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

Judgment reserved on: 28.11.2025
Judgment pronounced on: 04 .04 .2026

\+ **ARB. A. (COMM) 22/2024 & I.A. 8228/2024, I.A. 30930/2024**

TALENT UNLIMITED ONLINE SERVICES PRIVATE LIMITED AND ANR. ……Appellants

Through: Mr. Manik Dogra Sr. Adv. with Mr.Sandeep Devashish Das, Ms. Anandini Kumari Rathore, Mr. Arijeet Bhattacharjee, Advs.

versus

AFFLE INDIA LIMITED ……Respondent

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Abhishek Ghai, Adv.

OMP (ENF.) (COMM) 66/2024

AFFLE INDIA LIMITED ……Decree Holder

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Abhishek Ghai, Adv.

versus

TALENT UNLIMITED ONLINE SERVICES PRIVATE LIMITED AND ANR. ……Judgement Debtors

Through: Mr. Manik Dogra Sr. Adv. with Mr.Sandeep Devashish Das, Ms. Anandini Kumari Rathore, Mr. Arijeet Bhattacharjee, Advs.

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CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

ARB. A. (COMM) 22/2024

1. This is an appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") challenging the order dated 11.03.2024 ("***impugned Order***") passed before the Singapore International Arbitration Centre ("***SIAC***") in SIAC Arbitration No. 024 of 2023 in the arbitration proceedings titled as "*Affle (India) Limited vs. Talent Unlimited Online Services private Limited & Ors.*".

2. The appellants herein were the respondents in the arbitral proceedings and the respondent herein was the claimant.

FACTUAL MATRIX AS PER THE APPELLANTS

3. The appellant No.1 i.e., Talent Unlimited Online Services Private Limited, ("***appellant No.1 Company***") is a private limited company, registered as a 'Micro Industry' under the Micro Small and Medium Enterprises Development Act, 2006. The appellant No. 2 i.e., Mr. Ankit Prasad, is the founder and Chief Executive Officer of appellant No.1 Company.

4. The respondent i.e., Affle (India) Limited, a public company limited, is a technology company and delivers consumer acquisitions, engagements, and transactions using mobile advertising for companies globally.

5. The appellant No.1 Company developed an input method smartphone keyboard service namely Bobble Keyboard. Subsequently, many

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investors invested in appellant No.1 Company including Marquee International Investor SAIF Partners ("***SAIF***") and hold 12.74% of appellant No. 1 Company and Xiaomi Singapore Pte. Ltd. ("***Xiaomi***"), which holds 7.02% shareholding in appellant No.1 Company.

6. On 30.04.2020, the appellant No.1 Company was approached by the respondent with a proposal to invest in appellant No.1 Company by becoming its 'exclusive Ad monetisation' partner and assured that integrating its software development kit on appellant No.1 Company's keyboard applications, the appellants would generate substantial advertising revenue. Subsequently, the respondent and appellant No.1 Company entered into a Memorandum of Understanding ("***MOU***") dated 31.07.2020 and also into three inter-linked definitive agreements all dated 08.08.2020 namely:-

i. Series C Share Subscription Agreement ("***Series C SSA***") and Series C Shareholders Agreement ("***Series C SHA***") whereby which respondent subscribed to 2300 Series C CCPS ("***Initial Shares***") of appellant No.1 Company by investing USD 2,640,000 i.e., about Rs. 19,80,00,000/-;

ii. Platform Licensing Agreement ("***PLA***"); and

iii. Global Monetization Partnership Agreement ("***GMPA***") pursuant to which respondent became the exclusive ad publishing partner of appellant No.1 Company and under which the respondent guaranteed minimum revenue commitments of approximately Rs. 1,00,00,00,000/- upon achievement of certain minimum Daily Active User targets by appellant No.1 Company.

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7. Subsequently, on 09.06.2021 Series C1 Share Subscription Agreement ("***Series C1 SSA***") was signed, and consequently, Series C SHA was amended and the Amended and Restated Shareholders Agreement ("***SHA***") was executed.

8. The SHA contains the arbitration clause being Clause No. 14.7, which reads as under:-

> *"14.7 Dispute Resolution.*
>
> *14.7.1 All disputes and differences arising out of or in connection with any of the matters set out in this Agreement ("Dispute"), if not resolved by amicable settlement within 30 (Thirty) days from the Dispute, shall be finally and conclusively determined by arbitration by a sole arbitrator mutually appointed by the Parties to the dispute, in accordance with the Rules of Singapore International Arbitration Centre (SIAC).*
>
> *14.7.2 The arbitrator shall reach and render a decision in writing with respect to the appropriate award to be rendered or remedy to be granted pursuant to the dispute.*
>
> *14.7.3 To the extent practical, decisions of the arbitrator shall be rendered no more than 90 (Ninety) days following commencement of proceedings with respect thereto.*
>
> *14.7.4 The arbitration shall be conducted in English, and the venue for arbitration shall be Singapore.*
>
> *14.7.5 The arbitrator shall be entitled to award costs of the arbitration."*

9. The parties also entered into a Keyboard Licensing Agreement dated

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09.06.2021 ("***KLA***"), under which the subsidiary company of respondent i.e., Affle MEA FZ LLC ("***Affle Dubai***") was granted limited license to appellant No.1 Company proprietary keyboard software.

10. Later, under the Series C SSA and GMPA, respondent acquired additional shareholding, based upon certain predetermined figures of revenue being raised ("***Monetization Milestones***") and certain user targets being achieved. As per the terms of the Series C SHA, the respondent could subscribe to 2500 Series C CCPS for an amount of Rs. 19.8 Crores when it achieves Monetization Milestone 1 and to 1302 Equity shares for a consideration of Rs.13,020/-when it achieves Monetization Milestone 2. However, it is the case of the appellants that not only did respondent refused to share data regarding revenue generated but also, failed to achieve the Monetization Milestones.

11. Subsequently, the requirement of minimum guaranteed revenue was undermined, and the Series C SSA ("***Series C Addendum***") and GMPA ("***GMPA Addendum-I***"), dated 14.03.2022 were executed, whereby the right to subscribe to Milestone Shares would accrue on receipt of Ad campaigns of over 300 applications. Later, *vide* letter dated 16.03.2022, both Monetization Milestones were deemed to be achieved. However, the revenue as published by the respondent drastically declined and on appellant No.1 Company seeking explanation the respondent began raising issues under the GMPA and withheld payments under GMPA and since 21.11.2022 also suspended advertisement placements on the Bobble Keyboard. Consequently, appellant No.1 Company terminated the GMPA and the PLA.

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12. The KLA was terminated on 09.12.2022 by Affle Dubai. However, later, it was found out that AppNext PTE, a subsidiary of the respondent entered into an agreement with Mobicel, a South-African company, to distribute appellant No.1 Company's proprietary software and hence, appellant No.1 Company filed a petition under Section 9 of the 1996 Act being O.M.P. (I)(COMM.) No. 240/2023,wherein *vide* order dated 02.08.2023, it was recorded that the respondent and its other subsidiary have ceased "to use or access the 'Bobble Software, services or API'" and also "destroyed all copies of the "Bobble Software" and documentation".

13. The respondent sent two purported notices of inspection, first on 02.12.2022 and second on 07.12.2022 to inspect appellant No.1 Company premises, however the same were sent on email address 'mail@tanuvohra.com' which was not that of appellant No.1 Company's. Hence, appellant No.1 Company denied respondent to inspect the documents as the purported notices were not served upon appellant No.1 Company with a minimum prior notice of 4 days, as per the terms of the SHA. Later, the respondent sent a notice of dispute dated 14.12.2022 to the appellants.

14. Subsequently, the respondent demanded an Extraordinary General Meeting ("***EGM***") of appellant No.1 Company *vide* notice dated 09.12.2022 pertaining to the alleged obstruction of inspection. The said EGM was conducted on 18.01.2023.

15. On 18.01.2023, the respondent also issued a Notice Invoking Arbitration. The arbitration was deemed to have been commenced on 02.02.2023, under Rule No. 3.3 of the SIAC Rules and *vide* letter

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dated 23.03.2023 the Sole Arbitrator was appointed. The Sole Arbitrator designated New Delhi as the seat of the arbitration, *vide* decision dated 07.12.2023.

16. Consequently, the respondent filed a petition under Section 9 of the 1996 Act being O.M.P. (I) (COMM.) 4/2023 seeking various reliefs including the right of inspection. During the proceedings, the respondent filed an application being I.A. No. 11352/2023 seeking list of documents sought to be inspected and *vide* order dated 03.07.2023 the Court recorded that all the documents sought had been accumulated by the appellants and brought to the Court, however, no inspection was granted to the respondent. Also, the appellants in the reply to the said application raised objections to confidentiality and even, Xiaomi *vide* email dated 10.07.2023 objected to sharing of the documents. Eventually, *vide* order dated 31.07.2023 the Court disposed of the Section 9 petition with direction that the same shall be dealt with by the learned Arbitrator under Section 17 of the 1996 Act.

17. Later, by notice dated 08.08.2023, the respondent sought inspection of the appellant No.1 Company's records and *vide* reply dated 17.08.2023, the appellant No.1 Company offered respondent to conduct an inspection in second week of September 2023. The appellants again offered inspection *vide* email dated 26.10.2023, however, the respondent refused the same.

