   ALSO AT: D-3, NDSE,
   PART II, RING ROAD,
   NEW DELHI 110049

ALSO AT: 5, 1ST FLOOR,
COMMUNITY CENTRE NAGAINA
INDUSTRIAL AREA, PHASE-I
NEW DELHI SOUTH WEST DELHI 110028

2. EARL INFOTECH PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
5/71, WEA, PADAM SINGH ROAD,
KAROL BAGH, NEW DELHI-110005

ALSO AT:
5, 1ST FLOOR, COMMUNITY CENTRE,
NARAINA INDUSTRIAL AREA, PHASE-I
DELHI-110028

3. SHRI BALBIR SINGH
6/81, WEA, PADAM SINGH
ROAD, KAROL BAGH,
NEW DELHI-110005

ALSO AT: (I)D-3, NDSE, PART II, RING ROAD,
NEW DELHI 110049;
(II) V.P.O WAZIRABAD, DISTRICT
GURUGRAM, HARYANA

4. SHRI HARI SINGH
LR OF MRS RAM PYARI
6/81, WEA, PADAM SINGH
ROAD, KAROL BAGH,
NEW DELHI-110005

ALSO AT: (I)D-3, NDSE, PART
II, RING ROAD,
NEW DELHI -110049; AND
(II) V.P.O WAZIRABAD, DISTRICT
GURUGRAM, HARYANA.

5. SHRI HARPAL SINGH

LR OF MRS RAM PYARI
6/81, WEA, PADAM SINGH
ROAD, KAROL BAGH,
NEW DELHI-110005

ALSO AT: (I)D-3, NDSE, PART
II, RING ROAD,
NEW DELHI -110049; AND
(II) V.P.O WAZIRABAD, DISTRICT
GURUGRAM, HARYANA.

...

(Through: Mr. Sandeep Sethi, Sr. Adv. With Mr. Vivek Chib, Sr. Adv. W

Mr. Aditya Wadhwa, Mr. Siddharth Sunil, Mr. Sumer Dev Seth, Ms. Mansi Gupta and Ms. Bijaharini G., Advs. for R-1 and 2 Mr. Gagan Gupta, Sr. Adv. with Mr. Arkaj Kumar, Ms. Tanya Aggarwal, Mr. Ishank Jha, Mr. Aakash Mishra and Mr. Jasbir Singh, Advs. for R-3 to 5.)

% Reserved on:
Pronounced on:

JUDGMENT

The instant appeal, filed under Section 37[2][b] of the Arbitration and Conciliation Act, 1996 [AC Act], impugns the interim order dated 20.11.2024, passed by the Arbitral Tribunal [AT]. Vide the impugned award, the prayer of the appellant-claimant for interim measures has been rejected and the order of this Court dated 19.01.2023, passed during Section 9 proceedings, stood vacated by the AT. Stated in a nutshell, the present dispute pertains to the corresponding liabilities of the parties to the Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 3 KUMAR KAURAV Development Agreement dated 24.06.2010, which was executed among M/s. Godrej Properties Limited [appellant-claimant], M/s. Frontier Home Developers Pvt. Ltd. [respondent No. 1], Earl Infotech Private Limited [respondent No. 2], Mr. Balbir Singh [respondent No. 3], and the legal representatives of Mrs. Ram Pyari [respondents No. 4 and 5]. Clause 9.3 of the Development Agreement dated 24.06.2010, provides that in an event of any dispute arising therefrom, the same is to be resolved in accordance with the provisions of the AC Act.

2. The record indicates that the Development Agreement dated 24.06.2010 pertains to two distinct parcels of land. The first parcel, Part A, comprises 8.568 acres, which was acquired on 16.08.2004 by respondent no. 1, M/s. Frontier Home Developers Pvt. Ltd. [formerly Conway]. The second parcel, Part B, consists of 5.175 acres and was owned by Mr. Balbir Singh and late Mrs. Ram Pyari. The agreement, in essence, envisaged the construction and development of the Godrej Frontier Housing Project over the entire 13.743-acre land parcel.

3. It is pertinent to note that the entire subject land covered under the Development Agreement was previously subjected to acquisition proceedings by the State of Haryana. However, due to various reasons, the acquisition process was disrupted, leading to the release of the land from acquisition. The Supreme Court, while directing for the release of this particular land, imposed a condition of depositing a sum of 67,36,30,000/-.

4. The appellant-claimant, M/s Godrej Properties Limited, asserts that it had deposited the said amount with the relevant land acquisition authority and is now entitled to recover the same from the parties to the Development Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 4 KUMAR KAURAV Agreement. Relying on both, the directions issued by the Supreme Court, and the terms of the Development Agreement, the appellant-claimant sought a refund of the aforesaid deposited amount from the respondents herein. Prior to the appointment of an arbitrator, the appellant-claimant initiated proceedings under Section 9 of the

AC Act, seeking interim relief.

5. The aforesaid Section 9 proceedings were registered as OMP [I] [COMM] 12/2023 before this Court. In its order dated 19.01.2023, this Court noted that Godrej Properties Limited had been directed to deposit Rs. 67,36,30,000/- pursuant to the judgment of the Supreme Court in Rameshwar and Ors. v. State of Haryana1, for payment to the Haryana State Industrial and Infrastructure Development Corporation [HSIIDC]. The Court held that respondents nos. 1 to 5 could not transfer the benefits derived under the Development Agreement while simultaneously failing to secure the share of the appellant-claimant, on account of the additional liability imposed upon it, under the same agreement. The balance of convenience was found to favour the appellant-claimant and against respondents nos. 1 to 5, with the Court further noting that the appellant- claimant was likely to suffer grave and irreparable harm in the absence of ad interim protection. Consequently, the Court granted an ad interim injunction restraining respondents no. 1 to 5 from creating third-party interests or parting with possession of the flats or plots remaining in their title or possession within the group housing project developed under the Development Agreement dated 24.06.2010.

(2018) 6 SCC 215

6. In the further proceedings in OMP [I] [COMM] 12/2023 dated 25.05.2023, the Court noted that, by its order in ARB.P. 494/2023, a Sole Arbitrator had been appointed. In view of this development, the Court disposed of OMP [I] [COMM] 12/2023 with the direction that the reliefs sought at the Section 9 stage could be placed before the appointed Sole Arbitrator, and the petition could be treated as an application under Section 17 of the AC Act. Furthermore, in the said order, the Court requested the Sole Arbitrator to dispose of the applications for interim relief expeditiously. The Court further clarified that the observations made by the Court in the order dated 19.01.2023 were not binding on the AT, and the AT was at liberty to extend, modify, or vacate the said order as deemed appropriate.

7. The AT adjudicated upon the interim reliefs sought by the appellant- claimant and, by the impugned order dated 20.11.2024, disposed of I.A. 2/2023, I.A. 3/2023, I.A. 3/2024, and I.A. 4/2024. The respective I.As and the prayers made therein have been succinctly captured by the AT in paragraph 3 of the impugned award which reads as under :-

I.As.		Relief pr
2/ 2023	i.	Directions to Re deposit bank gua
Dated 18.01.2023 filed by the Claimant.		of Rs. 67,36,30,
	ii.	Restrain Respond

	Replies have been filed by Respondents No. 1 and 2.		alienating, tran third party inte plots of the sub project in Secto (220 sq. yds.),
		iii.	1655 (135 sq. yd 52, Gurgaon, Har
		iv.	Direction to dis
		v.	accounts, movabl assets owned by
Digitally Signed By:PRIYA Signing Date:05.04.2025 15:46:17		6	Dig By: KUM
			them from creat interest therein
	3/ 2023	i.	Vacation of orde passed by the De
	Dated 05.04.2023 filed by Respondents No. 3 to 5.		(whereby the Res were restrained third-party inte
	Originally OMP (I) (Comm) No. 12 of 23 in Delhi High Court.		the possession o remaining in the in the project d Development Agre 24.06.2010); and
		ii.	Alternatively mo 19.01.2023 in te of Respondents 3 order dated 20.0
	3/ 2024	i.	Direct Sub Regis Manesar) to regi
	Dated 02.04.2024 filed by the Claimant.		Deeds executed b attorney of Resp

Reply filed by Respondents 3 to 5. respect of flats in the Godrej-

			Frontier Project
	Rejoinder filed by the Claimant.	ii.	Restrain Respond from inter Claimant s authorized repre said project bef authority,
		iii.	Stay the effect Cancellation 06.04.2023 and t cancellation of of Attorney date
		iv.	Restrain Respond acting in furthe purported cancel

		Irrevocable Gene Attorney dated 2
	v.	Direct Responden deeds and docume nullify the effe of the irrevocab dated 23.08.2006 appoint a third
Digitally Signed By:PRIYA Signing Date:05.04.2025 15:46:17	7	Di By KU
		behalf of Res
	vi.	Direct Respond up the registe of 23.08.2006;
4/ 2024	i.	Restrain Respo the pendency a
Dated 18.05.2024 filed by the Claimant.		of the instant by way of temp
Reply filed by Respondent Nos. 1 and 2 on 02.07.2024		injunction fro alienating, en any third part

Rejoinder filed by Claimant on 26.07.2024. transferring in any other manner whatsoever the whole or any part of the Attached Assets upon their release by ED, and ii. Pass ad-interim ex-parte relief in terms of prayers above

8. To gain a comprehensive understanding of the controversy in the present appeal, the Court considers it appropriate to first examine the factual background leading to the dispute. This includes tracing the manner in which the land was initially acquired by the parties, how it became subject to acquisition proceedings, the circumstances under which the acquisition was subsequently annulled, and the directions issued by the Supreme Court in this regard. The Court is of the view that a detailed traversal of these events will provide a clearer perspective on the factual and legal issues at hand and the same would facilitate in adjudicating the present appeal. Brief Background

9. The origins of the dispute can be traced to 27.08.2004, when the HSIIDC issued a notification under Section 4 of the Land Acquisition Act, 1894. The said acquisition notification proposed acquiring approximately 912 acres of land from the villages of Manesar, Lakhnaula, and Naurangpur, Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 8 KUMAR KAURAV located in Tehsil and District Gurugram. The acquisition was intended for the development of Chaudhary Devi Lal Industrial Township, an integrated complex planned for residential, recreational, and other public purposes. The said notified land included the subject parcel measuring 13.743 acres.

10. However, following the issuance of the notification, the State Government, by order dated 24.08.2007, decided to drop the acquisition, stating that a fresh notification would be issued in its

place. Subsequently, on 29.01.2010, the concerned government authority formally rescinded and closed the acquisition proceedings in their entirety.

11. Apprehending fraud being played by the State in view of the decisions dated 24.08.2007 and 29.01.2010 pertaining to the land acquisition proceedings, certain landowners and farmers initiated multiple writ petitions challenging the withdrawal of acquisition. One such writ petition, CWP No. 23769 of 2011, was filed on 19.12.2011 before the High Court of Punjab and Haryana at Chandigarh. The appellant-claimants contended that the entire sequence of events, commencing with the initiation of the acquisition process, coercing landowners into parting with their fertile and valuable land at nominal prices under the imminent threat of acquisition, and subsequently withdrawing the acquisition just two days before the scheduled declaration of the award, constituted a calculated and mala fide exercise of governmental power. The High Court of Punjab and Haryana, however, dismissed these writ petitions. Aggrieved by the dismissal, the matter was carried in appeal before the Supreme Court. Upon finding merit in the controversy, the Supreme Court rendered its judgment dated 12.03.2018 in Rameshwar & Others v. State of Haryana & Others. Subsequently, the Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 9 KUMAR KAURAV Supreme Court delivered another judgment under the same title while adjudicating a review petition, addressing supplementary issues arising from the dispute. For convenience, the initial decision rendered in 2018 shall be referred to as Rameshwar-I, and the subsequent decision in review proceedings shall be referred to as Rameshwar-II. Rameshwar-II provided further clarifications on the legal and factual aspects concerning the land acquisition proceedings.

12. The Supreme Court, in Rameshwar-I, inter alia, held that the decisions dated 24.08.2007 and 29.01.2010 were vitiated by mala fides and amounted to a clear case of fraud on power. Thus, the orders cancelling the acquisition were annulled. The Court further determined that a deemed award had come into effect on 26.08.2007, thereby rendering all transfers of land effected between 27.08.2004 and 29.01.2010 legally invalid. However, an exemption was carved out for lands that had been transferred by the landowners during this period. In light of these findings, the Supreme Court issued various directions, including the recognition of a deemed award for lands covered by declarations under Section 6 of the Land Acquisition Act, 1894, and those transferred by landholders during the suspect period.

