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

% ***Judgment reserved on: 24.04.2026***
Judgment pronounced on: 29.05.2026

\+ O.M.P.(I) (COMM.) 30/2026, I.A. 2246/2026 (Ex.) & I.A. 2247/2026 (Seeking permission to file lengthy synopsis)

MIDPOINT COMMODEAL PRIVATE LIMITED
.....Petitioner
Through: Mr. Jayant Mehta, Senior Advocate along with Mr. Vijay Nair, Mr. Arpit Dwivedi, Mr. Manmeet Singh Nagpal and Ms. Mansvini Jain, Advocates.

versus

FIDATOCITY HOMES PRIVATE LIMITED & ORS.
.....Respondents
Through: Mr. Akhil Sibal, Senior Advocate along with Mr. Nitesh Jain and Mr. Nishant Bhargava Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been instituted under Section 9 of the **Arbitration and Conciliation Act, 1996**[1], seeking directions against the Respondents to deposit with the Registry of this Court an aggregate amount of Rs. 15.30 crore, comprising Rs. 14,19,90,000/- allegedly infused by the Petitioner in the form of an unsecured loan to Respondent No. 1 and Rs. 1,10,10,000/- stated to have been paid to

[1] A&C Act

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Respondent No. 2 towards acquisition of a 10% shareholding in Respondent No. 1.

2. In the alternative, the Petitioner has sought an order restraining the Respondents, their agents, representatives, employees, or any person acting for or on their behalf from alienating, encumbering, selling, transferring, or otherwise creating any third-party rights in respect of the land parcel situated at Sector 88B, Gurugram.

RELEVANT BACKGROUND OF THE PARTIES:

3. The Petitioner herein, Midpoint Commodeal Private Limited, is a company incorporated under the Companies Act, 1956, having its registered office at Unit No. l, 11 Crooked Lane. Kolkata - 700069, created as a special investment or holding vehicle, specially constituted to be an acquiring entity, so as to ensure operational efficiency and investment sustainability.

4. Respondent No. 1 herein, **Fidatocity Homes Private Limited**[2], is a company incorporated under the Companies Act, 2013, having its registered office at House No. D-800, Ground Floor, New Friends Colony, South Delhi - 110 025 and is presently stated to be engaged *inter alia* in developing the real estate project known as "*Sky Palazzos*" over approximately 11 acres situated at Sector 88B, Gurugram - 122005, registered with the **Haryana Real Estate Regulatory Authority**[3] bearing Unique Registration No. RERA-GRGPROJ-1851-2025 [*herein after referred to as* "***Sky Palazzos project***"].

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[2] Fidatocity
[3] HRERA

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5. Respondent No. 2 herein, **Trinity Landspace Private Limited**[4], is a company incorporated under the Companies Act, 2013, having its registered office at C-221, F/F, KH No.212, Pul Pahladpur, New Delhi - 110044 and holds 1,10,09,990 equity shares constituting 99.99% shareholding in Respondent No. 1/Fidatocity.

6. Respondent No. 3 herein, Mr. Madhur Mittal, is stated to have been the person who represented the other Respondents *inter alia* in making the proposal, handling negotiations and confirming the terms and conditions governing the alleged share purchase as well as the loan transaction that took place between the parties.

7. Respondent No. 4, Mr. Anil Sharma, is one of the Directors of Trinity and Fidatocity, holding 10 equity shares constituting 0.0001% shareholding and the authorized person stated to be responsible for executing the definitive documents in respect of the alleged share purchase as well as the loan transaction that took place between the parties.

BRIEF FACTS:

8. Shorn of unnecessary details, the facts germane to the institution of the present Petition are as follows:

a. In or about March 2024, Respondent No. 3 approached an entity, *namely*, **Kanodia Hi-Tech Private Limited**[5], for financial assistance and/or partnership in the development of Sky Palazzos project.

b. Pursuant thereto, a Share Purchase Agreement and a Shareholders' Agreement, both dated 21.03.2024, were executed between Kanodia Hi-Tech, Fidatocity/Respondent No. 1,

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[4] Trinity

[5] Kanodia Hi-Tech

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Trinity/Respondent No. 2, and Mr. Anil Sharma/Respondent No. 4.

c. Under the said Agreement, it is stated that Kanodia Hi-Tech agreed to acquire 10% shareholding in Fidatocity and simultaneously advanced funds aggregating to approximately Rs. 15.30 crore, comprising consideration for shares and financial assistance for the Sky Palazzos project.

d. It is further stated that Kanodia Hi-Tech remitted the said amount; however, the entire transaction was subsequently mutually unwound and restructured due to commercial and regulatory considerations. The amounts remitted were stated to be refunded between 16.07.2024 and 19.07.2024.

e. It is stated that the Petitioner herein was introduced as the investing entity on terms and conditions that were substantially identical to those governing the arrangement with Kanodia Hi-Tech.

f. It is the case of the Petitioner that, pursuant to the aforesaid arrangements entered into between Respondent Nos. 1, 2 & 4 and the Petitioner, an amount of Rs. 1.10 crore was remitted towards the acquisition of shares, while a further sum of Rs. 14.39 crore was advanced by way of unsecured loan. It is further stated that, out of the said loan amount, a sum of Rs. 20 lakh was subsequently repaid towards partial discharge of the loan liability.

g. It is further stated that, pursuant to the arrangements arrived at between the parties and with a view to formalising the terms governing their *inter se* relationship, drafts of the Share Purchase

Agreement and Shareholders' Agreement were stated to have been exchanged between the parties on 06.08.2024.

