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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.32517 OF 2026

1. Swan Corp Limited (Formerly Swan Energy Limited)
2. Cardinal Energy and Infrastructure Private Limited
3. Pegasus Ventures Private Limited ... Petitioners

Vs.

1. Subramanya Constructions and Developments Co. Limited
2. Prakruthi Infrastructure and Development Co. Limited
3. Arjun Balasubramanyam
4. Chandregowda alias Chandrappa ... Respondents

ATUL GANESH KULKARNI

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Date: 2026.10.22 12:01:01 +0530

Mr. Siddhesh Bhole with Mr. Ashwin Pimpale i/by SSB Legal Advisory for the Petitioner.

Mr. Ashish Kamat, Senior Advocate with Mr. Karl Tamboly, Mr. Ankit Lohia, Ms. Kausar Banatwala, Ms. Tanya Sheth, and Ms. Harshita Bajla i/by Mr. Tushar Goradia for Respondent Nos.1 to 3.

Mr. Zal Andhyarujina, Senior Advocate with Ms. Ankita Singhania, Mr. Vishal Thaker, Mr. Mulanshu Vora, Ms. Adish Shah, and Mr. Yash Sinha i/by V. Thaker's for Respondent No.4.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 15, 2026

PRONOUNCED ON : OCTOBER 22, 2026

JUDGMENT:

1. By filing the present Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioners seek to secure their claim for the Enhanced Settlement Amount of Rs.278,00,00,000/- from the Respondents. For this purpose, they seek disclosure of the assets of the Respondents and an injunction restraining the Respondents from selling, transferring, creating any charge over, or creating any third-party interest in their assets, until the disputes are decided.

2. According to the Petitioners, the facts leading to the filing of the present Petition are as follows. On 10 February 2012, Petitioner No.1 entered into a Memorandum of Understanding dated 10 February 2012 (hereinafter referred to as the "MoU") with the Respondents on the basis of the representations made by the Respondents. Thereafter, the parties amicably settled their disputes, and the settlement was recorded in the Minutes of the Meeting dated 14 August 2019. By an order dated 23 November 2022, this Court appointed former Judge of this court, as the sole Arbitrator to decide the disputes arising out of the MoU. Subsequently, on 2 January 2024, the Arbitrator allowed an application filed under Order I Rule 10 of the Code of Civil Procedure, 1908, and permitted Petitioner Nos.2 and 3 to be joined as parties to the arbitral proceedings. The disputes between the parties were settled amicably, resulting in the execution of Consent Terms dated 22 February 2026. On 16 March 2026, the Arbitrator passed a Final Arbitral Award in accordance with the

said Consent Terms and disposed of the arbitral reference.

3. On 18 August 2026, the Respondents filed an application before the Arbitrator, seeking, among other reliefs, an extension of two months for payment of the Settlement Amount from 7 September 2026. The Arbitrator heard the application on 20 August 2026. Thereafter, on 24 August 2026, the Arbitral Tribunal passed an order permitting the parties to approach this Court for appropriate reliefs. The Respondents accordingly filed Commercial Arbitration Petition (L) No.29704 of 2026. However, by a Judgment and Order dated 7 September 2026, this Court dismissed the said Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996. By a letter dated 7 September 2026, the Petitioners informed the Arbitrator, who was acting as the Escrow Agent, that the payment required under the Consent Terms had not been received. They accordingly requested the release of the documents kept in escrow. Consequently, the original Master General Powers of Attorney (MGPAs) and other documents were released and handed over to the Petitioners on the same date. On 7 September 2026, the Respondents addressed a letter to the Arbitrator, requesting him not to release, hand over, register or otherwise deal with the Master GPAs until the Appeal was decided. However, by an email dated 7 September 2026 addressed to Respondent Nos.1 and 2, the Arbitrator, in his capacity as the Escrow Agent, recorded that an Event of Default had occurred in terms of the Consent Terms and that the Petitioners were entitled to receive the documents kept in escrow immediately. Thereafter, by a letter dated 10 September 2026, the Petitioners called upon

the Respondents to cooperate in registering the Master GPAs and handing over possession of the Scheduled Properties. The Petitioners sent a reminder email on 11 September 2026. The Respondents replied to the Petitioners' letter dated 10 September 2026 on 12 September 2026. In these circumstances, the Petitioners have filed the present Petition.

4. Mr. Bhole, learned Advocate appearing for the Petitioners, submitted that the liability of the Respondents has been determined under the Consent Terms and the Consent Award. According to him, this liability is not limited to the Scheduled Properties alone. Respondent Nos.1 and 2 have personally undertaken to pay the Settlement Amount, while the Master GPAs have been given as security for payment of that amount. He therefore submitted that the Petitioners have enforceable rights under the Consent Terms and that those rights must be protected. Mr. Bhole submitted that the Respondents have received money from transactions relating to the Scheduled Properties but have failed to deposit that money as required under the Consent Terms. He pointed out that Respondent No.1 received Rs.19.75 crore by way of demand drafts between 12 May 2026 and 20 May 2026 under the Sameera Term Sheet relating to the Mysore Lands. However, the amount was not deposited as required by Clause 1.12 of the Consent Terms. According to him, the Respondents have claimed that the money was paid to HLFL, but they have not produced any document to support this claim. He submitted that the alleged demand drafts amounting to Rs.15 crore, said to have been obtained from the sale of Mysore Lands-1, were never

handed over to the Petitioners.

5. Mr. Bhole submitted that Respondent No.1 has merely stated in its Reply that the Petitioners' allegation is “not corroborated”. According to him, this is an evasive response because the Petitioners have pleaded the receipt and non-deposit of the amount, and the Respondent has not answered that allegation. Mr. Bhole submitted that a letter dated 4 September 2026 issued by Siddhasiri to Respondent No.1 in respect of 39 Acres 24 Gunthas of the Mysore Lands was not disclosed. Under that letter, a No Objection Certificate was sought from Petitioner No.1. He pointed out that the Respondents had offered the same land under the Sameera Term Sheet and received Rs.19.75 crore between 12 May 2026 and 20 May 2026. According to him, the Respondents could not offer the same land to two different entities without disclosing the earlier transaction. He submitted that such conduct amounts to a breach of Clause 10 of the Consent Terms. Mr. Bhole submitted that Respondent No.1 refused to cooperate by its letter dated 12 September 2026. He pointed out that the revocation notices issued by Respondent No.4 to Respondent No.1 through Mr. K. N. Balasubramanyam were accepted without any protest. According to him, these circumstances are relevant while considering the conduct of the Respondents and their refusal to comply with the Consent Terms.

6. Mr. Bhole submitted that the Respondents' contention that the Enhanced Settlement Amount of Rs.278 crore is a condition imposed merely to compel payment, or is otherwise unenforceable under Section 74 of the Indian Contract Act, 1872, amounts to an

indirect challenge to the Consent Award, which has not been challenged earlier. He pointed out that the extension of time was sought by the Respondents themselves. According to him, Clauses 1.12 and 1.13 of the Consent Terms permitted certain dealings with the properties subject to the conditions stated therein, and those permissions came to an end when the Event of Default occurred. He submitted that any defect relating to payment of stamp duty can be cured and cannot defeat the Petitioners' rights. He contended that the Respondents' objection concerning encumbrances over the Chennai property had been rejected.

7. In respect of Respondent No.2, Mr. Bhole submitted that Respondent No.2 is jointly liable with Respondent No.1 to pay the Settlement Amount and the Enhanced Settlement Amount. He adopted his earlier submissions in this regard. He submitted that the Respondents suppressed the Jones Term Sheet dated 6 August 2026 relating to the Chennai Land and did not disclose it either before the Arbitrator or in their own Section 9 Petition, although the same land was offered to Oaktree as security. He pointed out that the Respondents were seeking to obtain the release of the Kovilambakkam Land in Chennai by offering an advance payment of Rs.45 crore against the relevant tranche, although an amount of Rs.195 crore was payable earlier under the agreed schedule. According to him, this amounts to a clear breach of Clauses 1.5 and 1.11 of the Consent Terms. He submitted that the demand draft of Rs.45 crore dated 22 September 2026, which the Respondents claim to have prepared, was obtained after the Event of Default and after the filing of the present Petition. The demand

draft is allegedly held by a third party and is subject to the condition of obtaining a No Objection Certificate. He submitted that, if the Respondents intend to rely on this amount, it must be deposited in Court unconditionally. Mr. Bhole submitted that the Jones Term Sheet refers to 3.78 acres of land, whereas only 2.78 acres are held against the agreed value of Rs.15 crore per acre, which the Consent Terms describe as "binding and unchallengeable". According to him, the Jones Term Sheet has increased the stated value to Rs.62.50 crore per acre. He pointed out that, at page 615 of the Reply, the Respondents have offered Rs.45 crore on this basis. He submitted that this arrangement is only an attempt to secure the release of the Chennai Land at Kovilambakkam without following the payment schedule prescribed under Clauses 1.1 to 1.4 of the Consent Terms. In respect of Respondent No.3, Mr. Bhole submitted that Respondent No.3 is bound by the Consent Terms and the Consent Award. He pointed out that Respondent No.3 signed the Consent Terms in confirmation of his obligations and executed the MGPA in respect of his Mysore Lands. He submitted that Respondent No.3 confirmed the Consent Terms and undertook before the Arbitral Tribunal to comply with them. According to him, the Consent Award is binding upon the confirming parties, including Respondent No.3. Mr. Bhole submitted that, after the Event of Default occurred, the confirming parties were required to register the MGPAs and were not entitled to obstruct the Petitioners from taking possession of the properties. He pointed out that the Petitioners called upon Respondent No.3 to comply with these

obligations by letters dated 10 and 11 September 2026. However, in his letter dated 15 September 2026, Respondent No.3 called upon the Petitioners to “refrain from taking any steps”. According to Mr. Bhole, this conduct is contrary to the obligations undertaken under the Consent Terms.

8. Mr. Bhole relied upon the conduct of the person who is a Director of Respondent Nos.1 and 2. He submitted that the said Director executed the Sameera Term Sheet in respect of his own Mysore Lands and on behalf of Respondent No.4, under which an amount of Rs.19.75 crore was received. Thereafter, the same lands were again offered through Siddhasiri by the letter dated 4 September 2026. He pointed out that the said Director signed the Jones Term Sheet on behalf of Respondent No.2. According to him, these transactions show how the properties given as security are being dealt with by the Respondents. Mr. Bhole submitted that Respondent No.4, who owns adjoining Mysore Lands, has created third-party rights in respect of the properties. He apprehended that Respondent No.3 may create similar rights. According to him, unless the existing position is protected, the security provided under Clauses 3.2 and 3.3 of the Consent Terms and the restriction imposed by Clause 10 would become ineffective. He therefore submitted that the sale proceeds received from the Scheduled Properties form part of the security available to the Petitioners and must be deposited. In respect of Respondent No.4, Mr. Bhole submitted that Respondent No.4 is bound by the Consent Terms and the Arbitral Award. He pointed out that Respondent No.4 signed the Consent Terms through Mr. K. N. Balasubramanyam,

who was authorised to sign on behalf of Respondent No.1. According to him, Respondent No.4 personally confirmed the Consent Terms, undertook to comply with them and executed an irrevocable General Power of Attorney dated 7 March 2026. He therefore submitted that Respondent No.4 cannot avoid the obligations arising from the Consent Award by merely contending that he was not a party to the proceedings. Mr. Bhole submitted that Respondent No.4 made a statement before the Arbitrator on 16 March 2026 that the entire extent of 41 Acres 23 Gunthas was free from encumbrances and third-party rights. However, in his own suit, Respondent No.4 has stated that an agreement for sale dated 2 March 2026 had been executed in respect of 12 Acres 06 Gunthas. He has referred to sale deeds dated 10 April 2026 in respect of 11 Acres 06 Gunthas and 1 Acre 09 Gunthas. According to Mr. Bhole, these transactions show that third-party rights had been created even before or shortly after the Consent Award was passed. He therefore submitted that Respondent No.4 made an incorrect statement before the Arbitral Tribunal and has acted in breach of the Award. Mr. Bhole submitted that, even in 2024, an extent of 7 Acres 15 Gunthas was stated to be under joint development. In paragraph 18 of his suit, Respondent No.4 has stated that he is in the process of allotting that land to prospective purchasers. According to Mr. Bhole, Respondent No.4 has not held how these dealings are consistent with his obligation not to create third-party rights in any form in respect of the land. He submitted that the statement made by Respondent No.4 was not limited to the absence of encumbrances. It covered dealings with the

property in any manner whatsoever. Mr. Bhole pointed out that, in his Reply dated 8 October 2026, Respondent No.4 has stated that the Petitioners inspected the property on 26 February 2026. According to Respondent No.4, this inspection showed that the Petitioners were aware of whether any third-party interest had been created. Mr. Bhole submitted that such an inspection cannot establish that the Petitioners knew about the transactions referred to in the suit. He pointed out that Respondent No.4 has not produced any document with his Reply to show that the contents of paragraph 18 of the suit were disclosed to the Petitioners.

