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

*Judgment reserved on: 19.03.2026*
*Judgment pronounced on: 28.07.2026*

\+ **O.M.P.(I) (COMM.) 472/2025**

M/S GCD PRIME .... Petitioner

Through: Mr. Ravindra Shrivastava, Sr. Adv., Manish Sharma, Sr. Adv. with Mr. Abhishek Sharma, Mr. Tarun Bhagchandani, Mr. Adya Rao, Advs.

versus

DCM LIMITED .... Respondent

Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Karun Mehta, Ms. Pratiksha Mishra, Mr. Ambuj Sachan, Ms. Manjira Dasgupta, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE JASMEET SINGH**

**J U D G M E N T**

**1.** By way of this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ***("the Act")***, the petitioner has approached this Court seeking interim directions, including, inter alia, a stay on the effect and operation of notice dated 31.10.2025 ***("impugned notice")***, along with other reliefs which read as under:

> *"a. Issue interim and ad-interim directions to stay / restrain*

*the operation of Said Notice dated 31.10.2025 issued by the Respondent to the Petitioner and to restrain the Respondent and/ or their agents/ representatives/ servants/ employees or anyone acting for and on behalf of them, from taking any steps in furtherance to the said notice, which may in any manner prejudice the rights of the Petitioner on the Said Land under the Term Sheet and the Joint Development Agreement till the pendency of the present petition.*

*b. Issue interim and ad-interim directions to restrain the Respondent and/ or their agents/ representatives/ servants/ employees or anyone acting for and on behalf of them, or claiming under or through them, from acting in any manner interfering with the Petitioner's legal rights on the Said Land and/ or selling/ conveying / transferring / assigning / mortgaging / alienating / creating any third-party interest or rights whatsoever on the Said Land or any part thereof or on the rights/entitlements/ interest of the Petitioner on the Said Land, or from otherwise disturbing in any manner the present status of the Said Land, till the pendency of/the present petition;*

*c. Direct the Respondent to maintain status quo with respect to the ownership, possession, title, rights, and development of the Said Land and not to create any third-party rights, interest, encumbrance, charge, license, development rights or concessions of any nature over the Said Land;*

*d. Direct the parties to maintain status quo with respect to* *the terms and performance of the Joint Development Agreement dated 11.08.2022, until the conclusion of the Arbitration proceedings by the Arbitral Tribunal. …"*

**FACTUAL BACKGROUND AS PER THE PETITIONER**

**2.** The petitioner namely, M/s GCD Prime is a registered partnership firm having its registered office at Basement, Villa No. MAR-BL-040, Marbella, Sector-65/66, Gurugram, Haryana-122008 and undertakes real estate development business (also referred to as "GCD").

**3.** The respondent i.e., DCM Limited is a company incorporated in India and having its registered office at Unit No. 2050 to 2052, 2nd Floor, Plaza-II, Central Square, 20, Manohar Lal Marg, Bara Hindu Rao, Delhi, engaged in the business of real estate (also referred to as "DCM"), and owning land admeasuring approximately 68.35 acres, situated at Village Bir, Sector-23, Hisar, Haryana ***("subject land")***.

**4.** The respondent, in 2022, being desirous of developing the subject land under the Deen Dayal Jan Awas Yojana-2016 ***("DDJAY")*** and owing to its inability to do the same solely by itself, approached the petitioner firm for the proposed development and construction.

**5.** Accordingly, a term sheet dated 18.05.2022 was executed between the petitioner and the respondent, wherein the respondent (land owner) agreed to contribute land and petitioner undertook an obligation to develop, construct and market the project at its own cost.

**6.** Pursuant thereto, a detailed joint development agreement ***("JDA")*** was executed between the parties on 11.08.2022 (registered on 24.08.2022), wherein the respective obligations of the parties, revenue sharing mechanism and dispute resolution mechanism were set out.

**7.** The JDA has vested the petitioner with substantial rights *qua* the subject land including the authority to design, develop, construct, market, and sell units or plots, along with entitlement to retain 45% of the net sales revenue, thereby creating a distinct asset in the form of a composite bundle of development rights conferred by the respondent.

**8.** Pursuant thereto, the petitioner paid Rs. 50 crores in advance and took active measures in order to obtain license from the Directorate of Town and Country Planning, Haryana ***("DTCP"),*** and duly obtained a letter of intent dated 18.08.2022 and the process culminated with issue of license bearing No. 179 dated 07.11.2022 for setting up affordable residential plotted colony under the DDJAY scheme on 67.275 acres of the subject land.

