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

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Reserved on: 7th July, 2022

Pronounced on: 23rd August, 2022

+ O.M.P.(I) (COMM.) 192/2022

ROYAL ORCHIDS

..... Petitioner

Through: Mr. Mandeep Singh Vinaik
with Ms. Anjali Sharma,
Mr. Deepak and
Mr. S.K. Sagar, Advocates.

versus

KULBIR SINGH KOHLI & ANR.

..... Respondents

Through: Mr. Kunal Tandon with
Mr. Jaspreet Singh and
Mr. Manu Bhardwaj,
Advocates.
(M): 9650145159

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J.

1. The present petition has been preferred by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter called as "Act"), against the respondents seeking urgent interim orders for protection to preserve the subject matter of arbitration i.e. property bearing no. K-1, Basaidarapur, Rajouri Garden, New Delhi.

2. As per the petitioner, the parties entered into a MOU dated 03.03.2022, in terms of which the property had to be developed by the petitioner at its own cost in lieu of being paid 30% of the sale

proceeds. The petitioner paid an advance sum of Rs. 1 crore to the respondents and the remaining part of the initial deposit were ready and available with the petitioner. However, the respondents did not take the same and began to avoid the petitioner.

3. It is the case of the petitioner that the respondents have been deferring their obligation under false pretext. The petitioner has got information that instead of proceeding with their obligations under the MOU, the respondents are re-negotiating other deals with respect to the property in question. It is alleged that the respondents are in breach of the terms of MOU dated 03.03.2022.

4. It is seen from the record that the two respondents are spouses and are co-owners of the plot of land and in possession of the free hold property in question. The area of the plot of land is 757.50 sq yds. It is the case of the petitioner that being interested in engaging the services of a reputable builder, the respondents reached out to the petitioner and expressed a desire to collaborate in the construction and development of the project, which is subject matter of the present proceedings.

5. Thus, a Memorandum of Understanding dated 03.03.2022 (hereinafter called “MOU”) was entered into between the parties. The salient features of this MOU were that in consideration of getting 30% of total sale consideration of the resultant product and infrastructure facility, the petitioner would employ its technical expertise and resources and would bear the cost of construction and development of the property in question.

6. It was the understanding in the MOU that an initial amount of

Rs. 1 crore would be paid by the petitioner to the respondents. The respondents had taken a loan against the security of the subject property from Yes Bank Ltd. and the balance payable was a sum of Rs. 40, 291, 247.61/-. It was the understanding that the sum payable to Yes Bank Ltd. would be paid by the petitioner and adjusted in the amounts payable as initial amounts to the respondents.

7. Thus, the petitioner has contended that the petitioner paid a sum of Rs. 1 crore as per understanding of the respondents, which amount was duly encashed by the respondents. As per the petitioner, it has at all times been ready and willing to pay the balance amount in accordance with the MOU. Infact, the petitioner had caused to be prepared, cheques for the balance amount payable by way of initial amount from its bankers. It is the case of the petitioner that at that point of time, the petitioner had adequate balance in its accounts to make the said payment.

8. As per the petitioner, it was the understanding that respondent no. 1 would personally visit the office of the petitioner to collect the said cheques. However, on being notified that the said cheques were ready, respondent no. 1 began to state that he was suffering from high blood pressure and that he had been advised to rest for some time.

9. It is, thus, submitted on behalf of the petitioner that the respondents avoided their obligations under false pretext. In the meanwhile, the partners of the petitioner firm got information that the respondents were re-negotiating other deals with other builders. On getting to know the plans on the part of the respondents, petitioner caused to be issued a letter dated 27.05.2022 through its advocate,

calling upon the respondents to fulfil their part of the contract. In reply, respondents sent a letter dated 29.05.2022.

10. Thus, as per the petitioner, the respondents have a clear intent to commit breach of their obligations of MOU, which is a binding contract between the parties, and on which the petitioner has already acted to its financial detriment. The petitioner states that in pursuance of the execution of the said MOU, it had already caused to be mobilised, various resources both in terms of manpower, finance, equipment and material. As per the MOU, the last date for compliance of their obligations by the respondents was 30.05.2022. While the petitioner has been demonstrating its readiness and willingness to fulfil its obligations, the respondents have avoided to comply with the terms of the MOU.