h. The Petitioner states that certain modifications were thereafter suggested by a representative of the Respondents through communications, including WhatsApp messages, requesting alignment of the terms of these Agreements with the previously agreed Agreements concerning Kanodia Hi-Tech.

i. It is the case of the Petitioner that, following various exchanges of communications between the Petitioner and the representative of the Respondents, the final versions of the Agreements were shared on 24.08.2024 by the Petitioner. It is further stated that Respondent No. 3, acting on behalf of all the other Respondents, conveyed approval of the revised Agreements and assured the Petitioner that duly executed copies thereof, along with the requisite share transfer documents, would be furnished to the Petitioner.

j. The Petitioner alleges that despite repeated follow-ups, the Respondents failed to execute the Agreements or transfer the shares. It is further alleged that between August 2024 and June 2025, Respondent No. 3 made multiple assurances regarding repayment of the amounts, sought additional time and proposed execution of a loan agreement; however, the Respondents failed to execute the same.

k. Thereafter, the Petitioner states that, in the *interregnum*, upon reviewing the relevant regulatory records, it came to light that the amounts advanced had not been duly disclosed and that there had been defaults in repayment.

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l. It is further stated by the Petitioner that, on 07.06.2025, two separate drafts of loan agreements were forwarded to Respondent No. 3 for execution between the Petitioner and Respondent Nos. 1 and 2. However, despite repeated follow-ups and requests made by the Petitioner, the Respondents failed and neglected to execute the said loan agreements.

m. Pursuant thereto, notice dated 17.07.2025 seeking repayment of the loan amount and a notice dated 27.08.2025 seeking execution of the agreements and transfer of shares were issued to the Respondents.

n. In response, the Respondents, by communications dated 29.07.2025 and 08.09.2025, took the stand that the amounts paid by the Petitioner were towards the proposed acquisition of shares at higher valuations, and that since the Petitioner had failed to pay the balance consideration within the stipulated time, the amounts stood forfeited. The Petitioner replied to these responses on behalf of the Respondents.

o. The other Respondents also disputed the authority of Respondent No. 3 to act on their behalf and denied being bound by any acts, assurances, or representations made by him.

p. The Petitioner disputes the aforesaid stand taken by the Respondents.

q. It is further stated by the Petitioner that in November 2025, Respondent No. 3 acknowledged the outstanding liability, including interest, in WhatsApp communications and proposed a settlement by transfer of certain immovable properties, which proposal did not materialize.

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r. Apprehending that the Respondents may alienate or encumber their assets, including the land pertaining to the Sky Palazzos project, thereby frustrating any arbitral proceedings, the Petitioner has filed the present Petition seeking interim measures.

SUBMISSIONS ON BEHALF OF THE PARTIES:

9. At the outset, learned Senior Counsel appearing on behalf of the Respondents would raise a preliminary objection as to the maintainability of the present Petition under Section 9 of the A&C Act.

10. He would submit that there exists no valid and binding arbitration Agreement between the parties as required under Section 7 of the A&C Act. Invocation of Section 9 is contingent upon the existence of such an Agreement, failing which the Petition is liable to be dismissed at the threshold.

11. Learned Senior Counsel for the Respondents would further submit that the case set up by the Petitioner pertains to two transactions, *namely*:

(i) an alleged unsecured loan of approximately Rs. 14.19 crore to Respondent No.1; and

(ii) Rs. 1.10 crore allegedly paid towards acquisition of 10% shareholding;

however, neither of which is governed by any concluded Agreement containing an arbitration clause.

12. With respect to the alleged unsecured loan, learned Senior Counsel for the Respondents would submit that there exists no written or executed agreement evidencing or governing the said transaction, much less any agreement containing an arbitration clause. It would

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further be contended that the draft **Share Purchase Agreement**[6] and **Shareholders' Agreement**[7], relied upon by the Petitioner, make no reference whatsoever to the alleged loan transaction. According to the Respondents, the only document wherein the alleged loan finds mention is the draft Loan Agreement, which admittedly remained unfinalized and unsigned, and in any event does not contain any arbitration clause.

13. Insofar as the amount of Rs. 1.10 crore towards share acquisition is concerned, he would submit that the Petitioner relies on the draft SPA and SHA, which were never finalized, approved, or executed. The SPA contains no arbitration clause, and though the draft SHA contains one, it remains unexecuted and cannot be relied upon independently in the absence of a concluded SPA forming part of the same transaction.

14. Learned Senior Counsel for the Respondents would further contend that reliance by the Petitioner on WhatsApp communications is misplaced, as the exchanges reflect only ongoing negotiations and no final consensus. It would further be stated that, even as per the Petitioner, further changes were suggested on 24.08.2024, demonstrating a lack of finality. The alleged final versions are admittedly unsigned by both parties. There is no material to demonstrate that the same were ever accepted by the Respondents.

15. It would further be submitted that no credible material or contemporaneous evidence evidencing any follow-ups or communications exchanged between the parties during the period

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[6] SPA
[7] SHA

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from August 2024 to December 2024 has been placed on record by the Petitioner.

16. It would be contended by the learned Senior Counsel that the subsequent conduct of the parties itself belies the case sought to be set up by the Petitioner, inasmuch as the later communications exchanged between the parties do not refer to the alleged Agreements, but instead demonstrate that the parties were contemplating execution of fresh Loan Agreements. It would further be submitted that the Petitioner itself forwarded a draft Loan Agreement in June 2025, thereby acknowledging the absence of any pre-existing binding agreement between the parties. Even the said draft Loan Agreement admittedly remained unexecuted and, in any event, did not contain any arbitration clause.

17. In view of the above, it would be submitted that mere exchange of drafts or negotiations cannot give rise to a binding arbitration Agreement in the absence of finalization and execution.