13. Pursuant to the Rameshwar-I decision, the concerned District Revenue Officer-cum-Land Acquisition Collector passed further order dated 26.11.2018. However, in the said order dated 26.11.2018, the land forming the subject matter of the present dispute was not included within its scope.

14. On 05.08.2019, HSIIDC filed an application [I.A. 93822/2019 in M.A. 1175/2019 in Civil Appeal No. 8788/2015] seeking clarification on whether the judgment in Rameshwar-I would also extend to lands that had Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 10 KUMAR KAURAV been purchased before the issuance of the notification dated 27.08.2004 but were subsequently transferred by landowners between 27.08.2004 and 29.01.2010 through collaboration agreements.

15. Pursuant thereto, on 21.07.2022, the Supreme Court rendered its judgment in Rameshwar-II, providing the necessary clarifications. The Court, inter alia, held that "Development Rights" would fall within the ambit of "transfer" as contemplated in paragraph 42 of the Rameshwar-I decision.

16. The Supreme Court further observed that, with respect to the appellant-claimant, a total of 567 residential units had been constructed on the subject land, and substantial payments amounting to approximately Rs. 300 crores had already been received for the units sold. Recognizing the necessity of protecting the interests of third-party consumers, the Court emphasized that end-buyers should not be prejudiced due to the past misconduct of colonizers, developers, or landowners. To strike an equitable balance, the Court determined that a sum of Rs. 5 crores per acre was payable for the subject land measuring 13.743 acres, amounting to a total of Rs. 67,36,30,000, to be remitted to HSIIDC. The Supreme Court directed Godrej to make this payment and, in turn, allowed it to claim a proportionate sum as per its Development Agreement with Frontier, Earl, Balbir Singh, and Ram Pyari, the respondents herein. The Supreme Court further directed that the amount be deposited within six months from the date of the judgment, failing which an interest of 6% per annum would be levied. Subject to compliance with this direction, the land covered by the project was to be excluded from the deemed award.

17. The Supreme Court in Rameshwar-II examined the commercial transactions involving Frontier Home Developers Pvt. Ltd. (Frontier, formerly „Conway), M/s. Earl Infotech Pvt. Ltd, Balbir Singh, Ram Pyari, and the appellant-claimant, Godrej Properties Limited. The Court noted that Frontier had originally purchased 8.568 acres of land in Village Naurangpur on 16.08.2004 under its erstwhile name, Conway Developers Pvt. Ltd. [referring it to as "Lot-1"], for a consideration of Rs. 5.62 crores. Another parcel, measuring 5.175 acres, was owned by Balbir Singh and Ram Pyari [referred to as "Lot-2"]. Both parcels were included in the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894. During this period, Balbir Singh and Ram Pyari entered into a Development Agreement with M/s. Earl Infotech Pvt. Ltd. on 24.08.2006 for the development of Lot-2. Subsequently, on 11.12.2006, Earl entered into a Collaboration Agreement with Frontier concerning Lot-2, under which Frontier agreed to jointly develop both parcels. This was followed by a supplementary agreement between Balbir Singh, Ram Pyari, and Earl, under which additional consideration was paid to the owners. Following the decision of the State to withdraw the acquisition on 29.01.2010, the four licensees transferred their development rights over the entire 13.743-acre parcel to Godrej Properties Limited through the Development Agreement dated 24.06.2010. This agreement dated 24.06.2010, entered into by Godrej and other respondents herein, for the sake of convenience, shall be referred to as the Godrej Development Agreement. ["GDA"].

18. Under the terms of the GDA, Balbir Singh and Ram Pyari were entitled to 55,328.60 square feet of built-up area. Frontier was to receive a Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 12 KUMAR KAURAV 30% share in the gross revenue, while Godrej was entitled to the remaining 70%. Additionally, Frontier had prior

commitments, including the allotment of land to owners and an additional 1,00,000 square feet allocated for 50 residential flats to the Jammu & Kashmir All India Service Officers Society. The Supreme Court noted that the group housing colony consisted of 567 units, comprising 475 residential units, 84 EWS units, and 8 commercial units. Godrej stated that it had sold 357 residential units, 8 commercial shops, and 83 EWS units, leaving only 4 residential units, 1 EWS unit, and a nursery school unsold. Of the developed units, 199 had already been registered in favour of third-party buyers. The Supreme Court held that collaboration agreements allowing colonizers and developers to retain a significant portion of the constructed area as consideration were not mere construction contracts but involved the transfer of substantive interests.

19. The Supreme Court further observed that, apart from merely retaining the legal title, the landowners had relinquished substantial rights over the property. Recognizing the necessity of safeguarding third-party consumer interests, the Court sought to ensure that end-buyers did not suffer the consequences of the past misconduct of the developers. To strike a balance, the Supreme Court, in its judgment dated 21.07.2022, issued the following directions to the appellant:-

> "121. In the light of the above discussion, this Court s findings are summarized as follows:
>
> a. The expression „transfer used in the main judgment, especially in light of para 42.6, is not confined to sale, lease or other encumbrance. It includes development and/or collaboration agreements, as well as licenses issued (for development) during the suspect period, whether or not in favour of the developer.
>
> b. As a corollary to the above, the lands covered by licenses issued to Paradise (ultimately transferred to Green Heights); Karma (for which Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 13 KUMAR KAURAV collaboration was entered into with Unitech); Ram Pyari, Balbir Singh, Earl and Frontier (ultimately used by Godrej); Express Greens (DLF); Kalinga and Innovative amount to transfer....
>
> d. With respect to Godrej, a sum of 5 crores per acre is payable by Godrej to HSIIDC. Therefore, final amount payable is 13.743 acres x 5 crores = 67,36,30,000 /- (rupees sixty-seven crores, thirty-six lakhs and thirty thousand only) within six months from the date of this judgment, failing which interest at the rate of 6% per annum shall be levied from the date of default. Godrej is entitled to claim such proportionate sums as it may be entitled to in terms of its agreement with Frontier, Earl, Balbir Singh and Ram Pyari in accordance with law.

e. Upon full compliance with directions above, the lands covered by Green Heights and Godrej s projects shall be excluded from the deemed award...."

[emphasis supplied]

20. The appellant-claimant subsequently filed a review petition [Diary No. 28497/2022] challenging the judgment in Rameshwar-II, which was dismissed on 29.11.2022. On 18.01.2023, the appellant filed an application under Section 9 of the AC Act, 1996. As previously outlined, this led to the passing of an interim order, the appointment of a Sole Arbitrator, and the constitution of an AT. The parties were directed to present their case before the AT, which was instructed to treat the Section 9 application as an application under Section 17 of the Act.

21. Thus, after reviewing the chronology of events leading to the filing of the arbitration petition and the referral of the parties to the AT, it is noted that by the impugned order dated 20.11.2024, has adjudicated upon four interim applications filed under Section 17 of the AC Act. The details of these interim applications, the decision rendered and the submissions of the learned counsel advanced therein shall be examined.

22. The reliefs sought in the instant application essentially mirror the reliefs sought in O.M.P. (I) (COMM.) No. 12/2023, which was disposed of by this Court on 25.05.2023. In its order, the Court observed that the AT may treat the application as one filed under Section 17 of the AC Act, and to pass appropriate orders thereon. The reliefs sought in the application are as follows:-

> "(i) Direct Respondents No. 1 to 5 to secure the Appellant-claimant through deposits and/or bank guarantees amounting to INR 67,36,30,000/- (Indian Rupees Sixty-Seven Crores, Thirty-Six Lakhs, and Thirty Thousand only) during the pendency of the arbitral proceedings; and/or (ii) Restrain the Respondents, during the pendency and until the conclusion of the arbitral proceedings, from selling, gifting, alienating, encumbering, creating third-party interest, or transferring in any manner whatsoever their respective flats/units/plots (detailed in Document 18) of the Godrej-Frontier project situated in Village Naurangpur, District Gurugram, Residential Sector-80, Haryana, as well as Plot No. 1392 (measuring 220 sq. yards), Plot No. 1658, and Plot No. 1655 (each measuring 135 sq. yards), situated in Sector-52, Gurugram, Haryana, and to maintain status quo with respect thereto; and (iii) Direct the Respondents to disclose on affidavit details of their bank accounts and other movable and immovable assets owned by them, jointly or individually; and (iv) Restrain the Respondents, during the pendency and until the conclusion of the arbitral proceedings, from selling, gifting, alienating, encumbering, creating third-party interest, or transferring their bank accounts, movable and immovable assets, as disclosed in the affidavit pursuant to prayer (iii); and (v) Grant ad-interim ex-parte reliefs as per prayers (i) to (iv) above; and (vi) Direct the Respondents to bear the costs of the petition; and (vii) Pass any other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case."

23. Thus, reliefs sought in clause (i) of the prayer include:-

> "(i) A direction to respondents no. 1 to 5 to deposit or furnish a bank guarantee for INR 67,36,30,000/-.
>
> (ii) An injunction restraining the respondents from creating third-party rights or interests in the flats, units, or plots listed in Document 18 of the Godrej Frontier Project in Sector-80, Gurugram.
>
> (iii) An injunction restraining the respondents from creating third-party Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 15 KUMAR KAURAV rights or interests concerning Plot Nos. 1392, 1658, and 1655 in Sector- 52, Gurugram, Haryana.
>
> (iv) A direction to the respondents to disclose on affidavit the details of their bank accounts and other movable and immovable assets.
>
> (v) A restraint on the respondents from transferring, alienating, or encumbering their bank accounts and assets in any manner."

24. In the application being I.A NO. 2/2023, the appellant-claimant essentially sought multiple reliefs against the respondents. The primary relief sought is a direction to the respondents to deposit or furnish a bank guarantee for a sum of INR 67,36,30,000/-. Additionally, the appellant- claimant seeks an injunction restraining the respondents from selling, alienating, transferring, or creating third-party interests in the flats, units, and plots of the Godrej Frontier Project in Sector-80, Gurugram, as well as in Plot Nos. 1392 [220 sq. yds.], 1658 and 1655 [135 sq. yds each], in Sector-52, Gurugram, Haryana. Further, the application seeks a direction requiring the respondents to disclose, by way of an affidavit, details of their bank accounts and other movable and immovable assets. Lastly, the appellant-claimant seeks an order restraining the respondents from encumbering, transferring, or alienating their bank accounts and assets in any manner.

25. I.A. 3/2023, filed by respondents no. 3 to 5, sought the vacation of the interim order dated 19.01.2023 passed by this Court in OMP (I) (COMM) No. 12/2023. The said order had restrained respondents no. 1 to 5 from creating third-party interests or parting with possession of the flats and plots remaining in their title or possession under the GDA. Given that both I.A. 2/2023 and I.A. 3/2023 pertained to the same subject matter and involved interrelated reliefs, one seeking to enforce the injunction and secure the Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 16 KUMAR KAURAV payment made, and the other seeking to vacate the order imposing such restraints, the AT deemed it appropriate to adjudicate both applications conjointly.

26. The AT, upon taking into consideration the relevant clauses of the various agreements between the parties, the judgment(s) passed by the Supreme Court and the submissions advanced on behalf of both the parties, made the following broad observations:-

a. The Supreme Court in the decisions of Rameshwar I and Rameshwar II, has only enabled the appellant-claimant to claim "proportionate sums" only if it was entitled to do so in terms of the GDA.

b. No prima facie liability with respect to the payments made in respect of Land B has been fastened on respondents nos. 3 to 5. c. The Court, while passing the order dated 19.01.2023, which granted the interim relief to the appellant-claimant, did not have the stand of the respondents and the judgments of the Supreme Court, and the documents placed before the AT were not placed before the Court.

d. The appellant-claimant failed to make any case for injunction as the prima facie case was not made out, and the material placed on record indicated that the appellant-claimant was unlikely to succeed in the main proceedings.

27. Based on these observations, I.A. 2/2023 was dismissed, and the interim protection granted vide order dated 19.01.2023 in OMP (I) (COMM) No. 12/2023 was vacated. Consequently, the corresponding Section 9 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 17 KUMAR KAURAV injunction, which formed the basis of the Section 17 application in I.A. 2/2023, stood vacated in accordance with the relief sought in I.A. 3/2023.