11. It is envisaged in the MOU that all disputes pertaining to the agreement shall be referred to an arbitrator appointed under the Act. Clause 21 of the said MOU reads as follows:-

“21. That any disputes pertaining to this Agreement shall be referred first to an Arbitrator appointed under the Arbitration and Conciliation Act and thereon the Courts at New Delhi shall have exclusive jurisdiction to the subject matter of this Memorandum of Understanding.”

12. Being faced with breach of contract on the part of the respondents, the petitioner has invoked arbitration and has issued a notice to the respondents and their advocate vide letter dated 04.06.2022 seeking appointment of an arbitrator.

13. Thus, it is the contention of the petitioner that the petitioner has a right vested in it to proceed with the work envisaged under the MOU

and to complete the project as envisaged. It is contended that the size, location and nature of the plot as being one of a particular size and its free hold nature, make this site unique and special. If the petitioner is wrongfully deprived of this project, there will not exist any measure to compute any accurate damages that might be suffered. It is contended that the petitioner is entitled to seek a decree or award directing specific performance of the said MOU and an award directing the respondents to ensure full compliance of their obligations. Hence, it is prayed that an injunction may be granted restraining the respondents from selling, alienating or creating any third party interest in the land which was to be used for developing the project in question. If the subject matter is not secured, the petitioner will suffer grave harm and loss.

14. On the other hand, on behalf of the respondents, it is contended that the present petition is not maintainable as the MOU executed between the parties is in its nature determinable and hence cannot be specifically enforced as per Section 14(d) of the Specific Relief Act, 1963. The MOU is a revocable agreement.

15. It is contended that the MOU is in the nature of a private commercial transaction, as the said MOU pertains to a construction and re-development contract between two private parties. Thus, even in the absence of a specific clause authorising and enabling either party to terminate the agreement in the event of happening of an event specified therein, in a private commercial transaction, the agreement can be terminated without assigning any reason by serving a notice or otherwise. At the most, if the termination is found to be bad in law for

any reason, the remedy would be to seek compensation for wrongful termination.

16. It is further contended on behalf of the respondent that as per Section 14(b) of the Specific Relief Act, the performance of an act, which involves the performance of a continuous duty which the court cannot supervise, cannot be specifically enforced. A bare perusal of the MOU shows that it casts a continuous duty upon the petitioner to perform the services, which the court cannot supervise, and thus, cannot be specifically enforced.

17. It is further the case of the respondents that injunction prayed cannot be granted as the performance of the MOU cannot be specifically enforced. Learned counsel appearing for the respondents relies upon Section 41(e) of the Specific Relief Act, 1963 to contend that no injunction can be granted to prevent breach of a contract, the performance of which would not be specifically enforced. It is submitted that the MOU executed between the parties is a contract which is in its nature determinable.

18. It is further submitted on behalf of the respondents that the petitioner is guilty of material breach of the conditions of the MOU. As per Clause 3 of the MOU, the petitioner was obligated to deposit Rs. 5 crores with the respondents as interest free refundable security deposit, in order to enable the respondents to clear their loan pending with Yes Bank Ltd. Out of the said amount of Rs. 5 crores, the petitioner only deposited Rs. 1 crore. The balance of Rs. 4 crores had to be deposited by the petitioner in the following manner i.e. Rs. 1 crore by 30.04.2022 and Rs. 3 crores by 15.05.2022. However, the

petitioner failed to deposit the same as per the agreed timelines. After 30.04.2022, when the petitioner failed to make payment of Rs. 1 crore, the respondents categorically reminded the petitioner of its obligations to pay the balance amount of security deposit under the MOU. The petitioner, however, ignored the requests and reminders of the respondents.