**9.** After the execution of JDA, the petitioner states that it has incurred expenses and has started performing its obligations as per the JDA, and the details of the expenses incurred read as under:

| Sr. No. | Steps undertaken | Expenditure Incurred |
|---|---|---|
| 1. | Payment of non-interest bearing non-refundable deposit to the Respondent at the time of execution of the Term Sheet | Rs.30 Crore |
| 2. | Payment of non-interest bearing non-refundable deposit along with the | Rs.6 Crore |

| | | |
|---|---|---|
| | execution of the Joint Development Agreement | |
| 3. | Payment of non-interest bearing adjustable deposit along with the execution of the Joint Development Agreement | Rs.4 Crore |
| 4. | Payment of non-interest bearing adjustable deposit post 60 days of execution of the Joint Development Agreement | Rs.10 Crore |
| 5. | External Development Charges to DTCP | Rs.5.88 Crore |
| 6. | License Fee | Rs.50.10 Lakh |
| 7. | Procurement of License No.179 dated 07.11.2022 | - |
| 8. | Furnishing Bank Guarantees | Rs.7.97 Crore |
| 9. | Stamp Duty Charges | Rs.1.50 Crore |
| 10. | Procurement of RERA Registration On 15.03.2023 | Rs.15.51 Lakhs |
| 11. | Procurement of other approvals in relation to the project | Rs.10 Lakhs |
| 12. | On-site development work | Rs.5 Crore |
| | **Total** | **Rs.72 Crores (Approx.)** |

**10.** However, *vide* order dated 18.04.2023, the Director General, Town and Country Planning, suspended the aforesaid license on account of an enquiry initiated against the respondent regarding alleged unauthorized sale of land and illegal change of use of land as the land was allotted solely for the purpose of development of a mill. By the said order, all development activities were directed to be ceased and the creation of third-party rights were prohibited.

**11.** Since then, DCM made several representations against the said suspension of the license and the proceedings *qua* the suspension are pending before the relevant authorities.

**12.** Meanwhile, since the project was at a standstill, on 22.09.2025, the respondent served a notice to the petitioner alleging "events of default" on part of the petitioner under the JDA in ensuring validity of license and sought rectification within 30 days.

**13.** Consequently, impugned notice dated 31.10.2025 of forfeiture and termination was issued under Clause No. 11.3 of the JDA providing that the rights of the petitioner arising out of/under the JDA will stand forfeited upon the expiry of 15 days from the receipt of the said notice, and the JDA shall stand terminated. Hence, the present petition.

***INTERVENING EVENTS***

**14.** The present petition under Section 9 of the Act was filed on 10.11.2025 and the arguments pursuant thereto were heard in length and substance.

**15.** Consequently, *vide* Order dated 19.03.2026 the judgement was reserved in the present matter and the undertaking of Mr. Nayar, learned senior counsel for the respondent, recorded in the Order dated 14.11.2025 (i.e., no precipitative action shall be taken pursuant to the impugned notice dated 31.10.2025) was continued till the pronouncement of the judgement.

**16.** During the course of hearing, a notice dated 18.03.2026 was issued under Section 21 of the Act invoking Arbitration agreement between the parties contained under Clause No. 14 of the JDA. Accordingly, Hon'ble Mr. Justice (Retd.) Badar Durrez Ahmed was appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

**17.** Pursuant thereto, the petitioner filed an application bearing I.A. No. 13220/2026 seeking conversion of this petition to an application under Section 17 of the Act, to be adjudicated by the Sole Arbitrator.

**18.** Since, the Court after hearing the learned Senior Counsels over a number of days, had already reserved the judgment, I.A. NO. 13220/26 was dismissed on 08.07.2026.

**SUBMISSIONS ON BEHALF OF THE PETITIONER**

**19.** At the outset, Mr. Shrivastava and Mr. Sharma, learned senior counsels for the petitioner, submit that the petitioner has performed all of its obligations arising out of the JDA and is not in breach of any of them.

**20.** The petitioner has complied with all the terms and conditions of the JDA and more particularly those provided under Clause Nos. 2.1 and 4.4 and it is duly admitted by the respondent in the notice dated 22.09.2025. Hence, there is no breach.

**21.** It is further submitted that there is no right of termination under Clause No. 11 of the JDA and no event has happened which can be construed as conferring such a right on the respondent. In any case, the right to terminate is not an absolute or unilateral right.

**22.** There is no "GCD event of default" inasmuch as the JDA only contemplated the obligation of the petitioner to obtain the license and relevant approvals but did not include within its ambit, the reinstatement when the same had been suspended by the statutory authorities.

**23.** The respondent is contesting the suspension order issued by the Director General, DTCP, Haryana, and is also challenging the findings of the High-Level committee. The license was suspended due to the allegations of illegal sale of land, change in use and non-disclosure, and not due to any acts attributable to the petitioner.

**24.** Even though from the pleadings of the respondent, it seems to be under a misconception that it was the obligation of the petitioner to get the order of the suspension revoked, the obligations in the JDA did not and cannot be construed to contain an obligation that it would be the petitioner who would be responsible for the reinstatement of a suspended license.

**25.** They also submit that the petitioner has a *prima facie* case with balance of convenience leaning in its favour and will suffer irreparable injury in absence of any interim relief.

**26.** The petitioner has already incurred expenditures and made investments pursuant to the JDA and the termination of the same at this juncture would result in unjust enrichment.

**27.** The impugned notice of termination, in effect, deprives the petitioner of its vested legal rights in the subject land. Reliance is placed on notice dated 22.09.2025 and Clause No. 1.1.16 of the JDA.

