

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ARBITRATION PETITION (L) NO. 1366 OF 2022**

Chetan Iron LLP

... **Petitioner****V/s.**

NRC Ltd.

... **Respondent**

Mr. Anupam Surve a/w. Mr. Shahbaz Khan Pathan i/b. Mr. Abhinandan M. Waghmare for the petitioner.

Mr. Vikram Nankani, Senior Advocate, Mr. Summet Nankani, Mr. Prashant Asher and Mr. Naishadh Bhatia i/b. Crawford Bayley & Co. for the respondent.

CORAM : G.S.KULKARNI, J.**RESERVED ON : 20 January, 2022****PRONOUNCED ON: 24 January, 2022****JUDGMENT:**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short "**the Act**") whereby the petitioner has prayed for interim measures pending the arbitral proceedings. The dispute between the parties has arisen under a contract for sale of scrap dated 21 September 2021 titled as "**Scrap Sale Order**" (for short '**the contract**'), issued by the respondent in favour of the petitioner, inter alia for a sale of scrap material (Reinforcement Steel, Structural Steel, SS,

Aluminum etc.) of the following description as set out:-

1. Scrap of Plant and Machinery (Structural Steel Scrap)
2. Reinforcement Steel scrap – inclusive of all Demolition Charges for structures and plant building upto ground level
3. SS Scrap
4. Aluminum Scrap.

2. It also appears to be not in dispute that the parties consented to the following addition to be made to the contract on 26 October 2021.

“Note:- Items/material other than ‘plant & machinery’ related items, Total Qty upto 200 MT.”

3. The contract provides for general terms and conditions. Clause (3) thereof is the arbitration agreement between the parties. Clause (5) provides for ‘Validity of the Contract’ to provide that the validity of the contract would be upto 30 June 2022. It is provided that the petitioner (buyer) should lift the scrap items from the identified areas on regular basis and on accumulation of scrap materials. It further provides that termination from either side will require 15 days notice in advance. The other relevant clause is Clause 19 which provides that the sale shall be on “as is where is basis” and on “ground clearance basis”, and provides that the items shall be cleared without sorting or removal of any part, and a pick and choose arrangement of collection would not be permitted. It also provides that entire lots should be cleared as directed and that lots shown should be completely removed and the site should

be cleared fully and certified by the designated officer. Clause 20 provides that at the time of removal of Scrap material, if any usable/good material is found, the respondent would have right to hold/retain those materials. In the course of execution of the contract, in regard to the payments received from the petitioner, the respondent maintained a ledger account of the petitioner, a copy of which is annexed at 'Exhibit F' of the petition, which shows that the petitioner had paid an amount of Rs.2,14,11,212/- and in addition to that it had paid an advance amount of Rs.21,96,468/- which was the credit balance available to the petitioner in such account.

4. The case of the petitioner is that the execution of the contract, was smoothly taking place, until on, 24 November 2021 an unusual e-mail was received from the respondent to the petitioner. According to the petitioner, addressing such mail was an attempt on the part of the respondent to create some record, as surprisingly the petitioner was called upon to stop further activities of lifting the material effective from the next day to be followed by demobilization of deployed resources. This on the ground that the petitioner should submit an offer "as soon as possible" purportedly for complete plant and machinery and demolition of the building. The said mail can be noted

which reads thus:-

“ Wed. Nov. 24, 2021 at 4:20 PM

Dear Paresh bhai,

Pl ref our detailed discussion over phone reg your lifting of loose material scrap from Nylon Plant, under progress.

As briefed to you, our objective and priority is disposal of “complete plant & machinery and demolition of Building”.

You are requested to submit your Offer for that asap for further discussion with and finalization by our Head – Commercial (HO-A'bad).

After lifting loose material and few peripherals, whatever is now left as on date, will be covered in the above finalization.

Hence, you are requested to stop further activities and lifting, eff tomorrow, followed by demobilization of deployed resources.

[Regards]

Sandip Shah

90 999 38 999

AGM & Head – Techno Commercial

NRC, Mumbai.”

5. The petitioner responded to the above e-mail of the respondent, informing that the petitioner was carrying out contractual work as awarded by the respondent, pertaining to the scrap and demolition of nylon plant as per the contract being the work order dated 21 September 2021. The petitioner stated that as it was performing the contracted work as per the work order, hence the petitioner should not be stopped in continuing with the contractual work, and it would be continued to be performed as per the official documentation available

with the petitioner. It was also recorded that the commercial rates were discussed and were closed as per the agreed negotiations. The respondent was also informed that if the petitioner was called to stop the work forcefully, the petitioner had no choice but to resort to legal proceedings.