19. As per the respondents, even after 15.05.2022, no amount was deposited by the petitioner. The respondent no. 1 therefore, met partners of the petitioner on two occasions, one at Malcha Marg at their residence and then at the residence of the respondents in Rajouri Garden, and requested them to pay the balance amount towards the security deposit.

20. The respondents kept on following up with the petitioner for payment. Subsequently, on 23.05.2022, the petitioner sent a whatsapp message to respondent no. 1 with photographs of three post dated cheques of 28.05.2022 issued in the name of respondent no. 2 amounting to Rs. 50 lakh each, which made it clear that even on 23.05.2022, the petitioner did not have the readiness to make payment of the balance security deposit of Rs. 4 crores. The respondent no. 1 replied stating that the petitioner had failed to make payment as per the agreement, which was due on 30.04.2022 and 15.05.2022, to which there was no response from the petitioner.

21. Since time was of the essence and the parties had to perform the same strictly in accordance with the timelines contained in the agreement, the respondents were constrained to terminate the agreement vide their notice dated 29.05.2022. It is submitted on behalf

of the respondents that the failure of the petitioner to deposit the balance amount of security deposit of Rs. 4 crores within the agreed timeline, amounted to material breach of the terms of the agreement. Hence, the respondents were entitled to terminate the agreement. Since the agreement has been terminated by the respondents, the petitioner cannot seek specific performance of a terminable agreement, which is a private commercial transaction.

22. In rejoinder, it is submitted on behalf of the petitioner that Clause 1 of the MOU is akin to an agreement to sell immovable property, and is much more than any other collaboration agreement. In effect, what has been agreed upon is to sell 30% of the entire property that is to be created after construction. It is, thus, contended that since the petitioner was to become owner of 30% of the facility being constructed, the interest free security deposit would be refunded to the petitioner, in terms of para 4 of the MOU.

23. It is contended that the intent of the parties was to create rights over the immovable property in favour of the petitioner. The same is manifest from the fact that not only was the possession being handed over, the respondents were to execute a general power of attorney empowering the petitioner to get the plans sanctioned and to do general management of the property. Handing over possession and executing a power of attorney, is evidence of the said arrangement being an agreement to sell. Copies of entire chain of title of the papers was handed over to the petitioner, which is a feature of an agreement to sell. Even the brokerage is to be shared by both the parties in their respective ratio of 70:30 in terms of Clause 19(d) of the MOU. The act

of sharing brokerage is indicative of ownership to the extent of 30%.

24. It is further submitted on behalf of the petitioner that there is not a single stipulation that permits the respondents to terminate. Even the petitioner is not permitted to terminate. Even if the petitioner delays in the performance of its obligations, the consequences are not termination at all. This contract is not terminable at the option of the respondents and creates proprietary rights in favour of the petitioner.

25. It is contended on behalf of the petitioners that specific performance of collaboration agreements is allowed. There is a valid arbitration clause that covers the dispute between the parties. The dispute raised is arbitrable and within the scope of the arbitration agreement.

26. In support of their submissions, learned counsels appearing for the petitioner have relied upon the following judgments:-

“1. *Sushil Kumar Agarwal Vs Meenakshi Sadhu & Others, (2019) 2 SCC 241.*

2. *Overnite Express Vs Delhi Metro Rail Corporation, (2020) 271 DLT 422 : (2020) SCC OnLine Del 2093.*

3. *Sitac Private Limited Vs Banwari Lal Sons Private Limited & Others, 2019 SCC Online Del 9044.*

4. *Booz Allen and Hamilton INC Vs SBI Home Finance Ltd & Ors., (2011) 5 SCC 532.*

5. *Deccan Paper Mills Company Limited Vs Regency Mahavir Properties & Others (2021) 4 SCC 786.”*

27. I have given my thoughtful consideration to the submissions

made on behalf of both the parties and perused the documents on record.