18. As per the respondent, the appellants in their response dated 17.08.2023 to the third Inspection Notice refused inspection. On appellants refusal to allow inspection as per orders dated 10.01.2023 and 31.07.2023, the respondent on 28.08.2023 initiated contempt

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proceedings against the appellant No. 2 being Contempt Case (Civil) 1228/2023 and *vide* order dated 29.08.2023 the Court impleaded appellant No.1 Company as a party to the contempt petition. The said contempt petition is still pending. Later, since the appellants again failed to provide the information as promised *vide* email dated 12.09.2023, the respondent filed second contempt petition being Cont. Case. (C) 1414/2023 against appellants for non-compliance with the undertaking with respect to Clause No. 3.2.4 of the SHA, which was disposed of *vide* order dated 03.10.2023 granting liberty to the respondent to revive the contempt petition in case of noncompliance of the undertaking contained in the order dated 31.07.2023.

19. Eventually, in view of the order dated 31.07.2023, the respondent filed an application for interim relief before the Sole Arbitrator and later, an amended application for interim reliefs was filed. The appellants filed their reply to the said application. Subsequently, the respondent filed its Sur-Reply dated 29.12.2023 and the appellants filed their Sur-Rejoinder to the dated 05.01.2024. After hearing both the parties, the Sole Arbitrator reserved the order.

20. Subsequently, *vide* Procedural Order dated 11.03.2024 the Sole Arbitrator decided to defer the jurisdictional objections application to be heard with the merits (since these objections were closely interrelated to the merits of the case) and on 11.03.2024, the Sole Arbitrator also passed the impugned Order, wherein the reliefs granted to the respondent are extracted below:-

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6) CONCLUSION

6.1 In light of the above, having carefully and conscientiously considered all the Submissions on the Interim Application, documents, points and submissions made by each Party at the Hearing and relevant correspondence, pursuant to Rules 27(i) and 30.1 of the SIAC Rules, I hereby order:

6.1.1 **THAT**, within three days of the date of this Order, the Parties sign a non-disclosure agreement ("**NDA**"). However, if the Parties have not signed an NDA within three days of this Order, then the Claimant shall, within two days, provide to the Respondents a unilateral undertaking that it will maintain confidential the documents and information received or secured from the exercise of its Inspection Rights under Clause 3.4 (the "**Confidentiality Undertaking**"). The Parties are at liberty to mutually agree an extension. The Parties are also at liberty to apply to the Tribunal to determine the sufficiency of the Confidentiality Undertaking.

6.1.2 **THAT**, within two days of the date of this Order, the Claimant will provide to the Respondents a unilateral undertaking that if it is eventually determined that the Claimant is not entitled to any information and/or documents that it may have in its possession, custody or control following any inspection arising from this Order, then the Claimant will undertake to return to the Respondents (without keeping any copies or records of the same) and/or destroy any such documents and/or information (the "**Undertaking**"). The Parties are at liberty to mutually agree an extension. The Parties are also at liberty to apply to the Tribunal to determine the sufficiency of the Undertaking.

6.1.3 **THAT**, following the receipt of an appropriate and compliant notice under Clause 3.4 of the SHA from the Claimant, and subject to (i) the Parties signing the NDA or the provision of the Claimant's Confidentiality Undertaking as set out at 6.1.1 above to the satisfaction of the Tribunal; and (ii) the provision of the Claimant's Undertaking as set out at 6.1.2 above to the satisfaction of the Tribunal, the Respondents R1 and R2 (i) comply with their obligation to provide Inspection Rights to the Claimant; and (ii) fully cooperate, and facilitate the Claimant and its representatives' visit and inspection of R1's offices, pursuant to Clause 3.4 of the SHA.

21. Pursuant to the impugned Order, the respondent issued an inspection notice dated 12.03.2024 seeking to commence inspection on 19.03.2024 on 11 A.M. and also issued a non-disclosure agreement dated 12.03.2024 ("***NDA***") and a Confidentiality Undertaking dated 16.03.2024 and another undertaking dated 12.03.2024. On 18.03.2024, the appellants responded to the said Inspection Notice and raised concerns regarding undertakings and NDA. Later, the respondent filed

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a petition seeking enforcement of the impugned Order being O.M.P.(ENF.) (COMM.) 66 of 2024.

22. On 03.04.2024, the appellants wrote to the Arbitral Tribunal seeking to decide upon the sufficiency of Confidentiality Undertaking and Undertaking and the Tribunal *vide* email dated 03.05.2024 allowed the appellants to propose revisions to undertakings and respondent to respond to the appellants' suggestions. The appellants filed their submissions dated 10.05.2024 suggesting changes.

23. Hence, being aggrieved by the impugned Order dated 11.03.2024 the appellants have filed the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

24. Mr. Dogra, learned senior counsel for the appellants, has made the following submissions.

Final Relief Granted in Guise of Interim Relief

25. It is submitted that the impugned Order grants right to inspect appellant No. 1 Company's premises, which is also prayer No. (ix) of the final relief sought by the respondent. Reliance is placed on ***Mehul Mahendra Thakkar vs. Meena Mehul Thakkar, (2009) 14 SCC 48***; ***Hinduja Leyland Finance Ltd. v. Jaffer Khan, 2013 SCC OnLine Mad 1246***; ***GMR Pochanpalli Expressways Ltd. v. NHAI, 2023:DHC:493*** and ***Indore Development Authority v. Dr. Hemant Mandovra, 2024 SCC OnLine SC 3724,*** to contend that final relief should not be granted by way of an interim relief.

26. Additionally, the parties were already at liberty to request for documents as per the procedural order dated 02.10.2023 and the SIAC Rules already provide discovery of document production.

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Interim Relief Granted is Barred under Specific Relief Act ("SRA")

27. It is submitted that the interim relief granted in the impugned Order necessitates continuous supervision and such interim relief is barred under Section 14(b) of SRA. Further, seeking specific performance of Clause No. 3.4 of the SHA at the interim stage is barred under Section 14(d) of SRA, because the same is an issue for final adjudication. The SHA is a private commercial transaction, hence, determinable in nature and no specific performance or injunction can be granted. Reliance is placed on ***Ksheeraabd Construction Pvt. Ltd. vs. National Highways and Infrastructure Development Corporation Ltd., 2023 SCC OnLine Del 3156***; ***Rajasthan Breweries Ltd. v. The Stroh Brewery Company, 2000 SCC OnLine Del 481*** and ***Royal Orchids v. Kulbir Singh Kohli, 2022 SCC OnLine Del 2519***.

28. In response to respondent's arguments that objection of the SHA being determinable is irrelevant since the SHA has not been terminated as of today, reliance is placed on ***NHAI v. HK Toll Road Pvt. Ltd., 2025 SCC OnLine Del 2376***, wherein this Court has clearly held that "if a contract can be terminated by either of the parties whether for a specific breach or even without any cause and this right is based on an allegation of beach or happening of an event which is clearly stated in the contract, then the contract is determinable in nature and hence, cannot be enforced".

Patently Illegal – Beyond Scope of Section 17 of the 1996 Act

29. It is submitted that the impugned Order is patently illegal as permission to inspect for discovery of documents is outside the ambit of Section 17 of the 1996 Act and the same is not an interim measure.

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Section 17(1) of the 1996 Act does not provide power to allow discovery of documents. Further, there is no "property or thing" which forms the subject matter of the dispute and is required to be inspected for it to an interim measure. Additionally, it has also not been established that there is any property or thing would be at risk if the interim relief was not granted, reliance is placed on ***Union of India v. Reliance Industries, 2018 SCC OnLine Del 13018.***

Impugned Order is Non-Speaking and Unreasoned

30. It is submitted that the Sole Arbitrator has simply reproduced parties' arguments in major portion of the impugned Order and the findings are just Arbitrator's agreement with respondent's arguments. The Arbitrator decided the essential requirements of *prima facie* case, balance of convenience and irreparable harm based on mere reproduction of respondent's argument. Hence, it is submitted that the impugned Order suffers from non-application of mind. Reliance is placed on ***Kanti Bijlee Utpadan Nigam v. Paltech Cooling Towers & Equipments Ltd., (Judgment dated 05.07.2022 in O.M.P. (COMM.) 154/2021***), ***Som Datt Builders v. State of Kerala, (2009) 10 SCC 259*** and ***Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496***.

Impugned Order Does Not Satisfy the Parameters of Section 17 of the 1996 Act

31. It is submitted that the interim relief granted does not satisfy the standards of interim relief under Section 17 of the 1996 Act. The Sole Arbitrator approach in determination of a *prima facie* case was based on "plain reading of Clause 3.4" of SHA which is misconceived and

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does not lead to actual determination of the scope of Clause No. 3.4 of SHA.

32. *Prima facie* case should have been decided based on claims and analysis of precipitative event that allegedly led to respondent seeking inspection i.e., lack of transparency regarding share transfers from the appellant No. 2 to AnyCast Technology Private Limited, Appyhigh Technology LLP and Mobavenue Pte Limited. The Arbitrator while passing the impugned Order failed to appreciate the fact that respondent was fully aware of the said share transfers since March 2022. Throughout the respondent has been shifting its stance regarding reasons for seeking the inspection. Since, the inspection will necessarily give insight to the appellants' confidential information (which is not to be disclosed to the respondent), the balance of convenience and irreparable loss/ injury lies in favour of the appellant rather than the respondent. The impugned Order is cryptic and for the said, does not satisfy the parameters of Section 17 of the 1996 Act.

Scope of Clause No. 3.4 of the SHA not Determined

33. It is submitted that the Sole Arbitrator failed to determine the scope of Clause No. 3.4 of the SHA, and provided inspection with no limitation as to access or time. The lack of clarity as to the scope of inspection has led the respondent claiming an unlimited time for inspection. This has effectively given respondent the right to conduct fishing and roving enquiry.