**28.** They also submit that the JDA is in its nature not a determinable contract as Clause No. 12 of JDA stipulates that the agreement is irrevocable except otherwise provided. Reliance is placed on paragraph No. 64 of *K.S. Manjunath v. Moorasavirappa Muttanna Chennappa Batil*[1], and *A. Murugan and Ors. v. Rainbow Foundation Ltd. & Ors.*[2]

**29.** Clause No. 14.9 of the JDA contains a stipulation to the effect that when any dispute is pending between the parties, the parties will continue to perform their respective obligations. Reliance is also placed on *Innovative Facility Solutions (P) Ltd. v. Affordable Infrastructure & Housing Projects (P) Ltd.*[3]

**30.** The respondent has also failed to establish/explain that any interim measure in the present petition would lead to delay or create impediment in fulfilment of infrastructure project. Thus, the ingredients of Section 20A of the Specific Relief Act, 1963 ***("SRA")*** are not satisfied.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT**

**31.** At the outset, Mr. Nayar, learned senior counsel on behalf of the respondent, submits that the petitioner has not established the elements of Section 9 of the Act entitling it to interim relief.

**32.** The scope of JDA and the Term sheet were clear and it included the obligation of the petitioner to procure and maintain all necessary approvals and licenses. Reliance is placed on Clause No. 4.4.1 of JDA and Clause No. 2 of the Term sheet.

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[1] 2025 SCC OnLine SC 2378.
[2] 2019 SCC OnLine Mad 37961.
[3] 2024 SCC OnLine Del 7542.

**33.** The petitioner has undertaken due diligence *qua* the subject land and the obligation to develop it was undertaken strictly on "as is where is" basis when the land was found suitable for development under the DDJAY policy. The same is recorded under the Recital E of the Term Sheet and Recital F and Clause No. 9.8 of the JDA.

**34.** He also submits that the contents of the conveyance deed and the fact of sale of part of land parcel of 400 acres to DCM Nouvelle Ltd. was within the petitioner's knowledge, and the petitioner, of its own volition decided that no separate approval under Clause No. 7 of the conveyance deed was required and proceeded to seek approval from DTCP without even raising any issue at any instance prior to seeking approval.

**35.** The order of suspension dated 18.04.2023, issued by DTCP is premised on the ground of non-disclosure of information, however, it is the petitioner who had applied for the said license and non-disclosure, if any, is attributable only to the petitioner. Thus, the same has resulted in failure of petitioner to fulfil its obligations under Clause No. 4.4.1 of the JDA.

**36.** The petitioner's stand that it bears no responsibility for reinstatement of the suspended license is wrong and the same cannot be attributed to the respondent as the petitioner has contracted to develop the subject land on "as as is where is" basis. The petitioner did not file the application for conversion.

**37.** It is further submitted by Mr. Nayar, learned senior counsel, that the JDA is in essence a construction contract wherein the petitioner's rights are limited for the purpose of development of the subject land under the

DDJAY policy. The petitioner was entitled only to 45% of net sale revenue and not ownership of any part of the land. Thus, there cannot be any specific performance of the JDA.

**38.** The petitioner as per its obligation has not been able to get reinstatement of the suspended license.

**39.** Additionally, the balance of convenience in the present case leans in favour of the respondent as the possession of the subject land remains with the respondent and the right of the petitioner was limited only to the extent of developing the subject land, which had only been carried out to the extent of construction of boundary wall.

**40.** In any event, the appropriate remedy against the termination would be to seek damages and if the effect of impugned notice is stayed it would deprive the respondent of fructus of its land.

**41.** He also states that JDA is a contract in its nature determinable and the same cannot be enforced under Section 14(d) of the SRA. Reliance is placed on Clause No. 11 to state that in the event of a default, 30 days period to cure the deficiencies was to be given and on failure to cure, the amount could be forfeited and the contract could be terminated.

**42.** The termination clause (Clause No. 11.3) not only confers a unilateral right to declare an event as default but also makes the decision final and binding. Thus, the right to determine the contract is vested with the respondent in the present JDA.

**43.** It is further submitted that the nature of the relief claimed by the petitioner by way of the present petition under Section 9 of the Act is such that the petitioner is seeking specific performance of its rights under the JDA.

**44.** It is a settled position that directions under Section 9 of the Act can only be issued for the very specific purpose of preserving the subject matter of the dispute and not to direct specific performance. At best, damages for monetary loss can be claimed by the petitioner which forms a dispute to be adjudicated by the Arbitral Tribunal.

**45.** Additionally, no injunction restraining the respondent from continuing with the development of this infrastructure project can be granted as the same is barred by Section 41 (ha) of the SRA.

**ANALYSIS AND FINDINGS**

**46.** I have heard learned senior counsels for the parties at length and perused the documents available on record.

***SCOPE OF SECTION 9 OF THE ACT***

**47.** The law governing grant of interim reliefs under Section 9 of the Act is no longer res integra, and its scope has been succinctly explained by the Hon'ble Supreme Court in the judgment of ***Arcelormittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***[4], the relevant paragraphs of which read as under:

> *"88. Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject-matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value.*

[4] (2022) 1 SCC 712.