18. Learned Senior Counsel for the Respondents would submit that where the foundational requirement of a valid arbitration Agreement is absent, a Petition under Section 9 of the A&C Act is not maintainable, and in view thereof, the present Petition is misconceived, devoid of merit, and liable to be dismissed.

19. ***Per Contra***, learned Senior Counsel for the Petitioner would controvert the said objection on the ground that an arbitration Agreement need not be formally executed and can be inferred from the conduct of the parties, exchange of drafts, and mutual acceptance.

20. He would therefore submit that Clause 19 of the SHA remained unchanged across all drafts exchanged between the parties, thereby

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clearly establishing *consensus ad idem* with respect to dispute resolution by arbitration.

21. It would further be submitted that the Agreements were acted upon, inasmuch as the Petitioner paid an aggregate sum of Rs. 15.30 crore, which was accepted and utilized by the Respondents and therefore, the performance as per the terms of the Agreement stands satisfied, and therefore, the Agreement is binding upon the parties.

22. He would also submit that in such circumstances, the Respondents are estopped from denying the existence of the arbitration agreement after having received and benefited from the said amounts.

23. Learned Senior Counsel for the Petitioner would rely upon the notices issued by the Petitioner and the responses thereto by the Respondents, to establish that the said communications clearly show that the parties are *ad idem* that there exists a dispute resolution clause, which therefore would render the present Petition maintainable, irrespective of the fact that the parties do not agree upon which agreement validly stipulates the said Dispute Resolution Clause.

24. To further buttress this argument, learned Senior Counsel for the Petitioner would seek to rely upon the Judgements of the Hon'ble Supreme Court in ***Trimex International Vs Vedanta***[8], ***Govind Rubbber Ltd. V Louis Dreyfus Commodities Asia Pvt. Ltd.***[9] and ***Glencore International AG v. Shree Ganesh Metals***[10].

25. It would also be submitted by the learned Senior Counsel for the Petitioner that the Respondents' subsequent stand of forfeiture and

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[8] (2010) 3 SCC 1
[9] (2015) 13 SCC 477
[10] 2025 SCC OnLine SC 1815

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re-characterization of the transaction is an afterthought and inconsistent with the contemporaneous record.

26. Without prejudice, it would be submitted that even otherwise, in the absence of allotment of shares, the amounts are liable to be refunded in law and cannot be forfeited.

27. It would be contended that Respondent No. 3 had, throughout the course of dealings between the parties, acted as the authorised representative of the other Respondents, and consequently, the said Respondents cannot now be permitted to disown, repudiate, or disclaim the acts, assurances, and representations made by him on their behalf.

28. It would therefore be submitted that the conduct of the Respondents demonstrates a consistent pattern of delay, evasion, and non-performance, and that there exists a real and imminent risk of dissipation of assets, which would frustrate the arbitral proceedings.

ANALYSIS:

29. This Court has heard the learned Senior Counsel appearing on behalf of the parties, carefully perused the material placed on record, and duly considered the precedents relied upon by them.

30. The principal issue which arises for consideration in the present Petition is whether the Petitioner has been able to establish, even *prima facie*, the existence of a valid and binding arbitration agreement so as to invoke the jurisdiction of this Court under Section 9 of the A&C Act.

31. At the outset, it is clarified that if the Petitioner fails to satisfy the threshold requirement of establishing the existence of an arbitration agreement within the meaning of Section 7 of the A&C Act, the present Petition itself would not be maintainable. In such an

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eventuality, this Court would not be permitted to examine the merits of the Petitioner's contentions concerning the grant of interim measures sought in the present proceedings.

32. It is well settled that the jurisdiction of a Court under Section 9 of the A&C Act cannot be exercised in abstraction or *de hors* the arbitration agreement itself. The power vested in the Court to grant interim measures under Section 9 is purely ancillary and preservative in nature, and its very invocation is predicated upon the existence of a valid and enforceable arbitration agreement between the parties. Consequently, before this Court can proceed to examine the entitlement of the Petitioner to any interim protection, the Petitioner is required, at the threshold and at least on a *prima facie* examination, to establish the existence of a valid arbitration agreement within the meaning of Section 7 of the A&C Act. Absent such a foundational requirement, the jurisdiction under Section 9 of the A&C Act cannot be invoked as an independent or self-sustaining remedy.

33. This position of law has been reiterated by the judgment of this Court in ***Kuber Mart Global Hub (P) Ltd. v. Kuber Mart Industries (P) Ltd.***[11], wherein the scope and nature of the jurisdiction exercisable under Section 9 of the A&C Act, particularly the necessity of establishing the existence of a valid and enforceable arbitration agreement as a foundational prerequisite for invoking such jurisdiction, was considered. The relevant observations are reproduced hereunder:

> "….
> **25.** It is necessary to emphasize that the present petition does not arise under Section 11 of the A&C Act, which is confined to the limited question of the appointment of an arbitrator. The present proceedings have been instituted under Section 9 of the

[11] 2026 SCC OnLine Del 3254

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A&C Act, wherein this Court is called upon to exercise its jurisdiction to grant interim measures of protection. The scope and nature of judicial scrutiny under Section 9 are materially distinct and considerably broader than that contemplated under Section 11. While exercising jurisdiction under Section 9, the Court is required to apply the well-settled triple test governing the grant of interim relief, *namely*: (i) the existence of a *prima facie* case, (ii) balance of convenience, and (iii) likelihood of irreparable harm.

26. To augment, the Hon'ble Supreme Court, in ***Arcelor Mittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***[12], has reiterated that these foundational principles are equally applicable to proceedings under Section 9 of the A&C Act.