28. At the outset, it would be useful to discuss the relevant clauses of the MOU, as below:-

i. **Clause 1** of the MOU provides that consideration of bearing the cost and burden of construction and re-development, is a flat fee of 30% of the total receivables from the sale of floors.

ii. **Clause 3 and 4** provide that since there is a loan against the property, the petitioner has agreed to provide an interest free refundable security deposit of Rs. 5 crores to the respondents.

iii. **Clause 5** provides that the respondents shall vacate the property on or before 30.05.2022, and handover the possession of the property to the petitioner for commencement of construction.

iv. **Clause 6** specifies that the vacant possession will only be granted for the purpose of demolition and construction of the new development.

v. **Clause 7** provides that the respondents shall execute the Power of Attorney in favour of the petitioner, to file the application in various Government authorities to get plan sanctioned, electricity connection, water connection etc., from time to time.

vi. **Clause 11** provides that in the interim period from completion till sale, if any, the respondents shall assume

responsibility of discharge of such taxes in respect of unsold units/floors.

vii. **Clause 19(h)** provides that Capital Gains Tax and Income Tax on the sale of floors, shall accrue only to the respondents and the petitioner shall not bear the same.

29. A perusal of the aforesaid clauses of the MOU categorically point out that there is no portion of the property, which accrues in favour of the petitioner. The entire rights in the property, including possession and right to sell, remain with the respondents. The possession of the petitioner is only constructive for the purposes of construction. The Power of Attorney is also given for limited purposes of achieving construction. The cost of construction is provided in the MOU. It is also clear from the MOU that all taxes including Capital Gain Tax have to be borne by the respondents.

30. Considering the relevant clauses of the MOU dated 03.03.2022 between the parties, it is clear that the said MOU is nothing but a pure construction agreement. No ownership rights were to be acquired by the petitioner under the MOU. None of the incidences of ownership in the subject property, as laid down by Hon'ble Supreme Court in the case of *Sushil Kumar Agarwal Vs Meenakshi Sadhu and Ors.*, (2019) 2 SCC 241, are present in the MOU in question. In the said case of Sushil Kumar Agarwal (supra), Hon'ble Supreme Court has categorically held that Courts do not normally order specific performance of a contract to build or repair.

31. As regards the contention of the petitioner that he has been ready and willing to perform its obligations under the MOU, the same

is not tenable. As noted from the documents on record, the petitioner was obligated to pay Rs. 1 crore on 30.04.2022 and Rs. 3 crores on 15.05.2022, as the last date of handing over possession was 30.05.2022. The termination letter dated 29.05.2022 issued on behalf of the respondents clearly refers to two meetings between the parties. It is categorically submitted on behalf of the respondents that they requested the petitioner to make the balance payment towards the interest free security deposit and that the petitioner failed to make both these payments. It is also averred on behalf of the respondents that on 23.05.2022, the respondent no. 1 sent a whatsapp message to the petitioner stating that it had failed to make the payment as per the MOU. In response, the petitioner sent photos of three post dated cheques of 28.05.2022 to respondent no. 1 through whatsapp. The screen shot of the said whatsapp exchange between the petitioner and respondent no. 1 has been duly filed on behalf of the respondents. Thus, it is clear that the petitioner is guilty of non-payment of the requisite amounts within the time granted.

32. A reading of the MOU manifests that time was essence of the agreement between the parties. Thus, the petitioner was obligated to make the payment within the stipulated time. Reference in this regard may be made to the judgment in the case of ***P.R. Deb and Associates Vs Sunanda Roy***, (1996) 4 SCC 423, wherein Hon'ble Supreme Court has held as follows:-

“7. Under the agreement of sale dated 24-10-1977, the respondent was required to make part payment of Rs 4 lakhs within five months of the agreement of sale. The agreement has clearly provided that this payment is not by