*89. The principles for grant of interim relief are **(i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief.** Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking interim relief.*

*90. It could, therefore, never have been the legislative intent that even after an application under Section 9 is finally heard, relief would have to be declined and the parties be remitted to their remedy under Section 17."*

***(Emphasis Supplied)***

**48.** The foundational precept of Section 9 of the Act is undoubtedly the need for preservation/protection of the subject matter of the dispute between the parties, so that the Arbitral exercise between the parties is not rendered otiose.

**49.** The principles governing interim relief under Section 9 of the Act are similar to principles governing grant of temporary injunctions under Order XXXIX of the Civil Procedure Code, 1908, which encapsulates a three-prong test within its framework, wherein the Court is only required to satisfy itself as to existence of a good *prima facie* case in favour of the applicant, balance of convenience in favour of interim relief and risk of irreparable injury/loss to the applicant.

**50.** With the aforesaid position of law in mind, I shall now deal with the rival contentions.

***PRELIMINARY ISSUE QUA PRAYER CLAUSE 'A' AND 'D'***

**51.** The petitioner under prayer Clause 'A' and 'D' of the present petition has sought directions to restrain the operation of the impugned notice dated 31.10.2025 and to maintain *status quo* with regard to the terms and performance of the JDA, along with consequential reliefs flowing therefrom.

**52.** The nature of relief sought by way of the aforesaid prayers is not in the nature of seeking interim directions, it is in substance, seeking enforcement of the contractual obligations under the JDA and effectively specific performance of the JDA. If I were to agree with the petitioner's contentions and grant prayer 'A' i.e., a stay on impugned notice and restrain the respondent from acting upon it, the same would amount to continuing and enforcing the JDA, which has already been terminated by the respondent.

**53.** While adjudicating a matter for grant of interim directions under Section 9 of the Act, I am confined by the limitations of this jurisdiction, which does not permit me to grant a relief which is in nature of specific performance/enforcement of the contract itself unless the same is required to preserve/protect the subject matter of the Arbitration. A Coordinate Bench of this Court in the judgment of ***Ariat International Inc. v. Sunglass Palace India (P) Ltd.***[5], has already made categorical observations with regards to the object of Section 9 of the Act and the relevant paragraphs of the same read as under:

[5] 2025 SCC OnLine Del 9488.

*"15. The legal position with respect to Section 9 of the Act remains undisputed. The Supreme Court in the case of Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.*[2] *and Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.*[3] *has extensively dealt with the scope of intervention by the Courts while granting interim relief pending arbitration. It was reiterated that the jurisdiction of the Court under Section 9 of the Act is aimed at safeguarding and preserving the subject matter of the arbitration, so as to prevent frustration of the arbitral process and to ensure that the arbitral proceedings are not rendered otiose or inefficacious. It was further observed that while exercising jurisdiction under Section 9 of the Act, the* ***Court cannot adjudicate upon the merits of the dispute, grant final relief, extend contractual obligations, or direct specific performance.*** *The relief is essentially preservative in nature and is governed by the settled principles of grant of temporary injunctions under Order XXXIX of the Civil Procedure Code, 1908 (hereinafter referred as 'the CPC') and the triple test of prima facie case, balance of convenience and irreparable harm.*

*16. Moreover, the Division Bench of this Court, recently, in GTL Infrastructure Ltd. v. S.C. Wadhwa and Sons (HUF),*[4] *has held that the powers of the Court under Section 9 of the Act are of wide amplitude and are not confined to the grant of prohibitory or temporary injunctions analogous* *to Order XXXIX of CPC. The Court reiterated that Section 9 of the Act empowers the Court to grant such interim measures of protection as may be just and convenient, including mandatory injunctions, where such relief is necessary to protect and preserve the subject matter of arbitration and to prevent the arbitral proceedings from being rendered inefficacious. The relevant extract of the decision is reproduced as under:—*

> *"14. In the given facts, the contention that an order under Section 9 of the A&C Act could not be passed directing the appellant to remove the tower is unpersuasive. It is settled law that powers of a court under Section 9 of the A&C Act are wide and encompass such orders as are necessary to protect and preserve the subject matter of the arbitration, including issuing mandatory injunctions. The court must adopt a course, which is least likely to result injustice if the same is finally found to be wrong….."*

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

***(Emphasis Supplied)***

**54.** At this stage, it is pertinent to refer to Section 14(d) and 41(e) of SRA, which read as under:

> *"14. Contracts not specifically enforceable.—The following contracts cannot be specifically enforced, namely:*
>
> *....*
>
> *(d) a contract which is in its nature determinable.*
>
> *....*
>
> *41. Injunction when refused.—An injunction cannot be granted—*
>
> *....*
>
> *(e) to prevent the breach of a contract the performance of which would not be specifically enforced;"*

**55.** *Qua* the determinable nature of the JDA, it is the case of the petitioner that the JDA is non-determinable in its nature as it contains a termination clause which makes the JDA terminable for cause with notice and affords an opportunity to cure the same. Also, the Clause No. 12 of the JDA states the contract to be irrevocable. Clause No. 12 of the JDA reads as under:

> *"12. TERM*
>
> *12.1. Term of this Agreement shall commence on and from the date of execution of this Agreement and shall come to an end on the Closure of the Project ("Term"), **<u>Save and except as provided herein</u>** or required under Applicable Law, **<u>this Agreement shall remain irrevocable.</u>**"*

**56.** Reliance is also placed by the petitioner on the judgment of ***K.S. Manjunath (supra)***, wherein the jurisprudence with respect to Section

14 of the SRA particularly regarding the meaning of "in their nature determinable" has been explained. The relevant paragraphs of the same read as under:

> *"64. In this backdrop, it would be useful to advert to the classification set out in A. Murugan (supra), wherein the Madras High Court categorised contracts into five broad classes depending on their ease of determinability. <u>Out of those, the first two i.e., (i) contracts inherently revocable such as licences and partnerships at will, and (ii) contracts terminable unilaterally on a "without-cause" basis, were held to be determinable in nature. The remaining classes, namely, (iii) contracts terminable for cause without provision for cure,</u> **<u>(iv) contracts terminable for cause with notice and opportunity to cure,</u>** <u>and (v) contracts without a termination clause but terminable only for breach of a condition, were all held not determinable in nature.</u>*
>
> *65. Further, as laid down in DLF Home (supra), the question <u>whether a contract is in its nature determinable lies in ascertaining whether the party against whom specific performance is sought has the right to terminate the contract even when the other party is ready and willing to perform.</u> This means if the contract cannot be terminated so long as the other party stands willing to perform, it is not determinable in its nature and would, in equity, be specifically enforceable. The same reasoning was followed*

*in Affordable Infrastructure (supra), where it was held that a contract terminable for breach cannot merely for that reason be regarded as determinable, otherwise, no contract could ever be specifically enforced.*

*66. Applying these principles, the ATS in the present case cannot be said to be a determinable contract. Viewed in light of the classification as set out in A. Murugan (supra), the ATS would squarely fall within category (v) as mentioned above. The ATS was devoid of any clause enabling termination for convenience or otherwise empowering either party to terminate unilaterally. The only conceivable circumstance in which ATS could be brought to an end in the present case was upon a breach of a condition by either of the parties. Thus, the original vendors did not possess any contractual right to terminate the ATS in the absence of default by the original vendees. The grounds cited in the notice of termination dated 10.03.2003, namely, the subsistence of a status quo order and the death of one of the original vendors cannot be said to be based on any default or breach by the original vendees. The original vendees had performed their part by paying a substantial amount and were also ready and willing to perform the terms of ATS."*

***(Emphasis Supplied)***

**57.** It is also important to see Clause No. 11 of the JDA, which reads as under:

*"11. EVENTS OF DEFAULT AND CONSEQUENCES*

*11.1. GCD shall be considered to be in default of its obligations under this Agreement, in the event of occurrence of any of the following ("GCD Event of Default"):*

*...*

*11.1.2. **failure and/or delay in fulfilling any of its obligations which are material in the opinion of DCM**, as set out in this Agreement including but not limited to timely delivery of units/ Saleable Area to the purchasers/ buyers, ensuring superior quality of the Project as per the Project Master Plan and in terms of this Agreement; or*

*11.1.3. any breach or default which are material in the opinion of DCM, of the representation or warranties provided by GCD herein; or*

*...*

*11.2 Upon occurrence of a GCD Event of Default before the Effective Date, and GCD failing to rectify and cure such GCD Event of Default within 30 (thirty) days from the occurrence of the GCD Event of Default, DCM shall be entitled to terminate this Agreement and all rights in respect of development, construction, sale and marketing of the Project the Said Land of GCD shall stand cancelled and revert back to DCM with immediate effect. Upon such termination, DCM shall refund the entire NRD and AD to*

*GCD received from them without interest within 180 (one hundred eighty) days from the date of termination, without any obligation to compensate GCD for any expenses borne by GCD in furtherance of the Term Sheet or this Agreement, including any cost incurred towards applications in respect of LOI, License and other Approvals for the Said Land/ Project. Upon such termination, DCM shall be entitled to deal with and/or develop the Said Land / Project in such manner as DCM may, in its sole discretion, deem fit and GCD shall not have any claim and/or demand of any nature whatsoever against DCM and/or under this Agreement.*

*11.3 Upon occurrence of a GCD Event of Default after the Effective Date, and GCD failing to rectify and cure such GCD Event of Default within 30 (thirty) days from the occurrence of the GCD Event of Default,* ***DCM shall be entitled, subject to a written notice of 15 (fifteen) days to GCD, to forfeit, without any obligation to compensate GCD for any expenses borne by GCD in furtherance of the Term Sheet or this Agreement,*** *including any cost incurred towards procurement of LOI, License and other Approvals and/or construction/development in respect of the Said Land/ Project, all sums paid by GCD to DCM until such date, including but not limited the NRD and/or AD or any portion thereof. Upon such forfeiture, this Agreement shall stand terminated, without any demur, reservation, contest, protest or without any reference to GCD. Pursuant to such* *forfeiture and termination, DCM shall be entitled to deal with and/or develop the Said Land / Project in such manner as DCM may, in its sole discretion, deem fit and GCD shall not have any claim and/ or demand of any nature whatsoever against DCM and/or under this Agreement. GCD shall, immediately upon such termination, be deemed to have vacated the Said Land and GCD shall accordingly remove all its machineries, equipment and labour from the Said Land within 15 (fifteen) days. GCD shall be bound by such termination and consequent forfeiture and shall not cause any hindrance in the development of the Project including the rights of access and easementary rights with respect to the Said Land and the Project. GCD will be responsible to compensate DCM for any cost and/or loss incurred by DCM on account of any delay by GCD to comply its obligation in case of termination of Agreement. Additionally, DCM shall have the right to claim from GCD any amount appropriated by GCD from the Project over and above the cost incurred by GCD in terms of this Agreement. Parties agree that this Clause shall survive expiry/termination of this Agreement."*