27. Significantly, the requirement of establishing a *prima facie* case for the purposes of Section 9 of the A&C Act cannot be satisfied by the mere existence of an arbitration clause in the agreement between the parties. The *prima facie* case must extend beyond the formal existence of an arbitration agreement and must encompass an assessment of whether the disputes sought to be referred are, in law, capable of being resolved through arbitration. Where the dispute is *ex facie* non-arbitrable or is barred from arbitration by operation of statute, the Court cannot grant interim relief on the assumption that arbitral proceedings would validly ensue.

28. In proceedings under Section 9 of the A&C Act, therefore, the Court does not function as a mere referral or facilitative forum. Rather, it is vested with substantive powers to scrutinize the legal tenability of the claims raised, the maintainability of the reliefs sought, and the jurisdictional foundation for invoking arbitral remedies.

29. Unlike Section 11 proceedings, where the scope of judicial interference is deliberately circumscribed and limited to a *prima facie* examination of the existence of an arbitration agreement, as explained in ***Vidya Drolia*** (*supra*), such limited scrutiny cannot be mechanically or indiscriminately transplanted into proceedings under Section 9 of the A&C Act. The legislative intent underlying Section 9 contemplates a more searching inquiry, particularly where the grant of interim measures may have far-reaching civil and commercial consequences.

30. Further, even otherwise, a careful and holistic reading of the judgment in ***Vidya Drolia*** (*supra*), particularly paragraph no. 80 thereof, makes it abundantly clear that disputes pertaining to tenancy rights governed by rent control legislation stand on a fundamentally different footing. The Hon'ble Supreme Court has unequivocally held that where a special statute confers exclusive jurisdiction upon designated statutory forums to adjudicate specific rights and obligations, such disputes are rendered non-arbitrable."

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[12] (2022) 1 SCC 712

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34. The controversy arising in the present case is, therefore, not limited merely to determining whether certain sums of money were exchanged between the parties or whether commercial discussions and negotiations had taken place between them from time to time. The principal issue requiring consideration by this Court is whether such negotiations ever culminated into a concluded, binding, and legally enforceable agreement embodying a clear *consensus ad idem* between the parties with respect to the essential terms governing their relationship.

35. More particularly, this Court is required to examine whether there existed a mutual and unequivocal intention on the part of the parties not only to undertake defined contractual obligations *inter se*, but also to submit any disputes arising therefrom to arbitration in terms of a valid arbitration agreement within the meaning of Section 7 of the A&C Act. At this juncture, this Court deems it appropriate to reproduce Section 7 of the A&C Act, which reads as follows:

> "**7. Arbitration agreement**. - (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
> (3) An arbitration agreement shall be in writing.
> (4) An arbitration agreement is in writing if it is contained in-
> (*a*) a document signed by the parties;
> (*b*) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
> (*c*) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
> (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

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36. At this stage, it would be apposite to advert to the foundational principles embodied in the **Indian Contract Act, 1872**[13], which govern the formation and enforceability of contracts in law. Section 2(e) of the ICA defines an "agreement" to mean "every promise and every set of promises, forming the consideration for each other." The statutory definition itself makes it abundantly clear that the existence of reciprocal promises founded upon mutual assent forms the very basis of a legally recognizable agreement.

37. Further, Section 2(b) of the ICA stipulates that when a proposal is accepted, it becomes a promise. Thus, the essence of a legally binding agreement lies in the existence of a lawful proposal meeting with an absolute, unconditional, and unequivocal acceptance. The statutory scheme under Section 2 of the ICA clearly postulates that contractual obligations arise only where there exists a clear manifestation of assent by the parties to the same proposal. For ready reference, the relevant extracts of Section 2 of the ICA are reproduced herein below:

> "**2. Interpretation clause**. - In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—
>
> (*a*) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
>
> (*b*) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
>
> (*c*) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";
>
> (*d*) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing,

[13] ICA

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something, such act or abstinence or promise is called a consideration for the promise;

(*e*) <u>Every promise and every set of promises, forming the consideration for each other, is an agreement;</u>

(*f*) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) An agreement enforceable by law is a contract;

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(*j*) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."

(emphasis supplied)

38. In continuation thereof, Section 10 of the ICA provides that all agreements become enforceable in law only when they are made with the free consent of parties competent to contract, for lawful consideration and with a lawful object. The expression "*free consent*" assumes considerable significance in the present context, for consent in the eyes of law cannot be equated with a unilateral understanding, subjective assumption, or uncommunicated intention of one of the parties. The statutory requirement is one of *consensus ad idem*, *namely*, meeting of minds between the parties upon the same thing in the same sense, as expressly postulated under Section 13 of the ICA. Sections 10 and 13 of the ICA read as follows:

"**10. What agreements are contracts**. - All agreements are contracts <u>if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.</u>

Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed, by which any contract is required to be made in writing[2] or in the presence of witnesses, or any law relating to the registration of documents."

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"**13. "Consent" defined.-** <u>Two or more persons are said to consent when they agree upon the same thing in the same sense</u>."

(emphasis supplied)

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39. The doctrine of *consensus ad idem* constitutes the very foundation and soul of binding terms between them. Unless it is demonstrated that the parties had mutually agreed upon the essential and material terms governing the transaction with certainty, clarity, and finality, no concluded agreement can be said to exist in the eyes of the law.

40. Mere negotiations, exchanged communications, draft agreements, tentative proposals, preliminary understandings, or ongoing commercial discussions may at best indicate an intention to negotiate or explore a prospective business relationship; however, such circumstances do not, by themselves, mature into a legally enforceable contract unless the parties demonstrably arrive at a final, unequivocal, and binding meeting of minds on all essential terms of the arrangement.