way of earnest money but it is part payment of the purchase price. The purpose of this payment is clearly set out in the appellant's solicitor's letter dated 12-4-1978 addressed to the respondent's solicitors. Early payment of the amount of Rs 4 lakhs was required as the appellant had to purchase alternative residential accommodation for herself in order to carry out her obligation under the agreement of sale to deliver vacant possession of the property to the respondent except for the four shops set out in the said agreement. By her solicitor's letter of 12-4-1978, the appellant had also made it clear that she requires payment of Rs 4 lakhs for this purpose and gave notice to the respondent to pay this amount within a week of the said letter since the time for payment had already expired. Clearly, payment of Rs 4 lakhs within a reasonable time was an essential term of the contract. Because a late payment of this amount may affect the appellant's right to obtain suitable alternative residential accommodation; property prices may increase, thus affecting the appellant's right to purchase a suitable residential accommodation. From the reply which has been sent by the respondent's solicitors, especially the reply dated 25-9-1980, it is quite clear that the respondent was not in a position to pay the sum of Rs 4 lakhs either within the time specified in the agreement of sale or within a reasonable time. In fact, he has clearly set out in the said letter that unless he is able to enter into a suitable arrangement with a cooperative housing society, he will not be able to pay Rs 4 lakhs to the appellant. He has insisted, therefore, on the appellant first entering into an agreement with a proposed housing society which, admittedly, never came into existence. There is nothing in clause 11 of the agreement of sale which requires the appellant to enter into an agreement with a proposed cooperative housing society as a condition precedent to receiving part payment of the sum of Rs 4 lakhs. Clause 11 is independent of the right of the appellant to receive a sum of Rs 4 lakhs. The agreement specifies the time within

which the sum of Rs 4 lakhs was to be paid and the correspondence makes it quite clear that the respondent was not in a position to pay this amount within the agreed period or within any reasonable time thereafter because he had, in turn, to collect this amount from the expected members of the proposed cooperative housing society. There is no evidence in this case to show whether there were any members of this proposed cooperative housing society and whether the respondent was in a position to collect this amount of Rs 4 lakhs. In fact, the evidence is to the contrary. The proposed cooperative housing society was never registered and there is nothing to show that there were any members of this proposed cooperative housing society. Although the respondent and his solicitor have given evidence in the case, they have not stated that the respondent had the sum of Rs 4 lakhs at the material time or that the respondent was in a position to pay this amount within a reasonable time. There is nothing in the agreement requiring the appellant to enter into an agreement with the proposed cooperative housing society before the sum of Rs 4 lakhs is released to her. The trial court, therefore, had rightly come to the conclusion that the respondent-plaintiff was not in a position to carry out the terms of agreement of sale. The plaintiff, in a suit for specific performance, must be ready and willing to carry out his part of the agreement at all material times. Such is not the case here. In fact, even after the decree of specific performance, the respondent was not able to deposit the amounts specified by the High Court within the time prescribed. Ultimately he applied for extension of time for deposit of amount which application was rejected.

8. *In the case of Chand Rani v. Kamal Rani [(1993) 1 SCC 519] a Bench of five Judges of this Court considered a similar situation, where the contract stipulated that a sum of Rs 98,000 would be paid by the purchaser to the vendor within a period of ten days only. Despite notices of the vendor, the vendee was not willing to pay the said amount unless vacant possession of a part of the property was*

given by the vendor to the vendee. The Court said that in view of the express terms of the contract coupled with the conduct of the vendee, it was clear that the time was of the essence of the contract and the vendee was not ready and willing to perform the contract. In these circumstances, this Court upheld the refusal of the High Court to grant specific performance. This Court has observed that although in the case of a sale of immovable property time is not of the essence of the contract, it has to be ascertained whether under the terms of the contract, when the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. It observed that the specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that the time was not of the essence of the contract. But even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions of the contract so warrant. These can be inferred, (1) from the express terms of the contract; (2) from the nature of the property and (3) from the surrounding circumstances. For example, the object of making the contract may make it clear that the agreement requires to be performed within a reasonable time. The Court said that the stipulation in the contract regarding payment of Rs 98,000 within a period of ten days only showed that the failure to pay the amount within the stipulated period would constitute a breach of contract.