28. This application was filed by the appellant-claimant, seeking prohibitory orders against Respondent No. 1, restraining it from transferring its assets, which stand attached by the Enforcement Directorate [ED]. The record reveals that, pursuant to the directions of the Supreme Court, transactions undertaken by the parties with respect to properties acquired in Haryana during the relevant period were subjected to criminal investigation by the Central Bureau of Investigation [CBI] and ED. Pursuant to such investigation, a provisional attachment order dated 17.02.2021 was issued, attaching assets belonging to Respondent No. 1 amounting to Rs. 77,72,30,146/-. The appellant-claimant sought attachment of the assets in event these assets are released from the attachment of the ED.

29. The AT, after considering the submissions advanced, has made the following broad observations:-

a. The properties proposed to be subject to the sought relief are owned by third parties as evidenced from the order of attachment of the ED.

b. With respect to the argument that respondents have interest in the properties, the respondents indicated that the appeals against the attachments were not preferred by the respondents herein, but by the third parties only.

c. The impleadment of third parties has been rejected by the AT vide order dated 30.04.2024.

d. No injunctive order can be passed against third parties, who are not signatories to the GDA or parties to the proceedings.

30. Based on these observations, I.A. 4/2024 stood dismissed.

31. Against the impugned order dated 20.11.2024, the instant appeal under Section 37 of the AC Act is preferred by the appellant-claimant. Submissions advanced on Behalf Of Appellant- Claimant

32. Learned senior counsel Dr. Abhishek Manu Singhvi, Mr. Sudhir Makkar, and Mr. Ashish Dholakia, appearing for the appellant-claimant, have advanced the following broad submissions:-

i. The impugned decision of the AT is contrary to the mandate of Section 17 of the AC Act. The same fails to protect the rights of the appellant-claimant, which had been duly recognized and safeguarded by the interim order dated 19.01.2023 in ARB.P. 494/2023. This interim protection was subsequently continued by another order dated 25.05.2023, and the impugned order unjustifiably negated this protection.

ii. Referring to the order of the Supreme Court dated 13.10.2020 in Misc. Application 50/2019, it was contended that the Court had restrained the parties from creating fresh third-party rights or proceeding with any unfinished development work on the site, except for maintenance and upkeep. It is contended that this position, which remained in force throughout the pendency of the dispute, has now been altered by the impugned order, a decision made without due consideration of the factual circumstances.

iii. The payment of Rs. 67 crores to HSIIDC by the appellant-cla

has not been disputed by any of the parties. Rather, it was a mandatory payment as per the judgment in Rameshwar-II, which unequivocally held that such payment was a prerequisite for the subject land to be excluded from the Deemed Award category. The findings in the impugned order incorrectly interpret this liability as discretionary, contrary to the explicit direction of the Supreme Court, which categorically directed that the amount shall be paid, with an interest penalty of 6% in event of non-compliance.

iv. Thus, according to learned counsel, the AT failed to appreciate that the claim of the appellant-claimant arises from the GDA and is rooted in constructive liability and therefore, the appellant-claimant is entitled to recover the entire amount from the respondents, rather than a mere proportionate sum, as incorrectly construed in the impugned order. Clause 7.1[a] of the GDA explicitly stipulates that respondent no. 1 [Frontier] extended an unqualified indemnity against any litigation or claims arising out of the subject property. Despite this clear contractual provision, the

AT failed to acknowledge that the respondents, having benefited from the GDA, are jointly and constructively liable for the punitive liability imposed by the Supreme Court.

v. The conclusion rendered by the AT that only the appellant-claimant and respondent no.1 are liable to pay the sums to the HSIIDC is based on an erroneous interpretation of the GDA, which overlooks joint and constructive liability of the parties. This misinterpretation by the AT Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 20 KUMAR KAURAV not only absolves other respondents who are equally accountable but also goes against the fundamental tenets of contractual obligations and liability-sharing.

vi. Furthermore, according to learned senior counsel, the AT has committed a manifest and apparent error in law by failing to provide any reasoning as to why the principle of joint and constructive liability does not apply to the respondents. This oversight amounts to material perversity, as the arbitrator has disregarded the self-evident facts and evidence. According to them, the facts and evidence would on the face of it, necessitate appropriate directions against respondents no. 1 to 5.

vii. It is also submitted that the Supreme Court, in its findings, concluded that only the respondents actively colluded with the State to prevent acquisition and thus, secured development licenses through a quid pro quo arrangement. Recognizing that the respondents had derived windfall gains by circumventing the acquisition process, the Supreme Court imposed the punitive liability of INR 67.36 crores as a penalty upon them.

viii. Furthermore, the AT has prematurely adjudicated key issues at the interim stage, effectively exonerating respondents no. 3 to 5 from liability without conducting a full-fledged Trial. The AT has also incorrectly ruled that the liability clauses in the GDA do not apply to respondents no. 3 to 5. This conclusion is flawed, as clear evidence establishes that the term "Frontier" in the GDA encompasses respondents no. 3 to 5 along with respondent no. 2. By not taking into Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 21 KUMAR KAURAV consideration this crucial aspect, the AT has unduly absolved these respondents of their contractual obligations.

ix. Moreover, the reliance of the AT on the Earl GPA to exonerate respondents no. 3 to 5 is misplaced. A private agreement between respondents inter se cannot override the obligations expressly imposed under the GDA. This misapplication has led to an unjust outcome, shielding certain respondents from liability to which they are clearly bound.

x. Additionally, the AT has failed to consider the dual capacity of Frontier, which acts both as the landowner of Land A and as the power of attorney-holder of Land B. This oversight is significant, as it establishes that all respondents are bound by the joint liability framework and are collectively responsible under the GDA. xi. Without prejudice to the aforesaid submissions, it was further contended that respondents no. 3 to 5 have themselves admitted liability to the extent of INR 3.55 crores in paragraph 107 of the impugned order. However, despite this clear acknowledgment, the AT, in complete disregard of the own admission of the respondents no. 3 to 5, has exonerated them

entirely.

xii. By not taking into consideration key aspects and rendering a premature and final determination at the interim order stage, the appellant-claimants submit that they have been deprived of the intended purpose of the entire arbitral proceedings, i.e., an exhaustive and fair assessment of all claims and liabilities. As a result, the arbitration proceedings have been rendered redundant in view of the Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 22 KUMAR KAURAV fact that the AT has already pre-empted a critical aspect of the dispute.

xiii. It is further contended that the AT has acted in a manner which clearly indicates of non-application of mind by, on one hand, acknowledging in paragraph 108 of the impugned award that respondents no. 1 and 2 have sold off their entire inventory, while on the other, failing to grant any interim relief to prevent the dissipation of assets, thereby exposing the appellant to significant financial risks. xiv. Furthermore, in paragraph 112, the AT reasoned that an injunction against the respondents would deprive them of returns from their land, a finding that is factually incorrect given that the respondents have already realized substantial revenues from the sale of their inventory. xv. Thus, the learned counsel for the appellant-claimant concludes his submissions by re-iterating that the approach of the AT suffers from multiple legal and factual errors, including an erroneous interpretation of the GDA, premature adjudication of key issues, failure to grant interim relief, improper exoneration of respondents, and disregard of admitted liability. Moreover, it was contended that the AT has acted beyond its jurisdiction at the Section 17 stage by delving into the substantive merits of the case to such an extent that it has effectively rendered further adjudication redundant.

Submissions on Behalf of Respondents No. 1 and 2:

33. The contentions advanced by the learned senior counsel for the appellant-claimants are strongly opposed by Mr. Sandeep Sethi and Mr. Vivek Chib, learned senior counsels appearing for respondents No. 1 and 2.

The broad submissions of respondents No. 1 and 2 are as follows:-

i. It is contended at the outset that the scope of interference under Section 37 of is akin to the powers vested in the Court under Section

34 of the AC Act. Unless the grounds specified under Section 34 for setting aside an Arbitral Award are fully satisfied, Courts should refrain from interfering with interim measures granted under Section 17 by the AT.

ii. In this context reliance was placed on the decisions in World Window Infrastructure Pvt. Ltd. v. Central Warehousing Corporation2, Sanjay Arora and Anr. v. Rajan Chadha and Ors.3 , Augmont Gold Pvt. Ltd. v. One97 Communication Ltd.4and Dinesh Gupta and Ors. v. Bechu Singh and Anr.5, which reinforce the principle that the scope of consideration in an appeal under Section 37 is identical to the restrictive scope of interference under Section 34. iii. Furthermore, it is submitted that under the guise of seeking interim measures under Section 17, the appellant-claimant is effectively attempting to obtain relief akin to that under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (CPC), without making specific pleadings or fulfilling the essential requirements of the said provision. iv. Both counsels have taken this Court through various clauses of the GDA, the findings of the Supreme Court, and proceedings at different stages. However, a detailed reference to these aspects at this stage 2021 SCC OnLine Del 5099 2021 SCC OnLine Del 4619 2021 SCC OnLine Del 4484 2021 SCC OnLine Del 5556 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 24 KUMAR KAURAV may not be necessary, as they shall be dealt with at the appropriate juncture.

v. With respect to I.A. No. 2/2023 and I.A. No. 3/2023, learned counsel submits that the appellant-claimant sought various ad interim orders of restraint and attachment against the respondents. However, they submit that in Rameshwar-II, there was no direction, to or obligation upon the appellant-claimant to mandatorily pay the said amount. vi. According to them, the Supreme Court expressly clarified that the land on which the Group Housing Project was constructed would stand excluded from the deemed award only if the said amount was deposited by the appellant-claimant. Any omission to make such payment would simply result in the land/project becoming part of the deemed award. Learned senior counsel further rebuts the submission advanced by the appellant-claimant that the deposit was compelled to safeguard third-party homeowners interests in the project. It is contended that this submission is erroneous, as third parties were adequately protected by Rameshwar-I, even if the project were to vest with HSIIDC.

vii. Additionally, there was no economic compulsion on the appellant-

claimant to deposit the amount, as it had already monetized nearly 100% of the project, with only four residential units, one EWS unit, and one nursery school remaining unsold. The decision to make such payment, therefore, was financially unwise, opposed by respondent no.1, and as such, cannot be claimed to have caused any loss attributable to the respondents. Consequently, there exists no Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 25 KUMAR KAURAV causation to sustain a claim of indemnity as sought by the appellant-claimant.

viii. Therefore, the respondents cannot be called upon to indemnify any expenditure voluntarily incurred by the appellant-claimant without any cogent compulsion. The attempt of the appellant-claimant to recover monies from the respondents under the guise of indemnity is described as malicious, extortionate, and mala fide, aside from having no contractual basis under the GDA. Furthermore, with respect to the contention that the appellant-claimant was kept in the dark regarding the land being subjected to acquisition proceedings under an alleged quid pro quo arrangement, it is submitted that the appellant-claimant was fully aware of the ongoing disputes

before the Supreme Court and the Punjab and Haryana High Court at the time it commenced and completed construction of the Godrej Frontier Group Housing Project. Due diligence was conducted before executing the GDA, and no wrongdoing was attributed to the respondents.

ix. With respect to I.A. No. 4/2024, the appellant-claimant sought an order of attachment on certain assets already attached by the ED and, in the event of their release from ED attachment, further attachment of the properties mentioned in the application is sought. However, the list of ED attachments indicates that neither title nor possession of these properties belongs to respondent no. 1, as they are owned by third parties who are not part of the arbitral proceedings. Consequently, no order of restraint can be passed against respondent no. 1 with respect to the said properties.

x. It is further contended that the Court has already refused reliefs at the stage of Section 9 proceedings. This position was reaffirmed by the AT, which, vide order dated 30.04.2024, denied the impleadment of third parties. Notably, the claimant-appellant had initially opposed the impleadment of third parties but has now taken a contradictory stance in I.A. No. 4/2024.

xi. Moreover, they contend that the delayed filing of this application lacks any justifiable explanation, as the facts and documents relied upon were within the knowledge of the appellant-claimant even at the time of filing its Statement of Claim on 21.08.2023, but were not acted upon. This belated attempt to manufacture a cause of action is devoid of merit and ought to be outright rejected.