41. Tested on the aforesaid principles, this Court is unable to hold that the material placed on record discloses, even *prima facie*, the existence of a concluded and enforceable arbitration agreement between the parties within the meaning of Section 7 of the A&C Act. The documents and communications relied upon by the Petitioner fail to establish any clear *consensus ad idem* between the parties with respect to the essential contractual terms, much less any unequivocal agreement evincing a mutual intention to submit disputes to arbitration. In the absence of such demonstrable meeting of minds, this Court cannot presume the existence of a valid arbitration agreement merely on the basis of prior negotiations, financial transactions, or exchanged drafts.

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42. The Petitioner predicates its case primarily on the draft SPA and the draft SHA exchanged between the parties, coupled with certain WhatsApp communications and alleged oral assurances. However, the admitted position which emerges from the record is that none of the alleged agreements was ever executed by the parties.

43. The Petitioner itself pleads that draft Agreements were circulated on 06.08.2024; modifications were thereafter suggested by representatives of the Respondents, and a purported "*final version*" was subsequently shared on 24.08.2024. The very fact that amendments and modifications continued to be proposed after the circulation of drafts demonstrates that the negotiations had not attained contractual finality. A continuing process of revisions and alterations is, in fact, antithetical to the existence of a concluded contract.

44. Significantly, no material has been placed before this Court evidencing unconditional acceptance of the final drafts by the Respondent Nos. 1 and 2. Mere assertions that Respondent No. 3 verbally confirmed approval cannot substitute for legally cognizable evidence demonstrating acceptance by all contracting parties.

45. At this stage, it would be apposite to refer to the relevant portions of the judgment in ***Govind Rubber Ltd.*** *(supra)*, upon which considerable reliance has been placed by the learned Senior Counsel appearing on behalf of the Petitioner to contend that the parties, in the present case, were *ad idem* regarding the existence of an arbitration agreement between them. The relevant paragraphs of the said judgment read as under:

> "**12.** There may not be any dispute with regard to the settled proposition of law that an agreement even if not signed by the parties can be spelt out from correspondence exchanged between

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the parties. However, it is the duty of the court to construe correspondence with a view to arrive at the conclusion whether there was any meeting of mind between the parties which could create a binding contract between them. It is necessary for the court to find out from the correspondence as to whether the parties were ad idem to the terms of contract.

13. It is equally well settled that while construing an arbitration agreement or arbitration clause, the courts have to adopt a pragmatic and not a technical approach. In ***Rukmanibai Gupta* v. *Collector*** **[(1980) 4 SCC 556]**, this Court held that: (SCC p. 560, para 6)

> "*6.* Arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement."

14. So far as the first contention made by the learned counsel for the appellant that since the appellant did not sign the agreement, it cannot be said to be a party to the agreement, we would like to refer Section 7 of the Arbitration and Conciliation Act, which reads as under:

> "**7.** ***Arbitration agreement***. - (1) In this Part, '**arbitration agreement**' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
>
> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
>
> (3) An arbitration agreement shall be in writing.
>
> (4) An arbitration agreement is in writing if it is contained in—
>
> > (*a*) a document signed by the parties;
> >
> > (*b*) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
> >
> > (*c*) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
>
> (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

15. A perusal of the aforesaid provisions would show that in order to constitute an arbitration agreement, it need not be signed by all the parties. Section 7(3) of the Act provides that the arbitration

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agreement shall be in writing, which is a mandatory requirement. Section 7(4) states that the arbitration agreement shall be in writing, if it is a document signed by all the parties. But a perusal of clauses (*b*) and (*c*) of Section 7(4) would show that a written document which may not be signed by the parties even then it can be arbitration agreement. Section 7(4)(*b*) provides that an arbitration agreement can be culled out from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

16. On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(*c*) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties. Therefore, signature is not a formal requirement under Section 7(4)(*b*) or 7(4)(*c*) or under Section 7(5) of the Act.

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21. From the documents available on record and also referred to in the impugned order, it is evident that at the request of the appellant, the invoice was split into two invoices and in the said letter of request reference was made to the sales contract. The respondent proceeded to supply the goods on the terms contained in the sales contract. The intention of the parties, as appearing from the correspondence, can safely be inferred that there had been a meeting of mind between the parties and they were ad idem to the terms of sales contract which contained the forum of dispute resolution at Singapore Commodity Exchange. Apart from that, after the dispute was referred to Singapore Commodity Exchange for arbitration, the appellant in response to the notice made a counterclaim before the Arbitral Tribunal contending that the appellant had incurred huge loss in view of the failure on the part of the respondent to supply the goods in time. By making a counterclaim, the appellant indeed submitted to the jurisdiction of the arbitrator."

(emphasis supplied)

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46. There can be no quarrel with the settled proposition of law that an arbitration agreement does not necessarily require signatures of the parties upon a formal document in every case. An arbitration agreement may, in an appropriate factual matrix, be gathered from correspondence exchanged between the parties, contemporaneous conduct, or other material circumstances evidencing a clear intention to submit disputes to arbitration.

47. However, even in the absence of formal execution, the foundational requirement of *consensus ad idem* remains indispensable. The existence of a binding arbitration agreement cannot be inferred merely from fragmented negotiations or exchanged drafts unless the surrounding facts and circumstances unequivocally demonstrate a mutual meeting of minds between the parties with respect to the arbitration arrangement itself. It is, therefore, necessary for this Court to examine the material circumstances emerging from the record in the present case in order to ascertain whether such *consensus ad idem* can be said to exist.