34. Clause No. 3.4 of the SHA provides inspection only of appellant No. 1 Company's contracts and financial documents and the same is only to be allowed on a notice from all Major Investors and with a written

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notice at least 4 days in advance. The respondent is in violation of Clause No. 3.4 of the SHA by individually seeking inspection and not issuing notices in terms of the SHA.

35. It is further submitted that the Sole Arbitrator erred in holding that EGM has not amended the SHA. The Arbitrator ignores that the EGM reaffirms the scope of Clause No. 3.4 of the SHA and does nothing to amend the SHA. Further, the Sole Arbitrator also ignored that the EGM of appellant No. 1 Company, was requisitioned and attended by the respondent. All shareholders were present at the EGM and except the respondent all were *ad idem* that any inspection of records requires notice to be issued by all Major Investors, which was missing in the facts of the present case.

Appellants' Confidentiality Concerns

36. It is submitted that the impugned Order grants full access to all the documents of the appellants, which will put proprietary software and confidential documents of appellant No.1 Company's under threat of being exposed. Such access would violate appellants' confidentiality agreements exposing it to legal action. In fact Xiaomi has specifically objected to sharing of documents citing the respondent as a competitor.

37. It is further submitted that the undertakings are of no use as returning or destroying confidential information after arbitration would not help appellants' confidentiality concerns. Further, in the undertakings the respondent has insulated itself from any liability from the access of information *vide* inspection. Further, in the arbitration proceedings, the respondent admitted its commercial relationship with a competitor

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of appellant No.1 Company i.e., KPT, yet, the Sole Arbitrator dismissed such concerns based on plain reading of Clause No. 3.4 of SHA and also held that the respondent is not a competitor as per the definition of competitor under the SHA, and that the appellants has known of the respondent's business.

38. Further, the Sole Arbitrator failed to deal with the confidentiality concerns of the appellants by simply directing issuance of NDA and, the Undertaking and the Confidentiality Undertaking, without delineating any terms. The Arbitrator failed to consider the appellants' specific offers of inspection which respondent refused. Also, it is submitted that the terms of the Undertakings are still not agreed upon, and have been referred back to the Arbitrator.

39. Lastly, during arguments before the Court, the respondent sought to advance arguments based on Clause No. 12.3.4 of the SHA, for the very first time and this argument was neither pleaded in the Section 17 Application, nor before the Sole Arbitrator.

Suppression of Facts by the Respondent and Malafide Conduct

40. It is submitted that the Sole Arbitrator failed to deal with respondent's knowledge of the share transfers and suppression of said fact and found such fact irrelevant for granting interim reliefs. The issue of transfer of shares was before the then board of directors, which included Mr. Kapil Mohan Bhutani, respondent's Chief Financial and Operations Officer and then appointed nominee director of appellant No. 1 Company. This issue was discussed in board meeting dated 17.03.2022 and ratified afterwards. However, the respondent suppressed the said minutes of meeting dated 17.03.2022. Further,

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appellant No. 1 Company has executed shareholders agreements with Anycast, Appyhlgh and Mobavenue, which were signed by Mr. Kapil Mohan Bhutani on behalf of respondent and the same has been suppressed by the respondent.

41. It is clear that the respondent since March 2022, was aware of the transfer of shares, which was the alleged precipitative event for issuing inspection notices. Despite the same, the Sole Arbitrator only considered the date of filing Section 9 Application which was in January 2023.

Reliance on Judgement of Ares Investment is Misplaced

42. The Sole Arbitrator heavily relied on the judgment of ***Ares Investment LLC v. International Print-O-PAC Ltd. & Ors., 2016 SCC OnLine Del 5771***. However, the said judgment is distinguishable on the following grounds: (i) In ***Ares Investment (supra)***, the investor's right to conduct audit of the company was not disputed by the respondent therein, unlike in the present case; (ii) In ***Ares Investment (supra)***, the investor had not sought inspection rights as a final relief and the interim relief sought by the appellant therein was to conduct an audit, whereas in the present case, the final relief sought by the respondent is identical to the interim relief sought; (iii) In ***Ares Investment (supra)***, the company failed to provide specific information requested by investor, whereas, in the present case, the appellants have not concealed any information sought by the respondent (to which it is entitled); and (iv) lastly, unlike ***Ares Investment (supra)***, the appellants and third parties have raised confidentially concerns herein.

Erroneous Reliance on the Court's Order dated 31.07.2023

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43. It is submitted that the Sole Arbitrator has erred in relying upon the Court's Order dated 31.07.2023 passed in O.M.P.(I)(COMM.) 4/2023. The Arbitrator has relied on misconceived interpretation of the said order given by respondent i.e., that the Court had directed compliance with Clause No. 3.4. of the SHA as an interim measure. Such an interpretation would mean that there was no requirement for arbitration as the Court had already ordered compliance of Clause No. 3.4. of SHA. The Arbitrator failed to see the Order in its entirety which kept all the rights and contentions of parties open and did not determine respondent's alleged rights under Clause No. 3.4 of SHA.

44. Further, the respondent did not act expeditiously, as the Court's Order was dated 31.07.2023 and the respondent filed the application for Interim reliefs after a period of over two months.

Impugned Order Was Passed Without Deciding Jurisdiction

45. It is submitted that the issue of jurisdiction should have been decided first, however, the Sole Arbitrator deferred the issue, and granted interim relief. The Arbitrator ignored lack of arbitrability of the reliefs sought, which began after notice invoking arbitration was issued and which related to different reliefs. Also, the respondent did not first seek resolution under Clause No. 14.7.1. of the SHA. Further, the reliefs sought declaration of the transfers of shares of Anycast, Appyhigh, Mobavenue, Rahul Prasad and one Amit Negi invalid, which could have been only granted by National Company Law Tribunal ("***NCLT***") (Section 59 of the Companies Act, 2013). Further, affected rights of such individuals who were not made parties to the proceedings. The respondent made allegations regarding corporate

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governance issues, however, such matters are to be agitated before NCLT under Sections 241 and 242 of the Companies Act, 2013. Hence, the Arbitrator lacked jurisdiction for such reliefs under Section 430 of the Companies Act, 2013.

46. Further, the Sole Arbitrator wrongly refused the appellants' request to submit an expert's report on Indian law on maintainability of the arbitration concerning the interim reliefs sought and passed the Impugned Order, which is in violation of the settled law in India.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

47. Mr. Mehta, learned senior counsel for the respondent, submits that the impugned Order after dealing with all the argument of the parties granted a discretionary relief to respondent and the appellants have failed to establish any irrationality or unreasonableness in the impugned Order.

Scope of Interference Under Section 37 of the 1996 Act

48. It is submitted that it well settled law the scope of interference under Section 37(2)(b) of the 1996 Act is limited. The Court under Section 37 of the 1996 Act must refrain to interfere with orders passed by the Arbitral Tribunal under Section 17 of the 1996 Act only because an alternative view is possible and the Arbitral Tribunal's view should be upheld unless arbitrary or perverse. Reliance is placed on ***Shabnam Dhillon v. Zee Entertainment Enterprises Ltd., 2019 SCC OnLine Del 8905***; ***EMAAR MGF Land Limited v. Kakade British Realities Private Limited & Anr., 2013 SCC OnLine Del 4170*** and ***HK Toll (supra).***

49. An interim order, founded on the *prima facie* assessment, does not

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require detailed reasoning, reliance is placed on ***Rakesh Kumar and Company v. Union of India, 2015 SCC OnLine Del 8677***. Further, Courts are expected to not to interfere with view of Arbitral Tribunal, even when reasoning is implicit and not apparent, reliance is placed on ***M/s Star Shares & Stock Brokers Ltd. v. Praveen Gupta & Anr., 2024:DHC:7733***.

Interim Relief is not the Final Relief

50. It is submitted that the Sole Arbitrator held that the relief sought by the respondent in interim application is not same as the final relief, as the final relief was declaratory in nature, unlike the interim relief. Further, in the relief granted by the Arbitrator the respondent has been directed to give undertakings and NDA, which restricts the purpose of inspection, whereas if the final relief is granted the respondent would have unrestricted right to inspection.

SRA Does Not Bars Granting of the Interim Relief

51. The Sole Arbitrator held that the SHA is not a determinable contract under Section 14(d) of the SRA, by relying on ***DLF Home Developers Limited v. Shipra Estate Limited, 2021 SCC OnLine Del 4902,*** and Clause No. 14.10 of the SHA, which confers upon the parties the right to seek specific performance.

52. Further, the Arbitrator distinguished ***Ksheerabad Construction (supra)***, relied upon by the appellants, on the basis that the Court in ***Ksheerabad Construction (supra)*** had upheld and only distinguished ***DLF Home Developers (supra)*** on facts. Even in ***HK Toll (supra)***, this Court upheld ***Ksheerabad Construction (supra)*** wherein it distinguished ***DLF Home Developers (supra)*** on the ground that DLF

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Home dealt with "contracts which contained clauses conferring a right on parties to seek specific performance", just like in the present case. Further, in ***HK Toll (supra),*** this Court observed that for a contract to be determinable in nature both parties should have right to unilaterally terminate the contract, whereas, in the present case, the appellants have no right to unilaterally terminate the contract. Also, ***HK Toll (supra)*** was rendered on different facts, wherein the Court declined to grant specific relief on the fact that the agreement had already been terminated, whereas in the present case, the SHA has not been terminated and continues to subsist. Hence, the Sole Arbitrator placed reliance on ***Ares Investment (supra)***, and rejected appellants' contentions based on Section 14(b) of SRA.