9. Mr. Bhole submitted that Respondent No.4 has taken inconsistent positions in his Reply. In paragraphs 2, 3(a) and 3(b), Respondent No.4 has stated that he was not required to pay any amount to the Petitioners or arrange for the generation of funds for their payment. He has contended that he is not a party to the Consent Terms. However, in paragraphs 10 and 11 of the same Reply, Respondent No.4 has stated that Clauses 1.12 and 1.13 of the Consent Terms contemplate dealings with the Scheduled Properties for raising money to be paid to the Petitioners. He has stated that, to secure the release of his properties, he entered into an agreement and earmarked the amount received for payment to the Petitioners. Mr. Bhole submitted that these statements must be considered along with the letter at page 735 of the Rejoinder Affidavit, in which Respondent No.4 called upon the Petitioners not to take any steps in respect of the Scheduled Properties because an Appeal and a Section 11 application were pending before this Court. According to him, these statements show that

Respondent No.4 cannot avoid the obligations arising from the Consent Terms while simultaneously seeking to prevent the Petitioners from enforcing their rights.

10. Mr. Bhole submitted that the General Powers of Attorney were purportedly revoked on 18 September 2026, that is, one day after the present Petition was filed. According to him, the MGPAs were executed in connection with an interest created in favour of the Petitioners and cannot be revoked in a manner that prejudices that interest. He relied upon Section 202 of the Indian Contract Act, 1872, in support of his submission that an agency coupled with an interest cannot be terminated to the prejudice of that interest. Mr. Bhole submitted that Respondent No.4 filed O.S. No.440 of 2026 before the Civil Court at Srirangapatna, despite the parties having agreed to the exclusive jurisdiction of the courts at Mumbai. According to him, the suit is based on an alleged event dated 12 September 2026, which has been wrongly presented as giving rise to a cause of action. He submitted that Respondent No.4 obtained an ex parte order dated 24 September 2026 by placing incorrect facts before the Court. Mr. Bhole contended that Respondent No.4 is acting on behalf of Respondent No.1 and is being used as a front to prevent the Petitioners from enforcing their rights. Mr. Bhole submitted that the Petitioners' claim is not limited to recovery of money. According to him, the Petitioners intend to initiate arbitral proceedings to enforce their rights in the immovable properties, which, as they contend, have accrued or become vested in them because of the Respondents' default in paying the amounts agreed under the Consent Terms. Inviting my

attention to paragraph 18 at page 627, he submitted that an amount of Rs.125 crore generated from the sale deeds dated 10 April 2026 was earmarked for deposit with the Petitioners. However, according to him, the Petitioners' representative informed the Respondents that they would have to pay Rs.29,28,75,000/- in one instalment instead of paying Rs.15 crore. 25. Inviting my attention to Clause 10 of the Consent Terms, Mr. Bhole submitted that the said clause prohibits the Respondents from creating third-party rights in respect of the properties covered by the Consent Terms, except for the dealings permitted under Clauses 1.12 and 1.13. He submitted that, once the Respondents defaulted in making payment, the consequences provided under Clauses 3.1 to 3.5 of the Consent Terms became applicable.

11. Mr. Bhole invited my attention to the communication at page 163, which was addressed by the Petitioners to the Arbitrator in accordance with Clause 3.2 of the Consent Terms, seeking release of the original Master GPA. He submitted that the Arbitrator examined the matter, recorded that an Event of Default had occurred under the Consent Terms and stated that the Petitioners were entitled to receive the documents kept in escrow immediately. Thereafter, the Petitioners called upon the Respondents to remain present for registration of the documents. However, the Respondents replied that the said communication was unnecessary and ought not to have been issued. With regard to Respondent No.4, Mr. Bhole invited my attention to paragraph 22(b) of the Petition. He submitted that the Petitioners have alleged that the Respondents are acting together and have taken

steps to defeat the Petitioners' rights. He referred to paragraph 6 of the Rejoinder, which deals with the term sheet executed by Respondent No.1 as the Lead Intended Seller through its Director, Mr. Arjun Balasubramanyam. The term sheet was executed on behalf of Confirming Party No.2, represented by M/s. Subramanya Construction and Development Co. Limited through Mr. Arjun Balasubramanyam. Mr. Bhole pointed out that Mr. Arjun Balasubramanyam is a Director of Respondent Nos.1 and 2 and is Confirming Party No.1. He had executed the Sameera Term Sheet both in his personal capacity and on behalf of Confirming Party No.2 in respect of the Mysore Lands. According to Mr. Bhole, these facts show that the lands belonging to Confirming Party No.2 are, in substance, controlled and dealt with by the Respondents, and that Confirming Party No.2 is acting only as a front for them.

12. Mr. Bhole invited my attention to the non-binding term sheet dated 6 June 2026, annexed as Exhibit-D to the Reply filed by Respondent No.1. He submitted that the said term sheet was signed on behalf of Intended Seller Nos.2, 3 and 4 by Mr. Arjun Balasubramanyam. He relied upon paragraphs 10, 11 and 12 of the Reply filed by Respondent No.4 to contend that Respondent No.2 is acting as a front for the other Respondents. According to him, the restriction contained in Clause 10 of the Consent Terms against creating third-party rights applies to Respondent No.4. He relied upon Clauses 2.2(ii) and 1.8 of the Consent Terms to support his submission that the Consent Terms are binding upon Respondent No.4 as well. Mr. Bhole submitted that the increase in the Settlement Amount from Rs.240 crore to Rs.278 crore cannot

be treated as a condition imposed merely to compel the Respondents to make payment. According to him, the enhanced amount was agreed upon as a legitimate measure of compensation for breach of the Consent Terms, and the Petitioners are entitled to seek enforcement of that obligation. He submitted that, even if the enforceability of the enhanced amount is left open for consideration, the Respondents have admittedly failed to pay the original Settlement Amount of Rs.240 crore within six months, as required under the Consent Terms. He therefore contended that the Event of Default has occurred, and the consequences prescribed under the Consent Terms have been triggered. Mr. Bhole lastly submitted that the statement made by Respondent No.4 before the Arbitrator that no third-party rights had been created in respect of the property was incorrect. According to him, Respondent No.4 had created third-party rights before making that statement, and this fact is recorded in the proceedings before the Arbitrator. He submitted that this conduct must be considered while deciding whether Respondent No.4 can be permitted to rely upon the defence that he misunderstood his obligations. On these grounds, Mr. Bhole submitted that the Petitioners have established a case for grant of the reliefs sought in the present Petition.

13. Mr. Kamat, learned Senior Advocate appearing for Respondent Nos.1 to 3, submitted that the Consent Terms permitted Respondent Nos.1 to 3 to sell the properties for arranging the amount of Rs.240 crore payable to the Petitioners. He submitted that the condition increasing the amount from Rs.240 crore to Rs.278 crore was inserted merely to put pressure

on the Respondents to make payment and was unenforceable. He submitted that Respondent Nos.1 to 3 were ready to accept an arrangement under which a Court Receiver could be appointed in respect of the properties covered by the Consent Terms. The Court Receiver could sell those properties and recover the amount of Rs.240 crore for payment to the Petitioners. The disputed additional amount of Rs.38 crore could be deposited in this Court, and the question whether that amount was payable could be decided by the Arbitral Tribunal. He submitted that the Consent Terms did not prescribe any fixed schedule for payment of instalments during the period of six months. According to him, paragraphs 20 and 21 of the Petition showed that the Petitioners were seeking recovery of money from Respondent Nos.1 to 3. Their claim could be adequately secured by accepting the arrangement suggested by the Respondents for appointment of a Court Receiver. In support of his submission that the Court should exercise its equitable jurisdiction where a contract or a decree passed on the basis of a compromise contains a penal condition inserted merely to put pressure on a party, Mr. Kamat relied upon the judgments in the cases of *Deepchand Mini vs. Ticamchand Mini,* 1973 SCC OnLine Cal 88; *Jamotibai Satyanarayan Bajaj vs. Abdul Razzak,* 2006 SCC OnLine Bom 1056; *Kailash Nath Associates v. Delhi Development Authority,* (2015) 4 SCC 136; and *Authorised Officer, Central Bank of India vs. Shanmugavelu,* (2024) 6 SCC 641.

14. In support of his submission that the parties are not bound by an agreed valuation if the valuation is erroneous, Mr. Kamat

relied upon the judgments in *Mihir Chakraborty vs. Multi Tech Computers (P) Limited,* (2001) 106 Comp Cas 150; *Renuka Datla (Dr.) vs. Solvay Pharmaceutical B.V.,* (2004) 1 SCC 149; *G.L. Sultania vs. Securities & Exchange Board of India,* (2007) 5 SCC 133; *and Nafan B.V. vs. SAF Yeast Co.,* (2016) 199 Comp Cas 644. On the question of the doctrine of election, he relied upon the judgment in *Irreo Grace Realtech (P) Ltd. vs. Abhishek Khanna,* (2021) 3 SCC 241. In support of his submission that admissions made in pleadings are judicial admissions and carry greater weight than admissions made as evidence, he relied upon *Nagindas Ramdas vs. Dalpatram Iccharam alias Brijram*, *(*1974) 1 SCC 242.

15. Mr. Kamat relied upon *Kishorsinh Ratansinh Jadeja vs. Maruti Corporation,* (2009) 11 SCC 229, and *Best Seller Retail India Private Limited vs. Aditya Birla Nuvo Limited & Others,* (2012) 6 SCC 792, in support of his submission that the principles governing interim relief require the Court to consider all relevant circumstances and that an injunction need not be granted merely because a prima facie case is made out. On the question of injunction being an equitable relief, the grant of which depends upon the Court's discretion, he relied upon *Gujarat Bottling Co. Limited & Ors. vs. Coca Cola Co. & Ors.,* (1995) 5 SCC 545, and *Mandalli Rangana & Ors. vs. T. Ramachandra & Others,* (2008) 11 SCC 1. He relied upon the judgments in *Radha Sundar Dutta vs. Mohd. Jahadur Rahim,* 1958 SCC OnLine SC 2; *Sunil Kumar Chandra vs. Spire Techpark Private Limited,* (2023) 1 HCC (Del) 391; *Bharat Sher Singh Kalsia vs. State of Bihar,* (2024) 4 SCC 2; *and BPL Limited vs. Morgan Securities & Credits Private Limited,*

(2026) 3 SCC 1, in support of his submissions on the issues arising in the Petition.

