

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

**AO-COM/34/2026
DTC PROJECTS PRIVATE LIMITED
VS
AMBUD BUILDCON PRIVATE LIMITED AND ORS.
IA NO: CAN/1/2026**

For the Appellant : *Mr. Krishnaraj Thakker, Ld. Senior Advocate*
Mr. Rohit Bhattacharjee, Advocate
Mr. Rohan Kumar Thakkur, Advocate

For the Respondents : *Mr. Suddhasatwa Banerjee, Ld. Senior Advocate*
Mr. Anirudhya Dutta, Advocate
Mr. Harsh Tiwari, Advocate
Mr. Bhupendra Gupta, Advocate
Mr. Partha Ganguly, Advocate

Heard & Judgment on: August 11, 2026

Debangsu Basak, J.

1. Affidavits filed by the parties be kept on record.
2. Appeal is directed against Order No.2 dated July 18, 2026 passed in Misc. Arb (Com)-46, 2026 by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas.
3. By the impugned order, learned Judge refused to grant ex parte ad interim order of injunction.

4. Learned senior advocate appearing for the appellant submits that, the parties entered into a term sheet/memorandum of understanding dated February 10, 2024. He draws the attention of the Court to all the clauses in the memorandum of understanding. According to him, the memorandum of understanding is a joint venture agreement and can be construed to be a development agreement.
5. Learned senior advocate appearing for the appellant submits that, the parties thereafter entered into supplementary memorandum of understanding dated October 18, 2025. He draws the attention of the Court to the parties to such agreement. He submits that, apart from the parties in the memorandum of understanding dated February 10, 2024 another group of entities joined the agreement.
6. Learned senior advocate appearing for the appellant draws the attention of the Court to the third supplementary agreement dated January 30, 2026. He submits that, by virtue of three agreements dated February 10, 2024, October 18, 2025 and January 30, 2026 parties agreed that the respondents herein will make over agreed portion of the land at agreed consideration for the purpose of joint development. The ratio of joint development was also agreed upon.
7. Learned senior advocate for the appellant submits that, by reason of the nature of the agreement between the parties, it is a joint venture agreement and, therefore, Section 2(1)(c)(xii) of the Commercial Courts Act, 2015 stands attracted. He submits that, since the memorandum of understanding dated February 10, 2024 is a development agreement, it attracts Section 2(1)(c)(vii) of the Act of 2015. In support of his contention that, a development agreement by itself is a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015, he relies upon **2026-CHC-**

JP:17-DB (Ratan Kumar Agarwal vs. M/s. Asmi Construction & Ors.).

8. Relying upon **2023:CHC-AS:20760-DB (M/s. Lovely Promoters Private Limited vs. Shri Manoj Kumar Bothra & Anr.)**, learned senior advocate appearing for the appellant submits that, even if the parties agreed to enter into another agreement in the future, the initial agreement is an agreement none the less. He submits that, action can be taken in terms of the subsisting agreement between the parties.
9. Learned senior advocate appearing for the appellant draws the attention of the Court to the conduct of the respondent post a particular period of time. He submits that, the respondents threatened to sell the immovable properties which are the subject matter of the agreement to a third party at a different price. He submits that, the purchase consideration which, the appellant initially paid to the respondents was surreptitiously put into the bank account of the appellant by RTGS. He submits that, in the petition under Section 9 of the Act of 2015, appellant stated that, the appellant was ready and willing to deposit the purchase price with the Court, if so directed.
10. Learned advocate appearing for the respondents submits that, there is no arbitration agreement between the parties to the proceedings. He refers to the three agreements and submits that, the agreements are limited to the four legal entities only. All the respondents are not parties to the arbitration agreement. Section 9 of the Act of 1996 cannot be invoked as against all the respondents.
11. With regard to the subject matter of the dispute being a commercial dispute within the meaning of the Act of 2015, learned

advocate appearing for the respondents submits that, the three agreements contemplate that the parties enter into a joint venture agreement in the future. Therefore, according to him, such joint venture agreement is yet to be entered into. Consequently, the three agreements on which the appellant relies upon cannot attract the jurisdiction of the Commercial Court established under the Act of 2015. He submits that, Section 2(1)(c)(xii), is yet to exist, in the facts and circumstances of the present case.

12. Learned advocate for the respondents submits that the agreements cannot be treated as falling under Section 2(1)(c)(vii) of the Act of 2015.
13. Learned advocate appearing for the respondents submits that, the respondents made over the amount to the appellant on July 4, 2026. Thereafter, Section 9 petition was filed sometime in July with the impugned order being dated July 18, 2026. He submits that, there is no urgency with regard to an ex parte ad interim order of injunction, as prayed for being passed. He submits that, the subsisting order passed by the Division Bench should be vacated.
14. Some legal entities entered into three agreements on February 10, 2024, October 18, 2025 and January 31, 2026. Rights *inter se* the parties in these three agreements are in dispute in the proceedings under Section 9 of the Act of 1996.
15. Existence of jurisdictional fact for the Commercial Court to assume jurisdiction is raised by the respondents. Whether a commercial dispute within the meaning of Act of 2015 exists between the parties requires consideration. In addition thereto, what requires consideration by the Court in seisin of the proceedings under Section 9 of the Act of 1996 is whether or not, the three

agreements that the appellant relies on, encompass all the respondents. In other words, whether there is a subsisting agreement between the parties to the proceedings or not.

16. These are issues which are required to be considered in order to assess the *prima facie* case being made out by the appellant for the grant of an order of injunction. Ideally such issues should be decided even at the *prima facie* level after affording the parties an opportunity to file affidavits.
17. We are considering the rival contentions of the parties at the stage of grant of ex parte ad interim order of injunction.
18. In the facts and circumstances of the present case, we do not find that, the learned Trial Judge erred in not granting ex parte order of injunction in view of two jurisdictional facts which are required to be adjudicated upon.
19. In view of our finding hereinabove, we are not minded to discuss the two authorities cited at the Bar on behalf of the appellant. We keep such issues open to be decided by the learned Trial Judge.
20. We are informed that, the respondents are yet to use any affidavit to the injunction petition. Wholly without prejudice to the rights and contentions of the respective parties, the respondents will file affidavit-in-opposition to the injunction petition a week from date; reply within a week thereafter. Learned Trial Judge is requested to hear and decide the injunction petition as expeditiously as possible.
21. We clarify that, we discussed the merits of the matter to the extent of assessing as to whether or not the learned Single Judge erred in not passing an ex parte ad interim order of injunction. Our observation was limited to such extent. The same will not prejudice any of the parties in any manner whatsoever in the injunction petition. Learned Judge will decide the injunction petition on merits

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without being influenced by any of the observations made by us in any manner whatsoever.

22. Subsisting interim order stands vacated.

23. **AO-COM/34/2026** along with the connected application are **disposed of** accordingly without any order as to costs.

(Debangsu Basak, J.)

24. I agree

(Aryak Dutt, J.)

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