Submissions on Behalf of Respondents No.3 to 5:-

> 34. Mr. Gagan Gupta, learned senior counsel appearing for respondents no.3 to 5, submits as follows:-
>
> i. At the outset, learned senior counsel submits that, as per the various development agreements and the admitted liabilities of the parties, respondents no. 3 to 5 are concerned only with Lot 2, which was originally owned by Balbir Singh and late Ram Pyari. Upon the demise of Ram Pyari, respondents no. 4 and 5, as her legal successors, inherited the land. He contends that the GDA explicitly states at multiple instances that all previous transactions shall be construed as imposing liabilities solely on the appellant-claimant or, at best, on respondents no. 1 and 2, and not on respondents no. 3 to 5. He emphasizes that respondents no. 3 to 5 had already transferred their Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 27 KUMAR KAURAV valuable land in exchange for only 26 flats within the project and three plots outside it.

ii. Elaborating on the entitlement of respondents no. 3 to 5, learned senior counsel submits that they are entitled to only 14% of the owner's share within the 21% share allocated to M/s Earl Infotech. He explains that, based on the final computation, only 26 flats fell into the share of respondents no. 3 to 5, out of which one flat has already been sold, leaving 25 remaining. Despite having contributed 5.175 acres of valuable land to the project, he contends that respondents no. 3 to 5 stand to gain nothing if the interim order continues against them.

iii. He further submits that 21% of Rs. 67,36,30,000 amounts to Rs.

14,14,62,300, and 14% of this share equates to Rs. 1,98,04,722. Even assuming, purely for the sake of argument, that the purported liability under Rameshwar-II is imposed, he cannot be restrained from alienating properties beyond his proportionate share. iv. Additionally, he submits that following the final order dated 21.07.2022 passed by the Supreme Court, the appellant-claimant filed Review Petition M.A. No. 50/2019, which was subsequently dismissed on 29.11.2022. In the said review petition, the appellant- claimant had challenged the decision in Rameshwar-II that development rights are akin to the transfer of all rights, including title. He further contends that the appellant-claimant itself had construed the direction of the Supreme Court to deposit the amount as a penalty. Given this, he asserts that if this was the understanding of the Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 28 KUMAR KAURAV appellant-claimant before the Supreme Court, it cannot now take a contradictory stand at a later stage.

v. Referring to the provisions of the GDA on the issue of liability, learned senior counsel submits that the appellant-claimant is not entitled to recover any sum from respondents no. 3 to 5, as there exists no express or implied liability on their part under the agreement. He supports this contention by emphasizing that the AT has rightly held that the GDA makes no reference to respondents no. 3 to 5 and that the definitions of "development risk" and "Frontier cost"

refer exclusively to Godrej and Frontier. Once the AT has duly appreciated the facts and materials, he argues that the Court, while exercising power under Section 37, cannot overturn the decision merely because another view is possible. In any event, he asserts that, under no interpretation of the GDA, is the appellant-claimant entitled to recover any amount from respondents no. 3 to 5. vi. Expanding on this, he argues that, in lieu of the 5.175-acre land, an earlier development agreement was executed on 24.08.2006 between respondents no. 3 to 5 and M/s Earl Infotech (respondent no. 2). Subsequently, on 11.12.2006, it was agreed that Land A and Land B would be jointly utilized for the construction and development of a housing project. To substantiate his claim, he refers to various clauses in the respective agreements, demonstrating that the entire development risk and cost, including unforeseen payments, were the liabilities of the appellant-claimant and/or respondent no. 2.

vii. He further emphasizes that no specific clause in the GDA im

liability upon respondents no. 3 to 5 for any unforeseen payments, akin to the payment made by the appellant-claimant. Despite the restraining order dated 19.03.2023 against respondents no. 3 to 5, he highlights that he consented before the AT on 20.06.2023 to first file a Statement of Defense to enable the AT to effectively adjudicate the Section 17 proceedings. Referring to the procedural order dated 20.06.2023, he asserts that the AT, in the impugned order, has comprehensively addressed the issues raised, leaving no scope for any legal infirmity. In fact, he contends that it was the appellant-claimant who insisted on a detailed consideration of the relief sought. viii. Without prejudice to his rights and contentions, learned senior counsel states that at the very inception of the Section 9 proceedings, he made a statement before this Court, recorded in the order dated 20.03.2023 in OMP [COMM] [I] 12/2023, that at most, a restriction could be imposed on dealing with two flats or an amount approximately equivalent to Rs. 2 crore. He, therefore, reiterates that respondents no. 3 to 5 have no connection whatsoever with the Rs. 67 crore liability in question.

ix. He further raises concerns regarding the severe consequences of an order of attachment before judgment, contending that such an order would have drastic civil implications. He submits that the requirements under Order XXXVIII Rule 5 of the CPC have not been met, and such provisions should only be invoked in exceptional circumstances where the party seeking such relief, through cogent Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 30 KUMAR KAURAV material, establishes a prima facie case that the other party is likely to defeat the decree by disposing of assets or taking evasive actions. However, he argues that no such material has been placed on record by the appellant-claimant to justify such a measure. x. Learned senior counsel also alleges collusion between the appellant-

claimant and respondents no. 1 and 2. He submits that in the Section 9 proceedings, respondents no. 6 to 17 were arrayed as third parties who had received flats from the share allocated to respondents no. 1 and 2. However, in the arbitration proceedings, these third parties have not been heard, and the proceedings remain confined to respondents no. 1 to 5. He further points out that when respondents no. 3 to 5 filed an application for the impleadment of third parties who had received properties from respondents no. 1 and 2, the said application was strongly opposed by the appellant-claimant and respondents no. 1 and Rejoinder Submissions On Behalf Of Appellant-Claimant:-

35. In rejoinder, Dr. Abhishek Manu Singhvi, learned senior counsel on behalf of the appellant-claimant, submits as under:-

i. Learned senior counsel, while referring to paragraphs no. 37 to 42 of the decision of

the Supreme Court in Rameshwar-II, submits that the Court therein has made a conscious distinction between the landowners and third-party allottees, and he submits that the same must not be overlooked.

ii. He contends that the payment made by the appellant-claimant in question was imposed as a penalty on landowners rather than as a Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 31 KUMAR KAURAV charge on allottees, as the subterfuge with respect to the land acquisition was attributable solely to the landowners in collusion with the State. He contends that the Rameshwar-II judgment critically examined how landowners derived windfall profits during the suspect period. According to him, the decision elaborated the fraud played on the exchequer and this involved a two-step process, i.e., first, developers acquired lands and entered into collaboration agreements after the issuance of the notification under Section 4 of the Land Acquisition Act, 1894, despite being aware of the intent of the State to acquire the land and second, the application for and grant of development licenses influenced the decision of the State to withdraw the acquisition.

iii. In view of the fraud, the Supreme Court in Rameshwar-I cancelled the rescinding of the acquisition process and while doing so, preserved the subject matter of the dispute by passing the order restraining the respondents from creating third-party rights on 13.10.2020. Additionally, this Court issued a similar restraining order on 19.01.2023 in the Section 9 proceedings. Given these facts, he submits that the appellant-claimant has only sought either a bank guarantee of Rs. 67.36 crores or unencumbered flats amounting to the equivalent value and according to him, either of these still falls short of the full sum and subsequent interest paid by the appellant-claimant.

iv. Furthermore, learned senior counsel argues that the submissions of the respondents are fallacious. He contends that as per Clause 3 read with Clause 7.1(a)(iii) of the GDA, the appellant-claimant is entitled to Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 32 KUMAR KAURAV recover all losses, expenses, claims, and damages related to the property. Consequently, the appellant-claimant has a contractual right to recover the entire sum, as recognized in the Rameshwar-II judgment.

v. He further submits that the apportionment of liability amongst the respondents is a matter to be adjudicated by the AT at the stage of trail and not at the interim stage. However, until then, the prima facie case for preserving the subject matter is evident, as the appellant- claimant would be left without recourse if the assets stand dissipated. vi. Additionally, he asserts that the respondents have approached the Court with unclean hands. Respondents no. 1 and 2 falsely claimed that allowing the appeal would result in a double penalty since their assets are already under attachment. However, they failed to disclose that they had sought the release of these attached assets based on the appellant-claimants payment of Rs. 67.36 crores. He also submits that the purported third-party purchasers of the flats are none other than the directors and family members of respondent no. 1.

The names of these purchasers indicate that the respondents are merely attempting to deceive the Court, and a prima facie piercing of the corporate veil would reveal that no genuine third-party transfers have been executed. Moreover, no sale deed or documentary proof has been produced, apart from oral assertions that third-party rights have been created. This deliberate suppression of material facts, according to him, indicates their mala fide intent towards both the parties and towards the Court.

vii. Further, he submits that respondents no. 1 to 5 have erron

referenced the review petition filed by the appellant-claimant. The dismissal of the review petition, at best renders the Rameshwar-II judgment final and binding. Rameshwar-II established that the payment was imposed as a punitive liability and is recoverable from the respondents.

viii. Moreover, he contends that the test under Order XXXVIII Rule 5 CPC is satisfied, warranting attachment before judgment. The necessary ingredients of Order XXXVIII Rule 5 have been specifically pleaded. The Supreme Court has already passed an order restraining the respondents from creating third-party rights. Additionally, respondents no. 1 and 2 have admitted to selling their units, and their remaining assets are already under attachment by the ED. The impugned order itself affirms their prima facie liability. To substantiate his contention, learned senior counsel has placed reliance on the decision in the case of Essar House Private Limited Vs. Arcellor Mittal Nippon Steel India Limited6. Relying on this decision, he submits that in event a strong prima facie case is made out and the balance of convenience is in favour of granting the interim relief, technical grounds such as the absence of specific averments seeking attachment under Order XXXVIII Rule 5 of the CPC should not be the basis for not granting the interim relief, which also encompasses the attachment of property before judgment.

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ix. Lastly, he submits that the present appeal satisfies the te

illegality and perversity of the impugned order, warranting interference under Section 37 of the AC Act. The impugned order contradicts the Rameshwar-II judgment, which imposed liability upon the respondents due to their collusive dealings during the suspect period. Despite this, the AT incorrectly held that no liability could be imposed on respondents no. 3 to 5. Furthermore, despite recording that respondents no. 1 and 2 had sold all their units and that their remaining assets were under attachment by the ED, no interim relief was granted to secure the liability.

x. In light of the above, learned senior counsel reiterates that the Rameshwar-II judgment unequivocally mandates the payment of Rs. 67.36 crores as a punitive liability, not merely discretionary. Analysis

36. I have heard learned counsels for the parties and perused the record. From the extensive submissions advanced on both maintainability and merits, as well as upon careful examination of the record, the following issues emerge for adjudication:-

i. The permissible scope of judicial interference under Section 37 of the AC Act, when interim measures are denied by the AT.

ii. Whether, in the facts and circumstances of the present case, the appellant-claimant has made out a case for the grant of interim relief, including the preservation of subject matter and security for the claimed amount on the touchstone of principle of prima facie case, balance of convenience and irreparable loss.

Delineating The Scope of Interference Under Section 37 of the AC Act

37. Upon a perusal of Section 37 of the AC Act, under which the instant appeal has been filed, it is seen that the scope of the appeal under the aforesaid provision is highly circumscribed, and is analogous to the contours of the jurisdiction exercisable under Section 34 of the Act. The Supreme Court, in C & C Constructions Ltd. v. IRCON International Ltd7, elaborated on this aspect by placing reliance on a catena of decisions including Larsen Air Conditioning and Refrigeration Company v. Union of India8. In the said decision, the Court emphasized on the jurisdiction of the Court under Section 34 of the AC Act is extremely circumscribed, permitting interference with an arbitral award only on grounds of patent illegality, holding that the "illegality must go to the root of the matter and not be of a trivial nature". It further held that while a Tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground". Another valid ground for interference is the denial of natural justice.

38. However, in an appeal under Section 37, given the appeal is filed only against "interim measure", the scope of review by the Appellate Court is further confined beyond the contours of the limited scope of appeal under Section 34. Elaborating further on this aspect, the Supreme Court in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking9, reiterated that an Appellate Court reviewing a decision under Section 37 2025 SCC OnLine SC 218 (2023) 15 SCC 472 (2023) 9 SCC 85 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 36 KUMAR KAURAV cannot conduct an independent assessment of the merits of the Arbitral Award, rather it must limit itself to ascertaining as to whether the AT exceeded its jurisdiction under Section 34. The restrictive nature of an appeal under Section 37, as noted in various pronouncements, is only reflective of the legislative intent to ensure minimal judicial

interference, to uphold the finality of arbitral proceedings and to avoid multiplicity of litigation of matters. Moreover it was held that if two views are possible, the Court cannot substitute its own view for that of the AT. The Court further held that the narrow scope of "patent illegality" cannot be breached merely by using different expressions that refer only to "error" and not "patent illegality". No doubt, interference shall be warranted in desirable circumstances, but the threshold to interfere ought to be kept high so as to prevent multiplicity and prolongation.