16. Mr. Andhyarujina, learned Advocate appearing for Respondent No.4, submitted that the expression "party" has been defined in the Consent Terms. According to him, the definition identifies the Petitioners and Respondent Nos.1 to 3 as the parties, while Respondent No.4 signed the Consent Terms only as a confirming party. He submitted that relief under Section 9 of the Arbitration and Conciliation Act, 1996, can be granted against a third party only when that person claims through or under a party to the arbitration agreement. According to him, Respondent No.4 does not fall within that category. Inviting my attention to the definition clause at page 67, he submitted that the Petitioners and Respondent Nos.1 to 3 are described as the parties to the Consent Terms. He submitted that Clauses 1.6 and 2.1 prescribe the only obligations imposed upon Respondent No.4 under the Consent Terms. Except for those specific obligations, Respondent No.4 cannot be treated as a person claiming through or under a party to the arbitration agreement. He submitted that Clause 20, which refers to the acceptance of statements and undertakings contained in the Consent Terms, must be understood only with reference to the obligations undertaken by Respondent No.4. Therefore, according to him, no relief can be granted against Respondent No.4 in the present Petition. In support of his submissions, Mr. Andhyarujina relied upon the judgment in *Ningbo Aux Imp & Exp Co. Limited vs. Amstrad Consumer India Pvt. Ltd.,* 2026 SCC OnLine Bom 441.

REASONS AND FINDINGS:

Background and the agreed settlement:

17. The disputes between the parties arose from their earlier business arrangement and were referred to arbitration. During those proceedings, the parties settled their disputes by signing Consent Terms dated 22 February 2026. Thereafter, the learned Sole Arbitrator passed the Arbitral Award dated 16 March 2026 in accordance with those Consent Terms. The earlier arbitration was brought to an end on the basis of the written settlement. The settlement stated the amount to be paid, the properties to be released after payment, the security to be given and what would happen if the payment was not made. Clause 1.1 of the Consent Terms records the obligation to make payment in the following words:

> "The Claimants irrevocably agree to pay Swan or its nominees, a sum of Rs.240,00,00,000/- (Rupees Two Hundred Forty Crores Only) hereinafter referred to as 'Settlement Amount', within 6 (six) months from the date hereof (i.e., on or before 23.08.2026) without any interest towards full and final settlement and closure of all the claims."

18. Clause 1.5 states:

> "It is agreed between the Parties that the entire Settlement Amount shall be strictly paid within 6 (six) months, i.e. by or before 23.08.2026 from the date of execution of these Consent Terms. It is clarified that the Claimants shall strictly adhere to the sequence of the tranches as mentioned in 1.2, 1.3 and 1.4 above and shall not have the option to alter the sequence."

19. These clauses show that the Claimants had agreed to pay the full Settlement Amount under the Consent Terms. The release of the properties was linked with payment. The properties were not to be released without the required payment being made. Clause 1.5 makes it clear that one side could not change the payment date or the order of payment according to its own convenience. At the same time, the Consent Terms allowed the Claimants to arrange money through transactions with developers or purchasers and by obtaining financial facilities against the Scheduled Properties. However, they had to follow the conditions stated in the Consent Terms while doing so.

20. The Award dated 16 March 2026 extended the payment date up to 6 September 2026. The documents before this Court show that the Petitioners did not receive the Settlement Amount, or any payment under the relevant clauses, within the extended period. On 7 September 2026, the Petitioners informed the learned Arbitrator that no payment had been received and asked for the Master General Powers of Attorney and the other documents kept in escrow to be released to them. On the same date, the learned Arbitrator, acting as Escrow Agent, recorded that an Event of Default had occurred under the Consent Terms and that the Petitioners were entitled to receive the documents kept in escrow. Those documents were released to the Petitioners. The Respondents have not produced any receipt or other material before this Court to show that the Settlement Amount, or any part of it, was paid before the extended date. Their explanation is that payment was delayed because the Petitioners did not clear the

encumbrances over the Chennai Lands. They have not shown that the amount was paid within the required time. This is important because the parties had agreed in the Consent Terms about what would happen if payment was not made. They had not left this matter to be discussed or decided afresh later. Discussions with lenders, the expectation of receiving a loan or the possibility of a future transaction cannot be treated as payment of the Settlement Amount. Such circumstances may explain the efforts made by the parties and why payment was delayed. But they do not show that the payment obligation under the Consent Terms and the Award was fulfilled.

Effect of Clauses 1.1 to 1.14 of the Consent Terms:

21. The Consent Terms have to be read together. Clauses 1.1 to 1.14 deal with the Settlement Amount, the time and order of payment, release of properties in proportion to the amounts paid, deposit of title documents and permission to raise loans or enter into transactions with developers or proposed purchasers. These clauses show that the parties had considered that the Claimants could arrange the money by using the Scheduled Properties. But they had provided that the money received from such transactions would be used in the agreed manner. The title documents were to be released in proportion to the properties only after the required payment and other conditions were fulfilled. Clause 1.12 allowed the Claimants to enter into MOUs or agreements with developers or proposed purchasers. However, the full amount applicable to the concerned property under Clauses 1.2, 1.3 and 1.4 had to be deposited with the learned Arbitrator. After the payment was

received, the Petitioners had to be informed and the original title documents relating to the relevant portion of land had to be released. Clause 1.13 allowed the Claimants to borrow money or obtain financial facilities against the Scheduled Properties. This was subject to the agreed arrangement for releasing the loan amount and releasing the relevant title documents in proportion to the payment. Clause 1.14 provided that the learned Arbitrator had to be informed when the money was credited. The documents and cancelled Master GPAs would be released in the manner stated in the Consent Terms. These clauses gave the Claimants different ways of arranging the money. However, they did not say that the last date for payment would be extended. In simple words, the Consent Terms gave the Claimants different ways to arrange the Settlement Amount. They could obtain finance or enter into transactions relating to the properties. But the money had to be arranged within the agreed period and the order of payment instalments had to be followed. signing a term sheet with a lender or proposed purchaser does not mean that the money has been disbursed and paid to the Petitioners. If the parties wanted the payment period to be extended whenever a lender needed more time, they could have included such a condition in the Consent Terms. No such condition has been shown to this Court.

22. The Respondents rely upon their financing arrangements and the efforts made to obtain the Settlement Amount. The record refers to an indicative Term Sheet dated 25 March 2026 with Oaktree Opportunities and another term sheet dated 14 July 2026. The Respondents rely upon the non-binding Term Sheet dated 6

June 2026 with Sameera Estates, relating to proposed transactions concerning approximately 150 acres of land. They say that they were genuinely trying to arrange the money and were pursuing these transactions so that payment could be made. These documents do show that the Respondents were making efforts to obtain finance and proceed with property transactions. However, they do not show that the Settlement Amount was paid by 6 September 2026. Making genuine efforts to arrange finance and making payment are two different things. The first may explain the efforts made by the Respondents, but it cannot replace the second.

Clauses 3.1 to 3.5 and the consequences of default:

23. The parties had agreed that, if the Settlement Amount was not paid, the Petitioners could start proceedings for recovering it. They had agreed that a separate arrangement would become applicable if the payment was not made within the agreed time. This arrangement is important because it shows what the parties had decided would happen if there was a default and what steps the Petitioners could take thereafter. Clause 3.1 provides that if the Claimants "fail, avoid or otherwise neglect" to pay the Settlement Amount within six months from the date of the Consent Terms, an "Event of Default" would take place. In that situation, the amount payable would increase to Rs. 278 Crores, which is called the "Enhanced Settlement Amount". The clause says that any amount paid has to be adjusted in the manner provided there. The words used in Clause 3.1 are important. The parties have not said that the Enhanced Settlement Amount would become payable only if the Claimants intentionally refused to pay or if it was proved that

they never wanted to make the payment. The words used are "fail, avoid or otherwise neglect". These words cover a situation where the payment is not made within the agreed time. There may be different reasons for such failure. The money may not be available, the finance may have been delayed, a property transaction may not have been completed, or some other difficulty may have arisen. The reason for non-payment may have to be examined on the facts and under the Consent Terms. However, a party cannot escape the agreed consequence merely by saying that efforts were being made to arrange the money. The first thing to be seen is whether the payment was made within the agreed period.

24. There is a difference between having a duty to make payment and making efforts to arrange money for that payment. A person may approach lenders, discuss matters with proposed purchasers, sign term sheets and take other steps for arranging the required funds. These steps may show that the person was trying to fulfil the obligation. But, unless the contract says that such steps will extend the time for payment, they cannot be treated as if the payment has been made. The Consent Terms permitted the Claimants to arrange finance and enter into transactions relating to the Scheduled Properties. These facilities were provided to help them make the payment. They did not remove the obligation to pay by the agreed date.

25. In the present case, the extended date for making payment was 6 September 2026. The material before the Court shows that the Settlement Amount of Rs. 240 Crores was not paid within that period. The Respondents rely upon the efforts made by them to

arrange finance and the alleged delay in removing the encumbrances over the Chennai Lands. These submissions have to be considered, but they do not change the language of Clause 3.1. The effect of the alleged delay has to be examined in accordance with the contractual provisions and the relevant Court orders. Unless there is a legal basis to hold that the payment date was extended or that the default clause could not apply, the fact that discussions for arranging finance were still going on cannot prevent the consequence under Clause 3.1 from arising.

26. The principle that parties are generally bound by the agreement made by them is relevant. In *Nabha Power Ltd. v. Punjab State Power Corporation Ltd.*, (2018) 11 SCC 508, the Supreme Court held that the terms of a contract must be understood in their proper context. The Court cannot add a condition which the parties had never agreed upon. The contract may be read as a whole to understand the intention of the parties, but the Court cannot make a new agreement for them merely because one party now finds it difficult to follow the agreed terms. Applying this principle, the Court cannot add a condition to Clause 3.1 that default would arise only if the Claimants were unwilling to pay, or that the payment period would get extended whenever a lender required more time. Such a condition cannot be read into the clause unless the Consent Terms or some other established basis supports it.

27. The relevant part of Clause 3.2 provides that:

> "Upon occurrence of the Event of Default, the Respondents shall send a written intimation to the Hon'ble Arbitrator to

release the original Master GPAs whether the amounts are not received as per the Tranches and seek directions against the Claimants and Confirming Parties to register the Master GPAs immediately."