48. It is also relevant to note that it is the Petitioner's own categorical case that the parties were engaged in negotiations in relation to the proposed transaction. The existence of such ongoing negotiations has been repeatedly and unequivocally admitted by the Petitioner in the pleadings filed before this Court.

49. Without entering into unnecessary semantics, this Court deems it apposite to advert to the averments contained in Paragraph Nos. 31 and 32 of the present Petition, which unequivocally demonstrate that the contractual arrangements between the parties had not attained finality even as late as September-October 2025. Significantly, these developments have occurred subsequent to the exchange of legal

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notices between the parties, upon which learned Senior Counsel for the Petitioner has placed considerable reliance to contend that there existed an arbitration agreement between the parties. The said paragraphs of the Petition read as follows:

> "**31.** In response thereto. Midpoint vide its rejoinder letters dated 17.09.2025 and 26.09.2025, replied to the letters dated 29.07.2025 and 08.09.2025 addressed by the Respondents, respectively, categorically denying and disputing the concocted and arbitrary valuations, the mischaracterization of the nature of the transactions and the false and untenable assertion regarding forfeiture of the amounts paid. Midpoint further called upon the Respondents to strictly comply with and give effect to the notices dated 17.07.2025 and 27.08.2025, issued by Midpoint. A copy of the Rejoinder Letters dated 17.09.2025 and 26.09.2025 issued by Midpoint are annexed herewith and marked as **DocumentP23** and **Document P24**.
>
> **32.** Thereafter, Midpoint made repeated requests and follow-ups seeking repayment of the amounts due as well as execution and compliance of the Midpoint SPA & SHA. In or about November 2025, Respondent No.3 - Madhur Mittal sent multiple messages to Midpoint over WhatsApp, proposing to settle the outstanding accounts and further offering to transfer immovable properties [i.e. a shop cum office Plot No.118, Capital Central Market, Sector 79, Faridabad and Basement and Ground floor of shop cum office situated at Plot No.216, Capital Central Market, Sector 79, Faridabad] in lieu of the outstanding dues payable by Fidatocity and Trinity. A copy of the WhatsApp Chat dated 15.11.2025 between Midpoint and Respondent No.3 is annexed herewith and marked as **Document P25**."
>
> ***(emphasis supplied)***

50. A bare reading of the aforesaid pleadings leaves little room for doubt that the Petitioner itself was seeking execution of the SPA and the SHA, after the exchange of legal notices and responses thereto.

51. It is further an undisputed position that the arbitration clause relied upon by the Petitioner was contained only in the draft SHA exchanged *inter se* the parties. The very assertions made in the Petition demonstrate that the SHA was yet to be finalized and executed between the parties. Consequently, the material placed on

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record itself militates against the contention that a concluded and binding arbitration agreement had already come into existence.

52. Besides the above, the principal submissions advanced on behalf of the Petitioner rest substantially upon two foundational assertions. *Firstly*, it has been contended that certain representatives of the Respondent Nos. 1 and 2 were, at the relevant time, negotiating with the Petitioner on their behalf, and that such representatives had finalized and confirmed the terms of the SPA and SHA.

53. On that basis, it is urged that the Respondents are bound by the terms contained in the draft SHA, including the arbitration clause incorporated therein, and are consequently, precluded from disputing the existence of an arbitration agreement or the arbitrability of the disputes raised herein.

54. This Court is unable to accept the aforesaid contention. Even assuming that the concerned individuals were engaged in negotiations on behalf of Respondent Nos. 1 and 2, the same by itself would not be sufficient to bind corporate entities to a concluded contractual arrangement, much less to an arbitration agreement. In the case of juristic entities such as companies, authority to negotiate cannot automatically be equated with authority to finally bind the company contractually, unless there exists clear, unequivocal, and demonstrable material showing that the concerned individuals were duly authorized to conclude and bind the Respondents to the proposed agreements.

55. The Petitioner has failed to place on record any such material evidencing express authorization, approval, ratification, board sanction, or any unequivocal representation attributable to Respondent Nos. 1 and 2 establishing that the alleged negotiators possessed

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authority to finally conclude the transaction on behalf of the corporate entities concerned.

56. In fact, it is not disputed that the Petitioner was fully aware of the management structure and corporate functioning of Respondent Nos. 1 and 2. In such circumstances, the Petitioner cannot legitimately contend that it was misled regarding the authority or status of the individuals with whom negotiations were being conducted. Mere participation of certain individuals in discussions or negotiations, in the absence of any demonstrable authorization or binding corporate act, cannot by itself give rise to enforceable contractual obligations against the corporate entities concerned.

57. Commercial negotiations undertaken by representatives, agents, or intermediary negotiators do not attain the character of a concluded and binding agreement unless the same are supported by legally recognizable acts evidencing final acceptance by duly authorized persons acting on behalf of the concerned entities. Any communication exchanged during the course of negotiations, unless shown to have culminated into an unequivocal and authorized acceptance, cannot be construed as creating binding contractual obligations upon the Respondents.

58. However, this Court is conscious of the well-recognised exceptions to the aforesaid general principles. Nonetheless, no such exception has either been specifically pleaded or otherwise demonstrated to exist in the factual matrix of the present case.

59. The *second* foundational submission advanced by the Petitioner is in the nature of an alternative argument, *namely*, that even if the final agreements were not formally executed between the parties, the arbitration clause contained in the draft SHA survives independently

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of the substantive contractual terms and is enforceable by itself. According to the Petitioner, since the arbitration clause formed part of the draft agreements exchanged between the parties, the same constitutes a binding arbitration agreement notwithstanding the non-execution of the SHA itself.

