2026:DHC:9512

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

% Judgment reserved on : **15.10.2026**
Judgment delivered on: **28.10.2026**

\# **CNR No. DLHC010476932026**

\+ O.M.P.(I) (COMM.) 461/2026, I.A. 27471/2026, I.A. 27472/2026, I.A. 27473/2026, I.A. 28169/2026 & I.A. 28240/2026

\# **CNR No. DLHC010477292026**

\+ O.M.P.(I) (COMM.) 462/2026, I.A. 27476/2026, I.A. 27477/2026, I.A. 27478/2026, I.A. 28153/2026 & I.A. 28154/2026

THOR VENTURES (OPC) PRIVATE LIMITED .....Petitioner

versus

NYEQ TECHNOLOGIES PRIVATE LIMITED .....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Dayan Krishnan, Senior Advocate with Mr. Saurab Seth, Mr. Sukrit Seth, Mr. Thakur Ankit Singh, Ms. Liza Arora, Ms. Neelampreet Kaur, and Mr. Kabir Dev, Advocates.

For the Respondent : Mr. Sahil Sethi, Mr. Kanishk Kumar, Mr. Samriddh Bindal and Mr. Priyansh Kohli, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

I.A. 27471/2026 (Under Order XXXIX Rules 1 and 2 CPC) in O.M.P. (I) (COMM) 461/2026 & I.A. 27476/2026 (Under Order XXXIX Rules 1 and 2 CPC) in O.M.P. (I) (COMM) 462/2026





1. These are applications on behalf of the petitioner under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, seeking *ad-interim* protection with respect to properties bearing No. A-211, DLF City, Phase-I, DLF Qutub Enclave, Tehsil and District Gurugram, Haryana, admeasuring 420 sq. mtrs. (502.32 sq. yards) and No. B-7/4, DLF City, Phase-I, DLF Qutub Enclave, Tehsil and District Gurugram, Haryana, admeasuring 420 sq. mtrs. (502.32 sq. yards), which are subject matters of present petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as *"the Act"*).

BRIEF FACTS

2. The petitioner and the respondent executed two Agreements to Sell (hereinafter referred to as *"ATS"*) with identical terms and conditions as follows:

(i) Agreement to Sell dated 04.05.2019in relation to property bearing no. B-7/4, DLF city, Phase-l, DLF Qutub Enclave, Tehsil and District Gurgaon, Haryana;

(ii) Agreement to Sell dated 04.05.2019 in relation to property bearing no. A-2/1, DLF city, Phase-l, DLF Qutub Enclave, Tehsil and District Gurgaon, Haryana.

3. The petitioner had paid Rs.5,00,000/- each towards a consideration of Rs.5,62,24,000/- of each property, thus paying a total of Rs.10,00,000/- out of the combined sale consideration of Rs.11,24,48,000/- during the signing of the two ATSs. Per Clause 3 of the ATSs, certain obligations were to be fulfilled by the respondent, such as boundary/fencing of the property, erection of name board, mutation of seller to be updated in the revenue records of DLF, No Dues Certificate/House Property Tax upto date, No Dues Certificate and NOC for sale of property from RWA/DLF/DLF Maintenance Agency.

4. Pursuant to the respondent's instructions, the petitioner paid Rs.92,031/- to DLF towards mutation & late construction charges and a further sum of Rs.7,093/- to DLF Estate Developers Ltd. towards maintenance charges for Property No. B-7/4. The petitioner further paid Rs.58,358/- to DLF towards mutation & late construction charges and Rs.7,093/- to DLF Estate Developers Ltd. towards maintenance charges for Property No. A-2/1. The mutation was effected in favour of the respondent on 09.09.2019 and 12.09.2019 for the B-7/4 and A-2/1 respectively, and the respondent handed over the original Endorsement Letter and Certified Zoning Plan dated 09.09.2019 for both properties to the petitioner.

5. However, allegedly, the respondent delayed fulfilment of its obligations under Clause 3 of the ATSs and further informed the petitioner that the original title documents were with the director of the respondent in Dubai.

6. The petitioner had got loans sanctioned for the balance consideration for each property from Pooja Finelease Limited (hereinafter referred to as '*PFL'*) through two Loan Sanction Letters dated 07.07.2019. However, the respondent never came forward to execute the sale deeds as per the ATSs, and sent back the consideration of Rs.5,00,000/- each for both properties to the petitioner on 08.02.2021.

7. Apprehending that the respondent would create third party rights in the subject properties, the petitioner invoked the Arbitration Clause encapsulated in Clause 11 of the ATSs vide notice dated 08.02.2021 with respect to both the properties, appointing Mr. Rajat Bhalla as the Sole Arbitrator. The Sole Arbitrator passed a stay order dated 11.02.2021 with respect to the subject properties.

8. Subsequently, *vide* order dated 15.02.2023, in a petition filed by the respondent under Section 14 of the Act, Mr. Rajat Bhalla was replaced by Mr. Justice Jayant Nath (Retd.) as the Sole Arbitrator.

9. The petitioner filed its Statement of Claim on 09.03.2021 with the following prayers:

> "*(a) Pass an Award for Specific Performance of Agreement dated 04.05.2019 in favour of the Claimant and against the Respondent whereby directing the Respondent to comply with the terms of the Agreement to Sell dated 04.05.2019 and get the Sale Deed registered in respect of A-2/1, DLF city, Phase-l, DLF Qutub Enclave, Tehsil and District Gurgaon, Haryana admeasuring 420 Sq. Mts. (502.32 Sq yards) in favour of the Claimant with Damages of Rs. 10,00,000/- in favour of the Claimant in terms of Clause 5 of the said Agreement to Sell dated 04.05.2019;*
>
> *(b) Pass an Award for Permanent Injunction in favour of the Claimant and against the Respondent whereby restraining the Respondent or its agents, assignees, nominees, etc. from interfering with the peaceful possession and occupation of property bearing no. A-2/1, DLF City, Phase-l, DLF Qutub Enclave, Tehsil and District Gurgaon, Haryana admeasuring 420 Sq. Mts. (502.32 Sq. yards) and from parting with possession thereof, creating any 3'd Party interest or alienating the same till such time the Sale Deed is registered in favour of the Claimant;*
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> *(c) Pass an Award in favour of the Claimant and against the Respondent whereby directing the Respondent to pay the Litigation Charges to the Claimant."*

10. An identical Statement of Claim with respect to the B-7/4 property was also filed seeking the same relief as above.

11. The respondent filed its Statements of Defence on 04.06.2021 in both the arbitration proceedings, *inter alia,* claiming that the ATSs dated 04.05.2019 were forged and sham, executed by a person without authorisation from the respondent, relying on fake board resolutions. The respondent claimed that it only became aware of the deposit of Rs.5 lakh by the petitioner in January, 2021, and returned the said amount promptly on 08.02.2021. The respondent further alleged that the payment had been with respect to a loan

transaction with the promoter of the petitioner. The respondent levelled allegations that the petitioner is a One-Person Company, and the Director had been involved in a loan transaction with another entity connected with the director of the respondent, which led to acrimonious relations between the parties. As such, there was no question of executing an ATSs with the petitioner.

12. The petitioner, in rejoinder dated 07.08.2021, in both the arbitration proceedings, stated that the respondent has never taken any action against the authorised representative, despite now claiming that he was not authorised to execute the ATSs on his behalf.

13. The learned Sole Arbitrator framed the following issues on 07.08.2021:

> *"I. Whether this Arbitral tribunal has jurisdiction to try and entertain the present case? OPR*
> *II. Whether the claimant is entitled to a decree of specific performance of the agreement dated 4.5.2019 and damages? OPC*
> *III. Whether the Claimant is entitled to the relief of permanent injunction as per prayer (b) of the claim petition? OPC*
> *IV. Whether this Arbitral Tribunal has been validly constituted under the agreement dated 4.5.2019? OPR*
> *V. Whether Mr. Gaurav Bhargava has any authority from the Respondent company to enter into the agreement dated 4.5.2019 with the Claimant? OPR*
> *VI. Relief ? OPC"*

An additional issue was added as Issue II(a) on 08.05.2023:

> *"II(a). Whether the Claimant proves that he has performed / has always been ready and willing to perform the essential terms of the contract which are to be performed by him?"*

14. Further, the learned Sole Arbitrator continued the interim order dated 11.02.2021 till the disposal of the arbitration proceedings.

15. After several hearings the learned Sole Arbitrator passed separate Awards dated 26.09.2026 in both the proceedings with the following identical findings:

(i) With respect to Issue Nos.I and IV, the learned Arbitral Tribunal was validly constituted and had the jurisdiction to entertain the case.

(ii) With respect to Issue No.V, the petitioner has proved that the ATSs dated 04.05.2019 were valid and duly executed by the authorised representative of the respondent.