28. The clause provides that, after following this step, the Respondents may exercise the powers given under the Master GPAs without referring to the Claimants and Confirming Parties in any manner. They may convey the properties mentioned in Schedules I, II and III, according to their choice, to the extent of the value required for the Enhanced Settlement Amount. They may deal with the properties in other ways permitted by the clause. Any amount paid has to be deducted while calculating the amount which may be recovered. This provision has to be read with the remaining part of Clause 3.2 and the clauses which follow it. The first part explains the steps to be followed after default. The Respondents have to give written intimation to the learned Arbitrator for release of the original Master GPAs and seek the necessary directions for their registration. Thereafter, the powers given under the Master GPAs may be exercised according to the Consent Terms. Thus, the clause provides both a procedure which has to be followed and a right which may be exercised. The procedure relates to release and registration of the Master GPAs, while the right relates to using the Scheduled Properties for recovering the Enhanced Settlement Amount. Both parts of the clause have to be given effect. If it is read to mean that the Petitioners can only send a letter to the learned Arbitrator but cannot exercise the powers under the Master GPAs, the purpose of the clause would be defeated. On the other hand, if it is read to

mean that the Petitioners can take over every property without following the agreed procedure, the requirement relating to release and registration of the Master GPAs would become meaningless. The proper way is to read the clause as a whole and give effect to all its parts. Default brings the agreed arrangement into operation, but the powers under that arrangement must be exercised in the manner stated in the Consent Terms and the relevant documents. The words "without any reference to the Claimants and Confirming Parties in any manner whatsoever" must be understood in the context in which they are used. The parties intended that, after default and after following the agreed procedure, the Claimants should not be able to stop the security arrangement merely by refusing to give fresh consent or by not cooperating in steps which they had agreed to take. If fresh consent from the Claimants were required at every stage, the protection agreed upon would depend on whether the defaulting party was willing to cooperate. The security arrangement would then become uncertain precisely when it was intended to operate. At the same time, these words do not permit the Petitioners to ignore the terms of the Master GPAs, the agreed valuation, the registration requirements or any binding order passed by a competent Court. The words must be read along with the entire arrangement. They remove the need to obtain fresh consent from the Claimants for exercising rights which had been agreed upon after default. They do not remove the procedure which the parties retained. This distinction is important so that the Petitioners can exercise their rights without being given powers wider than those

granted under the Consent Terms. Another important part of Clause 3.2 is that the properties may be conveyed only to the extent of the value required for the Enhanced Settlement Amount, after giving credit for any amount paid. The clause does not permit the Petitioners to recover property of unlimited value merely because default has occurred. The property used and the extent of recovery must remain connected with the amount recoverable under the Consent Terms. The agreed valuations in Clause 3.5 provide the basis for calculating the value of the property which may be used for this purpose. The Petitioners may rely upon the agreed arrangement, but they must act within its limits. The Respondents may say that the Scheduled Properties are worth more than the amount claimed, or that they were trying to arrange finance by using those properties. These circumstances do not make Clause 3.2 ineffective. The clause provides that the properties may be used for recovery if payment is not made. The relevant question is not merely whether the Claimants had assets or were trying to raise money. The question is whether they fulfilled the agreed payment obligation and, if they did not, whether the Petitioners can use the security arrangement in accordance with the Consent Terms.

29. Clause 3.3 provides:

> "Upon the occurrence of an Event of Default and release of the Master GPAs by the Hon'ble Arbitrator in terms of Clause 2.2, the Claimants shall, forthwith and without any act, consent or documentation, so as to satisfy the Enhanced Settlement Amount (after adjustment of amounts paid, if any) that would be payable to the Respondents and/or their

nominee(s), the Claimants hereby irrevocably authorize the Respondents to take possession of the Scheduled Property in exercise of the powers under the Master GPAs and the Claimants agree not to object, obstruct or resist such taking over of possession by the Respondents by following the procedure detailed in 3.2 clause above."

30. The words used in Clause 3.3 show that the parties intended the Master GPAs to form part of the arrangement. They were not meant to remain as documents lying in escrow without being used. The clause connects the occurrence of an Event of Default and the release of the Master GPAs with the authority to take possession of the Scheduled Property. It records the Claimants' agreement that they would not object to, obstruct or resist the taking of possession when the agreed procedure was followed. This wording is important because the parties appear to have expected that, after default, the Claimants might refuse to cooperate when the security rights were being exercised. The clause seeks to prevent such refusal from defeating the arrangement which the parties had agreed upon. The word "irrevocably" indicates that the authority was intended to operate according to the agreed conditions and was not to be withdrawn merely because the circumstances changed after the settlement. Of course, the effect and enforceability of each Master GPA have to be examined according to its own terms and the applicable law. But the intention expressed in Clause 3.3 cannot be ignored while considering the rights claimed by the Petitioners after default. This clause must be read with Clause 3.2. Clause 3.2 provides for written intimation, release of the Master GPAs and the steps required for registration.

Clause 3.3 then deals with the exercise of the authority to take possession after default and release of the Master GPAs. The two clauses are connected. Clause 3.3 cannot be read as giving an independent right to take possession without considering the steps stated in Clause 3.2. Equally, Clause 3.2 cannot be read as dealing only with the custody of documents and having no connection with the authority to take possession under Clause 3.3. The purpose of this arrangement is to enable the Petitioners to recover the Enhanced Settlement Amount by using the properties identified in the Consent Terms, subject to the agreed valuation and adjustment of payments. Clause 3.3 does not allow the Petitioners to recover more than the amount due under the contractual arrangement. The words "after adjustment of amounts paid, if any" are important. They show that the payments made must be calculated before deciding how much property would be required to satisfy the amount. The arrangement must be applied in a manner which protects the Petitioners' right to recover, while ensuring that recovery remains within the amount and procedure agreed upon by the parties.

31. Clause 3.4, as referred to in the Consent Terms, records that the Claimants cannot refuse or challenge the agreed action, and that the Respondents in whose favour powers under the Master GPAs were given may exercise those powers to complete registration according to the agreed procedure. This provision supports the view that the security arrangement was not intended to depend upon fresh approval from the Claimants after default. It would not be consistent with the ordinary meaning of these

clauses to hold that, even after default, the Claimants could prevent the Petitioners from taking any step under the Master GPAs by refusing to sign or cooperate with the documents required to complete the agreed process. However, the words “shall not be entitled to refuse or challenge” cannot be understood as taking away the power of a competent Court to examine a genuine dispute about the meaning, validity or lawful operation of the contractual provisions. At this stage, the Court is not required to decide every possible question about ownership of the properties, the rights of third parties or the validity of a particular document. The question is whether the security arrangement exists and whether the default gives the Petitioners a prima facie right to seek protection while the disputes are decided. On the material available, Clauses 3.2, 3.3 and 3.4 support the Petitioners’ case that the security was intended to be acted upon after default, subject to the procedure and limits stated in the Consent Terms. Clause 3.5 records the agreed valuation of the properties for this purpose. This includes Rs. 2.25 Crores per acre for Sarjapur converted land, Rs. 1.50 Crores per acre for Chennai Land and Rs. 1.50 Crores per acre for Anagalli, Mysore land, as stated in the relevant provisions relied upon before this Court. These agreed values are important because the parties did not leave the valuation of the properties open for decision after default. They recorded the values to be used for the security and recovery arrangement. These values help in calculating how much property may be required to satisfy the Enhanced Settlement Amount and reduce the possibility of a fresh dispute about valuation when the

security has to be used. However, the agreed valuation does not mean that the Petitioners can take property of any value without making the necessary calculation. The property to be dealt with must be identified by applying the agreed rate and calculating the amount recoverable after making the required adjustments. If the amount can be satisfied from only part of the Scheduled Properties, the arrangement must be applied in a manner which matches that amount. The purpose is to recover the Enhanced Settlement Amount.

32. These clauses show that the parties had agreed upon a security arrangement which could be used if the payment obligation was not fulfilled. Default does not only increase the amount claimed. It brings into operation the agreed mechanism concerning the Master GPAs, possession and transfer of the Scheduled Properties. These provisions were included in the Consent Terms, and the Award was passed in accordance with those terms. On the material available, the Respondents cannot ignore these consequences merely by saying that they were trying to arrange payment. The difference between a promise to pay and a promise supported by security is important. In a money claim, a creditor may have to prove the claim and then follow the remedies available for recovery. Here, the parties agreed that, if payment was not made within the specified period, the Enhanced Settlement Amount would apply and the Petitioners could invoke the Master GPAs and use the Scheduled Properties according to the procedure stated in the Consent Terms. The security arrangement was a part of the agreement. It cannot be treated as an

unimportant document having no effect on the rights of the parties. The fact that the Consent Terms were followed by an Arbitral Award is relevant. The parties did not leave the settlement as a understanding which was never placed before the learned Arbitrator. The Consent Terms were placed before the learned Arbitrator, and the Award dated 16 March 2026 was passed in accordance with them. The earlier disputes were thus brought to an end on the basis of the settlement. The parties provided for what would happen in case of a future default and for arbitration of disputes arising under the Consent Terms. The contractual provisions have to be understood against this background.

33. In *Byram Pestonji Gariwala v. Union Bank of India*, (1992) 1 SCC 31, the Supreme Court in paragraph 43 explained the binding nature of a compromise and observed:

> "A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment."

34. This principle is relevant because the Consent Terms contain the settlement which the parties agreed upon to resolve their disputes. They decided the amount to be paid, the period within which payment was to be made, the properties to be released against payment and the consequences if payment was not made. The Court must give effect to this arrangement according to its terms unless a ground recognised by law is established for refusing to do so. A party cannot accept the benefit of a settlement and later behave as if the obligations placed upon it had never been

agreed upon. This does not mean that a consent award can never be challenged on any ground recognised by law. It means that the agreed terms cannot be ignored because one party later finds their consequences difficult or inconvenient.

35. The Respondents say that they were trying to arrange the Settlement Amount and that the delay occurred because the Petitioners did not remove the encumbrances over the Chennai Lands in time. This argument does not justify ignoring the consequences stated in Clauses 3.1 to 3.5. There is a difference between explaining why default took place and showing that, in law, no default took place. The Respondents' efforts to arrange finance may explain the reason for the delay. But, to show that there was no default, they must establish that the Consent Terms or some other applicable legal rule prevented the Event of Default from arising. The mere existence of term sheets or continuing discussions with a lender does not establish that the payment deadline was extended.

36. The earlier Judgment dated 7 September 2026 is important. The Respondents had earlier approached this Court seeking to stop the Petitioners from invoking the default clauses. They had relied upon the argument that delay in removing the encumbrances over the Chennai Lands affected the financing process. That argument was considered and the earlier Petition was dismissed. The present Court cannot proceed as if that decision does not exist. Unless the decision is stayed, set aside or otherwise changed by a competent order, its effect has to be respected. The Respondents may pursue any challenge available to them in law, but repeating the same

argument does not establish that the payment deadline was extended. It must be remembered that the Petitioners are not asking this Court to give them property without considering the amount agreed upon. Their case is that default has brought the security into operation and that the assets should be protected so that the agreed remedy remains effective. Any relief arising from default must remain within the Consent Terms, including the Enhanced Settlement Amount, the agreed valuations and adjustment of payments made. However, these limits do not mean that the security arrangement has no effect at all.

37. In *Essar House Private Limited v. Arcelor Mittal Nippon Steel India Limited*, (2022) 20 SCC 178, the Supreme Court held that the power under Section 9 is not restricted by every technical requirement which applies to attachment before judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure. The Court has to consider the facts of the case and whether interim protection is needed to preserve the subject matter of the arbitration and prevent the remedy from becoming ineffective. The Court must still exercise this power carefully and cannot grant protection merely because a claim has been made. In the present case, the agreed security arrangement, the non-payment of the Settlement Amount and the disputes concerning the Scheduled Properties are relevant circumstances supporting the need to preserve the assets while the disputes are resolved. At the same time, these clauses must be applied according to their own terms. The occurrence of an Event of Default does not mean that ownership of every Scheduled Property stands transferred to the

Petitioners. The Consent Terms provide for release of the Master GPAs, exercise of the powers given under them and completion of the required registration procedure. The right to take possession and convey the property is subject to the agreed procedure, the valuations and adjustment of payments, if any, as stated in the Consent Terms. Therefore, the Petitioners' right is to exercise the agreed security powers and complete the required steps. It is not a declaration by this Court that all the properties stand transferred merely because the payment date has passed.