6. The petitioner thereafter addressed its advocate's notice dated 25 November 2021 to the respondent, inter alia recording about the lawful award of the contract to the petitioner by the respondent, and that the petitioner was carrying out the contractual work of lifting the scrap as per the Rules and Regulations as also as per the terms and conditions of the contract. It was recorded that suddenly on 25 November 2021, the respondent stopped the work of the petitioner as also the petitioner was threatened not to carry out the work. It was recorded that the petitioner was suffering huge losses due to such conduct on the part of the respondent. The petitioner hence called upon the respondent to withdraw the said e-mail of the respondent calling upon the petitioner to stop work. The respondent was also informed that the respondent was not acting in accordance with law.

7. By a further notice dated 1 December 2021 of the petitioner's

advocate addressed to the respondent, the petitioner again reiterated the various happenings under the contract interalia recording that the petitioner was suffering on day-to-day basis on account of the respondent's conduct. It was also recorded that in the event the contract was to be terminated, the agreement under Clause 3 provided for 15 days notice to be issued by either of the parties which was also not followed by the respondent. The petitioner also invoked the arbitration agreement and called upon the respondent to appoint an arbitral tribunal.

8. It appears that the notices of the petitioner's advocate were not replied by the respondent. It is the petitioner's case that the respondent, however, had a different motive, as on 16 December 2021 the petitioner received a letter of the respondent which was in fact dated 17 November 2021, which according to the petitioner, was again intended to create a false record. By such letter, the respondent informed the petitioner that the petitioner was warned of violating the safety norms/requirements time and again reminders were issued by the respondent in that regard. It was recorded that the petitioner had no expertise in such activities, and that certain works undertaken by the petitioner were outside the scope of the contract. On behalf of the

petitioner much emphasis is laid on such letter which according to the petitioner was belatedly served on the petitioner on 16 December 2021 that is after one month and one day, from the actual date referred in the said letter. The petitioner has contended that surprisingly alongwith the said letter, the respondent annexed a note of one Shri.Vilas S. Supnekar, Consultant (Safety), dated 14 November 2021, purportedly recording violation of safety norms by the petitioner. It is contended by the learned Counsel for the petitioner that the contents of the said note are also dubious as they are in the absence of any prior existing material exchanged between the parties like notices, joint inspection etc. Learned Counsel for the petitioner has also submitted that to such report which was dated 14 November 2021, surprisingly the photographs dated 22 November 2021 were annexed, which clearly showed a malafide intention on the part of the respondent against the petitioner.

9. The petitioner has contended that it is on the above backdrop surprisingly a notice for Online Auction was issued by the respondent for sale of nylon plant and building structure on “as is where is basis”. The date for online auction was notified to be on January 11, 2022 between 3 p.m. to 4 p.m. The petitioner, in these circumstances,

addressed a notice of its Advocate dated 4 January 2022 calling upon the respondent not to create third party interest in respect of the work which was awarded to the petitioner, under the contract in question, under the online auction as proposed by the respondent on 11 January 2022. It appears that the online auction was thereafter postponed to 18 January 2022 to be held between 12 noon to 1 p.m.

10. It is on the above circumstances, the petitioner has approached this Court praying for interim measures under Section 9 of the Act.

The petitioner has prayed for the following reliefs:-

“a. That pending the hearing and final disposal of the arbitration this Hon’ble Court be pleased to order and direct the Respondent to comply with Sale-Order for Scrap material dated 21st September 2021 (as amended on 25th October 2021);

b. That pending the hearing and final disposal of the arbitration, the Respondent be restrained by an order and injunction of this Hon’ble Court from in any manner creating any third party rights in respect of the scrap of Plant and Machinery of the Respondent at NRC Site and from intermeddling or interfering with or exercising in any manner control or dominion over, or dealing with or disposing of any part thereof;

c. That pending the hearing and final disposal of the arbitration, this Hon’ble Court be pleased to stay the effect and implementation of the e-auction / tender and restrain the Respondent from issuing any auction / sale in respect of the scrap of Plant and Machinery at NRC Site;

d. That pending the hearing and final disposal of the arbitration, the Respondent, by themselves, their servants and agents, be restrained by an order and injunction of this Hon’ble Court from in any manner preventing or obstructing the Petitioner from entering into or remaining upon the NRC site and carrying-out the work as required under Sale-Order datd 21st September 2021 (as amended on

26th October 2021);

- e. For interim and ad-interim reliefs in terms of prayer clauses (a) to (d) above;
- f. For costs.
- g. For such further and other reliefs as the nature and circumstances of the case may require.”