(iii) With respect to Issues No.II, II(a) and III, the Loan Sanction Letter dated 07.07.2019 is a sham document, and therefore, the petitioner had failed to prove readiness and willingness to perform the essential terms of the contract. As such, the petitioner was not entitled to either the specific performance of ATSs dated 04.05.2019 or permanent injunction.

(iv) The respondent is entitled to costs of Rs.15,00,000/- .

16. In view of the above, the petitioner has moved this Court under Section 9 of the Act to restrain the respondent from creating third party rights in the subject properties during the pendency of challenge to the Awards dated 26.09.2026 under Section 34 of the Act.

CONTENTIONS OF THE PETITIONER

17. Mr. Dayan Krishnan, learned senior counsel appearing for the petitioner, at the outset contended that the impugned Award dated 26.09.2026, while upholding the validity of the ATSs dated 04.05.2019, had non-suited the petitioner on the failure of the petitioner to establish its readiness and willingness by holding that the Loan Sanction Letter dated 07.07.2019 (hereinafter referred to as "*LSL")* of PFL is a sham document. According to learned senior counsel, the said finding is perverse for the reason that there is no evidence brought on record enabling the learned Arbitral Tribunal to give a conclusive finding that the said document is sham. In fact, according to the





learned senior counsel, there is overwhelming evidence to the contrary, produced on record by the petitioner apart from oral evidence in the form of examination of CW-2, the authorised representative of PFL, who categorically asserted not only the financial status of the said company but also supported all the relevant financial documents placed on record.

18. The learned senior counsel would stoutly contend that even though the law relating to evidence may not be applicable *stricto sensu* to the arbitral proceedings, however, the appreciation of evidence and consideration of the same cannot be diluted. It is the vehement contention of the learned senior counsel that without either the respondent or the learned Arbitral Tribunal putting relevant question to discredit the oral evidence of CW-2 or the loan document alongwith other documents to the CW-2, rendering conclusive findings to the extent that the document is sham without any such legalistic evaluation, would amount to clear perversity in the findings recorded by the learned Arbitral Tribunal. This perversity, according to the learned senior counsel, propelled the learned Tribunal to reject the claim sought for specific performance which has necessitated the petitioner to seek urgent interim protection from this Court.

19. In support of the aforesaid submissions, Mr. Krishnan, learned senior counsel, copiously referred to the examination-in-chief by way of affidavit of CW-2 and his cross-examination. He would contend that on a clear reading of the evidence as also the cross-examination, it is apparent that the learned Arbitral Tribunal misdirected itself and committed not only error but also perversity by concluding, without any ostensible reason, that the petitioner has failed to establish readiness and willingness. He would contend that CW-2 has clearly withstood the cross-examination, and in fact has established that PFL is registered as Non Banking Financial Company (hereafter referred to as

the "NBFC") with the Reserve Bank of India (hereinafter referred to as the "RBI") as also that the asset size of the said company is worth Rs.200 crores. To the question in respect of examination of title documents is concerned, learned senior counsel would submit that it is the admitted case of the respondent that original title documents are lost and it is only the photocopies which were furnished for verification, thus, the said instance could not have weighed against the petitioner. Equally, to the question relating to physical inspection of the property, CW-2 affirmed the same. Learned senior counsel would also contend that CW-2 also answered in the affirmative and with conviction that the disbursement is not advancement of the loan but against the mortgage of the registered sale deed of the property which would be executed in favour of the petitioner. He also would submit that the CW-2 also withstood and supported the LSL by asserting that even if the said letter was valid for a limited period, PFL is ready and willing to pay the sale consideration even as on the day when the witness was being cross-examined. Learned senior counsel would further submit that the learned Arbitral Tribunal returned no finding on the respondent's prior obligations under Clause 3 of the ATSs dated 04.05.2019 which were a pre-condition to the payment of the balance consideration, thus being integral to any finding on readiness and willingness.

20. In view of the above, learned senior counsel would contend that all the ingredients that are required by the purchaser to establish readiness and willingness have in fact been brought on record and proved duly in accordance with law. According to him, in such circumstances rejecting the establishment of readiness and willingness merely on the *ipse dixit* of the learned Arbitral Tribunal that the LSL is a sham document is abject perversity which may require this Court to consider granting interim relief. Learned





senior counsel would rely on the judgement of the Supreme Court in ***Ssangyong Engineering v. NHAI,*** *(2019) 15 SCC 131* and the judgement of a Division Bench of this Court in ***D.V. Anand v. HPCL,*** FAO (OS)(COMM) 139/2018 dated 01.07.2026 to contend that the said finding is perverse.

21. Apart from the above, learned senior counsel would submit that the only assets available with the respondent are the subject properties. This, coupled with the fact that the petitioner did not seek any alternate relief of damages and solely sought a claim of specific performance, in case this Court is not inclined to pass any interim orders restraining the respondent from disposing of the only two assets it has, the challenge to impugned Arbitral Awards by the petitioner under Section 34 of the Act filed by the petitioner, would be rendered infructuous. He would contend that since no damages were sought by petitioner and in case no interim orders restraining the respondent from alienating the only properties it has is passed, not only the pendency of the petition under Section 34 would be rendered infructuous, the petitioner would actually be left with no remedy. He would contend that no party can be left remediless.

22. In order to demonstrate perverse findings learned senior counsel copiously read relevant paragraphs of the impugned Arbitral Award dated 26.09.2026. In particular, after having perused the LSL and the statement of the witnesses and their cross-examination the learned Arbitral Tribunal came to definitive conclusions in paras 91, 92, 93, and 96. According to learned senior counsel, these conclusions without there being any evidence or cross-examination to support, can be referred as extraneous to the pleadings or the evidence on record and must be necessarily eschewed from consideration. If so eschewed, according to learned senior counsel, the learned Arbitral

Tribunal could not, in any manner whatsoever, conclude that the petitioner could not establish readiness and willingness.

23. On law, learned senior counsel would refer to and heavily rely on the judgement of the Supreme Court in ***Home Care Retail Marts Pvt. Ltd v. Haresh N. Sanghavi,*** *2026 INSC 415*, to submit that even an unsuccessful party to the arbitration proceedings is entitled to invoke a petition under Section 9 seeking post award interim protection/relief. He would submit that the Supreme Court has observed that such interference or interim protection orders can be granted by a Court only in "rare and compelling cases". He would submit that the present case illustrates one such situation for the reason that the subject matter of the disputes is the subject property which, if disposed, would render not only the present petition infructuous, but also the challenge to the impugned Awards under Section 34 of the Act. This, coupled with the fact that the petitioner did not seek any relief of damages and the subject properties are the only assets of the respondent, the petitioner would be rendered remediless. He would submit that the Supreme Court also observed that invocation of Section 9 of the Act by an unsuccessful party may prevent irreparable prejudice and at the same time preserve the efficacy of the challenge laid in a petition under Section 34 of the Act. The only caveat placed by the Supreme Court in such a situation upon such a party was the higher threshold of establishing *prima facie* case for seeking interim relief. He would submit that all the aforesaid ingredients are fully met with in the present facts. Learned senior counsel relied on ***Saptarishi Hotels Pvt. Ltd. v. National Institute of Tourism & Hospitality Management,*** *(2019) SCC Online TS 1765* which was approved in ***Home Care Retail*** *(supra)* to illustrate that the Telangana High Court had allowed a petition under Section

9 of the Act by a party which had been unsuccessful before the arbitral tribunal in its claim of restoration/specific performance.

24. Mr. Krishnan, learned senior counsel, would point out that as per the Supreme Court's decision in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.,*** *(2025) 7 SCC 1,* the Court's powers of severability and modification of an arbitral award stand affirmed. Therefore, learned senior counsel would contend that if the tribunal's finding of the LSL being sham is set aside, then the same would lead to a modification which is inevitably of specific performance of the ATSs. As such, the learned senior counsel would argue that in the event of refusal of the protection being sought in this petition, the petitioner would be left remediless in case it is eventually successful in its petition under Section 34.

25. The learned senior counsel would submit that the triple test of *prima facie* case, balance of convenience and irreparable injury is also satisfied, since the petitioner was only non-suited on the finding of not establishing readiness and willingness, which finding is contrary to the evidence on record. He would contend that the balance of convenience is in favour of the petitioner in view of the interim stay on the subject properties having operated for more than five years during the pendency of the arbitration proceedings. Further, he would again strenuously emphasise that in the absence of the continuation of stay order, the respondent could alienate the subject properties and render the petitioner remediless, thus causing irreparable injury.

26. Thus, learned senior counsel would submit that the prayers as sought may be granted.

CONTENTIONS OF THE RESPONDENT

27. Appearing for the respondent, Mr. Sahil Sethi, learned counsel, vehemently refuted the submissions of the petitioner.