60. This Court again has no disagreement with the settled legal principle that an arbitration clause is separable and conceptually independent from the substantive contractual terms contained in the underlying agreement. However, the doctrine of separability cannot be stretched to such an extent as to dispense altogether with the requirement of mutual assent to the arbitration agreement itself. Mere incorporation or presence of an arbitration clause in a draft agreement exchanged during negotiations cannot, by itself, lead to the conclusion that the parties had arrived at a concluded arbitration agreement, unless the material on record demonstrates *consensus ad idem* between competent and authorized representatives of both sides in relation thereto.

61. This Court is unable to accept the broad proposition canvassed by the Petitioner that in every circumstance the mere existence of an arbitration clause in an exchanged draft document would, *ipso facto*, bind the parties to arbitration. Such a proposition would run contrary to the very foundational principles governing the formation of contracts. In the peculiar facts of the present case, the admitted position is that negotiations between the parties were ongoing and several material terms of the proposed transaction had not attained finality.

62. In such a scenario, it would be wholly incongruous to hold that although there was admittedly no concluded *consensus ad idem* with

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respect to the substantive contractual terms, there nevertheless existed a complete and binding *consensus ad idem* exclusively with respect to the arbitration clause.

63. In the opinion of this Court, the arbitration agreement cannot be viewed in artificial isolation, divorced entirely from the factual matrix in which the negotiations between the parties admittedly remained incomplete and inconclusive. This assumes greater significance in the present case where the arbitration clause itself formed an intrinsic and inseparable part of the very documents and contractual arrangements that had yet to attain finality and were still awaiting approval from the Respondent entities. In such circumstances, the arbitration clause cannot be selectively severed and treated as a concluded and binding agreement independent of the underlying negotiations and unresolved contractual terms between the parties.

64. Accordingly, having regard to the overall facts and circumstances emerging from the record, this Court is unable to arrive at a *prima facie* conclusion that there existed any valid, concluded, and enforceable arbitration agreement between the parties within the meaning of Section 7 of the A&C Act.

65. Now turning to the reliance placed by the Petitioner upon the judgment of the Hon'ble Supreme Court in ***Glencore International AG*** *(supra)*, this Court is of the considered opinion that the said reliance is misplaced. The Petitioner has sought to contend, on the strength of the said decision, that the parties in the present case were *ad idem* regarding the existence of an arbitration agreement and that such *consensus* is reflected through the WhatsApp exchanges and other communications between the parties. For ready reference, some relevant portions of the said judgment are reproduced hereunder:

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"**19.** We are of the considered opinion that it was not necessary for the appellant to fall back upon the contract of 2012 in the light of the admitted facts that demonstrated, in no uncertain terms, that the parties duly accepted and acted upon Contract No. 061-16-12115-S dated 11.03.2016. There is no denying the legal proposition that an arbitration agreement can be inferred even from an exchange of letters, including communication through electronic means, which provide a record of the agreement. The mere fact that Contract No. 061-16-12115-S was not signed by respondent No. 1 would not obviate from this principle when the conduct of the parties in furtherance of the said contract, clearly manifested respondent No. 1's acceptance of the terms and conditions contained therein, which would include the arbitration agreement in clause 32.2 thereof.

20. It is an admitted fact that 2,000 metric tons of zinc metal were supplied by the appellant pursuant to Contract No. 061-16-12115-S and not only were 8 invoices raised by the appellant in the context thereof, quoting the said contract number, but respondent No. 1 also complied with its obligations under that contract by furnishing two Standby Letters of Credit on 22.04.2016 and 17.11.2016. Thereafter, it also furnished an amended Letter of Credit on 02.07.2016. All these Letters of Credit were issued by HDFC Bank, respondent No. 2, at the behest of respondent No. 1, quoting Contract No. 061-16-12115-S. The exchange of correspondence by and between the appellant and respondent No. 1 also contained references to the very same Contract No. 061-16-12115-S.

21. The feeble plea of respondent No. 1 that this contract number was referred to in the context of the earlier email correspondence does not merit consideration as that contract number came into existence only after the exchange of email correspondence on 10.03.2016 and 11.03.2016. It is also significant to note that even in the course of this email correspondence, respondent No. 1 indicated its concurrence with the terms and conditions proposed by the appellant in its email dated 10.03.2016 by way of its reply email dated 11.03.2016, wherein it suggested only one modification, i.e., with regard to the provisional price being on the basis of the average of the last 5 LME days instead of the last 10 LME days, as proposed by the appellant. It was pursuant to such confirmation by respondent No. 1 that the appellant thanked it for the business confirmation and promised to revert with the contract and proforma. Admittedly, Contract No. 061-16-12115-S, signed by the appellant, reflected the modified provisional pricing, as requested by respondent No. 1, and stated that the provisional price would be the average of the last 5 LME days. Further, pursuant to the said contract, respondent No. 1 furnished two Standby Letters of Credit and thereafter lifted 2,000 Metric Tons of zinc metal. Such actions on its part clearly demonstrated due and complete acceptance of the said contract. Therefore, it cannot blithely bank

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upon its own failure to sign the said contract to wriggle out of the terms and conditions mentioned therein.

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29. In the light of the aforestated settled legal position and given the admitted facts, which unequivocally demonstrate that respondent No. 1 signified its consent to the terms spelt out in the appellant's email dated 10.03.2016 that finally found place in Contract No. 061-16-12115-S which, in turn, was accepted and acted upon by respondent No. 1, we are of the considered opinion that the arbitration agreement in clause 32.2 thereof was very much available to the appellant and invocation thereof under Section 45 of the Act of 1996, by way of I.A. No. 4550 of 2017 in CS (Comm) No. 154 of 2017, was fully justified and required to be accepted and acted upon by the referral Court. The refusal by the referral Court of the learned Judge and the confirmation of such refusal by the Division Bench are, therefore, unsustainable on facts and in law."