11. The Court heard the parties on the present petition on 18 January 2022, when an order came to be passed recording that the auction had already taken place on the very day, however, the work order was not issued by the respondent to the successful bidder. The Court, in these circumstances, observed that till the parties are heard on the adjourned date, work order be not issued. The said order reads thus :

1. Stand over to **20 January, 2022** to enable the respondent to place on record reply affidavit setting out their opposition to the petition.
2. It appears that the auction was to be held today and as informed by Mr. Surve, learned counsel for the petitioner, it was to be held between 2.30 p.m. to 5.30 p.m. However, Mr. Nankani, learned senior counsel for the respondent informs that the auction has already taken place at the time the Court is passing this order, which is at 1.42 p.m. Mr. Nankani, on instructions, has stated that Work Order is yet to be issued and only email communication to the successful bidder has been made by the respondent.
3. Be that be the case, let the Work Order be not issued till the adjourned date of hearing. Ordered accordingly
4. On the adjourned date of hearing, the parties would be heard on their rival contentions and an endeavour would be made to pass appropriate orders.
5. Let the reply affidavit be served by tomorrow evening on the petitioners.

12. On behalf of the respondent, a reply affidavit has been filed opposing the petition. In such affidavit although objections are raised in regard to the seat of the arbitration being outside the jurisdiction of this Court, Mr.Nankani learned Senior Counsel for the respondent has not pressed such objection and rightly so. The reply affidavit points out the steps taken to undertake the e-auction with effect from 11 January 2022. It is stated that on 18 January 2022 the e-auction was undertaken and completed and on its completion an e-mail was addressed to the successful participant. The affidavit states that in the said e-auction an offer has been received by the respondent in the sum of Rs.40 crores. The affidavit also raises an objection that this is not a case where the petitioner can seek specific performance of the contract as the contract, in its nature itself is determinable. The affidavit on the basis of the correspondence which is noted above, states that the petitioner was not in a position to perform the contractual work as awarded to the petitioner and/or that the petitioner was not interested to perform the work. It is stated that the petitioner was also resorting to malpractices with a view to obfuscate the completion of the e-auction. The affidavit accordingly prays that the petitioner is not entitled to any interim relief.

13. Mr.Surve, learned Counsel for the petitioner, drawing the Court's attention to the documents as placed on record, would submit that a concluded contract under sale-order in question subsists between the parties and which was being appropriately executed by the petitioner. He submits that without the petitioner being informed of any substantive grievance, the respondent in an illegal manner has prevented the petitioner from performing the work in question of removing the scrap, for which at all material times advance payment was made by the petitioner to the respondent. He submits that what is most material is that although clause (5) of the general terms and conditions specifically provide for a 15 days notice to be issued by either parties to terminate the contract, the respondent has not terminated the contract and without terminating the contract, has sought to issue online auction notice to auction the very sale which was awarded to the petitioner under the contract in question. It is submitted that all the letters issued by the respondent with effect from 24 November 2021 and thereafter, clearly showed the motives on the part of the respondent to prevent the petitioner from performing the contract so as to award the contract to a third party. Mr.Surve has submitted that the apprehensions of the petitioner have come true when the very same contract as awarded by the respondent to the

petitioner is now being awarded to a third party, as being done by issuance of the Online Tender in question. Mr.Surve would hence submit that this is a clear case where the respondent despite subsistence of its contract with the petitioner, has taken a position that the respondent would nonetheless award the said contracted work to a third party and which was certainly not permissible for the respondent to do so, during the subsistence of the petitioner's contract. It is therefore, submitted that the petitioner is entitled for the reliefs as prayed for.

14. Mr.Nankani, learned Senior Counsel for the respondent would submit that none of the contentions as urged on behalf of the petitioner ought to be accepted by the Court. It is his submission that it is a large plant of the respondent which is now sought to dismantled and for such work an online auction was proposed by the respondent. Referring to the document of "E-auction", he submits that such document itself indicates the nature of the work in "Annexure I", which according to him, may include the work which was awarded to the petitioner. It is submitted that the petitioner notwithstanding the contract in question cannot claim any right in the respondent issuing an e-auction.