28. Adumbrating the background facts, learned counsel would submit that the ATSs were executed for two plots namely plot no.A-2/1 and B-7/4, DLF City, Phase-I Gurugram, each for a consideration of Rs.5,62,24,000/- against which a meagre advance payment of Rs.5,00,000/- each was made. He would submit that this advance payment is less than one percent (1%) of the total sale consideration. He stated that from 04.05.2019 when the ATSs were executed and until the respondent refunded the aforestated advance to the petitioner on 08.02.2021, the petitioner did not take even a single step to get the sale deed executed. It is only after the advance payment was refunded that arbitration was invoked unilaterally by the petitioner and by the order dated 11.02.2021 an *ex parte* restraint order was passed by the then Arbitrator. He would submit that it is on the respondent's application that this Court by the order dated 15.02.2023 referred the dispute to the learned Arbitral Tribunal whose award is subject matter of the present petition.

29. Learned counsel would forcefully contend that the law in respect of interference with conclusions based on facts are fairly well settled in the realm of arbitral awards. He would submit that the learned Arbitral Tribunal has, after closely scrutinizing the evidence and the cross examination of the witnesses and after evaluating and appreciating the documents placed on record by the petitioner, has recorded a clear finding of fact against the petitioner. He strenuously argued that this part of the Arbitral Award cannot, by any stretch of imagination, be amenable or questionable in a Court considering a petition under Section 34 much less in a petition under Section 9 of the Act. In any case, it is trite that if there are two possible views then the Court will not interfere with the arbitral award solely for the reason that in the opinion of the Court, the view other than the one taken by the learned Tribunal was also plausible. According to him, this is impermissible in law.





For the said proposition, he relied on the judgement of the Apex Court in ***Delhi Airport Metro Express Pvt. Ltd. v. DMRC,*** *(2022) 1 SCC 131.*

30. Referring to the evidence, the cross examination as also the documents in question, learned counsel would contend that the respondent has utterly failed in demonstrating its readiness and willingness which was predicated purely on the LSL issued by PFL. He would submit that relevant documents in terms of demonstrating financial capacity to purchase the subject properties were neither filed by the petitioner nor by PFL. Except for the LSL, which also has been held to be a suspicious document by the learned Arbitral Tribunal, there is no supporting document to substantiate or establish the financial capacity of either the petitioner or the PFL. Relying upon the Supreme Court's judgement in ***Ritu Saxena v. J.S. Grover,*** *(2019) 9 SCC 132,* learned counsel would contend that it is in such dearth of crucial and essential documents demonstrating the financial capacity of both the petitioner as also PFL, that the learned Arbitral Tribunal had recorded that not only the LSL is suspicious but also that it was a sham document.

31. To the submission of the petitioner that the respondent ought to have put pertinent questions to the witnesses namely, CW-1 and CW-2, he would forcefully contend that the onus to prove readiness and willingness is squarely that of the petitioner and none else. He would contend that it would be against the canons of law to contend that in a case of specific performance the onus of proving financial capacity and readiness and willingness would shift to any party other than the plaintiff or the claimant. He would submit that it is only when the claimant or the plaintiff successfully establishes the issue, that the burden or the onus shifts to the opposite party. He would support the said proposition by adverting to the Supreme Court's judgement in ***Umabai v. Nilkanth Dhondiba Chavan,*** *(2005) 6 SCC 243* and ***Mehboob-ur-Rehman v.***

Ahsanul Ghani, *(2019) 19 SCC 415.* According to the learned counsel, having failed to prove readiness and willingness, the submission that the respondent did not put appropriate questions in cross examination, would not enure to the benefit of the petitioner**.** As such, learned counsel would forcefully contend that the present petition ought to be dismissed.

32. At this stage, learned counsel took the Court through para 80 onwards of the Arbitral Award to substantiate the contention that the learned Arbitral Tribunal has applied its mind clearly to the facts which have obtained in the present petition and after careful scrutiny of the documents and the evidence of the witnesses, recorded a conclusion that the LSL is a sham document. In particular, he emphasized on paras 86 to 97 of the impugned Arbitral Award to submit that the conclusions on facts cannot be interfered with, being based on sound reasons.

33. On law, learned counsel would submit that for a petition under Section 9 of the Act to succeed, the triple test as enunciated by the Supreme Court is to be met with by the petitioner, which it has miserably failed to do so. Moreover, he would submit that the Supreme Court in ***Home Care Retail*** *(supra)* has categorically held that the threshold of the triple test in a petition under Section 9 of the Act, that too post the award, is at a higher pedestal than at any previous stage of the arbitral proceedings. In respect of the present challenge, which would invariably require this Court to re-appreciate evidence, he would contend that law in that context is well settled against such re-appreciation. He would contend that readiness and willingness is an issue of fact for which he relies on ***Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan,*** *(1999) 5 SCC 651* and ***Madhukar Nivrutti Jagtap v. Pramilabai Chhandulal Parandekar,*** *(2020) 15 SCC 731.*He also would rely on the judgement of the Supreme Court in ***OPG Power Generation (P) Ltd. v.***

Enexio Power Cooling Solutions (India) (P) Ltd., *(2025) 2 SCC 417* and ***Ssangyong Engineering v. NHAI,*** *(2019) 15 SCC 131* to submit that the quality and quantity of appraisal of evidence are the sole domain of the arbitrator, who is the ultimate master to appreciate such aspects and cannot be questioned in a petition either under Section 9 or even under Section 34 of the Act.

34. For the proposition that patent illegality does not reach a plausible view on facts, and that the Courts have declined to re-appreciate or re-weigh the arbitrator's finding on readiness and willingness, learned counsel would rely on the Supreme Court's judgement in ***Delhi Airport Metro Express*** *(supra)* and this Court's judgements in ***Rudra Buildwell Pvt. Ltd. v. Realworth India Pvt. Ltd.,*** OMP 6/2022 dated 29.10.2024 and ***Millenium Realtech Pvt. Ltd. v. Opaque Infrastructure Pvt. Ltd.,*** FAO (OS)(COMM) 246/2023 (DB) dated 16.02.2026.

35. Learned counsel strenuously contended that the balance of convenience is clearly tilted in favour of the respondent and not the petitioner. In this context, learned counsel would submit that the sale consideration of each of the two subject properties was Rs.5,62,24,000/- against which the petitioner paid an advance of a meagre sum of Rs.5,00,000/- which is less than one per cent of the sale consideration. Moreover, since no action to proceed with the execution of the sale deed was undertaken by the petitioner for 21 months, the respondent refunded the said advance payment of Rs.5,00,000/- on 08.02.2021. Since then, till the Award was passed by the learned arbitral Tribunal, the petitioner has not deposited a single penny. In such circumstances, the balance of convenience surely cannot be in favour of the petitioner. Equally, he would submit that there is no irreparable injury which might be caused to the petitioner. Rather, after having failed to establish

readiness and willingness, coupled with the fact that not a single penny has been paid, it would be the respondent which would incur irreparable loss and injury in case any interim order is passed in the present petition.

36. Learned counsel referred to and fully relied upon the judgement of the Supreme Court in ***Home Care Retail*** *(supra)* to contend that the present case does not meet the threshold of rare and compelling case. He further relied on the judgement rendered by the Bombay High Court in ***ONGC v. Swiber Offshore Construction Pte. Ltd,*** Comm. Arb. Pet. No. 17832/2026 dated 15.06.2026 where the Bombay High Court, after referring to the judgement in ***Home Care Retail*** *(supra),* refused to restrain the invocation of the bank guarantee on the premise that merely an arguable challenge by the unsuccessful party under Section 34 of the Act is not enough to grant protection under Section 9 and that the party must prove the existence of exceptional circumstances which are capable of justifying departure from the normal rule. Learned Counsel would submit that the Petitioner has failed to make out such circumstances in the present petition.

37. Learned Counsel would therefore submit that the prayers sought by the Petitioner may not be granted.

REJOINDER OF THE PETITIONER:

38. In rejoinder, Mr. Krishnan, learned senior counsel, took this Court through the amended Section 10 of the Specific Relief Act, 1963, also pointing out the substitution of Section 14(1)(a), and strenuously argued that specific performance is no longer a discretionary relief with effect from 01.10.2018, i.e. the date of the said amendment. He would rely on the judgement of the Supreme Court in ***B. Santoshamma v. D. Sarala,*** *(2020) 19 SCC 80* and that of a Division Bench of this Court in ***Global Music Junction Pvt. Ltd. v. Shatrughan Kumar,*** *(2023) SCC Online Del 5479* to contend that

under the amended Section 10 of the Specific Relief Act, 1963, specific performance has to be enforced and monetary compensation is no longer a ground to deny the same.