39. Further, in Haryana Tourism Limited vs. Kandhari Beverages Limited10, the Supreme Court observed that while the Courts in an appeal under Section 37 are empowered to set aside an award, the Court cannot enter into the merits of the claim and the award may be interfered with only when the award stands contrary to:- (a) the fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) if the order is patently illegal. The Supreme Court in Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills11, further observed that an impugned award cannot be interfered unless the substantive provision of law or the terms of the agreement are breached. Further reference can be made to the decisions of this Court in the cases of Shamlaji Expressway (P) Ltd. v.

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National Highway Authority of India12, wherein this Court reiterated the principles laid down in Dinesh Gupta v. Anand Gupta13, Augmont Gold Pvt. Ltd. v. One 97 Communication Ltd., and Sanjay Arora v. Rajan Chadha14. These decisions reaffirm that judicial interference is warranted only in cases of patent illegality, violation of principles of natural justice, or perversity in the arbitral order.

40. Given the recurrent usage of the terms patent illegality, natural justice, perverse, reasonable among other terms, which are not amenable to rigid legal definition and each being susceptible to varying interpretations, the Court finds it appropriate, at the outset, to ascertain their precise meanings and the same would serve as the essential benchmarks in determining the permissible scope of appellate intervention under Section 37 of the Act. It is equally necessary to examine how the Courts have interpreted and delineated the scope of these terms generally, and specifically within the context of Arbitration.

41. The term patent illegality was first elaborated by the Supreme Court in ONGC v. Saw Pipes15, in the context of arbitration law, wherein it was observed that if an award is contrary to substantive law, the provisions of the Act, or the terms of the contract, it would be patently illegal and could be interfered with under Section 34. However, such procedural failure must be evident.

42. Subsequently, based on the recommendations of the 246th Law 2024 SCC OnLine SC 2632 2024

SCC OnLine Del 7131 2020 SCC OnLine Del 2099 (2021) 3 HCC (Del) 654 2003 (5) SCC 705 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 38 KUMAR KAURAV Commission Report, an amendment was introduced in Section 34 of the AC Act in 2015. This amendment expanded the scope of "public policy of India," which had been narrowly interpreted in earlier judicial pronouncements. Over time, various cases have relied on the ground of patent illegality. In general, patent illegality refers to an error of law that goes to the root of the matter. Such an error may involve inconsistency with common law, the Constitution, or a statutory provision. The definition of patent illegality and other related terms, as provided in Ramanath Aiyar s Major Law Lexicon, offer a comprehensive understanding of the concept of patent illegality. The treatise defines patent illegality as a legal defect that is apparent on the face of the record without requiring extrinsic evidence or interpretation. This concept is closely linked to patent ambiguity, which refers to an ambiguity that is evident from the language of an instrument itself. A latent ambiguity, in contrast, is one that is not immediately visible but emerges when extrinsic evidence is examined.

43. A patent ambiguity is an ambiguity that arises solely from the language of an instrument. It is distinguished from a latent ambiguity, which occurs when the words in an instrument apply equally well to two distinct things or subject matters and require external evidence to resolve. A patent defect is a defect that is plainly visible and can be discovered through reasonable inspection and diligence. The definition emphasizes that it is not necessary for the defect to have been observed by a party, rather, it must be observable upon exercising ordinary caution itself. It is understood that this principle is relevant in cases where defects are apparent on the face of it. A patent error is an error that is self-evident, requiring no elaborate reasoning Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 39 KUMAR KAURAV or extensive analysis to be demonstrated. The Supreme Court in Surya Dev Rai v. Ram Chander Rai16, held that a patent error must be one that is demonstrable without engaging in a long-drawn argument. Similarly, in Ranjeet Singh v. Ravi Prakash17, it was observed that when two opinions are reasonably possible on the same material, the finding of one over the other cannot be termed as a patent error.

44. Moving back to the context of arbitration, it becomes imperative to examine the scope and relevance of a patent illegality in the realm of arbitral proceedings. While patent error, patent ambiguity, and patent defect generally refer to errors or defects that are self-evident and discernible without elaborate reasoning, the concept of patent illegality, in arbitration jurisprudence has acquired a distinct connotation. The Supreme Court in Delhi Airport Metro Express (P) Ltd. v. DMRC18 elucidated the contours of patent illegality in the context of arbitral awards. It was observed that patent illegality must be of such a nature that it goes to the root of the matter and fundamentally affects the fairness and legality of the arbitral process.

45. The Court clarified that not every error of law committed by the AT qualifies as patently illegal. Similarly, a mere erroneous application of the law does not amount to patent illegality, unless it has a direct impact on the outcome of the case. Contraventions of law that do not involve public policy or public interest fall beyond the scope of the doctrine. It is equally important to note that the terms ambiguity, error and defect, command a lesser threshold as compared to an illegality. Illegality

refers to (2003) 6 SCC 675 (2004) 3 SCC 682 (2022) 1 SCC 131 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 40 KUMAR KAURAV contravention of the law and patent illegality would effectively mean an unequivocal contravention of the law that is writ large on the face of the record. Therefore, a higher standard is required to prove patent illegality as compared to a mere defect or ambiguity or error.

46. Understandably, judicial interference under Section 34(2-A) of the AC Act, is strictly limited to instances where the decision of the AT is wholly untenable, for instance:-

> a. When the AT adopts an interpretation of a contract that no fair- minded or reasonable person would endorse.
>
> b. When the AT exceeds jurisdiction by dealing with matters not contemplated in the contract.
>
> c. When the award is completely devoid of reasons. d. When the findings are based on no evidence or are reached by ignoring material evidence, rendering them perverse. e. When an AT relies on documents not provided to the opposing party, thereby violating the principles of natural justice.

47. In Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum 19, while delineating the contours of patent illegality, the Supreme Court emphasized the fundamental principle that a judicial precedent is binding only on the issue of law that is expressly raised and decided. The Court cautioned against interpreting judicial pronouncements in isolation, detached from the factual matrix in which they were rendered. It reiterated the well-established legal proposition that judgments and observations in judgments are not to be read as Euclid s theorems or as provisions of statute. Judicial pronouncements must be understood within the specific factual setting of the case and not be extrapolated as rigid legal definitions, as if incorporated in a statute.

48. Building upon the foregoing discussion on patent illegality, it becomes imperative to delve into the interpretative contours of key terms such as reasonable person, fair-minded, natural justice, public policy, perverse, and possible-view. These terms frequently appear in judicial determinations concerning arbitral awards and their validity under Section 34 and Section 37 of the AC Act. Their precise meanings, as expounded through case law and legal dictionaries, provide valuable guidance in assessing the threshold for judicial interference in arbitral proceedings.

49. The term possible view refers to a conclusion that can reasonably be reached, irrespective of whether a superior Court agrees with it or not. As elaborated in Murugesan v. State20, a possible view is one of reasonable legal or factual interpretation, as opposed to an arbitrary or manifestly erroneous finding. The Oxford English Dictionary defines possible as something capable of existing, happening, or being achieved or that may exist or happen but is not certain or probable. In legal

parlance, a possible view is not synonymous with an infallible or correct view but rather denotes a perspective that is within the bounds of rational acceptability.

50. The distinction between possible, practicable, and practical is also noteworthy. While possible is regarding the inherent potential of an event occurring, practicable depends on circumstantial feasibility, and practical relates to the actual implementation or application of a concept.

51. In the context of arbitral awards, a possible view is not to be conflated with an erroneous view. Judicial interference is warranted only when the award is so unreasonable that no fair-minded or reasonable person could (2022) 4 SCC 463 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 42 KUMAR KAURAV have arrived at such a conclusion. This principle was re-iterated in Hakeem Khan v. State of M.P.21, which reaffirmed that unless the conclusion of a Court is entirely disconnected from the evidence or legal reasoning, they must refrain from intervening under the guise of correcting mere errors of judgment.

52. Building upon the foregoing discussion on patent illegality and possible view, it is further necessary to explore the concept of reasonable view.

53. The term reasonable is inherently relative and context-dependent. As observed in Chintamanrao v. State of M.P.22, reasonableness implies intelligent care and deliberation. Courts have consistently held that a reasonable view is one that aligns with logical thought and legal principles, taking into account the circumstances of each case. In Raghunath G. Panhale v. Chaganlal Sundarji23, the Supreme Court clarified that reasonableness does not imply an ideal or perfect solution but one that is fit and appropriate to the end in view.

54. The reasonable view standard is distinct from correctness or best possible view. It acknowledges that different adjudicators may reach different conclusions based on the same set of facts, as long as those conclusions are within the bounds of rationality. As held in Veerayee Ammal v. Seeni Ammal24, reasonableness varies in its conclusions according to the idiosyncrasies of the individual and the times and (2012) 10 SCC 383 (2017) 5 SCC 719 AIR 1951 SC 118 (1999) 8 SCC 1 AIR 2001 SC 2920 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 43 KUMAR KAURAV circumstances in which he thinks. However, while individual perception may vary, Courts maintain that reasonableness must be assessed within the four corners of the law.

55. In the context of arbitral awards, reasonable view means a conclusion drawn from the evidence and legal principles that a fair-minded and rational person could reach, even if it is not the only possible conclusion. The Supreme Court in Delhi Airport Metro Express Pvt, cautioned against judicial interference in arbitral findings unless the view of the AT is so perverse that no reasonable person could have arrived at such a conclusion.

56. Furthermore, the reasonable person standard, which forms the backbone of negligence and contract law, plays an important role in arbitration jurisprudence. As noted in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shanker Pant25, a reasonable person is one who acts with ordinary

prudence, fairness, and diligence in the circumstances. Thus, when Courts review an arbitral award, they are not replace the reasonable view of the arbitrator with what the Court believes to be the correct view.

57. The final aspect that remains is perversity. A perverse finding is one that is so manifestly unreasonable, irrational, or contrary to the weight of evidence that no reasonable person would have arrived at such a conclusion.

58. The Supreme Court, in Kuldeep Singh v. Commissioner of Police26, clarified that a finding is not perverse if there is some evidence on record which is acceptable and which could be relied upon, however compendious it may be. However, a finding that is based on no evidence, or an inference drawn in an unacceptable manner, can be considered perverse. This (2001) 1 SCC 182 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 44 KUMAR KAURAV principle was further elucidated in Vishwanath Agrawal v. Sarla Vishwanath Agrawal27, wherein the Court held that a finding is perverse if it is not only against the weight of evidence but altogether against the evidence itself. In arbitration, the principle of perversity is particularly relevant when reviewing an arbitral award for patent illegality. In Sumitomo Heavy Industries Ltd. v. ONGC Ltd28, the Supreme Court held that the findings of the AT must be set aside if they outrageously defy logic or suffer from irrationality.

59. Further, in S.R. Tewari v. Union of India29 the Court laid down parameters to determine perversity, holding that a decision suffers from this vice if:-

a. It ignores or excludes relevant material;

b. It takes into consideration irrelevant or inadmissible material; c. It is against the weight of evidence;

d. It is so outrageously illogical.

60. Further, in Gaya Din v. Hanuman Prasad30, the Supreme Court emphasized that a finding can be deemed perverse if it is not supported by evidence brought on record, is contrary to law, or suffers from procedural irregularity. This is a critical test in arbitral proceedings, as ATs are bound by the principles of natural justice and reasoned adjudication.

61. The concept of perverse verdicts has also been examined in common law jurisdictions, where Courts have held that a jury or tribunal acts perversely if it refuses to follow legal directions or draws a conclusion that (1999) 2 SCC 10 (2012) 7 SCC 288 (2010) 11 SCC 296 (2013) 6 SCC 602 (2001) 1 SCC 501 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 45 KUMAR KAURAV is entirely unsupported by evidence. In India, this principle is mirrored in Triveni Rubber and Plastics v. CCE31, where the Court observed that a finding is perverse if no reasonable person would arrive at such a conclusion.

62. Thus, when an arbitral award is challenged on the ground of perversity, the Appellate Court is not permitted to re-appreciate evidence as if it were sitting in an ordinary appeal. Instead, it must assess whether the impugned Award/Order is so irrational that it falls outside the realm of legally sustainable conclusions. If the AT takes a view that is merely incorrect but reasonably possible, it will not be interfered with.