Relief Granted in Impugned Order Falls Within the Ambit of Section 17 of the 1996 Act

53. It is submitted that in the interim reliefs were granted under Section 17(1)(ii)(e) of the 1996 Act, which allow grant of such interim measures that the Arbitral Tribunal deems fit. Further, the reliefs granted were under respondent's contractual right to conduct inspection under Clause No. 3.4 of the SHA.

54. Reliance is placed on ***Ares Investment (supra)*** to contend that the said judgment is based on identical facts. In ***Ares Investment (supra***), this Court, despite termination of the agreement, granted inspection as right under contractual clause and Articles of Association, both of which are similar to the present case in terms of conferring inspection right. Additionally, as the subject matter of arbitration dispute concerns appellants' breaches of SHA, the relief sought and granted is

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directly related to protection of the subject matter. Even this Court *vide* order dated 31.07.2023 passed in O.M.P. (I) (COMM.) No. 4/2023, granted respondent right to inspection.

55. Further, the appellant's reliance on ***Reliance Industries (supra)*** is misplaced as the issue before the Court therein pertained to the maintainability of an appeal under Section 37(2)(b) of the 1996 Act filed against a procedural order for disclosure or discovery of documents.

Tests for Granting Interim Relief Under Section 17 of the 1996 Act Satisfied

56. There exists a *prima facie* case in favour of the respondent. For determining existence of *prima facie* case, the Sole Arbitrator on a plain reading of the Clause No. 3.4 of SHA found that respondent has established a *prima facie* case and further, it was observed that the inspection right under the said clause is an individual right, exercisable by any Major Investor and the appellants raised no objection to respondent's inspection notices, which shows that claim of inspection as a collective right was an afterthought.

57. In respect to the argument that respondent is allegedly a competitor of the appellants it is submitted that firstly, the respondent does not fall under the definition of "competitor" provided in the SHA. Secondly, Clause No. 3.4 of the SHA contains no limitation on inspection against a competitor and lastly, the appellants had full knowledge of respondent's business and still granted inspection rights under SHA. Even the SHA does not restrict the respondent from investing or collaborating with entities that may be competitors to the appellants.

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58. Further, the Sole Arbitrator held that the EGM held on 18.01.2023, wherein all shareholders, except respondent, agreed that inspection would be permitted only on issuance of notice by all Major Investors, did not affect amendment to SHA and placed reliance on Clause No. 14.8 of the SHA. Additionally, the Arbitrator rejected appellant's contention pertaining to the respondent's prior knowledge of the share transfers on the ground that it was irrelevant as Clause No. 3.4 of the SHA gave unfettered inspection right. The Arbitrator also relied upon order dated 31.07.2023 passed in O.M.P.(I)(COMM.) 4/2023, which gave same reliefs.

59. The balance of convenience lies in favour of the respondent. The Sole Arbitrator on the plain reading of Clause No. 3.4 of the SHA, observed that the relief was necessary for the respondent to present its case comprehensively. The Arbitrator also addressed confidentiality concerns and found that respondent is not a competitor and the appellants have failed to prove otherwise.

60. Further, in response to appellants' arguments that confidentiality undertaking dated 16.03.2024 provided by respondent is insufficient it is submitted that the Sole Arbitrator gave both parties opportunity to raise their concerns and the appellants have already availed the said opportunity. Additionally, actions of the appellants in not signing the NDA and then refusing inspection on 18.03.2024, and then approaching the Arbitral Tribunal on 03.04.2024 seeking clarity on NDA and undertakings, while simultaneously challenging the impugned Order and then again approaching Tribunal for adjudication of undertakings on 15.04.2025, after nearly 4 and a half months, is an

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attempt to reagitate the same issues already decided by the Arbitral Tribunal. Further, on respondent's request, the Tribunal held a hearing on determination of sufficiency of undertakings and order is awaited.

61. Lastly, it is submitted that the Sole Arbitrator rightly held that the respondent would suffer irreparable harm if not granted inspection rights, as the same aids it in presenting its case comprehensively and after considering appellants' confidentiality concerns, the Arbitrator directed respondent to furnish confidentiality and destruction undertakings.

On the Issue of Jurisdiction

62. It is submitted that the Sole Arbitrator deferred ruling on appellant's jurisdiction application *vide* Procedural Order dated 11.03.2024 and held that it has jurisdiction on all matters that may arise until final award, and the same is also noted in the impugned Order. Despite this, appellants did not raise any objection and therefore, are now barred from raising objection to validity of impugned Order on jurisdiction.

63. Lastly, it is submitted that the Sole Arbitrator observed that the respondent approached the Court and the Arbitrator within a reasonable timeframe. Even during the intermittent period, respondent was protected by Court's order dated 31.07.2023 passed in O.M.P.(I)(COMM.) 4/2023.

ANALYSIS AND FINDINGS

64. I have heard learned senior counsels for the parties and perused the material available on record including the judgments cited.

Scope Of Section 37(2)(b) Of The 1996 Act

65. Before going into the merits of the contentions, it is necessary to

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outline the ambit and scope of Section 37(2)(b) of the 1996 Act. The Hon'ble Supreme Court and this Court in a catena of judgments have held that the powers of appellate Court while exercising jurisdiction under Section 37(2)(b) of the 1996 Act against orders passed by the Arbitral Tribunal are very restricted and narrow and the same should be exercised when the order seems to be perverse, arbitrary and contrary to law. Reliance is placed on ***Ramesh Kumar Jain v. Bharat Aluminium Co. Ltd.***, ***2025 SCC OnLine SC 2857***, wherein the Hon'ble Supreme Court observed as under:-

> *"29. When it comes to section 37 of the A&C Act it provides for a limited appellate remedy against an order either setting aside or refusing to set aside an arbitral award passed by civil court in exercise of its power under section 34. This court in MMTC Ltd. v. Vedanta Ltd.[15], at Paragraph 14 observed that interference with an order made under section 37 cannot travel beyond the restrictions laid down in section 34. Further in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking[16] this court at Paragraph 18 observed that the scope of appellate scrutiny under section 37 is necessarily co-extensive with the parameters mandated under section 34 of the Act and hence the said provision does not enlarge the jurisdiction of the appellate court. Even this court has observed in Hindustan Construction Company Limited v. National Highways Authority of India[17], wherein one of us (Justice Aravind Kumar) was part of the bench at*

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Paragraph 26 that the standard of scrutiny of an arbitral award is very narrow and it is not the judicial review of an award. Further in Paragraph 27 it was observed that awards which contains reasons, especially when they interpret contractual terms, ought not to be interfered with lightly. ..... Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37. This court in Punjab State Civil Supplies Corporation Limited v. Sanman Rice Mills[19], at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view. This court in Batliboi Environmental Engineers Limited v. Hindustan

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Petroleum Corporation Limited[20] *held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence. Even an award which is based on little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious."*

(Emphasis added)

66. A perusal of the aforesaid judgment shows that the Appellate Court while exercising powers/jurisdiction under Section 37 of the 1996 Act has to keep in mind the limited scope of judicial interference as prescribed under Section 34 of the 1996 Act. The appeals under the 1996 Act against the orders passed by the Arbitral Tribunal are subject to strict and narrow grounds and the 1996 Act aims at minimal Court interference, thereby to uphold the autonomy and efficiency of the arbitration process. The Appellate Court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the Arbitral Tribunal has ignored the settled principles of law. The Appellate Court is not required to interfere in the arbitral orders especially if a decision taken is at an interlocutory stage. The Appellate Court is only required to see the whether the Arbitral Tribunal has adhered to the settled principles of law rather than re-assessing the merits of the Arbitral Tribunal's reasoning.

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67. To sum up, it is clear that in view of the limited judicial interference, the Appellate Court has to exercise its power only if the arbitral order suffers from perversity, arbitrariness and a manifest illegality.

Interim Relief Is Not Same As The Final Relief

68. The learned senior counsel for the appellants has argued that the relief sought by the respondent in its Statement of Claim i.e., prayer No. (ix) and the reliefs sought in interim application by the respondent are same and by granting the interim relief, final relief has been granted in the guise of an interim relief.

69. The law is well settled that an Arbitral Tribunal, while exercising jurisdiction under Section 17 of the 1996 Act, cannot under the guise of interim protection, grant relief of such nature as to lead to final adjudication of reliefs. However, in my considered view the present case, is not such a case. The final relief, which as per the appellants have been granted in guise of the interim relief is prayer No. (ix) of the Statement of Claim and the same reads as under:-

> *"(ix) A declaration that R1 and R2 have breached Clause 3.4 of the SHA and that R1 and R2 should comply fully with Clause 3.4 of the SHA upon request by Affle;"*

70. The interim relief granted to the respondent by the Sole Arbitrator is in paragraph No. 6.1 of the impugned Order (reproduced above), which provides that subject to parties signing the NDA or Confidentiality Undertaking, the appellants shall provide inspection rights to the respondent pursuant to Clause No. 3.4 of the SHA.

71. The Sole Arbitrator on the said issue observed that the interim relief is not the final relief as while the final relief is in the nature of a

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declaratory relief, the interim relief is not. I find myself in agreement with the reasoning of the Arbitrator. The final relief seeks finding that the appellants have breached Clause No. 3.4 of the SHA and hence, a declaration that the appellants should be directed to comply with the same upon the request of the respondent. On the other hand, what has been granted as interim relief is only a supervised inspection right guided by NDA and Confidentiality Undertaking, for the time being, to allow the respondent its inspection rights. The same cannot be said to be of permanent or declaratory nature like the final relief. Had the interim relief been in the nature of the final relief there would have been no restrictions on the parties to sign the NDA and Undertakings, as done in the impugned Order.