38. This distinction is necessary because the occurrence of an Event of Default and completion of a transfer are two different stages under the Consent Terms. The first stage concerns failure to make payment within the agreed period and the resulting operation of the default provisions. The next stage concerns release of the Master GPAs, the steps required for registration, exercise of the powers given under those documents and identification of the property required to satisfy the amount. The arrangement has to be given effect by following these steps. It would not be correct to treat the mere passing of the payment deadline as if every step required by the parties had been completed. The wording of Clauses 3.2 and 3.3 supports this approach. Clause 3.2 provides for written intimation to the learned Arbitrator and release of the original Master GPAs. Clause 3.3 refers to the occurrence of an Event of Default and release of the Master GPAs before setting out the authority to take possession. The reference to release forms part of the agreed sequence. The Court must respect this sequence instead of treating the entire

security mechanism as transfer of ownership at the time of default. There is a difference between taking steps under a power of attorney and the effect of transferring immovable property. The terms of the relevant document, the nature of the authority given and the applicable registration requirements have to be considered. The present Petition does not require the Court to decide every question about ownership of each property or the effect of each Master GPA. At this stage, it is enough to observe that the Consent Terms contain a security arrangement which the Petitioners claim they are entitled to invoke, and that the Court may preserve the assets while the effect and operation of that arrangement are considered by the appropriate forum. This limited approach protects the rights of persons who may claim interests in the Scheduled Properties. If any property has been conveyed to a third party, or if a third party claims right, that issue cannot be decided merely by referring to the default clause without examining the relevant documents. The Petitioners' rights cannot be defeated by creating a disputed third-party interest after default. Equally, an interim order cannot decide the ownership rights of a person who has not had an opportunity to present their case before the Court. For the same reason, the Petitioners' claim that they are entitled to exercise powers under the Master GPAs must be kept separate from a declaration that they have acquired ownership of every property listed in Schedules I to III. The first claim is, prima facie, supported by the default provisions, subject to their terms and the applicable law. The second would require examination of the particular properties, the relevant documents,

the procedure followed and any competing rights. The material available does not displace the prima facie conclusion that the payment deadline was not met and that the default provisions were invoked according to the procedure stated in the Consent Terms. The Petitioners are entitled to rely upon the written communication and release of the Master GPAs as part of the factual basis for seeking interim protection. In the circumstances of this case, the Respondents' objections concerning the Chennai Lands do not justify refusing all protective relief. The Court must preserve the assets and the effectiveness of the security arrangement, while ensuring that the Petitioners exercise their rights only within the limits of the Consent Terms, the Master GPAs and the law. For these reasons, the material available supports the conclusion that the Event of Default was asserted after the payment deadline had passed, that the Petitioners took the steps contemplated by Clause 3.2 to obtain release of the Master GPAs, and that the Respondents have not established a basis for treating the payment date as extended because of the alleged delay concerning the Chennai Lands. The consequences of default under Clauses 3.1 to 3.5 must be given effect according to their terms, subject to the remaining disputes which may be decided by the competent arbitral forum.

The Respondents' objection that the default clauses are unenforceable:

39. The Respondents have argued that the default clauses, particularly the provision relating to payment of the Enhanced Settlement Amount and the consequences of default, are intended

to put pressure upon them (*in terrorem*) and cannot be enforced in law. According to them, the additional amount mentioned in the Consent Terms cannot be recovered merely because it is stated in the agreement. This objection has to be considered. Whether the entire amount mentioned in the agreement can be recovered, or whether it is in the nature of a penalty, will depend upon the agreement, the circumstances in which it was made and the applicable law. However, merely because this objection has been raised, it does not follow that the whole of the Consent Terms, including the provisions made for securing performance of the settlement, has no legal effect.

40. The legal position has to be examined with reference to Section 74 of the Indian Contract Act, 1872. This section deals with cases where a contract states an amount to be paid if a breach takes place, or provides some other condition by way of penalty. The Court cannot direct payment of the entire amount mentioned in the contract in every case merely because a breach has occurred. It has to consider what would be reasonable compensation under the law, having regard to the terms of the contract and the circumstances in which the breach took place. At the same time, it would be wrong to say that every amount agreed to be paid upon default is a penalty, or that such a clause cannot be enforced because its financial effect upon the defaulting party may be serious. In *Fateh Chand v. Balkishan Das*, AIR 1963 SC 1405, the Supreme Court held that Section 74 applies where the contract states an amount which is to be paid if a breach occurs. The Court has to consider what would be reasonable compensation. A party

cannot recover the stated amount merely by pointing to the figure written in the contract, without examining the legal requirements governing such recovery. This principle was considered in *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, where the Supreme Court held that the terms of the contract, the nature of the obligation and the difficulty in proving the actual loss are relevant while deciding whether the amount mentioned in the contract can be granted as reasonable compensation. However, this decision does not mean that every amount written in a contract must be allowed. The terms of the particular contract and the requirements of Section 74 still have to be examined. In *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136, the Supreme Court again held that Section 74 deals with the grant of reasonable compensation. The amount mentioned in the contract does not become recoverable in full merely because the other party has committed a breach. The nature of the contractual condition and the circumstances in which compensation is claimed have to be examined. These decisions show that the Respondents' objection concerning the Enhanced Settlement Amount raises a legal question which must be decided according to law. It cannot be answered merely by referring to the amount mentioned in the Consent Terms. However, the question before this Court in the present Petition is not whether the Petitioners must receive the entire Enhanced Settlement Amount of Rs. 278 Crores, or whether some part of that amount may have to be reduced or dealt with differently under Section 74 of the Indian Contract Act. The question is whether, on the basis of the Consent Terms and the

Award, some protective measures are required so that the assets against which the Petitioners seek relief are not dealt with in a manner which may make the remedy through arbitration ineffective. These are separate questions and should not be mixed up.

41. The Respondents are entitled to raise all objections available to them in law before the forum competent to decide disputes arising under Clause 14 of the Consent Terms. These questions will have to be decided on their own merits. However, until such a decision is made, the mere fact that the Respondents dispute the effect of the default provisions cannot be a sufficient reason to refuse every interim measure intended to preserve the assets. If this approach is accepted, a party could defeat the purpose of interim protection by disputing the final amount recoverable, even though the settlement and the alleged default still require adjudication. It must be kept in mind that the Petitioners rely upon a written settlement which was recorded in an Arbitral Award. Their claim is not based merely upon an unpaid demand or an alleged oral understanding. The Consent Terms state the amount payable, the period within which payment has to be made and the consequences which may follow if default occurs. Whether every consequence mentioned in those terms can be enforced in the manner claimed by the Petitioners is a different question. For the present purpose, the existence of these contractual provisions and the Award is a relevant circumstance while considering whether the assets should be preserved until the dispute is decided. Therefore, the Respondents' objection that the default provisions

operate *in terrorem* is not being decided in this Petition. This Court is not holding that the Enhanced Settlement Amount must be recovered in full, nor is it holding that the objection under Section 74 has no merit. The limited conclusion is that this objection does not require the Court to treat the entire security arrangement as having no effect. If protective relief is otherwise justified, it can be granted without deciding the amount which may be recovered. The relief now sought is only to protect and preserve the assets while the arbitral remedy is being pursued. It does not award Rs. 278 Crores to the Petitioners. Nor does it decide that every asset of the Respondents can be taken over without accounting for payments, valuations, and the procedure mentioned in the Consent Terms. The Petitioners rely upon a written settlement recorded in an Arbitral Award and upon the default arrangement contained in that settlement. Until the arbitral forum decides the disputes concerning the operation and effect of these clauses, it would not be proper to treat the agreed security as having no meaning merely because its operation is now disputed.

42. There is an important difference between granting interim protection and allowing a claim for recovery. While deciding a Petition under Section 9 of the Arbitration and Conciliation Act, 1996, the Court need not decide every dispute concerning the interpretation of the contract, the amount which may be payable or the rights which may be enforced after the arbitration is completed. The purpose is to consider whether protection is required so that the rights claimed by a party do not become ineffective before the competent forum decides the dispute. Of

course, the Court must examine whether there is a proper basis for granting such protection. A claim for money alone does not entitle a party to an injunction against all the assets of the opposite party. There must be material showing why protection is necessary and how the proposed order is connected with the claim arising out of the arbitration. In *Essar House Private Limited*, the Supreme Court considered the nature of the power exercised under Section 9. The decision makes it clear that the principles governing interim measures under Section 9 should not be applied rigidly as if the Court were deciding an ordinary suit for injunction. The Court has to consider the circumstances of the case, the nature of the claim and the protection required to ensure that the arbitral remedy remains effective. But this power is not without limits. The relief must serve the purpose for which Section 9 was enacted and must be supported by the material placed before the Court.

43. In the present case, the Petitioners do not rely only upon a demand for money. They rely upon the Consent Terms, the Award passed in accordance with those terms, the agreed period for payment and the provisions stating what is to happen in case of default. According to them, the payment obligation was not fulfilled within the agreed period and the security arrangement was intended to come into operation. The Respondents dispute the legal effect of these provisions and say that the Enhanced Settlement Amount cannot be enforced in the manner claimed by the Petitioners. These rival arguments require adjudication. But the existence of this dispute does not mean that no protective order can be passed in the meantime. The reason is that if the assets

against which the Petitioners seek protection are transferred or otherwise dealt with while the proceedings are pending, it may become difficult to give effect to a final decision in their favour. If the Petitioners succeed, they may find that the assets which could have been available to satisfy their claim are no longer available, or that rights of third parties have been created in the meantime. On the other hand, if the interim order is limited to the assets of Respondent Nos. 1 and 2 and permits genuine transactions subject to safeguards, the Respondents may still be able to carry on their ordinary business. The Court must balance the need to preserve the Petitioners' possible remedy with the need to avoid imposing restriction upon the Respondents. The interim protection must be limited to what is required for the purpose for which it is granted. It must preserve the assets and the relevant information about them, while leaving the final questions of liability, calculation, valuation, and enforceability open for decision by the competent forum. The Court need not decide those questions merely to ensure that the subject matter of the dispute remains protected in the meantime.

44. The Respondents' objection must be considered along with Clause 1.10. That clause recognises that the Award passed in accordance with the Consent Terms will be final and binding, and that the Petitioners can seek its enforcement, including through execution and by enforcing the security arrangements recorded in the Consent Terms. This supports the view that the security was intended to provide a practical means of protecting the Petitioners' rights. Whether the final recovery has to be adjusted or limited in a

particular manner can be decided according to the Consent Terms and the Award. This question is not a reason to refuse every interim measure which preserves the available assets. Clause 1.10 is relevant because it forms part of the same arrangement under which the parties settled their disputes and agreed upon the consequences of non-payment. It cannot be read from the other provisions of the Consent Terms. At the same time, the other provisions cannot be read in a manner which makes Clause 1.10 meaningless. The proper approach is to read the settlement as a whole and understand what the parties intended to achieve through the payment obligation, the Award and the security arrangement.