63. Furthermore, in GLS Foils Products (P) Ltd. v. FWS Turnit Logistic Park32, this Court observed that the scope of review under Section 37(2)(b) is not that of a regular appeal. The discretionary jurisdiction exercised by the AT should not be interfered with, unless it is palpably arbitrary or unconscionable.

64. Thus, under section 37 proceedings, the Appellate Courts must exercise restraint, intervening only in cases of arbitral decisions that are perverse, arbitrary, or fundamentally illegal. It must be acknowledged that an AT is a forum of choice of the parties and unless an award is so outrageous that it militates against the very idea of fair adjudication or is affected by the vices discussed in detail above, intervention must be avoided, so as to ensure that the alternate mode of resolution voluntarily adopted by the parties remains effective and is not reduced to a subordinate forum whose every act is vulnerable to be attacked before the Appellate Court.

1994 Supp (3) SCC 665

Examining The Interplay of Sections 9 and 17 in Section 37 Proceedings

65. The provisions of Section 9 and Section 17 of the AC Act, when juxtaposed, indicate that they are almost identical provisions, applicable at different stages. The Act provides parties with the remedy of seeking interim relief under both Sections 9 and 17. Under Section 9, a Court may grant interim relief before or during Arbitral Proceedings, or at any time after the making of the Arbitral Award but before its enforcement under Section 36 of the Act. Similarly, Section 17 empowers the AT to grant interim relief during the arbitral proceedings. The nature of interim measures available under both provisions is pari materia, encompassing reliefs such as securing the amount in dispute, preserving the subject matter, granting injunctions, or appointing receivers.

66. However, to minimize judicial intervention in Arbitral Proceedings, the Act mandates that once an AT is constituted, parties must approach same for interim relief. The jurisdiction of the Court under Section 9 is thereby restricted once reference is made to the AT, and it may entertain an application only if circumstances exist that render the remedy under Section 17 inefficacious.

67. The Supreme Court in Arcelormittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd33, clarified that relief under Section 9 cannot be denied merely because Section 17 exists. Courts may

entertain Section 9 applications if the remedy under Section 17 is considered by the Court to be inefficacious. In the decision, it was explained that once an AT is constituted, Section 9 applications should not ordinarily be entertained 2023 SCC OnLine Del 3904 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 47 KUMAR KAURAV unless there is an impediment in approaching the AT or the relief cannot be obtained expeditiously. In Dalpat Singh Naruka v. Karuna Bansal34, the Supreme Court, while considering the scope of an appeal under Section 37 arising from an order under Section 9 refusing to grant interim measures, reiterated that the jurisdiction of the Appellate Court should be confined to the aspect of refusal to grant interim measures, and not to venture further or conduct a roving enquiry by taking into consideration the substantive controversy on merits.

68. Further, in Prabhat Steel Traders (P) Ltd. v. Excel Metal Processors (P) Ltd35, the High Court of Bombay held that a third-party affected by the order of an AT under Section 17 has the right to appeal under Section 37(2)(b), even though they are not a party to the arbitration agreement. The Court distinguished between Sections 34 and 37, noting that while Section 34 restricts challenges to a "party" to the arbitration, Section 37 contains no such inherent limitation, thereby allowing any affected non-party to seek relief. The intent of the provision appears to prevent collusive proceedings that may unfairly impact non-parties.

69. Thus, upon examining the relevant provisions, it is seen that Sections 9 and 17 of the AC Act, 1996, are designed to strike a balance between judicial oversight and arbitral autonomy. These provisions ensure that interim relief remains accessible to parties while simultaneously preserving the authority and independence of arbitral tribunals.

70. As the details pertaining to applications challenged in the impugned (2022) 1 SCC 712 (2022) 15 SCC 77 2018 SCC OnLine Bom 2347 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 48 KUMAR KAURAV order has already been discussed, which, in essence, seek for the retractations on the respondents to not to create third party rights in the first I.A. 2/2023 and in the second application being I.A. 4/2024, seek for attachment of certain properties, which are both part of and fall beyond the GDA. The Court is of the opinion the relief sought in the interim relief prayer clause are akin to an order of injunction under the CPC under Order XXXIX Rule 1 and 2 in the first application, and Order XXXVIII Rule 5 in the second application.

71. In Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd36, the Supreme Court has observed that the "well known rules" of the CPC would have to be kept in mind while granting interim reliefs. Therefore, the principles such as (i) prima facie case, (ii) balance of convenience, and (iii) irreparable injury would have to be kept in mind while granting an injunction. This Court in Ajay Singh v. Kal Airways Private Limited37, followed in Jetpur Somnath Tollways Limited and Ors. v. National Highways Authority of India and Ors38, National Highways Authority of India v. Punjab National Bank39, continued to recognise that the power of Courts to grant interim reliefs the AC Act is considerably wide, as is apparent from its text. Nevertheless, such power should be exercised in a principled manner, premised on some known guidelines. Hence, the reference to Orders XXXVIII and XXXIX of the CPC. It has further clarified that the Court should not find itself unduly bound by

the text of those provisions rather it is to follow the underlying principles. Further, (2007) 7 SCC 125 2017 SCC OnLine Del 8934 2017 SCC OnLine Del 9453 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 49 KUMAR KAURAV relying on the Supreme Court s finding in Indian Telephone Industries v. Siemens Public Communication40, this Court concluded that though there is no textual basis in the AC Act, linking it with provisions of the CPC, nevertheless, the principles underlying exercise of power by Courts in the CPC are to be kept in mind. Thus, an analysis as to the essential ingredients which are required to be granted for an injunction or attachment are to be considered before examining the impugned order.

Outlining the Essential Conditions for Granting an Injunction:- Prima facie Case, Balance of Convenience, and Irreparable Harm

72. It is trite law that no injunction can be granted unless the three essential conditions are satisfied, namely, the existence of a prima facie case, the balance of convenience in favor of the applicant, and the likelihood of irreparable injury that cannot be compensated in monetary terms. Furthermore, the failure to establish any one of these conditions disentitles a party from seeking an injunction, and the Court would be justified in refusing the relief of injunction. On this aspect, reference can be made to the decision of the Supreme Court in the case of Hazrat Surat Shah Urdu Education Society v. Abdul Saheb41. The relevant portion of the said decision reads as under:-

> "No doubt the District Judge held that there was no prima facie case in the respondent's favour but he further recorded a positive finding that even if the plaintiff respondent had prima facie case there was no balance of convenience in his favour and if any injury was caused to him on account of the breach of contract of service he could be compensated by way of damages in terms of money therefore he was not entitled to any injunction. The High court failed to notice that even 2017 SCC OnLine Del 11312 (2002) 5 SCC 510 JT 1988 (4) SC 232.
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> if a prima facie case was made out, the balance of convenience and the irreparable injury were necessary to exist. The question whether the plaintiff could be compensated by way of damages in terms of money for the injury which may be caused to him on account of the breach of contract of service was not considered by the High court. No temporary injunction should be issued unless the three essential ingredients are made out, namely:
>
> (i) prima facie case,
>
> (ii) balance of convenience,
>
> (iii) irreparable injury which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the

> injunction and the court will be justified in declining to issue injunction. In the instance case the respondent plaintiff was claiming to enforce the contract of service against the management of the institution. The refusal of injunction could not cause any irreparable injury to him as he could be compensated by way of damages in terms of money in the event of his success in the suit. The respondent was therefore not entitled to any injunction order. The District Judge in our opinion rightly set aside the order of the Trial Court granting injunction in favour of the plaintiff respondent. The High court committed error in interfering with that order."

73. The aforesaid principle has been relied upon by this Court consistently in Hari Krishan Sharma v. MCD42, I.K. Mehra v. Wazir Chand Mehra43, and B.M.L. Garg v. Lloyd Insulations (India) Ltd44. In light of this well-settled legal position, it is evident that an applicant seeking an injunction must establish all three essential ingredients, i.e., prima facie case, balance of convenience, and irreparable injury. The failure to satisfy even one of these elements would disentitle the applicant from obtaining injunctive relief.

74. The Court, in its recent decision in Rashmi Saluja v. Religare Enterprises Ltd45, held that if there exists an acceptable standard for 1987 SCC OnLine Del 286 1997 SCC OnLine Del 356 1992 SCC OnLine Del 447 2025 SCC OnLine Del 692 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 51 KUMAR KAURAV ascertaining the actual damages likely to be caused if injunctive relief is not granted at the outset and such damages can be awarded at the stage of final adjudication, then in such cases, the grant of an injunction should be refused. The principle underlying this position is that when the monetary value of the claim can be precisely determined, there may be no irreparable injury, as compensation in terms of money would suffice to repair the harm which may be caused. However, the impossibility of computing compensation is not the sole criterion for determining irreparable injury. The key consideration is whether monetary compensation alone would be adequate to redress the harm caused by the denial of an injunction. This assessment is inherently case-specific and must be made in light of the particular facts and circumstances of each case. Unless the party seeking injunctive relief conclusively establishes that the actions of the other party are wholly beyond the scope of legal provisions and patently erroneous, while also demonstrating a prima facie case and proving that the damages likely to be suffered are irreparable and cannot be compensated monetarily, the Court must exercise restraint in acting without conducting a full-fledged trial, based on evidence.

75. Moreover, as discussed above, the instant case is to be appreciated within the scope of Section 37 of the AC Act, and it is a settled principle that appellate intervention in such matters must be limited. In Monsanto Technology LLC v. Nuziveedu Seeds Ltd46, the Supreme Court held that the Appellate Court should not usurp the jurisdiction of the Trial Court by reassessing whether the conditions for granting an injunction, i.e., prima (2019) 3 SCC 381 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 52 KUMAR KAURAV facie case, balance of convenience, and irreparable injury are met. Similarly, in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd47, the Supreme Court reiterated that the Appellate Court benefits from reviewing the reasoning of the Trial Court and must examine its correctness within a limited framework. Further reference may also be made to Wander Ltd. v. Antox India P. Ltd48, where the

Supreme Court held that an Appellate Court must not reassess the material afresh or reach a different conclusion merely because it would have exercised discretion differently. So long as the discretion has been exercised reasonably and judicially, interference at the Appellate stage remains unwarranted.

76. Furthermore, considering that the subject matter pertains to immovable property comprising land and constructed real estate units, and since damages have already been quantified by the parties themselves, the interest of the appellant-claimant can effectively be secured through the application of the doctrine of lis pendens. The doctrine of lis pendens, founded upon sound public policy considerations, stipulates that if, during the pendency of a non-collusive suit or proceeding where the rights in an immovable property are directly and substantially in question, and a transfer of the property occurs, such transfer would remain subject to and bound by the outcome of the suit or proceeding. Consequently, any transfer made pendente lite shall not prejudice or frustrate the ultimate decree or order rendered therein.

77. In a catena of decisions, including Iqbal Singh v. Mahender Singh49, (2023) 1 SCC 634 1990 Supp SCC 727 2012 SCC OnLine Del 5852 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 53 KUMAR KAURAV this Court has observed that any transfer of immovable property during the pendency of legal proceedings, including arbitration proceedings, stands void, and falls within the ambit of Section 52 of the Transfer of Property Act, 1882 [TPA]. The principle of lis pendens ensures that once arbitration proceedings commence, marked by the date on which a request for arbitration is received by the respondent under Section 21 of the AC Act, the subject property is deemed sub-judice, and any subsequent transfer is hit by Section 52 of TPA. Accordingly, any apprehension regarding the impairment of their rights qua the immovable properties stands alleviated, as Section 52 of TPA serves as a safeguard against any adverse legal consequences that may arise from any transfer pending arbitration.

78. Having said that, it is relevant to note that in Opaque Infrastructure Pvt. Ltd. v. Millennium Realtech Pvt. Ltd50, this Court held that interim relief under Section 9 of the AC Act can be granted despite the existence of Section 52 of TPA. The Court is also mindful of the decision of the Supreme Court in Ramakant Ambalal Choksi v. Harish Ambalal Choksi51, wherein it was clarified that the protection under Section 52 of TPA should not be construed as an absolute safeguard against all pendente lite transfers and that there may be circumstances where such transfers can be permitted. In the instant case as well, the immovable assets in dispute are subject to the doctrine of lis pendens and shall remain so until the conclusion of the proceedings.