39. The learned senior counsel would further distinguish the judgement in ***ONGC v. Swiber*** *(supra)* on facts while also contending that in the present case, the test of "a situation which cannot later be corrected even if the challenge succeeds" is clearly met, since the alienation of the subject properties would lead to situation where even if the petitioner succeeds in the challenge to the impugned Awards, the situation would have become irreversible.

ANALYSIS AND CONCLUSIONS:

40. Having heard the extensive arguments of Mr. Dayan Krishnan, learned senior counsel for the petitioner, Mr. Sahil Sethi, learned counsel for the respondent and perusing the records with the assistance of learned counsel and after examining the judgements relied upon, the following order is passed.

41. The controversy regarding an unsuccessful party seeking interim protection under the provisions of Section 9 of the Act, post the passing of the arbitral award is no more *res integra*. The Supreme Court in ***Home Care Retail*** *(supra),* speaking through His Lordship Justice Manmohan has eloquently and eruditely postulated various circumstances which may require to be examined by a Court considering a petition under Section 9 of the Act, invoked by an unsuccessful party. That an unsuccessful party to the arbitration proceedings is entitled to invoke Section 9 of the Act, is unambiguous. That the onus of such an unsuccessful party to establish, *prima facie*, the ingredients of the triple test, is at a higher pedestal, in the post award situation than at the pre award scenario, is manifest. In other words, the

tests may have more rigors for the unsuccessful party. The Supreme Court also required the Courts to examine whether vacation of the protection post award would "*result in irreversible prejudice*", in the sense to leave such a party remediless. The judgement also cautions that grant of protection orders in post award condition in favour of the unsuccessful party can only be considered in "*rare and compelling circumstances*". That too, when passing of such orders are considered by the Court as would "*prevent irreparable prejudice and preserve the efficacy of the challenge proceedings"*. To make things unambiguous, the relevant paragraphs of ***Home Care Retail*** *(supra)* are extracted hereunder:

> *"49. Even applying the test of purposive interpretation, 'a party' must mean any party to the arbitration agreement. This Court can envisage situations where a party that has lost in arbitration may nonetheless require interim protection. For instance, where an arbitral award has been rendered without proper notice to a party, or where a party is able to prima facie demonstrate that the award has been induced or tainted by fraud or corruption. In such situations, the Court may not only stay the award but also grant interim measures under Section 9 of the Act to balance the equities. Similarly, in certain cases, an unsuccessful party may have obtained interim protection during the arbitral proceedings, such as an order restraining invocation of a bank guarantee. Upon the rendering of the arbitral award, such interim protection ordinarily stands vacated. However, the unsuccessful party may challenge the award under Section 34 of the Act and obtain a stay on the enforcement of the arbitral award under Section 36(3) of the Act. In such circumstances, immediate removal of interim protection, for example, in relation to a bank guarantee, may result in irreversible prejudice to the unsuccessful party whose challenge to the arbitral award is pending adjudication.*
>
> *50. Further, the Courts are not disabled from granting 'non prejudicial' interim relief in favour of an unsuccessful party in arbitral proceedings, particularly where such relief does not affect the enforceability of the award but merely preserves ancillary rights pending adjudication under Section 34 of the Act as was sought in the case of Wind World (India) Ltd. (supra).*
>
> *51. Another interesting conundrum may be where a party is partially successful, inasmuch as, part of its claims are allowed but as a consequence of a higher amount of counter-claim being allowed, it is branded as an unsuccessful party in accordance with Dirk India (supra) and is not in a*

position to prevent the other party from selling its assets after the award has been rendered. It is possible that in Section 34 proceedings, the arbitral award may be modified to the extent that the counter-claim is set aside and severed from the award. However, without interim relief, assets may dissipate rendering final success illusory.

52. Consequently, in rare and compelling cases, it may be necessary to permit the unsuccessful party to invoke Section 9 of the Act to seek continuation of the existing interim protection. This assumes greater significance, as noted earlier, in light of the decision in Gayatri Balasamy (supra) which recognises the Court's power under Section 34 of the Act to modify an arbitral award, including the power to sever 'the "invalid" portion from the "valid" portion of the award'.

xxx xxx xxx

59. Needless to say, the grant of interim relief under Section 9 of the Act will continue to be guided by well-established principles, namely, the existence of a prima facie case, balance of convenience, and likelihood of irreparable harm or injury. This Court, in Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited, (2022) 20 SCC 178, has held as under:

> *"47. Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.*

xxx xxx xxx

60. Undoubtedly, the threshold for grant of interim relief will be higher in the case of an unsuccessful party in arbitration seeking such relief. In rare and compelling cases, permitting the unsuccessful party to invoke Section 9 of the Act would prevent irreparable prejudice and preserve the efficacy of the challenge proceedings. However, the rights of such a party cannot be curtailed merely on the apprehension of possible misuse of a statutory provision."

(emphasis supplied)

42. Apart from enunciating the guiding principles as to how and in what circumstances an unsuccessful party would be entitled to invoke the

provisions of Section 9 of the Act, that too post the passing of the award, the Supreme Court has clearly postulated the scope and extent of power and the circumscription to such exercise. It is in these circumstances and bearing in mind the guiding principles postulated in ***Home Care Retail*** *(supra)* that this Court would proceed to examine this case.

43. Simply put, it is the case of the petitioner that it enjoyed the interim orders restraining the respondent from selling, alienating or creating third party rights *qua* the subject properties during the pendency of the arbitral proceedings. It is also the case of the petitioner that the claim being one of specific performance *sans* any claim for damages, in case the protection orders are not granted by this Court, the petitioner would be left remediless in case the respondent sells, alienates or creates any third party rights in the interregnum. It is also the case of the petitioner that the amended Specific Relief Act has substituted Section 14(1)(a) and now contemplates and envisages the grant of specific performance as the primordial objective of the said Act, unlike its erstwhile version. According to the petitioner, in the erstwhile regime, grant of specific performance was discretionary, tilting towards the alternate relief of damages. However, post amendment, the Specific Relief Act, 1963 mandates specific performance to foster consistency and purity in contracts.

44. Though, a challenge to the Arbitral Award dated 26.09.2026 has been laid after the filing of the present petition, it is the apprehension of the petitioner that if the respondent disposes of the subject properties in the interregnum, its petition under Section 34 of the Act would be clearly rendered infructuous inasmuch as, no relief other than specific performance of the ATSs has at all been sought by the petitioner.

45. The petitioner had also urged that the subject two properties are the only assets of the respondent, and no other. Thus, even if the petitioner were entitled to any compensation, the same would be rendered unexecutable. It was further urged that if the petition under Section 34 of the Act is allowed by this Court and further by virtue of the judgement of the Supreme Court in ***Gayatri Balasamy*** *(supra)*, this Court eventually severs or sets aside the finding that the LSL was not a sham document and modifies the said Award, the petitioner may not be able to execute the same if in the interregnum, the only assets, i.e., the subject two properties are disposed off. Nothing will remain for execution.

46. It was the forceful submission of the petitioner that the learned Arbitral Tribunal had upheld the validity of the ATSs, though vehemently opposed and objected to by the respondent. In such circumstances, if the finding reached by the learned tribunal that the LSL is a "sham document" is severed, the petitioner may be entitled to an award of specific performance. He has argued that in case the aforesaid result could be envisaged, interim protection orders would be required to preserve the property.

47. It is trite that the learned Arbitral Tribunal is the master of facts and ordinarily Courts are circumspect in interfering with such findings of fact. (See: ***OPG Power Generation*** *(supra),*and ***Ssangyong Engineering*** *(supra)*) There are very rare exceptions to this principle. Thus, when a Court is examining the findings of fact, it is not in the nature of an appellate Court which may reappreciate, but is limited in its scope and width. The Supreme Court has delineated this scope and width in the following terms in ***Delhi Airport Metro Express*** *(supra)*:

> *"29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous*

> *application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them.An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."*
>
> (emphasis supplied)

Similarly, in ***Ssangyong Engineering*** *(supra)*, the Supreme Court held in para 41 as under:

> *"41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."*
>
> (emphasis supplied)

48. It must also be borne in mind that this Court is not considering a petition under section 34 but one under Section 9 of the Act. The question of examining the contended perversity or delving into the findings of fact, is limited only to the extent of a *prima facie* opinion alone. Whether the facts need elaborate examination or scrutiny of findings to opine that those are