45. In *Nabha Power Limited*, the Supreme Court held that a contract must be understood by reading its terms together and giving effect to the intention which can be understood from the language used by the parties. The Court cannot rewrite a contract merely because one party finds the agreed terms inconvenient after a dispute has arisen. Equally, the Court cannot add an obligation which the parties never agreed to undertake. The language of the contract, its structure and the connection between its different clauses must guide its interpretation. Applying this principle, Clause 1.10 cannot be ignored while considering the Petitioners' request for interim protection. If the parties had contemplated that the Award could be enforced and that the security arrangements recorded in the Consent Terms would be available, those provisions must be considered. The fact that the Respondents now dispute the legal effect of the Enhanced

Settlement Amount does not show that the security provisions were never intended to operate. The Court has to distinguish between a dispute about how far a particular provision can be enforced and an argument that the entire agreed arrangement should be ignored even while considering interim protection. At the same time, Clause 1.10 does not answer every objection raised by the Respondents. The statement that the Award is final and binding does not mean that every disputed consequence of default must be accepted without examining the relevant terms and the law. In particular, whether the Enhanced Settlement Amount can be recovered in full, whether credit must be given for amounts paid and whether the security can be enforced against a particular property must be decided according to the Consent Terms and the applicable law. Clause 1.10 supports the Petitioners' argument that the settlement was intended to be enforceable, but it does not allow the Court to ignore the legal requirements governing recovery.

46. The difference between the existence of a right and the extent of that right is important in this case. The Petitioners rely upon the Award and the Consent Terms as the basis of their claim. The Respondents dispute the consequences which the Petitioners seek to draw from the default provisions. Until these disputes are decided, the Court has to consider whether the rights claimed by the Petitioners require protection in the meantime. If the assets are preserved and the necessary information is disclosed, the competent forum will be in a better position to decide the disputes without the additional difficulty of assets having been transferred

or encumbered during the intervening period. There is no conflict between preserving the assets now and deciding the amount recoverable later. The Court can direct disclosure of assets and impose a restriction upon dealings which may defeat the security, without declaring that Rs. 278 Crores is payable. This approach protects the Petitioners against the risk of their remedy becoming ineffective, while avoiding unnecessary interference with legitimate business activities. For these reasons, the objection regarding the legal effect of the Enhanced Settlement Amount does not justify refusing all interim protection. Clause 1.10, read with the remaining provisions of the Consent Terms and the Award, supports the conclusion that the parties intended the settlement and the agreed security arrangement to have practical effect. However, the final enforceability and calculation of the amount remain open for decision. The present order is intended only to preserve the position and protect the effectiveness of the arbitral remedy. It does not decide that the Petitioners are entitled to Rs. 278 Crores, permit double recovery or authorise taking of any asset contrary to the Consent Terms or the applicable law.

Proposal for appointment of Receiver:

47. I have considered the submission made by Mr. Kamat, learned Senior Advocate appearing for Respondent Nos. 1 to 3. His proposal is put forward as a practical solution, but its different parts cannot be separated and accepted individually. It is one combined proposal. Under it, the Court Receiver would sell the properties, realise Rs. 240 Crores for payment to the Petitioners, keep the disputed amount of Rs. 38 Crores deposited in this Court

and release the properties which are said to be worth more than Rs. 278 Crores. If this proposal is accepted, all these steps have to be considered together, because the sale, the amount paid to the Petitioners, the amount deposited in Court and the release of the remaining properties are connected with one another.

48. The suggestion made by Mr. Kamat for appointment of a Receiver has to be considered by seeing the rights which are given to the parties under the Consent Terms. Appointing a Receiver does not mean that the agreement between the parties is affected. The Court can appoint a Receiver to protect the properties, so that their value does not reduce, and no third-party rights are created while the proceedings are pending. However, such appointment cannot be made in a way that the rights agreed between the parties under Clauses 1.10 and 3.1 to 3.5 are taken away or stopped. Clause 1.10 provides how the powers under the Master GPAs can be used and how the properties can be registered when the agreed default takes place. Clauses 3.1 to 3.5 provide what will happen when such default takes place. This includes the claim for the Enhanced Settlement Amount, use of the Master GPAs, the arrangement for possession of the scheduled properties and the agreed valuation. All these clauses are connected with each other and are part of the same agreement. Therefore, they have to be read together. If a Receiver is appointed with power to take exclusive possession of the scheduled properties and to stop the Petitioners from using the powers given under the Master GPAs, it may affect the arrangement which the parties have agreed for enforcing their rights. The properties may come under a different

arrangement before the rights and obligations under the Consent Terms are decided. Such a result should not follow only because the Court feels that appointment of a Receiver is required for interim protection. At the same time, the Petitioners cannot say that because Clauses 1.10 and 3.1 to 3.5 are included in the Consent Terms, the Court has no power to protect the properties involved in the dispute. The right under the agreement to seek transfer or possession after default does not mean that the Court cannot take any interim steps to protect the properties. What has to be seen is whether the proposed step only protects the properties and keeps the agreed arrangement as it is, or whether it brings a different arrangement and prevents the Petitioners from using the rights which the parties had agreed to give them. In my view, it would not be proper to appoint a Receiver with powers to take exclusive possession, manage, sell or otherwise deal with the scheduled properties, if such powers prevent or seriously affect the Petitioners in exercising their rights under the Master GPAs as provided in the Consent Terms. If it is found necessary to appoint a Receiver, the powers given to the Receiver should be limited to protecting the properties, preventing damage or loss and maintaining accounts. The Receiver should not be given power to transfer the properties, change the agreed valuation, decide the Enhanced Settlement Amount or otherwise interfere with the arrangement agreed between the parties for enforcing their contractual rights. I am, therefore, not inclined to appoint a Receiver with powers which would take away or stop the rights created under Clauses 1.10 and 3.1 to 3.5. The rights of the

Petitioners under these clauses, including whether the Enhanced Settlement Amount and the agreed arrangement for possession and transfer can be enforced, will have to be decided in the appropriate proceedings. The question of appointing a Receiver has to be considered only for protecting the properties and not for replacing the arrangement which the parties have clearly agreed between themselves.

Grant of relief against Respondent No. 4:

49. I have considered the submissions made by Mr. Bhole for the Petitioners and Mr. Andhyarujina for Respondent No.4. The issue concerning Respondent No.4 will have to be considered with reference to prayer clauses (d)(ii) and (d)(iii) of the Petition. Under prayer clause (d)(ii), the Petitioners are asking for a direction to Respondent No.4 to maintain status quo in respect of 41 Acres 23 Guntas of land forming part of Mysore Lands-1 and Mysore Lands-2. Under prayer clause (d)(iii), they are asking for a direction to Respondent No.3 and/or Respondent No.4 to deposit the amount received from the sale and/or transfer of the scheduled properties at Mysore. Thus, the question is not only whether Respondent No.4 has to pay the Settlement Amount under the Consent Terms, but whether he can be directed to protect the properties and the amounts received from their sale or transfer, since these properties form part of the arrangement made under the Consent Terms.

50. Mr. Andhyarujina is right to the extent that Respondent No.4 cannot be treated as having agreed to pay the Settlement Amount

of Rs.240 Crores or the Enhanced Settlement Amount of Rs.278 Crores. The Consent Terms define the "Parties" as the Petitioners and Respondent Nos.1 and 2. Respondent No.4 is described as a confirming party, but his name is not included in the definition of the "Parties". The arbitration clause refers to disputes "arising between the Parties". Respondent No.4 says that his only obligation was to execute and deposit the undated Master GPA under Clause 1.6, and that he has performed the same. Therefore, merely because he is described as a confirming party, he cannot be made personally responsible for paying the amount which Respondent Nos.1 and 2 had agreed to pay. The Consent Terms cannot be understood as putting a monetary liability on Respondent No.4 which he had not agreed to take upon himself. However, it is difficult to accept that Respondent No.4 has no connection with the arrangement made under the Consent Terms. His lands form part of the scheduled properties and his name is shown as a confirming party in the Consent Terms. It is his case that the Consent Terms were signed on his behalf by Mr. K.N. Balasubramanyam under the General Power of Attorney dated 5 September 2006. His name appears "in confirmation of their obligation as stated herein", which refers to the obligation relating to execution and deposit of the Master GPA. The Master GPA was intended to form part of the arrangement concerning the scheduled properties. Therefore, though Respondent No.4 cannot be made liable to pay the Settlement Amount merely because he is a confirming party, his role in relation to the properties and the obligations undertaken on his behalf will have to be considered

while deciding what order is required to protect the subject matter of the dispute. Mr. Bhole has pointed out that Mr. Arjun Balasubramanyam is a Director of Respondent Nos.1 and 2, is Confirming Party No.1 and has signed the Sameera Term Sheet in his personal capacity and on behalf of Confirming Party No.2. He has relied upon the non-binding term sheet dated 6 June 2026, which was signed on behalf of Intended Seller Nos.2, 3 and 4 by Mr. Arjun Balasubramanyam. According to the Petitioners, these circumstances show that the properties belonging to Confirming Party No.2 are being dealt with by the other Respondents and that the transactions are connected with each other. These circumstances do raise a question about how the properties and the amounts received in relation to them have been dealt with. However, merely because one person has signed documents in different capacities, it cannot by itself be concluded that Respondent No.4 is only a front for the other Respondents. To reach such a conclusion, the documents, the authority under which they were signed and the manner in which the transactions were carried out will have to be examined.

51. Respondent No.4 has stated that the term sheet dated 6 June 2026 was non-binding, that no conveyance was made under it and that the transaction was subject to the Petitioners giving a no-objection. He has stated that the amount of Rs.19.5 Crores was received as a refundable security deposit and was used for payment of the HLFL loan to clear the charge over the land. The Petitioners dispute this explanation and say that the amount received in relation to the scheduled properties was not paid to

them as required under the Consent Terms. At this stage, it would not be proper to decide whether the amount of Rs.19.5 Crores was sale consideration, a refundable deposit or an amount used in the manner stated by Respondent No.4. However, merely saying that the amount was received as a refundable deposit does not settle the question whether the transaction or the use of that amount has affected the rights of the Petitioners under the Consent Terms. The material on record will have to be examined to see where the amount came from, which property it related to, who received it and for what purpose it was used. Mr. Bhole has relied upon the statement made by Respondent No.4 before the learned Arbitrator that no third-party rights had been created in respect of the property. According to Mr. Bhole, this statement was not correct because third-party rights had been created. Respondent No.4, however, says that he understood the statement to mean that no mortgages, charges or other encumbrances had been created and that the Petitioners knew about the layout and development on the land. He has relied upon the inspection which is stated to have taken place on 26 February 2026. These issues are disputed between the parties. Therefore, the dispute about the development carried out, the agreements entered into and the rights claimed by purchasers is relevant for deciding what protection is required in the present Petition and how far such protection can be given.

52. In this connection, Mr. Andhyarujina has relied upon the judgment in *Ningbo Aux Imp & Exp Co. Limited*. The principle considered in that judgment is that, in an appropriate case, the power under Section 9 of the Arbitration and Conciliation Act,

1996, may extend to a third party where it is necessary to protect the subject matter of the arbitration or secure the amount in dispute. However, this power cannot ordinarily be used to interfere with the independent rights of a third party who does not claim through or under a party to the arbitration. Section 9 cannot be used indirectly to make a third party liable for an amount which cannot be recovered from that person under the award. This principle will have to be applied by keeping the facts of the present case in view. Here, Respondent No.4 is not being treated as personally liable to pay the Settlement Amount. His connection with the dispute is that he is a confirming party and the Master GPA relates to the scheduled properties. The Petitioners' request for interim protection will have to be considered within these limits, and not by assuming that Respondent No.4 is liable for all the obligations undertaken by Respondent Nos.1 and 2. The submission of Respondent No.4 that the entire area of 41 Acres 23 Guntas cannot be covered by a general order of status quo needs to be considered. According to him, some portions of the property have been developed and purchasers and allottees have acquired interests in the sites. He has pointed out that his suit, O.S. No.440 of 2026, is pending and that an injunction has been passed in that suit. He disputes the description of certain lands given in the schedule to the prayer. If an order is passed covering the entire area without considering these matters, it may affect persons who are not before this Court. It may interfere with the order passed in the pending suit. The purpose of interim relief under Section 9 is to protect the subject matter of the dispute. It is not to disturb

rights which third parties may have acquired or to pass an order which does not agree with an order operating in another proceeding.