79. Upon a meticulous examination of the underlying principles in the aforementioned rulings, the following principles emerge:-

> 2014 SCC OnLine Del 7483 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 54 KUMAR KAURAV i. The appeal under Section 37 of the AC Act is highly limited in scope and is analogous to the jurisdiction exercisable under Section 34 of the Act. The provision does not allow for a broad review but rather operates within the strict confines of procedural and

substantive limitations. Reference can be made to the decision in C & C Constructions Ltd. v. IRCON International Ltd. ii. A party seeking injunctive relief must establish three essential conditions: the existence of a prima facie case, the balance of convenience in favour of the applicant, and the likelihood of irreparable injury that cannot be compensated in monetary terms. The failure to satisfy any one of these conditions disentitles a party from obtaining an injunction, and the court is justified in refusing such relief. This principle was reaffirmed by the Supreme Court in Rashmi Saluja v. Religare.

iii. The provision of Section 52 of the TPA is applicable to Arbitration Proceedings as well, as has been held in the case of Iqbal Singh v. Mahender Singh.

80. Having discussed in detail issue no. 1, which pertains to the scope of interference under Section 37 of the AC Act, along with other relevant legal aspects, the Court then proceeded to examine issue no. 2, wherein the essential ingredients of injunctions were analyzed. In light of these discussions, it is now necessary to assess the factual aspects concerning I.A.2/2023 and I.A.3/2023, wherein the appellant-claimant sought interim reliefs in the nature of an injunction, as well as I.A.4/2024, where the relief 2024 SCC OnLine SC 3538 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 55 KUMAR KAURAV sought is in the nature of attachment. This assessment is essential to determine whether the appellant-claimant is entitled to the injunction and other reliefs sought.

81. The relief sought in these applications can be structured into two distinct parts, the first part concerning respondents no. 1 to 5 as a whole, while the second, specifically addressing Sector 52 plots, which pertains solely to respondents no. 3 to 5.

82. In the order dated 19.01.2023, passed in Section 9 proceedings, this Court took note of the submissions made by respondents no. 6 to 17, who contended that they were not parties to the GDA and, therefore, could not be subjected to arbitration proceedings or be held liable for obligations arising from the orders of the Supreme Court.

83. These respondents contended that they being independent flat buyers who had acquired their flats from respondents no. 1 and 2, along with the appellant-claimant, are not governed under the arbitration clause in the GDA. Moreover, they contended that the directions in Rameshwar I and Rameshwar II were based solely on the agreements between the respondents nos. 1 to 5 and the appellant-claimants and thus, they are not necessary parties. The Court in the order dated 19.01.2023 had, prima facie concurring with the aforesaid respondents no. 6 to 17, noted that they were not the signatories to the GDA and are merely related parties independent to the GDA. The Court further noted that any directions against the aforesaid respondents can await their response to the main petition under Section 9. Since Section 9 petition was disposed of on 25.05.2023, the said respondents Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 56 KUMAR KAURAV therein were not referred to the AT. However, the Court reserved the liberty in favour of respondents no. 3 to 5 to seek appropriate directions regarding their impleadment.

84. While doing so, the Court further recorded the submissions of respondents no. 3 to 5 noting that under Clause 3.5.1(ii) of the GDA, only an area of 55,328.60 sq. ft. of the total built-up area was allotted to them, which constituted approximately 5.28% of the total project. These respondents were allocated 26 flats, of which they retained possession of 25. Without prejudice, even assuming the appellant-claimant to be entitled to proportionate adjustment, the maximum liability attributable to respondents no. 3 to 5 would be Rs. 3.55 crore.

85. However, in the present applications, respondents no. 1 and 2, in their reply have categorically stated that within their allotted inventories, third- party rights have already been created with respect to 23 flats. According to them, these flats were allotted to respondents no. 6 to 17 at arm s length consideration, with corresponding buyer agreements executed between 2010 and 2015. Furthermore, on an application filed by respondents no. 3 to 5 to implead respondents no. 6 to 17 in the arbitral proceedings, vide order dated 30.04.2024, the application was rejected on the ground that orders could not be passed against third parties who were not signatories to the GDA.

86. It is further pertinent to note that the appellant-claimant was in notice of the creation of the aforesaid third-party rights, as the appellant-claimant was a signatory to each of the said agreements. The respondents have also annexed copies of such agreements. The following assertions are made by respondents No. 1 and 2 in paragraphs 6 to 9 of the reply to Section 9 Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 57 KUMAR KAURAV petition, which reads as follows:-

> "6. The captioned Petition, inasmuch it seeks the relief, inter alia, of „temporary order and injunction, jointly and severally from selling, gifting, alienating, encumbering,\ creating any third-party interest or transferring in any other manner whatsoever their respective flats/units/Plot (detailed in Document 18) of the Godrej-Frontier project situated at village Naurangpur, Dist- Gurgaon in Residential Sector- 80 of Gurgaon, Haryana... , is thoroughly misconceived, and premised on a suppression of relevant facts.
>
> 7. The Appellant-claimant has failed to disclose to this Hon ble Court that, qua the 23 flats listed as „Inventories of Frontier Home Developers Pvt. Ltd. and „Inventories of Earl Infotech Pvt. Ltd. , third- party rights have already been created. Respondents No. 6-17 to the present Petition have been allocated these 23 flats at arms-length consideration, and corresponding Apartment Buyer s Agreements have been executed between the years 2010-2015. The creation of these third-party rights was demonstrably within the Appellant-claimant s knowledge since 2010/2015, as it was a party signatory to each of the said Apartment Buyer s Agreements. Illustrative copies of such Apartment Buyer s Agreements are annexed as Document-6 (Colly.) to the present Reply.
>
> 8. Thus, the Appellant-claimant s claim that the aforesaid 23 flats are „unsold is demonstrably false, as a) it was in knowledge of the execution of the aforesaid Apartment Buyer s Agreements; and b) it was instrumental in creating third party

rights in these flats, way back in the years 2010- 2015. Furthermore, the reliance placed upon by the Appellant-claimant on Document 18 of the Petition is also misplaced as the Affidavit dt. 04.11.2020 filed by the Respondent No. 1 before the Hon ble Supreme Court itself shows that these units were duly allotted.

9. Therefore, it is evident that the Appellant-claimant has suppressed vital facts and documents in withholding from disclosing and placing on record the allotment letters and the Apartment Buyer s Agreements. The instant Petition deserves to be dismissed on this ground alone."

87. In rebutting the grounds taken by respondents no.1 and no.2 in the reply to the instant application, the appellant-claimant contended that as per Clauses 7.1(a) and 7.2 of the GDA, Respondent No. 1, Frontier is to indemnify the appellant-claimant against any losses or damages arising from misrepresentation, breach of warranty, or non-compliance with the terms of Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 58 KUMAR KAURAV the agreement. The consequential failure of the adherence to the GDA has resulted in substantial financial exposure and that units falling within the share of Frontier, respondent No. 1 have been subjected to attachment by the ED, as evidenced by the final attachment order dated 13.12.2021. The appellant-claimant asserts that these assets remain encumbered, and unless an interim order is granted, its right to recover dues from Frontier will be severely jeopardized.

88. From the aforesaid position and the record, the following status emerges regarding the total constructed units under the GDA :-

Party	Ownership Deta
Appellant-Claimant (Godrej Properties Limited)	Holds 453 units: 361 residential 8 shops, and 1 nursery school.
Respondents No. 1 & 2 (Conway Developers/Earl Infotech)	Own 88 flats, constituting 79% o property of the share of all res
Respondents No. 3 to 5 (Balbir Singh, Hari Singh & Harpal Singh)	Entitled to 14% of the 21% share No. 2, translating to 26 flats (

89. As observed by the AT in paragraph 68 of the impugned award, the appellant-claimant has sold 357 out of 361 residential units, 8 commercial shops, and 83 out of 84 EWS units from its share of inventory. As of today, as per record, only 4 residential units, 1 EWS unit, and a designated school remain unsold in the entire project. The observation made by the learned AT in paragraph 68 reads as under:-

"68. ....

"g. Upon completion of the project occupation certificate has also been granted by DTCP, Haryana vide memo no ZP433/SD(BS)/2014/24133 dated 16.10.2014 for residential, EWS and commercial units and vide memo no. ZP-

433/SD(BS)/2017/13639, dated 19.06.2017 for community building. The said Group housing colony consists of 567 units (i.e. 475 Residential; 84 EWS and 8 Commercial) and 1 nursery Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 59 KUMAR KAURAV school (for the group housing), have been constructed, the status of all the units developed in the group housing colony are provided as under:

Tower/Block No.	Number o Units

Out of these 567 flats as per the Development Agreement following units were allocated amongst the parties:

I. 88 units (residential) have been transferred to Frontier Home Developers Pvt. Ltd. and its associate entities (formerly Conway Developers Pvt. Ltd.) being their share;

II. 26 units (residential) have been transferred to Farmers/ original landowners [13 flats each were allotted to 'Balbir Singh and Ram Piyari (and her sons Hari Singh and Harpal Singh)]; III. 453 units (361 residential, 8 commercial and 84 EWS) and 1 nursery school were retained by Godrej Properties Ltd. being part of their share. Copies of the photographs of the project Godrej Frontier are annexed herewith and marked as ANNEXURE-B. (PAGES 21 TO

41)."

90. The obligation to pay Rs. 67,36,30,000/- to HSIIDC, as directed by the Supreme Court, does not automatically entitle the appellant-claimant to seek security for the entire amount from the respondents, particularly in the absence of clear contractual provisions under the GDA dated 24.06.2010 imposing such liability. The AT has further considered the submissions of the respondents, particularly their contention that their liability, at best, is only limited to their proportionate share in the benefits derived from the Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 60 KUMAR KAURAV project.

91. However, this proposal was not accepted by the appellant-claimant, who instead sought security for the entire sum paid to the HSIIDC. The AT found that the demand of the appellant-claimant for

complete security, despite acknowledging 70:30 ratio of ownership and benefit distribution in the GDA, inconsistent. Additionally, the AT held that the balance of convenience favors the respondents. Restraining them from alienating the entire inventory received under the GDA would effectively deprive them of any return on the lands they contributed to the project, resulting in an unjust and disproportionate outcome. Furthermore, the AT found that the appellant- claimant has failed to demonstrate that it would suffer irreparable harm that cannot be compensated monetarily if the relief is denied. The obligation to pay HSIIDC is a fixed monetary liability, which can be pursued through appropriate proceedings, rather than an injunctive order.

92. Therefore, before asserting any claim against the respondents based on the liberty granted by the Supreme Court, the appellant-claimant must first establish a clear basis for the proportionate sharing of the amount deposited. The AT has prima facie observed that there is no explicit provision within the GDA that unequivocally entitles the appellant-claimant to claim a proportionate share of the amount levied against them by the directions of the Supreme Court. In fact, the appellant-claimant, while preferring a review petition against the decision in Rameshwar II, has itself construed the liability as a mandatory penalty. Reference can be made to paragraph M of the review petition, which reads as under:-

"M. BECAUSE this Hon'ble Court in the judgment under review while directing the Appellant-claimant to pay Rs 5 Cr/Acre and has further relied upon the fact that the value of the land in· 2009 was Rs 4.5 Cr/Acre and the current value of the land in Rs 5.3 Crore/Acre. However, it is stated that the said value has relied upon by this Hon'ble Court, is a consideration ~or complete transferor of the land which will involved transferor all rights include the title. However, in the present case only development rights have been transferred to the Appellant- claimant and title of the land is still with the land owners. In light of the above, it is most humbly stated that this Hon'ble Court has erred in imposing a penalty on the Appellant-claimant by relying upon the current value of the land, when only the development rights have been transferred to the Appellant-claimant."

93. For these reasons, the AT concluded that the interim relief sought was devoid of merit. Consequently, the order dated 19.01.2023, passed in OMP (I) (COMM) No. 12 of 2023, was vacated. In light of the above findings, I.A. No. 2 of 2023 and I.A. No. 3 of 2023 were disposed of accordingly. The AT, guided by the decision of the Supreme Court and the contractual obligations governing the parties, found no justification for granting the interim relief, as stated in the following paragraphs of the impugned order of the AT:-

> "112. In view of the above, it has to be held that the Claimant has failed to establish a prima facie case for grant of an ad-interim injunction in respect of all the properties allotted to the Respondents. The Tribunal also finds that in case the Respondents are so injuncted, it would tantamount to the Respondents receiving nothing against utilization of their valuable lands for the purposes of the project. As such, the balance of convenience and interests of justice are in favour of the Respondents and against

the Claimant.