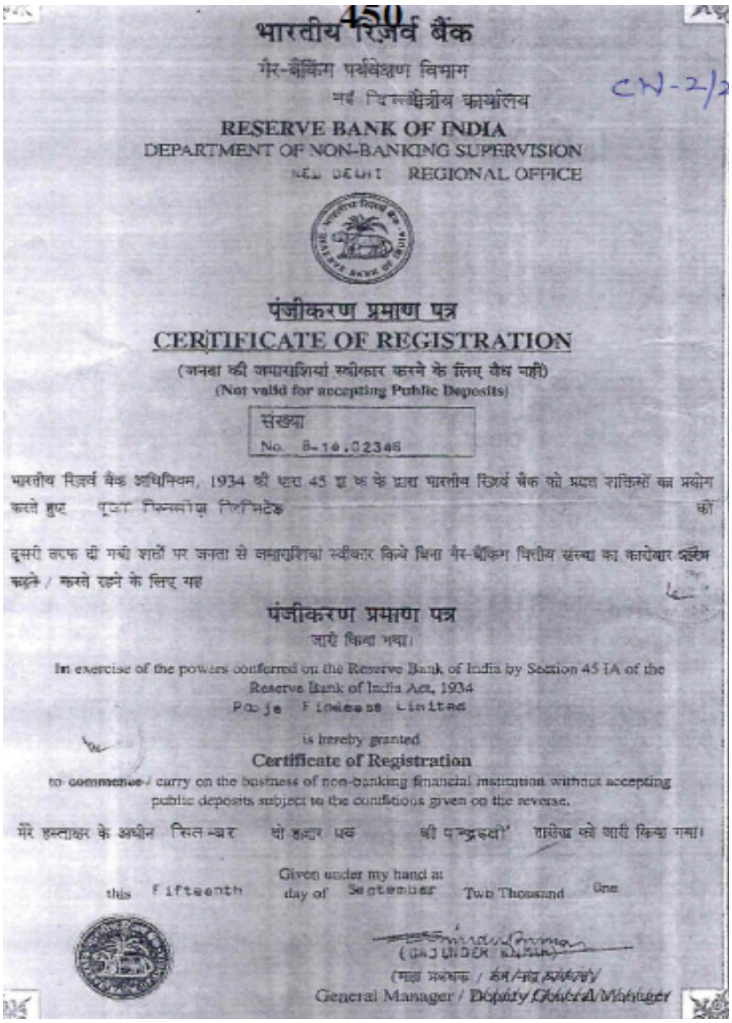
perverse to an extent warranting interference would arise only in the petition challenging an arbitral award.

49. That said, it may be relevant to also understand the extent and scope of interference by a Court while examining the facts and findings rendered thereon by the learned Arbitral Tribunal. As enunciated in ***Delhi Airport Metro Express*** *(supra)* above, one of such relevant considerations would be as to whether such conclusion is based on "no evidence". It is trite that the learned Arbitral Tribunal is the master of findings of fact, however, a conclusion based on no evidence would be "perverse". It is one thing to say that the learned Arbitral Tribunal has recorded a finding which may be plausible based on the evidence adduced by parties, but completely another thing to say that the finding is based on no evidence. It is only the latter circumstance which may warrant interference. The former circumstance is insulated and protected from any interference by a Civil Court. (See: ***Ssangyong Engineering*** *(supra)*). Thus, this Court is now required to examine if the arguments and contentions of the petitioner regarding challenge to the conclusion that the LSL is a sham document, is or is not based on "no evidence".

50. The arguments of both the parties circumambulated only on the question as to whether the conclusion as a finding of fact that the sanction letter dated 07.07.2019 issued by the NBFC is a sham document, is based on no evidence at all. If the conclusion is borne out from the facts and the evidence adduced, the proscription from interference as enunciated by the Supreme Court in a catena of judgements would squarely apply. In case the said conclusion on facts is based on no evidence, then and then alone this Court may require to examine the dispute on facts.

51. It is relevant to note that the claim as laid by the petitioner before the learned Arbitral Tribunal was for specific performance of the ATSs dated 04.05.2019. It is not disputed that the petitioner did not, of its own, demonstrate or place on record, any document or evidence substantiating its own financial capacity/capability to pay the sale consideration to the respondent. The claim for specific performance was purely predicated on payment of the sale consideration by PFL. The documents in support of the said claim were (i) Registration Certificate of PFL with the RBI; and (ii) LSL dated 07.07.2019. Before this Court proceeds to examine the aforesaid issue, it may be relevant to extract hereunder both the aforesaid documents.

(i) Registration Certificate of Pooja Finelease Limited:



भारतीय रिज़र्व बैंक
गैर-बैंकिंग पर्यवेक्षण विभाग
नई दिल्ली क्षेत्रीय कार्यालय
CW-2/2
RESERVE BANK OF INDIA
DEPARTMENT OF NON-BANKING SUPERVISION
NEW DELHI REGIONAL OFFICE

पंजीकरण प्रमाण पत्र
CERTIFICATE OF REGISTRATION
(जनता की जमाराशियां स्वीकार करने के लिए वैध नहीं)
(Not valid for accepting Public Deposits)

संख्या
No. B-14.02346

भारतीय रिज़र्व बैंक अधिनियम, 1934 की धारा 45 झ क के द्वारा भारतीय रिज़र्व बैंक को प्रदत्त शक्तियों का प्रयोग करते हुए पूजा फिनलीज़ लिमिटेड को

दूसरी तरफ दी गयी शर्तों पर जनता से जमाराशियां स्वीकार किये बिना गैर-बैंकिंग वित्तीय संस्था का कारोबार शुरू करने / करते रहने के लिए यह

पंजीकरण प्रमाण पत्र
जारी किया जाता।

In exercise of the powers conferred on the Reserve Bank of India by Section 45 IA of the Reserve Bank of India Act, 1934
Pooja Finlease Limited
is hereby granted
Certificate of Registration
to commence / carry on the business of non-banking financial institution without accepting public deposits subject to the conditions given on the reverse.

मेरे हस्ताक्षर के अधीन दिल्ली में हजार नौ सौ पन्द्रह को यह प्रमाणपत्र जारी किया गया।

Given under my hand at
this Fifteenth day of September Two Thousand One

(GAJENDER KUMAR)
(सहायक महाप्रबंधक / Asstt. General Manager)
General Manager / Deputy General Manager

IBC Laws | www.ibclaw.in

(ii) Loan Sanction Letter dated 07.07.2019:

LOAN SANCTION LETTER

Date: 07.07.2019

Our Reference No.

Name of the Applicant: ***M/s Thor Ventures (OPC) Pvt Ltd***

Address: ***D-25, KH-345/228, Saidulajab Extension, Westened Marg, Opp. Garden of 5 senses, New Delhi-110030***

Dear M/s Thor Ventures (OPC) Pvt Ltd,

Subject: ***Sanction of Loan against Plot bearing no. B-7/4, DLF City, Phase-I, DLF Qutub Enclave, Tehsil & District Gurgaon, Haryana admeasuring 420 sq.mtrs (502.32 sq.yds)***

We refer to your application dated 07.07.2019 and wish to inform you that our competent Authority has approved your request as above with the following terms & conditions.

We are pleased to sanction an amount of Rs 5.20 cr against Plot bearing no. B-7/4, DLF City Phase-I, DLF Qutub Enclave, Tehsil & District Gurgaon, Haryana admeasuring 420 sq.mtrs (502.32 sq.yds) with reference to your (ATS) Agreement to Sell) dated 04.05.2019.

Type of facility	*(LAP)Loan Against Property)*
Sanction Loan Amount	*5.20 crores*
Loan Tenure (Months)	*60*
Interest type	
Rate of interest	*ROI will be as per applicable reference rate at the time of disbursal*
Total processing fee	*Non refundable*
Transaction handling fee	*3500/- (inclusive of GST)*

All the applicable taxes, duties and levies would be additionally charged as per law.

Special conditions (as applicable)

1. You are requested to please get the sale deed registered as per agreement dated 04.05.2019 for the purpose of disbursement and

complete set of original documents pertaining to the property for which photo copy has been supplied.

2. Execution of Loan Agreement and other documents between you and Pooja Finelease Ltd. as per its policy and format. Pooja Finelease Ltd. retains all right regarding processing and disbursement of loan.

3. Repayment of loan amount will be through instalments/EMI's comprising of principal and /or interest. Repayment of loan amount can be done through electronic mode (ECS) also.

Please sign this letter as token of your acceptance of the terms and conditions mentioned above.

For Pooja Finelease Ltd. *Accepted the offer*
Authorized Signatory *Authorized Signatory*

52. Undeniably, PFL is indeed registered with the RBI as an NBFC. This status was neither questioned nor any question put to the CW-2, who was the witness from PFL and had produced and placed on record these documents. The entire controversy revolved only around the LSL. As noted above, the said letter delineated material particulars which would, *prima facie*, indicate that PFL had committed itself to give loan against property. The amount of sanction, the tenure of the loan and the type of facility for the specific subject property was clearly delineated. So far as the rate of interest is concerned, it was indicated that the same would be applicable at the reference rate at the time of disbursal. It may be relevant to bear in mind that this particular sanction, though termed as LSL, was more in the nature of a loan against property rather than a simple home loan. The special conditions prescribed therein governed the manner in which the documentation, etc., were to be worked out between the parties.