53. In my view, therefore, the request to maintain status quo cannot be granted as a general direction covering the entire 41 Acres 23 Guntas without considering the portions in respect of which third-party rights are claimed to have been created. The protection will have to be limited to those portions of the scheduled properties which are identified and are covered by the arrangement under the Consent Terms and the relevant Master GPA. Any order passed for this purpose must not change or interfere with the injunction operating in O.S. No.440 of 2026. At the same time, subject to these limits, rights should not be created in the remaining identified portions in a manner which may defeat the protection claimed by the Petitioners, except for transactions which are permitted under the Consent Terms and are carried out according to the conditions mentioned therein. Such an order would protect the subject matter of the dispute without deciding the disputed question of title or the other rights of Respondent No.4.

54. As regards prayer clause (d)(iii), the Petitioners are asking for a direction to deposit the amount received from the sale and/or transfer of the scheduled Mysore properties. This request will have to be considered separately from the question of whether Respondent No.4 is personally liable. He cannot be directed to deposit the entire Settlement Amount or the Enhanced Settlement Amount merely because he is a confirming party. However, if any

amount by way of sale consideration from a completed sale or transfer of the scheduled properties has been received and is still held by Respondent No.3 or Respondent No.4, that amount may require protection so that the Petitioners' claim is not defeated by its use or transfer. For this purpose, it will be necessary to identify the amount received, the property to which it relates and the person who holds or controls it. A direction to deposit an amount cannot be made merely on the basis of an allegation, particularly when it is not shown that the amount was received by the person against whom the direction is sought or that it relates to the scheduled property. The explanation given by Respondent No.4 regarding the refundable security deposit of Rs.19.5 Crores and its use for discharging the HLFL loan will have to be considered while deciding how far a direction for deposit can be made. The Petitioners can seek protection of identifiable amounts arising from the scheduled properties which have not been paid to them in accordance with the Consent Terms. However, these interim proceedings cannot be used to decide the disputed nature of the security deposit or to impose personal monetary liability upon Respondent No.4. The proper course would be to direct the concerned Respondent to disclose the amounts received from any completed sale or transfer of the scheduled Mysore properties, the person who received those amounts and the manner in which they were used. If any amount is found to be sale or transfer proceeds from the scheduled properties and is still available with the concerned Respondent, that amount shall be deposited, after giving credit for any amount paid to the Petitioners and without

affecting rights acquired by third parties.

55. I am, therefore, unable to accept the submission of Mr. Andhyarujina that no protective order can be passed in relation to the lands of Respondent No.4 merely because his name is not included in the definition of the "Parties" under the arbitration clause. At the same time, the submissions of Mr. Bhole cannot be accepted to the extent that they seek to make Respondent No.4 personally liable for the Settlement Amount or to obtain a general order affecting all his lands and the rights of persons claiming through completed transactions. Prayer clause (d)(ii) can be considered only as a limited measure to protect the identified and unsold portions of the scheduled properties, subject to the existing order in O.S. No.440 of 2026 and the rights of existing purchasers and allottees. Prayer clause (d)(iii) can be granted only in respect of identifiable sale or transfer proceeds received from the scheduled properties and still available with the concerned Respondent, after accounting for amounts paid to the Petitioners. These directions would protect the subject matter of the dispute, while leaving the final rights and liabilities of Respondent No.4 open for determination in appropriate proceedings.

<u>Grant of relief against Respondent No. 3:</u>

56. So far as Respondent No.3 is concerned, Mr. Bhole has submitted that he is bound by the Consent Terms and the Consent Award. According to him, Respondent No.3 signed the Consent Terms confirming his obligations and executed the MGPA in respect of his Mysore Lands. He has pointed out that Respondent

No.3 confirmed the Consent Terms and gave an undertaking before the learned Arbitral Tribunal to follow them. On this basis, Mr. Bhole submits that the Consent Award is binding upon the confirming parties, including Respondent No.3, and therefore, he cannot now go back from the obligations which he had accepted under the arrangement. Mr. Bhole has submitted that after the Event of Default took place, the confirming parties were required to register the MGPAs and could not prevent the Petitioners from taking possession of the properties as provided under the Consent Terms. He has pointed out that the Petitioners had called upon Respondent No.3 to comply with these obligations by their letters dated 10 and 11 September 2026. However, by his letter dated 15 September 2026, Respondent No.3 called upon the Petitioners to "refrain from taking any steps". According to Mr. Bhole, this stand of Respondent No.3 is not in accordance with the obligations which he had accepted under the Consent Terms. Therefore, it will have to be considered whether the obligations undertaken by Respondent No.3 and the terms of the Consent Award require protection to be granted in respect of his scheduled Mysore Lands, as asked for under prayer clause (d)(i).

57. Mr. Bhole has referred to the transactions relating to the Sameera Term Sheet and the Jones Term Sheet. He has pointed out that the Director of Respondent Nos.1 and 2 executed the Sameera Term Sheet in respect of his own Mysore Lands and on behalf of Respondent No.4, under which an amount of Rs.19.75 crore was received. Thereafter, according to Mr. Bhole, the same lands were again offered through Siddhasiri by the letter dated 4 September

2026. He has pointed out that the said Director signed the Jones Term Sheet on behalf of Respondent No.2. According to Mr. Bhole, these transactions show how the properties forming part of the security arrangement are being dealt with by the Respondents. These submissions raise questions about the manner in which the scheduled properties have been dealt with and the amounts received in relation to them. However, each transaction will have to be considered by looking at the documents and other material placed on record. Merely because the Petitioners have relied upon these transactions, it cannot be concluded, without examination, that every transaction was against the Consent Terms or that Respondent No.3 was personally responsible for all such dealings.

58. In the present Petition, prayer clause (d)(i) seeks a direction to Respondent No.3 to maintain status quo in respect of 29 Acres 01 Guntha forming part of Mysore Lands-2, as more particularly described in the schedule to that prayer. Prayer clause (d)(iii), on the other hand, seeks a direction to Respondent Nos.3 and/or 4 to deposit the amount received from the sale and/or transfer of the scheduled Mysore properties. Both these prayers will have to be considered separately. While deciding what protection is required for the scheduled lands of Respondent No.3, it will have to be seen whether he is bound by the obligations accepted under the Consent Terms and the Consent Award. At the same time, the direction cannot be wider than what is necessary to protect the subject matter of the dispute. It will have to be seen whether purchasers or other third parties have already acquired any rights in the properties, so that the interim order does not unnecessarily

affect persons who are not before this Court. If Respondent No.3 has undertaken obligations under the Consent Terms regarding execution, registration, or use of the MGPA, his stand asking the Petitioners to "refrain from taking any steps" will have to be considered in the light of those obligations and the Consent Award. However, merely because Respondent No.3 is a confirming party, it cannot be said that he had agreed to pay the entire Settlement Amount of Rs.240 Crores or the Enhanced Settlement Amount of Rs.278 Crores. What obligations he had actually accepted will have to be seen from the Consent Terms, the MGPA and the relevant terms of the Consent Award. For the present purpose, the question is whether the identified lands of Respondent No.3 require protection against dealings which may affect or defeat the arrangement made under the Consent Terms.

59. So far as the prayer for deposit of amounts is concerned, it will have to be seen whether any amount received from the sale or transfer of the scheduled Mysore properties is still available with Respondent No.3 or Respondent No.4. The receipt of Rs.19.75 crore under the Sameera Term Sheet, as pointed out by Mr. Bhole, is a matter which requires consideration. However, before any direction for deposit is made, it will be necessary to find out the amount received, the property to which it relates, the person who received it and the manner in which it was used. An amount cannot be directed to be deposited merely because an allegation has been made, without considering the explanation given and the material available on record. If any identifiable amount received from the sale or transfer of the scheduled properties is still

available with the concerned Respondent, a direction to deposit that amount can be considered, after giving credit for any amount already paid to the Petitioners and without affecting rights already acquired by third parties.

60. Therefore, the submissions made by Mr. Bhole concerning Respondent No.3 cannot be rejected merely because he is described as a confirming party. His execution of the MGPA, the obligations which he is stated to have accepted under the Consent Terms and the Consent Award, and his subsequent letter dated 15 September 2026 are all relevant while considering the protection sought under prayer clause (d)(i). However, the relief will have to be limited to the identified scheduled lands and the amounts shown to have been received from their sale or transfer. The actual nature and extent of the obligations of Respondent No.3, as well as the effect of the transactions relied upon by the Petitioners, will have to be considered from the relevant documents and the material placed on record. At this stage, it would not be proper to decide disputed issues beyond what is necessary for granting interim protection.

The objection concerning encumbrances over the Chennai Lands:

61. The Respondents say that they were ready and willing to pay the Settlement Amount, but payment was delayed because the encumbrances over the Chennai Lands, which were proposed to be given as security to the lender, were not removed in time. They rely upon the correspondence starting from 22 June 2026, the later communications about removing the mortgages and the fact

that the relevant Discharge Deeds were registered only on 18 August 2026. According to them, the lender could not complete its due diligence and release the money before the extended payment date because the encumbrances were still there. They therefore say that the Petitioners should not be allowed to take advantage of a situation which, according to the Respondents, was caused by the Petitioners' own actions or failure to act. This argument cannot be considered as if the question of extending the agreed payment date is being raised for the first time. The Respondents had earlier approached this Court under Section 9. They had asked for an order preventing the Petitioners from acting under the default clauses and for more time to make payment. In the Judgment and Order dated 7 September 2026 passed in Commercial Arbitration Petition (L) No. 29704 of 2026, this Court considered the same argument about the Chennai Lands. In paragraph 37, the Court recorded:

> "For all these reasons, I find that the basis of the Petitioners' case, namely that the Respondents' delay in clearing the encumbrances over the Chennai Land postponed the Petitioners' obligation to make payment, has not been established. The Petitioners have not shown any provision in the Consent Terms or any other right which gives them the declarations, extension, and restraints sought in the Petition."

62. The earlier Petition was dismissed. The record now before this Court shows that the Respondents challenged that judgment in appeal. However, no interim order staying the operation of that judgment has been shown to this Court. Therefore, unless the earlier judgment is stayed or set aside, the Respondents cannot say

that the payment date was extended because of the issue concerning the mortgages. The present Petition is different in relation to the relief sought. It has been filed by the parties in whose favour the security was agreed, and the payment deadline has passed. However, the Respondents' attempt to explain the default by relying upon the same issue of mortgages has to be considered in a manner consistent with the earlier order. The fact that the formalities for removing the encumbrances took time and affected the lender's process does not extend the payment period. The Award had extended the payment date up to 6 September 2026. No document has been placed before me to show that the parties mutually changed that date thereafter. The Respondents may have made genuine efforts to arrange finance. But making genuine efforts to arrange money is not the same as obtaining an extension of the agreed payment period.