66. However, the factual foundation in ***Glencore International AG*** (*supra*) stands on an entirely different footing. In the said case, the material on record unequivocally demonstrated that the parties had reached a concluded understanding on the terms of the contract and had acted upon the same in furtherance thereof.

67. The Hon'ble Supreme Court in that case noted that the contractual terms had been expressly accepted through email correspondence, the modifications suggested by one party had been incorporated into the final contract, and, most significantly, the parties had thereafter performed substantial obligations under the said agreement, including supply of goods, issuance of invoices, furnishing of Letters of Credit, and lifting of material strictly in terms of the contract in question. It was in those circumstances that the Apex Court held that the conduct of the parties unmistakably established acceptance of the contract, including the arbitration clause contained therein, notwithstanding the absence of signatures on the formal agreement.

68. The present case, however, does not disclose any such concluded *consensus* or subsequent conduct evidencing unequivocal acceptance of finalized contractual terms. On the contrary, the material placed on record clearly indicates that the draft SPA and SHA exchanged between the parties never attained finality. The negotiations remained fluid and tentative, and the correspondence itself reveals that upon the failure of the proposed SPA and SHA structure, the parties allegedly began discussing an altogether different arrangement in the nature of a loan transaction. The subsequent discussions regarding fresh loan agreements themselves demonstrate that the earlier contractual framework had not crystallized into a binding and concluded arrangement.

69. Similarly, the WhatsApp exchanges and other communications relied upon by the Petitioner do not establish any unequivocal assent or concluded agreement between the parties. At best, the said communications reflect ongoing commercial negotiations and attempts to arrive at mutually acceptable terms. They do not disclose any final *consensus* on the essential contractual terms, much less any clear and binding agreement to arbitrate disputes.

70. Mere exchanges of draft documents or commercial discussions cannot be elevated to the status of a concluded arbitration agreement in the absence of a clear meeting of minds and definitive acceptance by the parties. The material on record, therefore, clearly establishes that the parties never attained certainty or finality in respect of the contractual arrangements sought to be relied upon by the Petitioner.

71. Equally misplaced is the reliance placed by the Petitioner upon ***Trimex International*** (*supra*). The said judgment arose in a completely distinct factual background where the correspondence

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between the parties clearly evidenced a concluded commercial bargain and mutual acceptance of the contractual terms. The Petitioner cannot selectively rely upon isolated observations from the said judgment while disregarding the materially different factual circumstances in which the same was rendered.

72. The record in the present case reflects that the financial transactions between the parties had admittedly taken place prior to the formulation and exchange of the draft SPA and SHA. The said circumstance itself indicates that the transfer of funds was not effectuated pursuant to any finalized contractual framework containing mutually accepted terms governing the rights and obligations of the parties.

73. This Court also finds considerable merit in the contention advanced on behalf of the Respondents that the Petitioner has sought to conflate commercial dealings with contractual finality. Mere receipt or utilization of funds, by itself, cannot create a binding contract where none otherwise exists in law. At the highest, such transactions may furnish a cause of action in restitution, recovery, or other civil proceedings. However, they cannot substitute the statutory requirement of a valid arbitration agreement founded upon mutual consent, certainty of terms, and a concluded meeting of minds between the parties.

74. In the present case, although the Respondents do not dispute the receipt of monies, there remains a serious and fundamental dispute regarding the very nature and terms of the proposed transaction. The record reflects that the discussions initially proceeded on the basis of the proposed SPA and SHA, but subsequently shifted towards negotiations for fresh loan agreements.

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75. Significantly, even in the pleadings before this Court, the Petitioner continued to assert and seek execution of the SPA and SHA at a later stage, which itself demonstrates that the parties had never arrived at a concluded and binding arrangement. It is also material to note that the arbitration clause relied upon by the Petitioner forms part only of Clause 19 of the draft SHA, which itself admittedly never attained finality. In such circumstances, the absence of certainty and *consensus* regarding the underlying contractual framework becomes manifest.

76. At the cost of repetition, this Court is mindful that proceedings under Section 9 of the A&C Act do not require a detailed adjudication on the merits of the disputes between the parties. Nonetheless, the existence of a valid and enforceable arbitration agreement is not merely a disputed question of fact, but a foundational jurisdictional precondition for the exercise of powers under the A&C Act. Unless such a foundational requirement is established, this Court cannot assume jurisdiction under Section 9 merely on the basis of ongoing negotiations, exchanged draft agreements, commercial dealings, or other inconclusive communications between the parties.

DECISION:

77. In view of the foregoing analysis, this Court is unable to hold, even *prima facie*, that a valid and enforceable arbitration agreement existed between the parties within the meaning of Section 7 of the A&C Act. The material on record does not disclose any concluded *consensus ad idem* between the Petitioner and Respondent Nos. 1 and 2 on the essential terms of the transaction, nor any unequivocal agreement evincing a mutual intention to submit disputes to arbitration.

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78. Once the foundational requirement for invoking Section 9 of the A&C Act, *namely* the existence of a valid arbitration agreement, is found to be absent, the jurisdiction of this Court under the A&C Act cannot be invoked. Consequently, the present Petition is not maintainable and no occasion arises for this Court to examine the merits of the interim reliefs sought by the Petitioner.

79. In view thereof, the present Petition, along with all pending applications, is dismissed.

80. It is, however, clarified that this Court has expressed no opinion on the merits of the monetary or civil claims *inter se* the parties, and the Petitioner shall have the liberty to avail such remedies as may be available in law.

81. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 29, 2026/sm/va

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