**58.** From a conspectus of the aforesaid, I am of the view that the scheme of JDA with respect to its termination is amply clear and squarely falls under category (iv) of the contract as explained in paragraph No. 64 of the ***K.S. Manjunath (Supra)*** i.e., a contract terminable for cause with notice and opportunity to cure. In the instant case JDA is a contract which is terminable for cause i.e., failure and/or delay in fulfilling obligations by the petitioner, coupled with a cure period of 30 days after which in case of failure to rectify, the respondent is entitled to terminate the JDA with a 15 days' notice. Thus, it is essentially a non-determinable contract.

**59.** Even though Clause No. 11.1.2 confers the power to decide material breach unilaterally on the respondent, the same cannot be interpreted to confer a unilateral power to revoke the contract without any cause and without assigning any reasons. Additionally, Clause No. 11.3 also contemplates a cure period of 30 days within which petitioner is required to cure the event of default as ascertained by the respondent. Thus, the JDA cannot be said to be a contract which is inherently revocable or unilaterally terminable without any cause, making the contract non-determinable in its nature. The findings in the judgment of ***NHAI v. HK Toll Road (P) Ltd.***[6], were in a different factual scenario and prior to the judgment of ***K.S. Manjunath (Supra)***.

**60.** However, relief under Section 9 of the Act cannot be automatically granted merely because the contract is found to be non-determinable in nature, it has to essentially and mandatorily satisfy the three-prong test for grant of any equitable relief under Section 9 of the Act.[7]

**61.** Having answered the first preliminary question in favour of the petitioner, the next question that arises for my consideration is whether any relief can be granted under Section 9 of the Act. For this purpose, I

[6] 2025 SCC OnLine Del 2376.
[7] QC One Solutions (P) Ltd. v. DMRC, 2026 SCC OnLine Del 4072.

shall now assess whether a *prima facie* case exists in favour of petitioner for grant of any interim relief.

***PRIMA FACIE CASE***

**62.** The petitioner has raised multiple submissions to demonstrate a good *prima facie* case in its favour like it has duly complied with all the condition precedents under Clause Nos. 2.1 and 4.4 of the JDA and has continued to perform its obligations arising out of the contract. Thus, the impugned notice itself is not only premature but also beyond the contractual terms.

**63.** The impugned notice of termination was issued without any event of default necessitating such notice because as per the JDA, petitioner was only obligated to obtain the necessary license and approvals but not reinstatement after it has been suspended in exercise of powers by the statutory authority on fault attributable solely to the respondent.

**64.** The Clause No. 4.4.1 of the JDA, which sets out obligations of GCD *qua* approvals and compliance, reads as under:

> *4.4.1.* ***GCD shall be solely responsible*** *for undertaking all actions required towards liaison and co-ordination with Governmental Authorities and other third parties, if any, for procuring and keeping all Approvals for the conceptualization, execution, implementation, development and completion of the Project over the Said Land(including but not limited to registration under RERA and procuring completion/ occupation certificate in a time bound manner)* ***valid and subsisting*** *at its own cost and expenses, in the name of DCM and engagement of GCD as joint developer,*

*in terms of this Agreement. DCM shall provide to GCD such information and execute such documents as are required by Governmental Authorities in accordance with Applicable Laws for obtaining, renewing or modifying the Approvals, provided however that DCM shall not execute any general power of attorney in favour of GCD. However, DCM shall provide authority to GCD from time to time as are legally necessary in the opinion of DCM for achieving the purposes of this Agreement. GCD shall not submit any document, render any information or make any representation before Government Authorities or third parties, without having sought the written approval of DCM. It is agreed between the Parties that GCD shall commence the development of the Project overthe Said Land only upon acquiring all the Approvals from the Governmental Authority(ies) in accordance with the Applicable Laws.*

***(Emphasis Supplied)***

**65.** From a conspectus of the aforesaid Clause No. 4.4.1 of the JDA and a perusal of the Term Sheet, it is clear, to my mind, that the JDA imposes a continuing obligation on the petitioner to not only get necessary approval and licenses but also to keep them subsisting pending the completion of the project. Clause No. 4.4.1 categorically vests the petitioner with the sole responsibility to keep the necessary approvals in place and subsisting.