9. The present case is similar. The clause relating to payment of various amounts under the contract including the sum of Rs 4 lakhs states that the time is of the essence. Moreover, by his letter of 12-4-1978, also the appellant has made payment of Rs 4 lakhs within a period of seven

days from the date of notice, of the essence of the contract pointing out the circumstances which require payment of Rs 4 lakhs within a reasonable time. As the respondent did not comply and was unwilling and/or unable to comply with this term of the agreement, he cannot be considered as ready and willing to perform his part of the contract.”

33. Reference to Section 16(c) of the Specific Relief Act shows that the said section provides that specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or has always be ready and willing to perform the essential terms of the contract, which are to be performed by him. This Court is of the prima facie view that the petitioner has failed to prove that it was ready and willing to perform its obligations under the MOU at the relevant time. There is nothing on record to demonstrate that the petitioner had the relevant balance in its account at the relevant time to make payment to the respondents.

34. As regards the contention of the petitioner that the MOU is not a determinable contract, the said contention has to be rejected in view of the fact that the MOU being a private commercial transaction, from the very nature of the agreement, the same could be terminated. The MOU dated 03.03.2022 executed between the parties is a construction and re-development agreement. It is a commercial transaction between two private parties and hence the same is by its very nature determinable, even if there is no termination clause in the MOU. Reference in this regard may be made to the case of **Rajasthan Breweries Limited Vs The Stroh Brewery Company**, 2000 (55) DRJ (DB) 68: 2000 SCC OnLine Del 481, wherein this Hon’ble Court has

held as follows:-

“In view of long catena of decisions and consistent view of the Supreme Court, I hold that in private commercial transaction the parties could terminate a contract even without assigning any reason with a reasonable period of notice in terms of such a Clause in the agreement. The submission that there could be no termination of an agreement even in the realm of private law without there being a cause or the said cause has to be valid strong cause going to the root of the matter, therefore, is apparently fallacious and is accordingly, rejected.”

Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i)(c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same.”

35. The MOU being determinable in nature in view of the aforesaid

discussion, the same is not capable of specific performance due to the statutory bar contained in Section 14(d) of the Specific Relief Act. Thus, in terms of Section 41(e) of the Specific Relief Act, no injunction can be granted to prevent breach of a contract, the performance of which cannot be enforced. As noted above, the respondents had already terminated the MOU vide their notice dated 29.05.2022, hence, the remedy available with the petitioner is to seek damages, if any. Thus, when the petitioner is statutorily barred from seeking specific performance of the MOU, the petitioner cannot be held entitled to any interim relief under Section 9 of the Act.

36. Reference may be made to the case of ***Bharat Catering Corporation Vs Indian Railway Catering and Tourism Corporation Ltd. (IRCTC) and Anr.***, 2009 (113) DRJ 435 (DB): 2009 SCC Del 3434, wherein this Hon'ble Court has held as follows:-

“17. Apart from merits, even otherwise, in our view, the scope and ambit of Section 9 do not envisage the restoration of a contract which has been terminated. The learned Single Judge, in our view, rightly held that if the petitioner is aggrieved by the letter of termination of the contract and is advised to challenge the validity thereof, the petitioner can always invoke the arbitration clause to claim damages, if any, suffered by the petitioner. It is not open to this Court to restore the contract under Section 9, which is meant only for the sole purpose of preserving and maintaining the property in dispute and cannot be used to enforce specific performance of a contract as such. A bare glance at the said Section will suffice to show that pending arbitration proceedings, the Court and the Arbitral Tribunal have been vested with the power to ensure that the subject matter of the arbitration is not alienated or frittered away. The provisions of Section 9, for the sake of

convenience, are extracted below:-

"9. Interim measures, etc. by Court.- A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:-

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it."

37. In view of the discussion hereinabove, the petitioner is not entitled to the reliefs sought for.

38. The contentions of the parties as regards the breach of the terms of the MOU, are issues that will be decided by the arbitral tribunal, as

and when constituted.

39. It is made clear that this Court has not expressed any opinion on the merits of the disputes. All rights and contentions of the parties are left open for consideration by the learned sole arbitrator.

40. The petition is accordingly dismissed.

**(MINI PUSHKARNA)
JUDGE**

August 23rd, 2022
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