113. The Tribunal also holds that the Claimant failed to establish that irreparable injury, which cannot be compensated in monetary terms, would be caused to it if the relief is not granted. The Payment to HSIIDC by the Claimant stands quantified as a fixed monetary amount. For this reason as well there is no loss which cannot be compensated.

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114. As a result of the above discussion, it is held that: i) I.A. No. 2 of 2023 is devoid of merit and is hereby dismissed,

ii) the order dated 19.01.2023 passed in OMP (I) (COMM) No. 12 of 2023 shall stand vacated in the above terms, and

iii) I.A. No. 2 of 2023 and I.A. No. 3 of 2023 are disposed off in the above terms."

94. In the present case, the appellant-claimant must demonstrate, based on the Collaboration Agreement dated 11.12.2006, the GDA and other agreements binding the parties, that the appellant-claimant is entitled to a proportionate adjustment against the other respondents. The Supreme Court has extensively examined the implications of the relevant documents in both Rameshwar I and Rameshwar II, and has held that the transactions under the GDA confer rights and interests akin to those typically enjoyed by landowners in the property. Therefore, the appellant-claimant was not merely a developer of the subject property, but had also acquired certain rights and interests giving it the character of the title holder.

95. In this context, the affidavit dated 16.11.2020 submitted by the appellant-claimant is to be re-examined. The affidavit inter alia states that Godrej Properties Limited had sold 357 residential units, 8 commercial shops, and 53 EWS units from its allocated share of inventory. As on the date of the signing of the affidavit, 4 residential units, 1 EWS unit, and the nursery school remained unsold. Correspondingly, in paragraph 71 of the impugned order dated 20.11.2024, the AT has rendered certain findings with respect to the directions regarding the payment of the amount to the HSIIDC, their nature as to whether they are only discretionary or mandatory, which read as under:-

"71. The Tribunal is also of the prima facie view that the Supreme Court had protected the third party buyers of flats in the Project and Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 63 KUMAR KAURAV thus, the Claimant did not have obligation to deposit the entire amount of Rs. 67,36,30,000.00. The inventory that was remaining with the Claimant was only about Rs. 6.5 crores."

96. The findings of the AT, as recorded in the impugned order, correspond to the affidavit filed by the appellant-claimant and upon examining the stake of the appellant-claimant in the venture, the Court is of the opinion that the appellant-claimant, insofar as the submission that they had no option but to deposit the amount to the HSIIDC as directed by the Supreme Court, seems to be correct. Upon holistic reading of the directions of the Supreme Court in their correct perspective, in consonance with the decision in Rameshwar I, it is also pertinent to note that the Supreme Court was well aware of the GDA executed between Godrej and other parties, and the other agreements binding the respondents therein. However, at the time of issuing directions, the Supreme Court did not directly hold the other parties liable for the payment of the amount to the HSIIDC for the release of the subject land from the deemed award. The directions issued in Rameshwar II essentially stated that appellant-claimant, i.e. Godrej, was to deposit the amount to the HSIIDC for the release of the subject land from the deemed award, and subsequently was entitled to recover the same from the respondents herein, only in accordance with the terms and conditions of the agreements between the parties inter se. However, no conclusive determination as regards the recovery to be made from the respondents herein was made by the Supreme Court, and the same is subject matter of the ongoing dispute and determination, thereof, would require a comprehensive appreciation of evidence. Thus, the Court is of the opinion that the directions in Rameshwar II were mandatory in nature, to the Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 64 KUMAR KAURAV appellant-claimant.

97. Moreover, another aspect that warrants consideration is the contention of the appellant-claimant that, in the absence of the interim protections as sought before the AT, the entire purpose of the proceedings would be rendered infructuous, as the subject matter which the appellant-claimant seeks to protect and the payments to be recovered may, in their apprehension, be subjected to third-party rights created by the respondents.

98. However, the Court finds itself unable to accede to the contention of the appellant-claimant. It is seen that in circumstances where the subject matter is an immovable property, the same is adequately protected under the doctrine of Transferee Pendente Lite enshrined in Section 52 of TPA. Even assuming, for the sake of argument, that the respondents are in the process of creating third-party right, that could potentially defeat the objective of the proceedings, the appellant-claimant remains protected by sheer operation of law.

99. A holistic analysis of the facts and circumstances in the present case reveals that the directions in Rameshwar I and Rameshwar II were aimed at protecting third-party rights, particularly those of innocent consumers. Additionally, the appellant-claimant was found to have enjoyed possession of the property as though it were the owner and received substantial consideration for the units allocated to its share. Furthermore, the review petition filed by the appellant-claimant, seeking to absolve itself from the liability of paying 67.36 crores, was dismissed by the Supreme Court.

100. While the Court, at this stage, refrains from making any final determination regarding the entitlement or otherwise of the appellant-

claimant to recover the amount paid, from the respondents, the Court limits its observations to the aspect of the prima facie case of the parties, particularly in the absence of any explicit provision in the GDA entitling the appellant-claimant to recover the amount paid pursuant to the directions in Rameshwar II from respondent Nos. 1 to 5, as noted by the AT. The observations of the AT regarding the absence of a prima facie case in light of the GDA are pertinent and this Court finds no infirmity in the same.

101. With respect to the fastening of liability on the respondent Nos. 3 to 5, upon careful scrutiny of the GDA, it emerges that the definitions of "Development Risk" and "Frontier Costs" expressly relate only to Godrej and Frontier, without any reference to respondent Nos. 3 to 5. This omission appears deliberate, as respondent Nos. 3 to 5, originally landowners, had transferred 5.175 acres of their land to the developers (respondent Nos. 1 and 2) in return for receiving 26 constructed flats as consideration. Thus, the primary responsibility for development risks and associated costs was vested with respondents Nos. 1 and 2, who subsequently transferred these obligations to the appellant through the GDA. Therefore, imposing a blanket restriction at this stage on the unsold inventory held by respondent Nos. 3 to 5 would be both unjustified and inequitable, particularly given that respondent Nos. 3 to 5 currently retain only 25 flats, having already sold one. Any further restriction would disproportionately prejudice their interests and significantly curtail their expected returns from the transaction. The relief sought against respondent Nos. 3 to 5, prima facie appears untenable since no specific indemnity or liability is imposed upon these respondents under the GDA. Additionally, no cogent evidence has been Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 66 KUMAR KAURAV brought forth at this interim stage that could prima facie substantiate such entitlement. Consequently, any claim for recovery, if eventually found warranted, would necessarily have to be proportionate and contingent upon the final adjudication by the AT.

102. It is pertinent to note that respondents nos. 3 to 5 expressed their willingness to secure an amount equivalent to 5.28% of the total liability, amounting to Rs. 3.55 crores. Since respondents nos. 3 to 5 had already undertaken the same obligation in the order dated 25.05.2023 in OMP(I)(COMM) No. 12/2023 which they reiterated before the AT as well as before this Court during the hearing, as recorded in the said order. The Court directs that they shall remain bound by the same undertaking.

103. Insofar as the relief sought against respondent Nos. 1 and 2 is concerned, it is evident that third-party rights have already been created over the flats allocated to their share. The legality and validity of such transactions must be adjudged on the touchstone of the doctrine of lis pendens, subject to its applicability in the given factual matrix, of which the determination rests with the AT.

104. Thus, in determining whether the appellant-claimant is entitled to interim relief, the AT has applied the well-established principles governing injunctive relief being (i) the existence of a prima facie case, (ii) balance of convenience, and (iii) irreparable injury and the Court is of the view that the learned AT has not committed any patent error or passed any perverse order on the instant

applications, especially in view of the law governing the injunctive reliefs under Order XXXIX Rules 1 and 2 of the CPC.

105. Therefore, having concluded the discussion on the essential Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 67 KUMAR KAURAV conditions for granting an injunction, it is necessary to examine I.A. 4/2024 at this stage, wherein the appellant-claimant has sought reliefs aimed at preserving the subject matter of the dispute. Specifically, the appellant- claimant seeks to restrain respondent No. 1 from transferring, alienating, or encumbering the Attached Assets upon their release by the ED until the conclusion of the arbitral proceedings.

106. In the instant application, the appellant-claimant seeks attachment of various properties. However, as evident from the record, respondent No. 1 and certain third parties have already challenged the attachment orders of the ED through the statutory appellate process under the Prevention of Money Laundering Act, 2002 ("PMLA"), and these appeals remain pending adjudication. The third parties also have specifically contended that they are independent legal entities that acquired the properties for valuable consideration. Moreover, the appellant-claimant had previously sought similar prohibitory reliefs in OMP [I] [COMM] 12/2023 before this Court under Section 9 of the AC Act. However, vide dated 19.01.2023, this Court, as noted earlier, held that no injunction could be granted against third parties who were not signatories to the GDA. Similarly, the AT, vide order dated 30.04.2024, dismissed an application for impleadment filed by respondent Nos. 3 to 5, reiterating that no orders could be passed against non- signatories.

107. The AT further noted that the ED has filed a Supplementary Prosecution Complaint against respondent No. 1, seeking confiscation of the attached properties. Pursuant to the liberty granted by the Supreme Court, Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 68 KUMAR KAURAV respondent No. 1 has also approached the High Court of Punjab & Haryana by filing CRM-M No. 14298 of 2024, seeking to quash the attachment orders, which remain pending adjudication.

108. Upon due consideration, this Court finds no reason to interfere with the well-reasoned findings of the AT. The AT has rightly concluded that the claim of the appellant-claimant for prohibitory relief is speculative, particularly as it seeks an injunction against third-party properties presently under attachment under the PMLA. In the absence of any prima facie determination of title and legal status of these properties, any order of attachment, at this stage would be premature. Furthermore, it could be seen that the respective claims qua proportionate liability are to be determined only after appreciation of evidence and third party interests have already been created in the properties with complete knowledge of the appellant- claimant. Thus, in addition to the prima facie case being not clearly made out, it is also inescapable that the elements of irreparable injury and balance of convenience have also not been satisfied. Furthermore, since, the prima facie grounds necessitating the grant of interim relief is not made out, the question of granting the relief of an attachment under Order XXXVIII Rule 5 of CPC, which stands on a higher pedestal, does not arise. Whereas, the reliance placed on Essar is correct in stating that, when the Court is satisfied, the interim relief of attachment before judgment may be granted, however, in the instant facts of the

case, such circumstances are conspicuously absent.

109. The AT has thoroughly examined the pleadings, submissions, and supporting documents presented by the parties, assessing the relief sought Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 69 KUMAR KAURAV by the appellant-claimant. Upon detailed scrutiny, it has been observed that the previous order dated 19.01.2023 did not consider the stance of all concerned parties, nor did it have the benefit of evaluating relevant judgments and documents subsequently placed before the AT. The AT, after a meticulous review of the materials on record, has concluded that the appellant-claimant failed to establish a prima facie case warranting the injunction sought. The reasoning employed by the AT reflects proper application of mind, rooted in a careful appreciation of facts, circumstances, and documentary evidence placed before it.

110. It is a settled principle that the appellate jurisdiction under Section 37 of the AC Act, mirrors the restricted contours applicable to Section 34, and is therefore limited and circumscribed. Interference under Section 37, especially concerning discretionary interim orders passed under Section 17, is permissible only in exceptional circumstances, adhering to the principle laid by the Supreme Court in Wander Ltd. v. Antox India (P) Ltd., wherein it was reiterated that Appellate Courts ought not to substitute their discretion merely because another plausible view exists.

111. In the considered opinion of this Court, the conclusion arrived at by the AT represents a plausible view, supported by cogent reasoning and reappraisal of the available material. This Court does not find any patent illegality, perversity, or manifest injustice in the impugned order. Merely because an alternative interpretation or conclusion is suggested, it does not imply that no reasonable adjudicatory authority could have arrived at the impugned decision.

112. In view of the above, the Court finds no justification to interfere with Digitally Signed By:PRIYA Digitally Signed Signing Date:05.04.2025 By:PURUSHAINDRA 15:46:17 70 KUMAR KAURAV the order passed by the AT and concurs with the findings rendered in the impugned award dated 19.01.2023. It is, however, clarified that the observations made herein are confined strictly to deciding the interim measures sought in this appeal and should not influence the adjudication on merits by the Sole Arbitrator. Accordingly, the present appeal, along with all pending applications, is disposed of with no order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 03, 2025
nc/p/aks/dpa/sph/sp

Digitally Signed By:PRIYA
Signing Date:05.04.2025

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