72. In furtherance of its contention that final relief cannot not be granted in guise of interim relief the appellants have relied upon ***Mehul Mahendra Thakkar (super)***, which is not relevant and distinguishable on facts as therein issue was matrimonial in nature and the Court had granted a declaratory order at the interim stage. Further, reliance upon the judgment of ***GMR Pochanpalli Expressways Ltd. (supra)*** is also not relevant and distinguishable on facts as therein the Court held that interim relief was outside the ambit of Section 9 the 1996 Act as the petitioner sought amount illegally withheld by respondent, which the Court found to be in nature of a permanent relief. Similarly, reliance on ***Hinduja Leyland Finance Ltd***. ***(supra)*** is also misplaced as therein too interim relief granted seizure of vehicle and permitted the applicant to dispose of the vehicle which was akin to final adjudication. However, in the present case, the inspection sough

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cannot be said to be permanent in nature especially in view of the requirement of NDA and Undertakings. Even reliance upon ***Indore Development Authority (supra),*** is misplaced wherein the State Commission by way of an interim order directed delivery of possession of plot in question and under such circumstances it was observed that final relief could not have been granted in an interlocutory application.

Relief Is Not Barred Under The Provisions Of SRA

73. The learned senior counsel for the appellants contends that the interim relief granted is barred under Section 14(b) of the SRA, as interim relief necessitates continuous supervision and also under Section 14(d) of the SRA, as the SHA is determinable in nature.

74. At this point it is relevant to refer to Sections 14(b) and 14(d) of the SRA, which read as under:-

> *"14. Contracts not specifically enforceable.—The following contracts cannot be specifically enforced, namely—*
>
> *(a) ...*
>
> *(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;*
>
> *(c) ...*
>
> *(d) a contract which is in its nature determinable."*

75. In ***HK Toll (supra),*** I have after referring to judgments of this Court and Hon'ble Supreme Court, laid down when a contract is determinable in nature and that if a contract is found to be determinable in nature, specific performance of such contracts cannot

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be granted. The relevant paragraphs from the said judgment are reproduced below:-

> *"85. The word "determinable" is not defined in SRA. As per the Black's Law 18th Edn., the said word means "liable to end upon the happening of a contingency", meaning thereby, if a contract is liable to be terminated by either of the parties to a contract in view of some future situation or events, then such contract can be termed as determinable in nature. There cannot be any straitjacket formula to test whether a contract is determinable or not but the same has to be tested on the facts of the each case after taking note of the clauses of the said contract.*
>
> ***xxxxxxx***
>
> *88. On perusing the above judgments, it is discernible that if a contract can be terminated by either of the parties whether for a specific breach or even without any cause and this right is based on an allegation of beach or happening of an event which is clearly stated in the contract, then the contract is determinable in nature and hence, cannot be enforced.*
>
> ***xxxxxxxx***
>
> *91. This Court has time and again observed that once a contract is held to be determinable in nature, injunction cannot be granted.[34] The Division Bench of this Court in Rajasthan Breweries Ltd. v. Stroh Brewery Co.[35] has observed that if court finds that the contract was illegally*

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terminated, then the only remedy available to the aggrieved party is to seek compensation for wrongful termination and it cannot claim specific performance of the agreement. ...

xxxxxxx

94. In somewhat similar circumstances and more particularly the termination clause being the same, this Court in Supreme Panvel Indapur Tollways (P) Ltd. case[7] dismissed the appeal and upheld the order passed by the AT under Section 17 wherein the AT had dismissed the interim application on the ground inter alia, the contract being determinable contract and if termination found illegal, the aggrieved party can seek damages and once the appellant therein had already been dispossessed from the project, granting stay of termination would amount to final relief. ..."

(Emphasis added)

76. However, the judgment of ***HK Toll (supra)*** is not relevant in the present case in view of the Clause No. 14.10 of the SHA, which reads as under:-

"14.10 Specific Performance. This Agreement shall be specifically enforceable at the instance of any Party. The Parties agree that a non-defaulting Party will suffer immediate, material, immeasurable, continuing and irreparable damage and harm in the event of any material breach of this Agreement and the remedies at Applicable Law in respect of such breach will be inadequate and that

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such non-defaulting Party shall be entitled to seek specific performance against the defaulting Party for performance of its obligations under this Agreement in addition to any and all other legal or equitable remedies available to it."

77. Clause No. 14.10 of the SHA is a contractual understanding between the parties, wherein the parties have clearly understood and agreed that in the event of default, non-defaulting party will suffer immediate, material, immeasurable, continuing and irreparable damage and remedies in respect of breach are inadequate and the then non-defaulting party shall be entitled to specific performance. In such situation the argument of the SHA being determinable in nature does not hold any ground.

78. The Sole Arbitrator has referred to and relied upon Clause No. 14.10 of the SHA and in paragraph No. 5.114 of the impugned Order observed that the said clause permits specific performance of the SHA and therefore, the SHA is not determinable in nature under SRA. The paragraph No. 5.114 of the impugned Order reads as under:-

"5.114 I agree with the Claimant's arguments for the purposes of this Application. The SHA does not appear to be a determinable contract within the meaning of Section 14 of the SRA 1963, particularly in light of the reasoning and arguments provided by the Claimants relying on DLF Home Developers. Clause 14.10 of the SHA confers the right on the parties to seek specific performance and therefore is not determinable within the meaning of Section 14 of the SRA 1963. I do not agree with the Respondents that Ksheerabad

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is applicable in this case, as the agreement in that case did not contain a specific enforcement clause."

79. Upon a perusal of the paragraph, reproduced above, the interpretation adopted by the Sole Arbitrator of Clause No. 14.10 of the SHA is fair and a plausible one and hence, requires no interference. Additionally, the reliance on the judgment of ***DLF Home Developers (supra)*** is also correct as therein too there was a similar clause of specific performance, depending upon which a Coordinate Bench of this Court held that the contract in question was liable for specific performance. The relevant paragraphs from the said judgment read as under:-

"72. The aforesaid view also finds support in Clause 10 of the ATS, which entitles DLF to claim specific performance of the ATS. Clause 10 of the ATS is set out below:

"10. SPECIFIC PERFORMANCE

The Parties agree that in the event of any breach or threatened breach by the Seller, and, or, Promoter and, or, IHFL of any covenant, obligation or other provision set forth in this Agreement, the Purchaser shall be entitled, in addition to any other remedy that may be available to it, to seek; (i) any decree or order of specific performance to enforce the observance and performance of any covenant, obligation or other provisions of this Agreement by the Seller, and, or, Promoter and, or, IHFL; and, or, (ii) any injunction restraining such breach or threatened breach by the Seller, and, or, Promoter and, or, IHFL. The Parties agree that the Sale Property is a

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special property and in the event of any breach or default of any terms of this Agreement by the Seller, and/or, Promoter and/or IHFL monetary relief shall not be sufficient and the Purchaser is entitled to seek mandatory or any other injunctions at an interim stage."

xxxxxxxx

96. As noted above, Clause 10 of the ATS expressly states in unambiguous terms that DLF would be entitled to specific performance of the ATS as the Sale Property is a special one and a similar property is otherwise not easily available. Once the parties have expressly agreed that the contract is required to be specifically enforceable, it is clearly not open for any party to contend to the contrary.

xxxxxxxxx

118. As noted above, in terms of Clause 10 of the ATS, the parties had agreed that the Sale Property is a 'special property' and damages would not be an adequate remedy. Thus, if DLF prevails in its case that it is entitled to specific performance of the ATS, the damages it would suffer in the event the Sale Property is alienated, cannot be compensated in monetary terms. This Court is of the view that in these facts, the balance of convenience is, plainly, in favour of grant of an interim injunction restraining the parties from creating any third party rights."

80. Further, reliance upon the judgments of ***Ksheeraabd Construction (supra), Rajasthan Breweries (supra)*** and ***Royal Orchids (supra)*** is

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not relevant here and the same are distinguishable as in none of the said judgments a clause like Clause No. 14.10 of the SHA, which provided specific performance of the contract, existed.

81. Lastly, I also do not agree with appellants' contention that the interim relief is barred under Section 14(b) of the SRA, as the Sole Arbitrator will continue to supervise the inspection rights as the Arbitrator is yet to decide upon the sufficiency of the terms of the NDA and Undertakings. The Arbitrator in paragraph Nos. 5.126 and 5.127 of the impugned Order has opined as under:-

> *"5.126 I am persuaded by the Claimant's arguments. The court in Ares Investment or the DHC did not seem concerned with the continuous supervision issue. I agree with the Claimant that my remit would be "to preside over any ordered inspection(s) and follow up inquiries provided for in Clause 3.4 for a short period that would last for less than two months since the merits hearings will take place within that time" (in other words, until the merits hearing of this Arbitration).*
>
> *5.127 In any event, I will have supervisory powers over this Order until this Arbitration is concluded."*

82. The Arbitrator has relied upon the judgment of ***Ares Investment (supra)***, and held that the Arbitrator would be required to preside over the order only for a small period of time and not continuously. A perusal of the aforesaid finding to my mind is fair, reasonable and plausible.

<u>Relief Is Not Outside The Ambit Of Section 17 Of The 1996 Act</u>

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83. The learned senior counsel for the appellants has contended that the interim relief granted i.e., right of inspection for discovery of documents is outside the ambit of Section 17 of the 1996 Act and there is no "property or thing" forming subject matter of the dispute, which require inspection for interim measures or that any "property or thing" would be at risk if the interim relief was not granted.