**66.** In this view of the matter, the contention of the petitioner that it was only under an obligation to obtain the necessary approvals and licenses but not to ensure their reinstatement, cannot be accepted, as it lacks merit and is in essence against the express contractual stipulation contained under Clause No. 4.4.1 of the JDA.

**67.** The Term Sheet dated 18.05.2022 entered into between the petitioner and the respondent duly recorded the mutual intent of the parties to develop the subject land and mutual obligations of the parties were duly decided therein. The Recital E of the Term Sheet is important and reads as under:

> *"E. Party 2 has accordingly carried out detailed title, legal and technical due diligence with respect to the Said Land, including but not limited to review, inspection and verification of all title documents in relation to the Said Land such as the relevant sale deed, revenue records, jamabandis and shijra maps etc, and* ***fully satisfied itself in regard to Party 1's rights over the Said Land*** *and the development potential thereof. "*

**68.** The Recital F of the JDA also sets out the extent of liability limited by the use of "as is where is" basis clause, and the same reads as under:

> *GCD has reviewed and examined the documents and information furnished by DCM and has also conducted due diligence with respect to the Said Land and has obtained independent legal advice, made enquiries and has satisfied itself in all respects,* ***with regard to the right, title and interest of DCM in the Said Land*** *and has also personally conducted physical inspection of the Said Land, ownership records, and measurement etc. of the Said Land and is fully*

*satisfied with right, title and interest of DCM over the Said Land and/or every part and portion thereof. On the basis of representations and assurances of GCD as mentioned in this Agreement, DCM has agreed to grant the Joint Development Rights in the Said Land on the Effective Date (as defined herein) for the conceptualization, execution, implementation, development and completion of a project over the Said Land, in accordance with the terms of this Agreement, strictly on "as is where is" basis on the premises that GCD will undertake its obligations as set out in this Agreement in a timely and orderly manner as per Applicable Laws and GCD has agreed to take all necessary action along with DCM to procure the Approvals (including but not limited to the License for development) for the Said Land in the name of DCM and develop the Said Land at its own cost and expenses, in the manner envisaged under this Agreement.*

**69.** Further, Clause No. 9 of JDA which contains the "representations and warranties" as agreed between the petitioner and the respondent, also contains a sub-clause bearing No. 9.8 which categorically states that detailed due diligence has been undertaken by the petitioner. Clause No. 9.8 of the JDA reads as under:

> *"9.8**. GCD acknowledges and agrees that DCM has disclosed and provided all material and important information**/ documents pertaining to the Said Land and in light of the transactions contemplated under this Agreement,*

*based on the requests made by GCD and/or, their advisors, representatives, agents, etc., from time to time, as part of the comprehensive due diligences conducted by GCD on the Said Land and other matters.* ***GCD agrees and acknowledges that it has conducted a comprehensive and detailed due diligence on all aspects of the Said Land including its title and permissibility for development*** *and has satisfied itself in all respects and agrees and undertakes that it shall not raise any claims against DCM with respect to information/ documents disclosed in respect of the Said Land."*

**70.** In view of Recital E of the Term Sheet, Recital F and Clause No. 9.8 of the JDA, it is clear to my mind, that the petitioner has undertaken due diligence and reviewed the documents of the subject land including the nature of ownership, title of respondent and its interest in the subject land.

**71.** At this stage and under Section 9 of the Act, I am not inclined/required to undertake a fact-based evidentiary enquiry to adjudicate upon disputed questions between the parties which are already being adjudicated by the Sole Arbitrator. I am only required to satisfy myself as to existence of a good *prima facie* case, the balance of convenience and risk of irreparable loss and injury.

**72.** To my mind, the aforesaid clauses and recitals clearly indicate that the petitioner's contention regarding suppression of factual information is misconceived. Having undertaken due diligence *qua* the subject land, the petitioner now cannot be permitted to disclaim the knowledge of such factual material information. The JDA was entered into between the parties for utilization of petitioner's technical know-how and expertise, and from the documents placed on record, it seems that the relevant information was already within the knowledge of the petitioner.

**73.** Additionally, a perusal of Clause No. 4.4.1 of the JDA as reproduced above suggests that petitioner was to obtain approval and keep them valid and subsisting during the entire period of the agreement. Hence, the petitioner at this stage has failed to make out a *prima facie* case in its favour.

***BALANCE OF CONVENIENCE AND RISK OF IRREPARABLE INJURY/ LOSS***

**74.** The petitioner has raised a contention that the impugned notice, in effect, has divested the petitioner of its valuable rights *qua* the subject land vested by virtue of the JDA. The relevant Clause No. 1.1.16 of the JDA, which defines the scope of "Joint development rights" reads as under:

> *"1.1.16. "Joint Development Rights" shall mean and refer to the joint development rights on the Said Land and shall include, subject to due fulfilment of its obligations by GCD in terms of this Agreement, the permission to:*
>
> *(a) enter upon the Said Land in terms of this Agreement, for the purpose of developing the Project on the Said Land and marketing the Saleable Area in the Project to be developed on the Said Land, in accordance with this Agreement.*

*(b) carry out, in terms of this Agreement, the conceptualization, execution, implementation, development, completion of the Project on the Said Land (as provided in this Agreement) and bear the entire Project Costs.*