15. Mr.Nankani would next submit that in any event the petitioner is not entitled to the reliefs as prayed for in view of the provisions of Section 14(d) of the Specific Relief Act,1963, as the nature of the contract as awarded to the petitioner itself is determinable which is clear from the termination clause which requires a 15 days notice to be issued by either party who is intending to terminate the contract. Mr.Nankani would submit that the only remedy for the petitioner if it feels aggrieved by any action of the respondent, is to seek damages and which can only be in an adjudication in the arbitral proceedings. Mr. Nankani, on instructions, has also submitted that his client has no objection to refund the petitioner the advance of Rs.21,96,468/- accepted by the respondent.

16. In regard to the e-auction, Mr. Nankani has submitted that the e-auction as undertaken by the respondent being for the entire plant and machinery, hence, the contract awarded to the petitioner ought not to come in the way of the respondent awarding the work as comprised under the online auction. It is his submission that the petitioner has raised disputed issues which can be gone into only in the arbitral proceedings. He accordingly submits that the petition ought not to be entertained and be dismissed.

17. Mr.Surve, in rejoinder would submit that the provisions of Section 14(d) of the Specific Relief Act are not applicable inasmuch as there is no termination of the contract in question as awarded by the respondent to the petitioner. He submits that the nature of the contract as awarded to the petitioner is absolutely clear and that there was no ambiguity whatsoever as the contract was also partly performed, which also pertained to the nylon plant as clear from the petitioner's quotation dated 20 September 2021 and acceptance of the same in the contract.

18. Having heard learned Counsel for the parties and having perused the record, it is quite clear that the contract as awarded by the respondent to the petitioner has not been terminated and/or that the contract is partly performed by the petitioner by lifting some material on payment of the price to the respondent. However, even in these circumstances, when a question arises before the Court, to consider granting of reliefs in the nature as prayed for by the petitioner, in my opinion, the basic consideration for the Court would be to examine as to what is the nature of the contract between the parties. Perusal of the contract and the general terms and conditions as appended thereto, more particularly, Clause (5) thereof, clearly indicate that the parties

have provided that either of the parties can terminate the contract with a fifteen days notice to be served on the other party. Further such clause also provides for the validity of the contract up to 30 June 2022. It is thus clear that nature of the contract in question is determinable. If that be so, then Mr.Nankani would be correct in his contention that the provisions under sub-clause (d) of Section 14 of the Specific Relief Act which provides that a contract which is in its nature determinable, cannot be specifically enforced becomes applicable.

19. In the context of Section 14(d) of the Specific Relief Act, another provision which would become relevant is Section 41 of the Specific Relief Act, which provides as to when an injunction would be refused or when it cannot be granted. Section 41(e) provides that an injunction cannot be granted by the Court to prevent the breach of a contract, the performance of which would not be specifically enforced. Thus once the nature of the contract itself is such, that it cannot be specifically enforced, Section 41 (e) of the Specific Relief Act would stare at the petitioner when the petitioner claims a relief of an injunction. Certainly the principles which are embodied in Section 14(d) read with Section 41(e) of the Specific Relief Act are applicable even when the Court considers an application under Section 9 of the

Act for interim measures. It is a settled principle of law that although Section 9 is a remedy available to the parties having an arbitration agreement between them, however, when a relief for grant of an injunction is prayed for, certainly the Court would be guided by the principles as contained in the Specific Relief Act read with the provisions of Order 39 of the Code of Civil Procedure.

20. In the above context, it would be apposite to consider the position in law. In the celebrated commentary of **Pollock and Mulla** on **“The Indian Contract Act and the Specific Relief Act”**, (14th Edn, Volume II, page 1939), the views of the learned authors on ‘determinable contracts’ being not enforceable as per the provisions of Section 14(1)(c) (pre 2018 amendment) of the Specific Relief Act need to be noted, which read thus:

“Clause (c): Determinable Contracts

... ..

A contract, which is in its nature revocable, or determinable as described in Specific Relief Act, is not enforceable by specific performance. Specific performance is not decreed if the defendant would be entitled to revoke or dissolve a contract when executed, as in the case of a contract containing an express power of revocation, since it would be idle to do that which might instantly be undone by one of the parties.