84. At this juncture it is relevant to extract Section 17(1) of the 1996 Act, which reads as under:-

> *"17. Interim measures ordered by arbitral tribunal.—*
>
> *(1) A party may, during the arbitral proceedings, apply to the arbitral tribunal—*
>
> *(i) ...*
>
> *(ii) for an interim measure of protection in respect of any of the following matters, namely—*
>
> *(a) ...*
>
> *(b) ...*
>
> *(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) ...*

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

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

85. In the judgment of ***Ares Investment (supra),*** a Coordinate Bench of this Court set aside the impugned order therein on the ground that the appellant therein had right to conduct audit under Articles of Association and the respondent failed to show otherwise. Further, it was found that the subject matter of the dispute pertained to alleged breach of Articles of Association, hence denying the interim relief of conducting audit on the ground that the same has no relation with protecting the subject matter of the dispute was not found sustainable.

86. While dealing with the issue whether the relief sought by the respondent in the interim application falls within the scope of Section 17 of the 1996 Act, the Sole Arbitrator has heavily relied upon the judgment of ***Ares Investment (supra),*** and held that the clause in question in the said judgment, providing information rights, was similar to Clause No. 3.4 of the SHA and based on such clause the Court allowed the appeal and set aside the impugned order therein denying the information rights. Hence, the Sole Arbitrator held that just like in ***Ares Investment (supra),*** the present case also fall within the ambit of Section 17(1) of the 1996 Act. The said findings are provided in paragraph Nos. 5.102 and 5.103 of the impugned Order, which read as under:-

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"5.102 I am more persuaded by the Claimant's arguments. I agree with the Claimant that the decision in the Ares Investment case is relevant on this point. As the Claimant argued, the clause analysed in Ares Investment was similar to Clause 3.4 of the SHA. On that basis, the court in Ares Investment set aside the tribunal's wrongful order not to give effect to the information rights clause as an interim measure of protection under Section 17(1)(ii). I am therefore persuaded that the situation in Ares Investment is similar to the present Application and that the Claimant's Application falls within Section 17(1)(ii).

5.103 As to whether it falls within Section 17(1)(ii)(c) or (e), I agree with the Claimant that the court in Ares Investment granted the petitioner's claim for interim relief for inspection, information and audit under Section 17, which can only mean Section 17(1)(ii)(e)."

87. Although, the learned senior counsel for the appellants have enumerated as to how of the judgment of ***Ares Investment (supra)*** is not relevant to the present case, but to my mind the interpretation given by the Sole Arbitrator is correct. Hence, I find no reason to interfere with the finding of the Arbitration that the interim reliefs sought and granted falls within the ambit of the Section 17(1) of the 1996 Act.

88. The learned senior counsel for the appellants to buttress this contention has also placed reliance on ***Reliance Industries (supra),*** which is distinguishable, as in the said case there were request for

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disclosures under Redfern schedules, however, the same is not the case here, as in the present case, the respondent is not making request to disclosure but is exercising its contractual right under Clause No. 3.4 of the SHA.

Satisfaction Of The Standards Of Section 17 Of The 1996 Act

89. The learned senior counsel for the appellants has argued that the impugned Order is a mere reproduction of contentions of the parties and the final decision of the Sole Arbitrator under each issue is a mere agreement with the respondent's argument. *Per contra*, the learned senior counsel for the respondent has argued that firstly, such argument is a mere afterthought, as the same was not raised in appeal and secondly, the Arbitrator has considered all the documents on record before arriving at the findings and an interim order based on *prima facie* case does not require detailed deliberations.

90. The argument that the impugned Order is mere reproduction of the contentions of the parties has not been pleaded in the appeal. Though pleadings are not to be filed in a rigid form and there is generally no straight jacket formula, however, there should at least be a semblance of reference to the grounds in the petition/appeal which are urged orally by the appellants at the stage of arguments, so that the opposing party has a fair chance to deal and address the same during arguments. Reliance is placed upon the judgement ***Deep Nursing Home v. Manmeet Singh Mattewal, 2025 SCC OnLine SC 1934***, wherein the Hon'ble Supreme Court while referring to the judgements ***Trojan & Co. Ltd. v. Nagappa Chettiar, (1953) 1 SCC 456*** *and* ***Ram Sarup Gupta v. Bishun Narain Inter College, (1987) 2 SCC 555***, observed

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as under:-

> *"29. Useful reference may also be made to the observations of this Court in Trojan and Company v. Rm. N.N. Nagappa Chettiar[12], as long back as in the year 1953, that it is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Again, in Ram Sarup Gupta (Dead) by LRs v. Bishun Narain Inter College[13], this Court observed that it is well settled that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by a party in support of the case set up by it. It was pointed out that the object and purpose of pleadings is to enable the adversary party to know the case it has to meet as, in order to have a fair trial, it is imperative that a party should settle the essential material facts so that the other party may not be taken by surprise."*
>
> *(Emphasis added)*

91. In the present case, the appellants have only raised the ground of verbatim reproduction of respondent's argument and non-application of mind by the Sole Arbitrator at the stage of argument and filing of written submissions and hence, the same should not be entertained. Only legal pleas can be permitted to be urged at the time of oral hearing.

92. Despite the same, I have scrutinized the impugned Order and do not find myself in agreement with the contentions raised by the learned

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senior counsel for the appellants. It is a fact that the impugned Order extends to approximately 86 pages and a substantial portion, nearly first 57 pages, is mere reproduction of pleadings of the parties. However, from page No. 57 of the impugned Order, under the heading "THE DECISION", the Sole Arbitrator has dealt with each issue. Further, while it is true that under each issue there is reproduction of contentions raised by both parties in the application, reply, surreply, surrejoinder, closing submissions, etc. respectively, but the Arbitrator has while stating, in majority issues, that she agrees with respondent's arguments, in my considered opinion, has also provided her reasoning for such agreement.

93. I will now begin to analyse analysis as done by the Sole Arbitrator, under the sub-heading "D. Standard/Test for Interim measures to be ordered" to assess whether the standards of Section 17 of the 1996 Act were met or not for granting interim relief.

94. The Sole Arbitrator after laying down the test for grant of interim relief, first determined existence of a "*prima facie* case". The Arbitrator first quoted and summarised both parties' arguments on the said issue from paragraph Nos. 5.32 to 5.38 of the impugned Order and then in paragraph Nos. 5.39 to 5.49 of the impugned Order, has expressed agreement with respondent's argument. Paragraph Nos. 5.39 to 5.49 of the impugned Order are reproduced below:-

> *"5.39 I agree with the Claimant's arguments. At this point (ie on a prima facie basis or on a strong/very strong prima facie basis, the latter as argued by the Respondents), the most relevant fact that needs to be taken into account to*

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decide whether there is a prima facie case (or a strong/very strong prima facie case) or not is whether the interpretation of Clause 3.4 on a prima facie basis grants a right of inspection to the Claimant. Based on the evidence presented by both Parties, I am satisfied that on a plain reading of Clause 3.4 a prima facie case (or a strong/Very strong prima facie case) has been made out by the Claimant for it to be entitled to Inspection Rights. To clarify, whether the test to be met is a prima facie case or a strong/very strong prima facie case, this has been established.

5.40 Furthermore, on a plain reading of Clause 3.4, there seems to be no inclusion, on a prima facie basis (or a strong/very strong prima facie basis), of any caveat that the Respondents are entitled to refuse granting the Inspection Rights on the basis of confidentiality concerns or because the Claimant may be a competitor of the Respondents.

5.41 I have also reviewed the definition of competitor under the SHA and I agree with the Claimant, on a prima facie basis (or a strong/very strong prima facie basis), that the Claimant is not a competitor within the meaning of the SHA[291] *and that:*

"Respondents' claim that Affle is a ……"[292]

5.42 As to whether the Inspection Rights are an individual or collective right, at this point, on a prima facie basis (or a strong/very strong prima facie basis), I agree with the Claimant's arguments:

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"The reference to the Majority Investors needing …."[293]

5.43 Furthermore, I also agree with the Claimant, on a prima facie basis (or a strong/very strong prima facie basis), that:

"[T]here is at least a prima facie right to …." [294]

5.44 As to the weight to be given to the EGM, I am persuaded, on a prima facie basis (or a strong/very strong prima facie case), by the Claimant's arguments on this point. Based on the evidence submitted by the Parties and/or taking into account the wording of Clause 14.8 (Amendments) of the SHA, on a prima facie basis (or a strong/very strong prima facie case), I find that the EGM has not indeed amended the SHA. This is also supported by the Respondents who have themselves stated that the EGM has not amended the SHA. [295]

5.45 In this regard, I note the Respondents' arguments that:

"No order, with the effect of altering or overturning the decision….."[296]

5.46 However, I am persuaded by the Claimant's arguments put forward at the Hearing:

"And again, we have this idea that there….."[297]

5.47 I also agree with the Claimant that the Ares Investment case is relevant for the purposes of this Application and that the Respondents have failed to demonstrate why it should not be applied in assessing whether this application should be granted. As the Claimant submits:

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"Respondents have tried in vain to distinguish Ares Investment…"[298]

5.48 Finally, I am not persuaded by the Respondents' arguments that this Application cannot be granted because the "Claimant has suppressed material facts and made various inconsistent statements across its various pleadings".[299] *This is irrelevant for the granting of this Application. In any event I note from the Claimant's arguments that the DHC Order was issued despite this argument being raised.*[300] *I also do not consider that this Application should be refused because the Claimant declined to accept the Respondents' offers of inspection.*

5.49 For the sake of clarity, although the issue related to a prima facie case (or a strong/very strong prima facie case) has been relevant to the conclusion reached in this Order, it is nevertheless one of the many circumstances I have had regard to in reaching my conclusions in this Order."