63. I am not convinced by the Respondents' argument that no Event of Default occurred. The agreed amount was not paid by the extended date. Therefore, the consequences stated in Clauses 3.1 to 3.5 of the Consent Terms became applicable, subject to the terms and legal effect of those clauses. This does not mean that every issue which may arise in the fresh arbitration has been decided. This includes the question of the final amount which can be recovered or whether any adjustment is required. For deciding the present Petition, it is enough to say that the material before this Court gives a strong prima facie basis to proceed on the footing that a default occurred under the Consent Terms.

Maintainability and scope of relief under Section 9:

64. It is true that the earlier arbitration came to an end on 16 March 2026, when the Award was passed. However, Clause 14 of the Consent Terms provides for arbitration of disputes arising under those terms. The present dispute concerns the alleged default, the Enhanced Settlement Amount, the operation of the Master GPAs and the protection of the Petitioners' claim. The record shows that steps have been taken to appoint an arbitrator to decide disputes arising under the Consent Terms. Therefore, the present Petition cannot be treated as not tenable merely because the earlier arbitration came to an end. The disputes now raised arise from the later contractual arrangement and the arbitration clause contained in it. Section 9 gives the Court power to grant interim measures when they are necessary to preserve the subject matter, secure the amount in dispute and protect the effectiveness of the arbitration proceedings. This power is not granted merely because one party has made a monetary claim or payment has not been made. The Court must consider the nature of the claim, the conduct of the parties, the security agreed between them, the possibility of recovery becoming difficult and the effect of the proposed order on the other side. In *Essar House Private Limited*, the Supreme Court considered the Court's power under Section 9. It held that the relevant principles have to be applied according to the facts and circumstances of each case. Every technical requirement under the Code of Civil Procedure cannot be treated as an absolute bar. However, the power must still be exercised on the material before the Court and with suitable safeguards.

65. The Respondents rely upon the principles of Order XXXVIII Rule 5 of the Code of Civil Procedure. They say that the Petitioners have not produced specific material to show that the Respondents intend to defeat or obstruct the claim. According to them, asking for details of all assets, investments, bank accounts and income-tax returns would amount to an unnecessary inquiry into their financial affairs. They point out that the original title documents of the Scheduled Properties are with the Petitioners and that the value of the properties covered by the Consent Terms is more than enough to secure the Petitioners' claim. These objections have to be considered and cannot be rejected merely because the Petitioners are claiming a large amount. However, the present case is not an ordinary monetary claim where the parties have not agreed to any security. Here, the parties made a specific security arrangement and agreed about the consequences if the Settlement Amount was not paid. The Respondents rely upon term sheets relating to properties to show that they were trying to arrange the money. At the same time, these documents show that transactions concerning the Scheduled Properties were being considered or discussed. The Respondents refer to a proposed transaction with Sameera Estates concerning approximately 150 acres, of which around 70 acres formed part of the Scheduled Properties. They refer to the use of a refundable security deposit while dealing with an existing lender. They say that these steps were genuine and were taken to make payment possible. This Court is not required to conclude that the financing efforts were dishonest merely because they were made. However, it can be seen that transactions

concerning properties and interests relevant to the Petitioners' claim were being considered. Therefore, the present position of those properties and interests needs to be disclosed and protected.

66. There is a dispute concerning a transaction and an advance said to relate to part of the Anagalli lands. The Petitioners rely upon this to say that properties forming part of the security may be dealt with even though the Settlement Amount remains unpaid. Respondent No. 4 disputes this and says that the transactions were not part of any plan to defeat the Petitioners' rights. He says that the Petitioners had inspected his land and knew about its layout and development. I am not treating this disputed allegation as proved in the present Petition. However, the different versions given by the parties, the term sheets concerning property transactions, the default and the dispute about the security arrangement, when considered together, show that the Petitioners' apprehension cannot be dismissed as a statement without any supporting material.The Respondents say that the properties mentioned in the Consent Terms are worth more than the Petitioners' claim and that the original title documents are with the Petitioners. However, the Petitioners are entitled to know whether those assets are still available and whether any encumbrances, transactions or third-party rights have affected them. Disclosure will show the actual position. Without such disclosure, neither the Petitioners nor the Court can safely assume that the properties which were available as security when the Consent Terms were signed are still available in the same condition and without any dealings. The details of assets mentioned in the Consent Terms are

relevant, but they cannot replace disclosure of the present position after the payment deadline has passed, and a dispute has arisen about the security.

67. Prayer (c) seeks an injunction against Respondent Nos. 1 and 2, whether acting or through their directors, officers, servants, agents or persons claiming through them. The Petitioners want them to be restrained from selling, transferring, alienating, disposing of, encumbering, parting with possession of or creating any third-party right, title, or interest in their movable or immovable assets. The purpose is to secure the Enhanced Settlement Amount of Rs. 278 Crores. The Respondents say that there is no specific material to show that they are removing or disposing of their assets with the intention of defeating the Petitioners' claim. They rely upon their efforts to arrange finance, the term sheets and the steps taken to clear the encumbrances. They say that the Petitioners are trying to secure a monetary claim even though the Consent Terms provide sufficient security. They argue that a general restriction on their assets would be excessive and would interfere with the agreed arrangement, under which they were permitted to deal with the Scheduled Properties to arrange the Settlement Amount.

68. The objection that the relief should not be excessive has to be considered. The Court should not impose a restriction which destroys the arrangement made by the parties or prevents legitimate steps required to give effect to the Consent Terms. However, this does not mean that no protection can be granted after the default has occurred. The security arrangement was made

to protect the Petitioners if payment was not made. The Petitioners have produced material showing that transactions concerning the Scheduled Properties were being pursued, and there is a dispute about the present position of certain property interests. Therefore, the possibility that the Petitioners may face greater difficulty in securing their claim cannot be ignored. Some protection is necessary until the arbitral forum considers the disputes between the parties. The injunction sought will not decide whether the Petitioners are entitled to the Enhanced Settlement Amount. It will not make the Petitioners owners of any property. It will only stop Respondent Nos. 1 and 2 from creating third-party rights or dealing with their assets in a manner which may make the Petitioners' claim ineffective. Considering the amount claimed, the security arrangement agreed between the parties, the failure to pay within the extended period and the material showing that property transactions were being pursued while the amount remained unpaid, such protection is justified in the facts of this case.

69. I am not convinced that the injunction should be refused merely because the Respondents may have made efforts to arrange finance. The point is that the parties had agreed upon a fixed date for payment and had provided for what would happen in case of default. If finance was not made available within the agreed time, the Respondents cannot, only for that reason, insist that the Petitioners should remain without protection against dealings with the assets. The Respondents may raise their legal and factual defences in arbitration, including any permissible objection

regarding the Enhanced Settlement Amount or the extent of the security. Until those issues are decided, the Court must ensure that the subject-matter of the dispute is not put beyond effective protection. However, the injunction must remain within proper limits. It will apply to Respondent Nos. 1 and 2 in respect of assets owned by them, standing in their names or under their control. It will not give the Petitioners any right to take possession of property beyond the rights available under the Consent Terms and the Master GPAs. It will not prevent the Petitioners from taking lawful steps to exercise the powers provided under Clauses 3.2 and 3.3, subject to the relevant Master GPA, the agreed valuation arrangement and the procedure required for registration. The purpose of the injunction is to preserve the assets which are available. It is not intended to stop the Petitioners from using the security mechanism which the parties had agreed upon.

70. For the reasons recorded above, the following order is passed:

> (a) Prayer clause (a) is granted. Respondent Nos. 1 and 2 shall, within seven days from the date of this order, file and serve an affidavit disclosing their assets and the details thereof, including all bank accounts and encumbrances, immovable properties and encumbrances, movable properties and encumbrances, and details of investments including demat accounts, shares, stocks, mutual funds, bonds, cryptocurrency, liquid funds and the encumbrances on the same;

(b) Prayer clause (b) is granted. Respondent Nos. 1 and 2 shall, within seven days from the date of this order, disclose and furnish their income-tax returns for the last three financial years;

(c) Prayer clause (c) is granted against Respondent Nos. 1 and 2. Pending commencement and conclusion of the arbitral proceedings, Respondent Nos. 1 and 2, whether or through their directors, officers, servants, agents or any person claiming through or under them, are restrained from selling, transferring, alienating, disposing of, encumbering, parting with possession of or creating any third-party right, title or interest in their movable or immovable assets, in a manner which may defeat or frustrate the Petitioners' claim to the Enhanced Settlement Amount of Rs. 278,00,00,000/-, except with prior leave of this Court or the competent arbitral forum;

(d) The injunction granted under prayer clause (c) shall not be read as preventing the Petitioners from exercising such rights as are available to them under Clauses 3.2 and 3.3 of the Consent Terms and the Master GPAs in accordance with law. Any action concerning property claimed by Respondent No. 4 shall remain subject to the terms of the relevant Master GPA, the agreed valuation and registration mechanism, the rights of third parties and the order dated 24 September 2026 passed in O.S. No. 440 of 2026. Nothing in this order varies or vacates that civil court order;

(e) It is clarified that the present order does not determine the final liability of Respondent Nos. 1 and 2, the final enforceability of the Enhanced Settlement Amount, or the independent title and possession rights claimed by Respondent No. 4. Those questions shall remain open to be considered by the competent forum in accordance with law;

(f) As regards prayer clause (d)(ii), Respondent No. 4 shall maintain status quo in respect of the identifiable and unsold portions of the scheduled Mysore properties, to the extent of 41 Acres 23 Guntas, which are covered by the Consent Terms and the relevant Master GPA. This direction shall not affect rights, if any, already acquired by purchasers or allottees under completed transactions. It shall remain subject to the orders passed in O.S. No. 440 of 2026 and shall not operate so as to vary or interfere with any subsisting injunction granted in that suit;

(g) As regards prayer clause (d)(iii), Respondent Nos. 3 and 4 shall, within two weeks from the date of this order, file an affidavit disclosing:

(i) the details of amounts received from any sale or transfer of the scheduled Mysore properties;

(ii) the person or entity from whom each amount was received;

(iii) the property and transaction to which each amount relates; and

(iv) the manner in which each amount has been dealt with, including whether it has been paid to the Petitioners, utilised towards discharge of any encumbrance or loan, or remains available with the concerned Respondent.

(h) Any amount established to be sale or transfer proceeds of the scheduled Mysore properties and remaining available with the concerned Respondent shall be deposited in this Court within two weeks thereafter, subject to credit for any amount already paid to the Petitioners. This direction shall not extend to amounts which are not shown to relate to the scheduled properties or which are not held by the Respondent against whom the direction is sought;

(i) As regards prayer clause (d)(i), Respondent No.3 shall maintain status quo in respect of the identified and unsold portions of the scheduled Mysore Lands-2, to the extent of 29 Acres 01 Guntha specified in the said prayer, subject to the rights already acquired by purchasers or allottees under completed transactions and subject to any subsisting order passed in any pending proceeding concerning the said properties;

(j) The rights of existing purchasers and allottees, the effect of any completed transactions, and the rival contentions regarding the amounts received and their utilisation are kept open. Nothing in this order shall be construed as a final determination of title, ownership or the

enforceability of Clauses 1.10 and 3.1 to 3.5 of the Consent Terms'

(k) All other contentions are kept open for consideration in the arbitral proceedings.

(l) The Petition is disposed of in the above terms. There shall be no order as to costs.

71. At this stage, learned Senior Advocates appearing for respective Respondents requests for stay of this Judgment. However, considering the reasons recorded in this Judgment, the request for stay stands rejected.

(AMIT BORKAR, J.)