53. Since the controversy revolves around the aforesaid document and the evidence furnished in support thereof, it would be apposite to extract hereunder the evidence by way of affidavit of CW-2:

> *"**EVIDENCE BY WAY OF AFFIDAVIT OF CW-2***
>
> *I, Brajesh Panday, S/o Sh. Sudarshan Panday, aged about 45 years, Authorized Representative of Pooja Finelease Ltd. (Non-Banking Finance Company duly registered with Reserve Bank of India, vide registration no B-14.02348 dated 15th September 2001), having its registered office at 70/A- 32, Rama Road Industrial Area, Najafgarh Road, New Delhi-110015 do hereby solemnly swear and affirm as under:*
>
> *1. That I have been authorised by Pooja Finelease Ltd. having its registered office at 70/A-32, Rama Road Industrial Area, Najafgarh Road, New Delhi-110015 vide Board resolution dated02.07.2016 to swear the present Affidavit and depose on their behalf and I further state that being aware of the facts and circumstances of the present case I am competent to file the present Affidavit. Copy of Board Resolution dated 02.07.2016 which is exhibited as **Ex. CW2/1**. Copy of registration certificate no. B-14.02348 dated 15th September 2001 issued by Reserve Bank of India for running Non-Banking Finance Company which is exhibited as **Ex. CW2/2)**.*
>
> *2. That Claimant had approached us for grant of financial facilities to the tune of Rs.5,20,000,000/- and furnished the photocopy of title docs of property bearing No. B-7/4, DLF City, Phase-1, DLF Qutub Enclave, Tehsil and District Gurgaon, Haryana admeasuring 420 Sq. Mts. (502.32 Sq. yards) and after going through the same and carrying out internal inspection, we found that the title of Respondent to be perfect and M/s Pooja Finelease Ltd. approved to sanction the loan amount of Rs.5,20,00,000/- (Rupees Five Crore Twenty Lakhs Only)on the said property.*
>
> *3. I say that as per the settled terms and conditions, the said loan amount was to be disbursed vide Demand Draft in the name of the Respondent on the date of registration of the Sale Deed at the tehsil in the name of the claimant and the complete set of original documents pertaining to the property for which photocopy has been supplied would be handover simultaneously by the respondent toM/s Pooja Finelease Ltd.*
>
> *4. I say that the Loan was sanctioned vide Loan Sanction letter dated 07.07.2019 which is exhibited as **Ex. CW2/3**.*
>
> *5. I say that M/s Pooja Finelease Ltd. is still willing to perform its obligations and disburse the loan amount subject to no*

stay/injunction/Order of the Court/Arbitral Tribunal being in force at the time of execution of the Sale Deed whereby affecting the title of the subject property and further as per the terms mentioned in sanction letter dated 07.07.2019.

6. I say that the above content of the present affidavit are true and correct to best of my knowledge and nothing material has been concealed there from. It is wrong to suggest that hat my statements are wrong and false."

54. A perusal of the affidavit, *prima facie*, indicates that the loan amount was to be disbursed *vide* a demand draft directly in the name of the respondent on the date of registration of the sale deed. Simultaneously, the original documents of the said property were also to be handed over to PFL. CW-2 brought on record and exhibited LSL as Exh. CW-2/3. The witness affirmatively asserted that PFL is still willing to perform its obligations and disburse the loan amount. This examination-in-chief of CW-2 was put to test through cross-examination conducted by the respondent.

55. Though at this stage, and particularly in proceedings under the provisions of Section 9 of the Act, this Court is not required to delve into oral evidence or the cross-examination, however, keeping in view the piquant situation based whereon the petition has been filed and contested, it becomes the bounden duty of this Court to satisfy itself, at this *prima facie* stage as to whether any lacunae which may be alleged to be perversity or findings based on no evidence, have any merits at all. Thus, it would be in the fitness of things to extract the entire cross-examination, as hereunder:

"xxxxx Cross-examination by Mr. Sahil Sethi, Ld. Counsel for the Respondent

Q1 What is your designation in the above noted company?

Ans. Collection Manager.

Q2 Is the above noted company is a registered as NBFC. If so, under what classification?

Ans. It is a registered NBFC. I do not understand the term "classification".

Q3 What is the asset size of your company?

Ans. Rs. 200 Crores.

Q.4 Is your company base layer NBFC, Mid layer NBFC or Upper layer NBFC?

Ans. I do not know.

Q5 What is the principal business of your company?

Ans. Property loan, personal loan and automobile loan.

Q6 Is it correct to say that your company is primarily into auto loan?

Ans. Yes.

Q7 Kindly refer to CW2/3, purported loan sanction letter dated 7th July, 2019. Does this letter bear your signature?

Ans. No. It bears the signature of Mr. Bobby Sharma, (Senior Manager) at the end.

Q8 Is there maximum threshold upto which your company provides loan against property?

Ans. No, it depends on the property. Witness is shown the print out Ex. CW2/R1. Purported printout from the website.

Q9 Does this document pertain to your company?

Ans. It appears so.

Q10 Are the special conditions stated in Ex CW2/3 applicable and necessary for disbursement of loan, in pursuance of the sanction letter?

Ans. Yes.

Q.11 Is there a validity period for which sanction letter is issued?

Ans. Yes, six months.

Q12 When was the application for loan given by the claimant company?

Ans. June, 2019.

Q13 Whether the contents stated in para-2 of your evidence by way of affidavit are correct in totality?.

Ans. Yes, they are correct.

Q14 Can you kindly elaborate internal inspection claimed to have been carried out, in the instant case prior to giving the loan sanction letter?

Ans. We had got the property inspected physically. That is all that was done by us for this property.

Q 15. Is it correct that no valuation exercise was done for this property?

Ans. We assess the value during physical inspection, however, before disbursal of the loan actual valuation is carried out.

Q 16. At what stage do you do a valuation?

Ans. We first inspect the original documents of the property and then get the valuation done.

Per Tribunal

Q 17. Who carries out the Valuation?

Ans. An Authorised Valuer.

Q 18. Do you have the valuation report of this property?

Ans. No.

Per Counsel for the Respondent

Q 19. Have you inspected the original title deeds of the property?

Ans. No.

Q20. Is this correct that the loan sanction letter is done only on the basis of photocopies of title deeds of the properties in question in favour of the Respondent, and a physical inspection of the property?

Ans. Yes, it is.

Q 21. Did you personally carry out the physical inspection?

Ans. No.

Q 22. Do you have, the physical inspection report, in your records?

Ans. No.

Q 23. What is the time frame within which the company decides whether to give a loan sanction letter or not, after receipt of an application in this regard.

Ans. 15- 20 days

Q 24. Please refer to your CW 2/3 the loan sanction letter dated 07.07.2019. The letter states that the Application of the Claimant was dated 07.07.2019. In light of the statement above, I put it to you that the loan sanction letter has been given without following due process.

Ans. The process is of 15-20 days, the Claimant must have given the application in June.

Q 25. Do you have a copy of the Application?

Ans. I have to check the records.

Q 26. Does your company give housing finance?

Ans. No.

Q 27. Please refer to the loan sanction letter, especially the first condition, is the condition for procurement of registered sale deed as per alleged agreement dated 04.05.2019 for disbursement and complete set of original documents pertaining to the property, applicable in the instant case.

Ans. Yes"

56. So far as the fact that PFL is registered as NBFC, the witness has affirmed the same. To the question of asset size, the witness has affirmed PFL to have a net worth of Rs.200 Crores. The witness also appears to have withstood, *prima facie*, questions regarding inspection of the property as also the valuation done of the said property. The question regarding sanction of the loan based on photocopies of the title deeds coupled with physical inspection does not negate the stand taken by the witness inasmuch as admittedly the respondent did not have in its own possession, the original documents. Substantial questions regarding the LSL and its contents were put to the CW-2. However, on a holistic examination and scrutiny of the cross-examination and the responses elicited, do not appear to, in the humble view of this Court, *prima facie*, discredit the LSL by itself. In other words, whether right or wrong, CW-2 appears to have answered all questions relating to the Sanction

Letter. Unlike a Court considering a petition under Section 34 of the Act, at this stage, this Court is not required to evaluate the ultimate effect of the cross-examination.