*(c) to apply for and obtain from the Government Authority, in the manner prescribed under this Agreement, all registrations and Approvals in the name of DCM, in respect of the Project to be developed on the Said Land.*

*...*

*(e) to deal with, appear before and file applications, declarations, certificates and submit information as may be required under Applicable Law, with any Governmental Authority, jointly along with DCM and/or duly approved by DCM in the manner agreed to in this Agreement, in relation to the conceptualization, execution, implementation, development, completion of the Project on the Said Land.*

*(f) to carry out and comply with all the conditions contained in the Approvals as may be obtained from time to time.*

*(g) manage the Common Facilities / common areas developed upon the Said Land as may be required under the Applicable Laws and/or rules made there under, in accordance with the terms of this Agreement.*

*...*

*(i) do all such incidental and ancillary acts as may be required to give effect to the foregoing for the*

> *conceptualization and development of the Project on the Said Land in accordance with the terms of this Agreement."*

**75.** Also, Clause Nos. 3 and 5 of the JDA pertaining to the vesting of rights and revenue sharing and distribution, read as under:

> *"3. VESTING OF JOINT DEVELOPMENT RIGHTS*
>
> *3.1. DCM has rights, title and interest over the Said Land and the Said Land is in the vacant and peaceful physical possession of Company.*
>
> *...*
>
> *5. REVENUE SHAREAND DISTRIBUTION WATERFALL*
>
> *5.1. In consideration of vesting of Joint Development Rights in GCD to develop the Said Land, DCM shall be entitled to receive 55% (fifty five percent) of the Net Sales Revenue ("DCM's Entitlement"). The remaining 45% (forty five percent) of the Net Sales Revenue shall be paid to GCD in accordance with this Agreement ("GCD's Entitlement"). The distribution of the Net Sales Revenue between DCM and GCD in the ration of 55:45 shall hereinafter be referred to as the "Sharing Ratio"."*

**76.** From a perusal of the aforesaid, I am of the view that as per JDA there is no proprietary or possessory interest created in the subject land in favor of petitioner. The said development was to be undertaken on a profit-sharing model of 45% and 55%, thus, the same cannot be said to be conferring anything more than a 45% share in the profits.

**77.** Hence, there is no irreparable loss or injury to the petitioner which cannot be compensated in terms of money. If the petitioner succeeds before the Sole Arbitrator, it can always be compensated for 45% of net sale revenue or whatsoever is its entitlement under the JDA but as per the terms of the JDA, the petitioner does not get any right with respect to the subject land.

**78.** The reliance placed by the petitioner on paragraph No. 19 of ***Sushil Kumar Agarwal v. Meenakshi Sadhu***[8], is misconceived as it is distinguishable on facts. Paragraph No. 19 of the aforesaid judgment itself states that there is no uniform formula by which it can be determined if a development agreement can be enforced or not, and it would always depend upon the terms of the individual agreement and the rights created thereunder. In the present case, the terms of JDA do not confer any right *qua* the subject land upon the petitioner.

**79.** It is also contended by the petitioner that the JDA contains a stipulation under its Clause No. 14.9, wherein it is stated that the parties shall continue to abide by their obligations arising out of the agreement inasmuch as they do not relate to subject matter of the dispute. Clause No. 14.9 reads as under:

> *"14.9 While any dispute is pending, the disputing Parties shall continue to perform such of their obligations under this Agreement as do not relate to the subject matter of the dispute, without prejudice to the final determination of the dispute."*

**80.** The aforesaid contention of the petitioner raised by placing reliance on the judgment of ***Innovative Facility Solutions (Supra)*** is misconceived and unfounded as the present case is entirely distinguishable on facts

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[8] (2019) 2 SCC 241.

from ***Innovative Facility Solutions (Supra)***. In ***Innovative Facility Solutions (Supra)***, the relevant Clause therein clearly stated that the parties will maintain *status quo* with regards to the "services, consideration and other obligations".

**81.** To the contrary, Clause No. 14.9 of JDA clearly provides for continuance of performance in so far as it does not relate to the subject matter of the dispute.

**82.** The petitioner has also fleetingly raised several contentions regarding the balance of convenience and risk of irreparable injury, which to my mind are unfounded. The petitioner having invested substantial money and labour in a particular project cannot urge the balance of convenience in its favour, because the remedy to seek damages in such a case is always available to the petitioner.

**83.** In view of the aforesaid findings, it is not necessary to deal with the contentions raised by the respondent by placing reliance on Section 20A and 41(ha) of SRA as the petitioner's case fails to satisfy the three-fold test for grant of interim relief.

**CONCLUSION**

**84.** The petitioner has failed to establish a good *prima facie* case, balance of convenience in its favour, and risk of irreparable loss and injury. Accordingly, the petition is dismissed and the interim order stands vacated.

**85.** The observations made hereinabove are only for the purpose of decision in the present petition filed under Section 9 of the Act, and the Sole Arbitrator shall be at liberty to draw his independent conclusions after evidence is led in the matter.

**JASMEET SINGH, J**

**JULY 28th, 2026/(SS)**