(emphasis added)

21. The following decisions would throw light on the principles of

law the Courts have consistently followed in refusing injunctory reliefs and specific performance of the contract, when the nature of the contract is determinable.

In **Indian Oil Corporation Ltd v Amritsar Gas Service and Ors**,¹ the Supreme Court was considering a dispute between the parties arising under a distributorship agreement which permitted either party to terminate the agreement by 30 days' notice to the other party without assigning any reason for the termination. A dispute had arisen between the parties on wrongful termination of the agreement. The dispute was referred to arbitration. The arbitral tribunal in its award granted restoration of the distributorship as one of the reliefs to the claimant. This relief granted by the arbitral Tribunal was challenged by the appellant under Section 34 asserting the applicability of Section 14(1)(c) of the Specific Relief Act contending that when the arbitral tribunal having noted that the contract was determinable, it could not have proceeded to grant a relief of specific performance of the contract. In such context, the Supreme Court held that the contract in question by its nature was determinable, hence granting the relief of restoration of the distributorship was contrary to the mandate of Section 14(1)(c) of the Specific Relief Act. In paragraph 12 it was observed thus :-

¹ (1991)1 SCC 533

“12.... ... The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. **Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is ‘a contract which is in its nature determinable’.** In the present case, it is not necessary to refer to the other clauses of sub section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to ‘the law governing such cases.’ The grant of this relief in the award cannot, therefore, be sustained.

(emphasis added)”

22. In **Spice Digital Ltd. vs. Vistaas Digital Media Pvt. Ltd., 2012 SCC Online Bom 1536**, learned Single Judge of this Court was considering an appeal filed under section 37 of the Act against an order of the arbitral tribunal passed under Section 17 of the Act, refusing a relief of interim injunction to the applicant on the ground that the contract between the parties was determinable. It was held that the tribunal was right in refusing to grant injunction under section 17 of the Act, as the same would have amounted to granting a relief against the provisions of the Specific Relief Act. The Court, accordingly, rejected the appeal. Mr.Justice R.D.Dhanuka speaking for the bench observed thus:

“20. In my view, the arbitral tribunal was right in its prima facie view that clause 6.2 read with clause 12.1 shows that the contract is determinable during the lock in period. Section 14(1) (c) provides that the contract which in its nature is determinable, cannot be specifically enforced. The Judgments of the Supreme Court in the case of Indian Oil Limited (supra), Delhi High Court and also the judgment of the Supreme Court in the case of Cox and Kings are clearly applicable to the facts of this case. In my view, the arbitral tribunal has interpreted the terms of the contract and has recorded prima facie finding that the contract is determinable and thus no specific performance of such contract can be enforced in view of section 14(1)(c). This interpretation of the arbitral tribunal is a possible interpretation and thus no interference is warranted at this stage.

21. In my view, the injunction sought by the Appellant under section 17 of the Arbitration Act, 1996 for the contract which is determinable or is terminated even according to the appellant, such injunction is statutorily prohibited. In my view, at the interim stage, the arbitral tribunal while deciding application under section 17 and the court deciding application under section 9 of the Arbitration Act, 1996 cannot continue operation of such determinable contract or the same having been terminated otherwise it would amount to re-writing the contract. In my view the arbitral tribunal was thus right in refusing to grant injunction under section 17 of the Arbitration Act, 1996. Even otherwise, the arbitral tribunal has given a finding of fact after considering the facts, provisions of the agreement and the provisions of Specific Relief Act and thus no interference is warranted by this court with such finding of fact recorded by the arbitral tribunal at this stage.”

23. In **“Mittal Services Vs. Escotel Mobile Communication Ltd.”**²

learned Single Judge of Delhi High Court in the context of a franchisee agreement, observed that the prayer of the plaintiff therein, that the defendant be restrained by an injunction from appointing another franchisee in the concerned territory, could not have been granted, as the contract in the said case contained a clause which provided for