57. Before this Court renders any opinion, it may be relevant to appreciate the reasoning as to how the learned Arbitral Tribunal has concluded that the LSL is a sham document. The relevant paragraphs are extracted hereunder:

> *"84. It is also a matter of fact that the Claimant has produced no evidence to show its financial capacity to purchase two properties of alleged consideration of above Rs.5 crores each. The Claimant has not filed any bank statement, copy of balance sheet, or any other document showing fund availability at the time of the contract. The only alleged source of funding is an alleged loan sanction by one Pooja Finelease Limited vide sanction letter dated 07.07.2019 for alleged consideration towards the Agreement to Sell.*
>
> *85. The sum and substance of the plea of the Claimant regarding availability of funds and the fact that the Claimant was ready and willing to perform its commitment under the Agreement to Sell is only based on this letter dated 07.07.2019 from the said company M/s Pooja Finelease Limited.*
>
> *86. A perusal of the said letter dated 07.07.2019 from Pooja Finelease Limited shows that the Claimant had sent an application dated 07.07.2019 to the said financial company, who on the same date, i.e.,07.07.2019, issued a letter approving the request for providing finances to the Claimant. The communication sanctions a loan of Rs.5.20 crores to the Claimant. Para 3 of the said letter dated 07.07.2019 reads as follows:*
>
> > *"3. Repayment of loan amount will be through installments/EMIs comprising of principal and/or interest. Repayment of loan amount can be done through electronic mode (ECS) also."*
>
> *87. A perusal of the said communication dated 07.07.2019 by the alleged financer shows it is extremely sketchy and bereft of details. At what rate of interest is the said finance company agreeing to advance the loan is not stated. The manner of repayment by the Claimant to the said finance company is not stated. Documents that the finance company would require for disbursing of the loan are again not stated.*
>
> *xxx xxx xxx*
>
> *91. The above facts as stated and the evidence on record clearly demonstrates that the letter issued by the alleged financer Pooja Finelease Limited was issued in a very casual manner. As per the evidence by way of affidavit of*

CW- 1, the request for sanction of loan was sent on 07.07.2019, which shows that on the day when the Claimant made an application for sanction of loan, on the same day i.e. 07.07.2019, the company in question i.e., Pooja Finelease Limited, allegedly sanctioned the loan.

92. Further, the above cross-examination clearly demonstrates that the said letter issued by Pooja Finelease Limited is a suspicious document. The cross-examination of CW-2 confirms that the said company is primarily into auto loans. The validity of the sanction letter was only six months, and the same expired by end of 2019. The cross-examination further reveals that the only due diligence done by the said finance company was to get the property inspected physically. No valuation exercise was carried out. No valuation report or inspection report regarding the property was filed. No proof of inspection of the property is available. It has been confirmed that the loan sanction letter was done only on the basis of photocopies of the title deeds and physical inspection of the property.

93. Further, there is nothing on record to show that the company, Pooja Finelease Limited, has the means to finance the Claimant. It may be noted that the Claimant had entered into two separate Agreements to Sell for two different properties, each valued at above Rs.5 crores. There is nothing to show that Pooja Finelease Limited had wherewithal or the capability to finance a sum of upward of Rs. 10 crores for the properties in question.

94. The Hon'ble Supreme Court of India in Mohammed Khaleel (D) through LRs & Ors. v. Jayamma, 2026 SCC Online SC 1191 held that both conditions of readiness and willingness have to be cumulatively seen for making out a case for specific performance. The relevant paragraphs of the said judgment read as follows:

> *"29. The relief of specific performance is one based on equity for enforcing contractual obligations undertaken by the parties. Section l6 (c) of the Specific Relief Act, 1963 (as it stood prior to the amendment dated 01.10.2018) required the person seeking specific performance to specifically aver and prove his continuous readiness and willingness to perform his obligations. A failure to satisfy these requirements would ultimately make him disentitled for the relief of specific performance.*
>
> *30. The tenn 'readiness' refers to the financial capacity, and the term 'willingness' reflects the conduct and intention of the party seeking the relief to perform the contract. Thus, both these conditions cumulatively have to be seen for making out a case of specific performance.*
>
> *31. The principles governing readiness and willingness have been well settled through a long line of decisions of this court. In the case of N.P. Thirugnanam (Dead) by LRs. v. Dr. R. Jagan Mohan Rao , this Court held*

that continuous readiness and willingness to perform the part of the contract is a condition precedent to grant the relief of specific performance. This Court held thus:

" 5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963 (for short "the Act"). Under Section 20, the court is not bound to grant the relief just because there was a valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the fact of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

xxx *xxx* *xxx*

36. Though it was not necessary for the appellants to physically deposit the consideration amount before the Court, they must nevertheless have to place reliable and acceptable evidence on record to show that they possessed sufficient funds to complete the transaction at the relevant time.

37. In the present case, there is no material whatsoever to show that the appellant/plaintiff had the balance sale consideration available either at the time of execution of the agreement, within the stipulated period of four months for performance of the contract, or eyen at the time of filing of the suit in the year 1993. Thus, in our view, the High Court has rightly observed that the availability of funds must be proved with reference to the

relevant point of time and not by relying upon financial documents generated long after the filing of the suit."

95. The Claimant has failed to file valid documents to show capacity or the means to pay the balance consideration execution of the Agreement to Sell or thereafter.

96. The alleged sanction letter sent by Pooja Finelease is clearly a sham document."

58. The learned Arbitral Tribunal in its wisdom indeed has evaluated the evidence threadbare and finally opined on the basis of such reasoning that the LSL is a sham document. In particular, learnedArbitral Tribunal, in para 87 has observed that (i) the rate of interest; (ii) manner of repayment; and (iii) documents required for disbursing the loan are not stated in the LSL. As observed above, the three ingredients find a general mention in the LSL coupled with the fact that CW-2 in his affidavit has affirmed not only the sanction of loan against the property but also the manner in which the disbursal would be completed. It may be noticed that the LSL is a document which accords in-principle approval of the loan and is not the loan agreement itself. A holistic and harmonious appraisal of the cross-examination demonstrates that no question regarding the authenticity, genuineness or veracity of the said LSL was ever put to CW-2 either by the respondent or even by the learned Arbitral Tribunal itself, though certain questions indeed were put by the learned Arbitral Tribunal. Primarily, all the questions that were put to the witness were indeed answered, however, not a single question doubting the authenticity or genuineness of the LSL were at all put to the witness.

59. It is trite that when a witness is produced for cross-examination, questions regarding not only the integrity of the witness himself to discredit his testimony can be put, but also penetrating questions regarding the validity

of the document itself can and ought to be put so as to discredit the document itself. To that extent, *prima facie*, this Court is unable to satisfy itself that the conclusion that the LSL is a "sham document", as observed in para 96 of the Arbitral Award, is based on any evidence at all. This is not a case where it is *ex facie* or *prima facie* apparent that LSL is a sham document or fabricated. The fact that PFL is a registered NBFC has neither been disputed nor doubted by the respondent. The fact that PFL has net worth of Rs.200 Crore has also not been discredited. In a case of specific performance, the claimant is only required to show readiness and willingness in some form or the other, i.e., whether by its own financial capacities or that of a bank or an NBFC or any other sound financial entity. Thus, the genuineness of the source of the LSL or the authenticity of the intent behind such issuance has neither been questioned nor discredited.

60. Whether PFL is capable of extending a loan; whether the validity of the LSL can be extended by PFL; whether PFL would indeed disburse the sale consideration simultaneous with the registration of the sale deed, etc., by themselves, have no remote connection with the nature or genuineness of the LSL itself.

61. Learned counsel for the respondent had argued, and rightly so, that the onus to prove readiness and willingness is squarely on the claimant and not of the respondent. However, as to whether the LSL by itself is a sham document once having been produced by a witness of the PFL which issued the LSL, the onus to demonstrate or prove that the said LSL is a "sham document" would surely be that of the respondent. No questions doubting the credibility of the LSL itself were at all put to CW-2.

62. It is in the aforesaid circumstances alone, this Court humbly observes that the conclusion in para 96 of the Arbitral Award that the LSL is a "sham

document" is merely inferential however, based on no evidence at all. The mere questions surrounding the recitals in the documents by itself would not, *ipso facto*, lead any prudent person to conclude that the LSL is a sham document. It may be significant to note, of course, *prima facie*, that not even a single suggestion that the LSL is either forged or fabricated or a sham document was ever put to the witness. It is well nigh possible, that had such a question been put, the witness would have surely given an answer and depending on such response, the learned Arbitral Tribunal then could have concluded one way or the other. That not having been done, this Court finds no evidence on basis whereof the conclusion was recorded in para 96 by the learned Arbitral Tribunal that the LSL is a sham document.

63. Having noted the above, this Court is now enjoined to examine as to whether the facts which have arisen in the present case would commend themselves as "rare and compelling" so as to pass any interim protection orders in favour of the petitioner. Undoubtedly, the threshold for grant of interim relief is higher in case of an unsuccessful party in the arbitration proceedings. This flows from the judgement in ***Home Care Retail*** *(supra)*. At the same time, while laying down the aforesaid proposition, the Supreme Court, in ***Home Care Retail*** *(supra)*, guided the court exercising powers under Section 9 to invoke the said provision to "*prevent irreparable prejudice and preserve the efficacy of the challenge proceedings.*" So much so, that the Supreme Court also laid down that the rights of such a party cannot be curtailed merely on the apprehension of possible misuse of a statutory provision. It is these principles which ought to guide a court exercising powers under Section 9 invoked by an unsuccessful party.