95. On a perusal of the paragraphs, reproduced above, no doubt there is reproduction of respondent's arguments and the Arbitrator has expressed agreement with respondent's argument, but it cannot be said that there is no application of mind or reasoning. In paragraph No. 5.39, the Sole Arbitrator has stated that based on evidence presented by parties and on plain reading of Clause No. 3.4 of SHA a *prima facie* case has been made out by respondent showing entitlement to inspection rights. Further, in paragraph No. 5.40, the Arbitrator states that on plain reading of Clause No. 3.4 of SHA *prima facie* there

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seems no right to refuse inspection on basis of confidentiality or because the respondent might be a competitor. By relying on Clause No. 3.4 of SHA shows that the Arbitrator has duly considered the clause and applied the *prima facie* test. It shows that the Arbitrator did a literal interpretation of the clause in issue and then provided her understanding of the clause.

96. At this point it is relevant to refer to Clause No. 3.4 of SHA, which reads as under:-

> *"3.4 Inspection Rights. In addition to the information and materials to be provided under this Clause 3, the Company shall permit any Major Investor and its representatives, subject to such Major Investor holding (either individually or collectively with its Affiliates) at least 8% (Eight percent) of the Share Capital, at all times during normal business hours to visit and inspect to its satisfaction, the offices of the Company. The Major Investors will be required to issue a prior Notice of at least 4 (Four) days prior to such visit and inspection. Such Major Investor or their authorized representative will be entitled to inspect Company's material contracts and financial accounts and documents as well as conduct internal audits, as such Major Investor may deem fit at its sole discretion. The Company and Founder shall render full co-operation and provide all such other authorization as may be required. The Major Investors shall also have a right to consult with and receive information, documents and material about the business and operation of*

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the Company that they consider material, from the Company, its employees, vendors, consultants, counsel (internal or external) and internal and external auditors of the Company. The Company and/ or the Founder shall, where required, facilitate such consultation including by issuing appropriate instructions to the persons referred to above."

97. A perusal of the clause, reproduced above, clearly shows that the respondent has a right to inspect, which has been so exercised by the respondent and recognised by the Sole Arbitrator. Hence, I am of the view that the findings of the Sole Arbitrator are based on correct interpretation of Clause No. 3.4 of the SHA. As observed above, the Court under Section 37 of the 1996 Act is not to substitute its views with that of the Arbitrator's if the same are not perverse or arbitrary.

98. Further, the learned senior counsel for the appellants have also argued that the Sole Arbitrator failed to determine the scope of Clause No. 3.4 of the SHA, and provided respondent inspection with no limitation as to access or time. I am unable to agree with the same, as the Arbitrator has directed both parties to enter into NDA and Undertakings, thereby taking care of putting limitations to inspection rights.

99. As regards the contention of the appellants that respondent is a competitor and is engaged with the competitors of the appellants, even though not stated before the Sole Arbitrator, Clause No. 12.3.4 of the SHA permits the respondent to invest in similar or allied field of business. Clause No. 12.3.4 of the SHA reads as under:-

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"12.3.4 Investors' Right to Invest. The Major Investors and the Angel Investors and their respective Affiliates invest in numerous companies, some of which may compete with the Company. The Company and the Founder confirm that they will not have any objection to the Major Investors and/ or the Angel Investors or any of their Affiliates investing in the equity, entering into a joint venture, or collaborating with any company entity in the same or allied field (as the Business) in India or elsewhere, subject to compliance by the Major Investors and/ or the Angel Investors of their confidentiality obligations as detailed in Clause 12.7. In the event the Major Investors and/or the Angel Investors invest in any such company / entity, they shall inform the Company of the same at the time of such Major Investors and/ or the Angel Investors making a bona fide offer for such investment. The Founder and the Company shall provide the necessary no objection certificate, if requested by the Major Investors or the Angel Investors, as and when required. Further, neither the Major Investors, the Angel Investors nor any of their Affiliates shall be liable for any claim arising out of or based upon any action taken by any of their officers or representatives in assisting any such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company."

100. As regards the contention of the appellants that all major investors have to issue notice for inspection (an interpretation reaffirmed in the

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EGM), the Sole Arbitrator in paragraph No. 5.44 of the impugned order (reproduced above) dealt with the said issue and after considering both parties argument and Clause No. 14.8 of SHA, found that EGM did not amended the SHA. In paragraph No. 5.47 of the impugned Order (reproduced above), the Arbitrator agreed with respondent's contention relying upon the judgment of ***Ares Investment (supra)***.

101. Lastly, in paragraph No. 5.48 of the impugned Order (reproduced above), the Arbitrator expressed disagreement with appellants' argument regarding suppression of facts by the respondent and found the same irrelevant and also based this finding, on the fact that the order dated 31.07.2023 was passed despite such arguments. As observed above, the Arbitral Tribunal is the best judge of quality and quantity of evidence and facts, and if the Arbitrator found the contention regarding suppression of facts by the respondent and its changing stance irrelevant for determination of *prima facie* case, then I find no reason to interfere with the same.

102. To my mind, the reasoning provided in paragraph Nos. 5.39, 5.40, 5.44 and 5.48 of the impugned Order coupled with the reliance placed on the judgment of ***Ares Investment (supra)*** and order dated 31.07.2023 passed by the Court, shows sufficient application of mind and Arbitrator's reasoning for existence of *prima facie* case and the same is enough at the interim stage. There is no straight jacket formula as to what amount of reasoning an Arbitral Tribunal is required to provide to show that it is satisfied as to existence of *prima facie* case.

103. Moving further to the test of 'Balance of Convenience', in paragraph

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Nos. 5.55 to 5.61 of the impugned Order, the Arbitrator has showed agreement with respondent's contentions and provided reasoning for the same. Paragraph Nos. 5.55 to 5.61 of the impugned Order are reproduced below:-

> *"5.55 I am persuaded by the Claimant's arguments. I believe in granting this Application the balance of harm test favours the Claimant particularly given the prima facie plain language of Clause 3.4 and the fact that granting this Application is relevant for the Claimant to be able to put forward its case holistically without which it may not be able to do so.*
>
> *5.56 I also do not agree with the Respondents' assertion that their offer to provide an undertaking to the effect that they will not alter / destroy / tamper with the records of R1 (as well as the appointment of a receiver for this purpose) will "balance the equities between the parties, simultaneously addressing the Claimant's [...] concerns about preservation of records and the Respondents' concerns regarding confidentiality of documents."[308] The Respondents' offer would not allow the Claimant to exercise its Inspection Rights and get access to documents that may be relevant for it to put forward its case holistically under this Arbitration.*
>
> *5.57 I have also taken note of the Respondents' confidentiality concerns. However, I agree with the Claimant that: ....*

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5.58 In any event, I agree with the Claimant's proposal to enter into the Proposed NDA, if I grant this Application. This is dealt with in more detail in Section 6 of this Order.

5.59 I also note the Claimant's proposed undertaking (see paragraph 5.51) that it for whatever reason, it is eventually determined at the merits hearing that the Claimant is not entitled to the information to which they will get access through the Inspection Rights, the Claimant is willing to undertake to return or destroy any such documents obtained as a result of the Parties complying with this Order (the Proposed Undertaking).

5.60 I believe that having the Proposed NDA in place, as well as the Proposed Undertaking, are reasonable means to address the Respondents' concerns. This is dealt with in more detail in Section 6 of this Order.

5.61 For the sake of clarity, although the issue related to balance of convenience has been relevant to the conclusion reached in this Order, it is nevertheless one of the many circumstances I have had regard to in reaching my conclusions in this Order."

104. In the paragraphs, reproduced above, the Sole Arbitrator takes into account the respondent's NDA and undertakings to return/destroy such documents subsequently. In paragraph No. 5.55 of the impugned Order (reproduced above), the Arbitrator provided two reasons for which she thinks the balance of convenience lies in favour of granting the interim relief i.e., first that *prima facie* case exists on plain reading

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of Clause No. 3.4 of SHA and second to enable the respondent to present its case holistically, which it might not be able to do if interim relief is not granted.

105. Based on all these findings the Sole Arbitrator held that balance of convenience lies in favour of granting the interim relief. Hence, to my mind, there is reasoning provided by the Arbitrator for holding balance of convenience in favour of the respondent i.e., in paragraph Nos. 5.55 to 5.60 of the impugned Order and the reasoning of the Arbitrator is fair, reasonable and shows due application of mind.

106. Moving further to the test of 'irreparable harm/ injury', in paragraph Nod. 5.72 to 5.75 of the impugned Order, the Sole Arbitrator has shown agreement with respondent's contentions and provided reasoning for the same. Paragraph Nos. 5.72 to 5.75 of the impugned Order are reproduced below:-

> *"5.72 I am persuaded by the Claimant's arguments in this regard. I believe that the Claimant would suffer irreparable harm if this Application were not granted as the Claimant would not have had the chance to put forward its case in this Arbitration holistically. The Claimant's ability to present its case adequately would be affected. As the Claimant has argued: ...*
>
> *5.73 I have taken note of the Respondents' concerns about confidentiality, as well as the alleged irreparable harm that they may suffer if the Claimant has access to commercially sensitive or confidential information that may be irrelevant*

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to the present dispute that. I reiterate what I mentioned above at paragraph 5.40-5.42; 5.57.