2 AIR 2003 Delhi 410

termination of the agreement with a ninety days advance notice in writing. It was also observed that the agreement was for a specific period of five years and that too determinable by any party, by serving a 90 days advance notice. In these facts, the Court observed that Section 41(e) of the Specific Relief Act would get attracted which provided that no injunction can be granted to prevent breach of the contract, the performance of which is not specifically enforceable. It was observed that as the agreement in its nature was determinable by giving a 90 days advance notice in writing, the agreement obviously was one which could not have been specifically enforceable. The Court also referring to the decision of the Division Bench of the Delhi High Court in “**Rajasthan Breweries Ltd. Vs. Stroh Brewery Company**”³ wherein the Division Bench had upheld the findings of the learned Single Judge which were to the effect that when an injunction prayed for was statutorily prohibited on a conjoint reading of Section 41 and 14(1)(c)⁴ of the Specific Relief Act, as the contracts in question were determinable in nature, no injunction could be granted, and this would be the mandate of law. I am in complete agreement with a view taken by the learned Single Judge of this Court in **Spice Digital Ltd.** (supra) as also the decision of the learned Single Judge of the Delhi High Court

3 AIR 2000 Delhi 450

4 As it then stood prior to 2018 Amendment.

in **Mittal Services** (supra).

24. The position in law as laid down in the above decisions is fully applicable to the facts of the present case which in my clear opinion, dis-entitles the petitioner for any reliefs as prayed for. It needs to be observed that an exception to Section 41(e) of the Specific Relief Act as carved out in Section 42 of the Specific Relief Act is also not applicable in the facts of the present case. In any event the petitioner cannot be granted any relief applying the well settled principle that an interim relief can be granted only in aid of and ancillary to the main relief. It is prima facie seen that a relief of specific performance or an injunction cannot be granted to the petitioner, hence, a relief of a temporary injunction as an interim measure cannot be granted to the petitioner, pending the arbitral proceedings.

25. Now to discuss the reliefs as prayed for by the petitioner, it is seen that the reliefs as prayed for, in terms of the prayer clause (a) and (d) are in the nature of a final relief, that is, they are as good as in the nature of granting a specific performance of the contract, which for the aforesaid reasons, certainly cannot be granted. Insofar as prayer clause (b) and (c) are concerned, they are in the nature of an injunction

which cannot be granted to the petitioner in the context of the contract in question, which cannot be ordered to be specifically performed.

26. In the aforesaid circumstances, the petition needs to fail. It is accordingly dismissed. No costs.

27. Needless to observe that the observations as made above are prima facie and are only in the context of the present proceedings. The rights and contentions of the parties in the event the disputes are referred to arbitration, are expressly kept open.

28. At this stage Mr.Surve, learned Counsel for the petitioner seeks continuation of the ad-interim order passed by this Court. In the facts of the present case, such protection cannot be granted. It is accordingly rejected.

29. At this stage Mr.Surve, learned Counsel for the petitioner has made a request that the disputes as arisen between the parties be referred to arbitration by appointing a sole arbitrator. Mr.Nankani, learned Senior Counsel for the respondent, on instructions, would not be averse to such course of action as suggested by Mr.Surve. There is

consensus between the parties that the disputes be referred to arbitration, and this Court appoints an arbitrator. In the circumstances, the suggestion needs to be accepted. Accordingly Mr.Vikramaditya Deshmukh, Advocate of this Court is appointed as a sole arbitrator to adjudicate the disputes and differences between the parties as arisen under the Scrap Sale Order (“the said contract”) dated 21 September 2021. The learned Sole Arbitrator before entering the reference shall make a declaration as per the provisions of Section 11(8) read with Section 12(1) of the Act and furnish copies of the same to the parties as also forward the same to the Prothonotary and Senior Master of this Court to be placed on record. The parties are at liberty to approach the learned Sole Arbitrator within a period of 10 days from today on a mutual convenient date as may be fixed by the learned Arbitrator. The fees of the arbitral proceedings shall be shared by the parties in equal proportion and the same shall be governed as per the Fourth Schedule to the Act. All contentions of the parties on merits are expressly kept open.

30. Mr.Nankani, at this stage, fairly states that an advance amount of Rs.21,96,468/- accepted by the respondent from the petitioner, shall be refunded to the petitioner within two weeks from today, which shall be

without rights and contentions of the respondent in the arbitral proceedings.

31. Needless to observe that the above arrangement is subject to the rights of the petitioner to assail the rejection of its Section 9 petition by the aforesaid order. All contentions in that regard are expressly kept open.

32. Disposed of in the above terms. No costs.

33. Office to forward a copy of this order to the learned Arbitrator on the following address:-

1W Dilwara West, 1st Floor,
Next to Cooperage Tel.Exchange,
Maharshi Karve Road,
Mumbai-400021
Mob.No.9820675957
Email:vikram.deshmukh@gmail.com

(G.S.KULKARNI, J.)