64. That the petitioner has instituted a petition under Section 34 of the Act challenging the Arbitral Award dated 26.09.2026 is by itself, not a "rare and

compelling" circumstance. That the petitioner has filed the present petition under Section 9 seeking interim directions, too by itself, is also not a "rare and compelling" circumstance. Such action may be initiated by an unsuccessful party under most circumstances and is not a rarity. Thus, what are the rare and compelling circumstances tempered with prevention of irreparable prejudice and preservation of the efficacy of the challenge proceedings, is to be examined.

65. To the submission of the petitioner that the respondent has no asset other than the subject two properties, there has neither been any denial nor controversy. That the claim of the petitioner is only with respect to specific performance of the ATSs dated 04.05.2019 and no claim for damages in the alternate have been claimed, is also not in dispute. That the interim orders of protection were granted by the learned Arbitral Tribunal and continued till the passing of the Award, is also borne from the record and not in dispute.

66. Significantly, the amendment of Specific Relief Act, 1963 (hereinafter referred to as the *'SRA'*) by substitution of Section 10 with the new Section has clearly taken away the discretion which was vested with the Court to grant or refuse specific performance. In other words, grant of specific performance is a mandate, subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16 of the SRA. It is noted that the erstwhile Section 14(1)(a) of the SRA, stipulated that a contract would not be specifically enforceable where non-performance of the same can be compensated in money as an adequate relief. The said erstwhile section 14(1)(a) of SRA has been substituted by the Amending Act, 2018 whereby the proscription from specific performance, if compensation in money could be an adequate relief, has been removed. These amendments were brought into force with effect from 01.10.2018 which is prior to the execution of the

subject ATSs and thus applies with full rigour. Thus, the discretion having been taken away, specific performance of a contract appears to be mandatory subject to fulfilment of certain provisions of the SRA. (See: paras 69 and 70 of ***B. Santoshamma****(supra)*) The said proposition has been reiterated and elucidated upon by a Division Bench of this Court in ***Global Music Junction*** *(supra)*. The relevant paragraphs are extracted hereunder:

> *"38. This Court is of the view that the Amendment Act, 2018 introduces a paradigm shift in law regarding contractual enforcement in India. A glaring instance of the legislative shift is the amendment of Section 14 of Act, 1963 which deletes the earlier sub-clause (a) which prescribed that the contracts for the non-performance of which compensation in money was an adequate relief would not be specifically enforced, meaning thereby that the plea that a party could be compensated in monetary terms as damages for breach of the contract and resultant refusal of interim injunction on the said ground, is no longer a ground to refuse specific performance of the contract. Consequently, the Amendment Act, 2018 does away with the primacy given to damages as a relief over specific performance. It shifts the focus from the previous default remedy of award of damages for breach of contract to enforcing specific performance of contracts……..* (Table not extracted)
>
> *39. This Court is of the view that by virtue of the changes brought about by the Amendment Act, 2018, the Courts will now grant specific performance unless the claim for relief is barred under limited grounds prescribed in the statute. This change is aimed at providing greater protection of contractual expectations by ensuring that a non-defaulting party can obtain the performance it bargained for. The Amendment Act, 2018 intends to discourage errant parties who may deem it more viable to breach a contract than perform it, as the cost of damages may still be less than the cost of the performance.*
>
> *xxx xxx xxx*
>
> *42. Consequently, the Amendment Act, 2018 has changed the nature of specific relief from an equitable, discretionary remedy to a statutory remedy. It has made specific performance of a contract a general rule rather than an exception.*
>
> *xxx xxx xxx*
>
> *45. Moreover, as the legislative shift is towards stronger enforcement of contracts, this Court is of the opinion that the judgments of this Court in*

similar lines of Infinity Optimal Solution Pvt. Ltd. (IOS) v. Vijender Singh (supra) to the extent they hold that there is a presumption that any commercial transaction can be terminated in the absence of a termination clause by giving a reasonable notice and/or contracts for the non-performance of which compensation in money was an adequate relief would not be specifically enforced are no longer good law."

(emphasis supplied)

67. Reading the facts alongwith the amendments to SRA, it appears that in case the petitioner is able to demonstrate that the conclusion of LSL as a sham document is based on no evidence and the said document itself is held to be a valid and creditworthy document, it would be able to establish its "readiness and willingness" which is a necessary concomitant of Section 16(c) of the SRA. This is all the more relevant as the discretion which was hereto before available with the Court having been taken away, instead, specific performance having been mandated read with the omission/substitution of erstwhile Section 14(1)(a) SRA and tempered with the analysis made hereinabove, could be a "compelling" circumstance to prevent not only "irreparable prejudice" but also at the same time, "preserve the efficacy of the challenge proceedings" under Section 34 of the Act.

68. Another compelling and rare circumstance appears to be that of the respondent having no other properties/assets other than the two subject properties which, if not preserved, may render the proceedings under Section 34 of the Act redundant and infructuous. As observed above, the mere filing of a petition under Section 34 itself is neither rare nor compelling, however, read with the aforesaid observations and analysis, coupled with the dicta of the Supreme Court, interim orders to ensure preservation of the efficacy of the challenge, in the present piquant facts, may have to be passed.

69. ***Home Care Retail*** *(supra)* had clearly enunciated that mere apprehension of a possible misuse of a statutory provision ought not to curtail the right of an unsuccessful party to seek interim protection orders. The facts obtained in the present case commend and align themselves with the said principle/proposition, in the humble opinion of this Court.

70. In the opinion of this Court, *prima facie,* the petitioner has been able to demonstrate a rare and compelling case coupled with establishing a strong case in its favour on a higher pedestal than in ordinary circumstances. The cumulative analysis and observations noted above clearly tilt the balance in favour of the petitioner inasmuch as not only are the circumstances rare and compelling but the efficacy of challenge under Section 34 of the Act would also be rendered nugatory if the subject properties are not preserved. Clearly prejudice would be caused to the petitioner in case restraint orders are not passed inasmuch as not only would the petitioner be put to irreparable loss but also that the petitioner cannot be compensated in monetary terms in view of the amended provisions of the SRA.

71. Thus, this Court is inclined to pass interim protective orders in favour of the petitioner.

72. A large number of judgements were cited by both the parties in favour and in support of their contentions and submissions. Since this Court has *prima facie* come to a conclusion that the finding recorded by the learned Arbitral Tribunal in para 96 of its Award is based on no evidence, the judgements relied upon by the respondent regarding non-interference in arbitral awards, particularly in respect of findings rendered on fact may not be fully applicable to the present case. The guiding principles enunciated by the Supreme Court in ***Home Care Retail*** *(supra)*, in the humble opinion of this Court clearly cover the facts of the present case, and thus, the other





judgements, though there is no quarrel to such propositions, may also not be applicable to the facts of the present case.

73. The respondent had relied upon the judgement of the Supreme Court in ***Ritu Saxena*** *(supra)* to contend that mere approval of loan by the bank or NBFC, as in the present case, would not tantamount to readiness and willingness and thus, reliance on LSL is insufficient to seek specific performance of the ATS. The facts in ***Ritu Saxena*** *(supra)* appear to be different from those obtained in the present case. In ***Ritu Saxena*** *(supra),* the appellant/plaintiff asserted readiness and willingness based on her own financial capacity coupled with the approval of loan by ICICI Bank. Finding that the appellant/plaintiff could not establish her or her husband's independent financial capacity, the Supreme Court held that the mere approval of the loan was insufficient to prove "readiness and willingness". While in the present case, the petitioner's case of readiness and willingness is completely hinged on the LSL coupled with the assertion of CW-2 in the witness box that PFL is ready and willing to pay the entire sale consideration. There was no assertion at all that the petitioner is having the financial capacity to pay the sale consideration. It is in this context that the LSL needs to be appreciated. Thus, on facts, the cases appear to be distinguishable.

74. Resultantly, the respondent is restrained from selling, alienating, creating any third-party rights or any encumbrances of whatsoever nature in the subject properties till the next date of listing.

75. The respondent is permitted to file its reply within three weeks from date.

76. Rejoinder thereto, if any, be filed within two weeks thereafter.

O.M.P.(I) (COMM.) 461/2026 & O.M.P.(I) (COMM.) 462/2026

77. The respondent is permitted to file its reply within three weeks from date.

78. Rejoinder thereto, if any, be filed within two weeks thereafter.

79. List on 02.12.2026 alongwith O.M.P. (COMM) 471/2026 and O.M.P. (COMM) 472/2026.

TUSHAR RAO GEDELA
(JUDGE)

OCTOBER 28, 2026/*rl*

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