5.74 In any event, I am satisfied that (i) the Proposed Undertaking referred at paragraph 5.59; and (ii) the Proposed NDA to be entered into by the Claimant (see paragraph 5.58 above), are sufficient to protect the Respondents.

5.75 For the sake of clarity, although the issue related to irreparable harm has been relevant to the conclusion reached in this Order, it is nevertheless one of the many circumstances I have had regard to in reaching my conclusions in this Order."

107. In paragraph No. 5.72 of the impugned Order (reproduced above), the Sole Arbitrator states that the respondent would suffer irreparable harm as it would not able to put its case holistically if not allowed inspection rights. Further, in paragraph Nos. 5.73 and 5.74 of the impugned Order (reproduced above), the Arbitrator again states that as for confidentiality concerns she is satisfied with the respondent's argument that the same can be dealt with by executing Undertakings and NDA. Hence, to my mind, the reasoning provided in paragraph Nos. 5.72 to 5.74 of the impugned Order, shows Arbitrator's reasoning for existence of irreparable harm in favour of respondent and the same shows due application of mind. The reasoning is both fair and reasonable and based on correct interpretation of the SHA.

108. Lastly, while dealing with the test of 'urgency/ expediency', in paragraph Nos. 5.79 to 5.83 of the impugned Order, the Arbitrator

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while agreeing with respondent's contentions, provided reasoning for the same. Paragraph Nos. 5.79 to 5.83 of the impugned Order are reproduced below:-

> *"5.79 I am more persuaded by the Claimant's arguments in this regard. I believe that the Claimant has demonstrated that they have acted with urgency (ie expeditiously) when dealing with this matter. This is mainly, inter alia, for the following reasons:*
>
> *(a) The Claimant filed the Section 9 Application in the Indian courts in January 2023-just after having its notice of inspection rejected by Respondents the month before on 22 December 2023. (Typographical error should be December 2022)*
>
> *(b) Once the DHC Order was issued on 31 July 2023, the Claimant filed its Unamended Interim Measures Application on 6 October 2023, which I consider to be a reasonable timeframe.*
>
> *(c) Having reviewed the events described in the Claimant's List of Dates and the Respondents' List of Dates (particularly the interactions between the Parties on this matter), I consider that the Claimant has dealt with this matter with urgency/expediency.*
>
> *5.80 Furthermore, I agree with the Claimant that: ...*
>
> *5.81 I also note the Respondents' argument that the Claimant has failed to establish any urgency in the grant of interim measures or how if the Application is not allowed at*

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this stage, it would render the relief infructuous at a later stage. However, I am more persuaded by the Claimant's arguments put forward at the Hearing: ...

5.82 For the sake of clarity, although the issue related to urgency/expediency has been relevant to the conclusion reached in this Order, it is nevertheless one of the many circumstances I have had regard to in reaching my conclusions in this Order.

5.83 For the reasons set out above, I believe that this Application meets the four elements of the relevant standard/ test to grant interim measures."

109. In paragraph No. 5.79 of the impugned Order (reproduced above), the Sole Arbitrator has provided three reasons for why she believes that respondent acted expeditiously namely, (i) the respondent filed Section 9 application in January 2023, within a month after appellants' rejected its inspection notice; (ii) the respondent filed Section 17 application in October 2023, which is a reasonable time from order of 31.07.2023 and lastly, (iii) on review of parties list of dates, in Arbitrator's view the respondent acted expeditiously. To my mind, the Arbitrator has provided reasons and the same are reasonable.

110. The Sole Arbitrator based on all the findings and views, as discussed above, held that the respondent has met all the conditions for grant of interim relief and hence, allowed the application. As observed above, the Court under Section 37 of the 1996 Act is not to substitute its view with that of the Arbitral Tribunal just because an alternative view is possible. In my opinion, the Arbitrator has provided enough and

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reasonable reasoning under each of the four tests to give findings in favour of the respondent. I find no reason to interfere with the said findings of the Sole Arbitrator.

Reliance On Order Dated 31.07.2023 Passed In O.M.P. (I)(COMM.) 4/2023

111. As observed above, the Sole Arbitrator heavily relied upon Court's Order dated 31.07.2023 passed in O.M.P.(I)(COMM.) 4/2023, in furtherance of the view that the respondent should be allowed inspection right under Clause No. 3.4 of the SHA. The learned senior counsel for appellants' asserts that the Arbitrator's interpretation of the said order i.e., there is direction for compliance with Clause No. 3.4 of SHA as an interim measure is wrong as the order kept rights and contentions of parties open and did not determine respondent's alleged rights under Clause No. 3.4 of the SHA.

112. It is relevant to refer to the operative portion of the said order, which reads as under:-

> *"6. Respective counsels for the parties are also in agreement that pending further consideration of the matter by the learned sole Arbitrator, the assurance and undertaking given on behalf of the respective parties on 10.01.2023 shall continue to operate, in terms of which the parties are required to strictly adhere to the terms of the Amended and Restated Shareholders Agreement dated 06.09.2021. Necessarily, the same subsumes adherence to clause 3.4 thereof, which affords certain inspection right/s to the petitioner.*

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7. The undertaking recorded in the order dated 14.03.2023 shall also continue to operate.

8. The above shall be subject to further order/s as may be passed by the learned Sole Arbitrator. All rights and contentions of the parties are left open to be considered by the learned Sole Arbitrator."

113. A perusal of paragraph No. 6 of the said order, reproduced above, clearly shows that the Court held that pending arbitration proceedings the parties will be bound by undertakings given on 10.01.2023, whereby which they are bound to adhere to terms of the SHA which includes Clause No. 3.4 of the SHA. Hence, I find no error with the finding of the Sole Arbitrator and reliance on the said order, among other things, for granting the interim relief.

On The Issue Of Jurisdiction

114. The learned senior counsel for the appellants argued that the relief sought lacked arbitrability and the reliefs sought could only be granted by NCLT under the Companies Act, 2013.

115. While dealing with the appellant's jurisdictional objections the Sole Arbitrator observed as under:-

"5.9 I note that the Respondents have raised their Jurisdictional Objections in their pleadings concerning the Claimant's Application and argue that no interim measures can be granted by the Sole Arbitrator in the absence of jurisdiction: ... ...

5.10 I do not wish to comment in this Order on the Respondents' Jurisdictional Objections Application, as this

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will be dealt with separately. The Parties will receive my PO2 addressing the Tribunal's approach to the Respondents' Jurisdictional Objections at the same time this Order is served on them.

5.11 Notwithstanding the outcome of the Respondents' Jurisdictional Objections Application, I find and reiterate that I have the jurisdiction to determine this Application. As the Parties will appreciate from PO2 in respect of the Respondents' Jurisdictional Objections Application, the Tribunal retains jurisdiction over all aspects of the proceedings while the Respondents' Jurisdictional Objections Application is pending and to be decided. This encompasses not only this Application but also any other Interlocutory matters that arise in the interim."

116. A perusal of the paragraphs, reproduced above, shows that the Sole Arbitrator deferred ruling on jurisdiction and observed that she has jurisdiction on all matters that may arise until final award. The Arbitrator was appointed by both the parties and as per the principle of *Kompetenz-Kompetenz* the Arbitral Tribunal has the power to rule on its jurisdiction. Hence, I find no infirmity with the said finding of the Arbitrator.

CONCLUSION

117. In view of the aforesaid discussion, I find no merit in the submissions made by the learned senior counsel for appellants to set aside the impugned Order. The findings of the Sole Arbitrator are plausible and not contrary to the terms of the SHA or so unreasonable that no

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prudent man could have arrived at.

118. Hence, the present appeal is dismissed and the impugned Order dated 11.03.2024 is upheld.

119. Consequently, pending applications, if any, are also disposed of.

120. The Written Submissions handed over in the Court by both the parties are taken on record.

OMP (ENF.) (COMM) 66/2024

121. This is an enforcement petition filed under Section 17(2) of the 1996 Act Read With Order XXI of the Code of Civil Procedure, 1908 seeking the following prayers:-

> *"A. Issue direction to the Respondents to comply with Order on interim relief dated 11.03.2024 passed by the Ld. Sole Arbitrator Ms. Sherina Petit, in SIAC Arbitration No. 024 of 2023 between Affle India Limited and Talent Unlimited Online Services Pvt Ltd and others.*
>
> *B. Issue direction to the Respondents to comply with their obligation to provide inspection rights to the Petitioner; and fully cooperate and facilitate the Petitioner and its representatives' visit and inspection of Respondent No. 1 's offices, pursuant to Clause 3.4 of the Amended and Restated Shareholders Agreement dated 09 June 2021 and the Order on interim relief dated 11.03.2024 passed by the Ld. Sole Arbitrator Ms. Sherina Petit, in SIAC Arbitration No. 024 of 2023 between Affle India Limited and Talent Unlimited Online Services Pvt Ltd and others.*

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C. Pass any other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the decree Holder."

122. The decree holder i.e., Affle (India) Limited, was the claimant before the Arbitral Tribunal and the judgment-debtor No.1 i.e., Talent Unlimited Online Services Private Limited, and judgment-debtor No.2 i.e., Mr. Ankit Prasad, were the respondents.

123. Since, the validity of the impugned Order dated 11.03.2024 challenged in the ARB.A. (COMM) 22/2024 has been upheld, the judgement debtors are directed to comply with the directions contained in impugned Order dated 11.03.2024 expeditiously and in any case not later than 4 weeks from today.

124. Consequently, pending applications, if any, are also disposed of.

JASMEET SINGH, J

APRIL 04, 2026/(HG)

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