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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL CIVIL JURISDICTION**

COMM ARBITRATION PETITION NO.219 OF 2025

Satyavan Vishnu Agate,

Sole proprietor of M/s. Vision Enterprises,
having registered office at 311,
Gundecha Industrial Complex, Akurli Road,
Kandivali (E), Mumbai 400 101

... Petitioner

Vs.

Airports Authority of India,

through its Airport Director,

A body corporate constituted under the
Central Government under the Airports
Authority of India, 1994 and having its
address at Juhu, S.V. Road, Vile Parle (W),
Mumbai 400 056

... Respondent

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WITH

COMM ARBITRATION PETITION (L) NO.10397 OF 2025

WITH

COMM ARBITRATION PETITION (L) NO.5861 OF 2025

Zee Media LLP,

having its registered office at Eden Square,
4th Floor, N.S. Road No.10, J.V.P.D. Scheme,
Juhu, Mumbai 400 049, through its
authorized partner Sanjay Raval

... Petitioner

Vs.

Airports Authority of India,

through its Airport Director,

A body corporate constituted under the

Central Government under the Airports
Authority of India, 1994 and having its
address at Juhu, S.V. Road, Vile Parle (W),
Mumbai 400 056

... Respondent

WITH
COMM ARBITRATION PETITION (L) NO.5932 OF 2025
WITH
COMM ARBITRATION PETITION (L) NO.6073 OF 2025

Sanjay Surendrakumar Raval,
having its registered office at 701,
7th Floor, Raval Niwas, Plot No.25,
N.S. Road No.2, Vile Parle (West),
Mumbai 400 101, through its
Proprietor Sanjay Raval

... Petitioner

Vs.

Airports Authority of India,
through its Airport Director,
A body corporate constituted under the
Central Government under the Airports
Authority of India, 1994 and having its
address at Juhu, S.V. Road, Vile Parle (W),
Mumbai 400 056

... Respondent

Mr. Karl Tamboly with Mr. Sanit Shukla and Ms.
Vaibhavi Bhalerao i/by Trilegal for the petitioner in
CARBP/219/2025.

Mr. Ashutosh Kulkarni with Mr. Gaurav Sharma, Ms.
Anushree Maheshwari and Mr. Rushikesh Bhadre for
the petitioner in CARBPL/6073/2025, 5861/2025, and
5932/2025.

Mr. Pralhad Parabjape with Ms. Shweta More for the
petitioner in CARBPL/10397/2025.

Mr. Pravin Samdani, Senior Advocate with Ms. Shilpa Kapil, Mr. Chidanand Kapil, Mr. Darshit Jain, Ms. Aishwarya Mall and Ms. Vishwabharati Devkhile for the respondent-AAI.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 30, 2026.

PRONOUNCED ON : AUGUST 4, 2026

JUDGMENT:

1. Since all these arbitration petitions arise from the same facts and involve common questions of law, they are being decided by this common judgment. For convenience, the facts in Commercial Arbitration Petition No. 219 of 2025 are taken as the lead case.

2. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection in respect of the licences granted for supply, installation, testing, commissioning, operation and maintenance of EV charging stations on the concerned land. According to the petitioner, after receiving the licences it started carrying out the required work and performed its obligations under the agreements. However, the respondent later directed the petitioner to stop all work on the project due to "administrative reasons" until orders. During the pendency of these proceedings, the respondent issued termination notices dated 22 March 2025, terminating the Licence Agreements dated 14 October 2024 executed between the parties.

3. The respondent had decided to establish Electric Vehicle charging stations in the parking areas of airports managed by it.

For that purpose, it invited tenders at different airports across the country for granting licences to supply, install, test, commission, operate and maintain EV charging stations. The petitioner has referred to similar tenders issued at other places. In August 2024, the respondent issued two separate e tenders bearing E Bid Nos. 2024_AAI_202914_1 and 2024_AAI_202915_1. Through these tenders, eligible bidders were invited to submit offers for obtaining licences to supply, install, test, commission, operate and maintain EV charging stations at Juhu Airport, Vile Parle (West), Mumbai, including the Car Park I area, on the terms and conditions mentioned in the tender documents.

4. Apart from these two tenders, the respondent issued separate tenders for EV charging stations at Car Park II opposite Mahesh Lunch Home on Juhu Tara Road, Vile Parle (West), Mumbai, and at the land earlier occupied by IOCL on S.V. Road, Vile Parle (West), Mumbai. According to the tender conditions, the required land was available with the respondent and the successful bidder would be able to start the work after the licence was granted. Relying on these representations, the petitioner submitted its bid on 26 August 2024. The petitioner paid Rs.2,000 towards the tender fee and Rs.50,000 towards the earnest money deposit for the proposed land measuring about 5000 square metres. After considering the bids received, the respondent declared the petitioner as the successful bidder. By Letters of Intent dated 11 October 2024 bearing Reference Nos. AAI/Juhu/Comml/EVC/35 and AAI/Juhu/Comml/EVC/34, the respondent informed the petitioner about its decision to grant the licence for the land

required for the EV project. Thereafter, the parties executed Licence Agreements dated 14 October 2024. Under these agreements, the respondent granted the petitioner a licence to use the land for carrying out the EV project for a period of ten years. The agreement provided for possible renewal before expiry of the term, subject to the respondent's approval, payment of licence fees and compliance with the agreed terms and conditions. In accordance with the Licence Agreements, the respondent handed over possession of the designated land to the petitioner on 26 October 2024 so that the petitioner could start the work.

5. After obtaining possession of the land measuring about 5000 square metres, the petitioner took several steps for implementing the project.

a) By letter dated 29 October 2024, the petitioner submitted the layout plan for construction of the EV charging facilities and sought approval from the respondent. On the same day, the respondent approved the layout subject to the conditions mentioned in the Letter of Intent and the Licence Agreements;

b) By letter dated 30 October 2024, the petitioner informed the respondent that, as required under Clause 5 of the Licence Agreement, it had deposited Rs.7,50,000 as part of the performance security on 21 October 2024. The petitioner informed that the remaining amount of Rs.7,50,000/- would be transferred through RTGS and requested the respondent to acknowledge the payment and

issue a receipt. The respondent acknowledged the communication on the same day. The petitioner thereafter deposited the remaining amount;

c) After making the required payments and obtaining approval of the layout, the petitioner started the work on the project. According to the petitioner, the construction was carried out in good faith and substantial progress was made within the scheduled time;

d) The petitioner states that, despite proceeding with the work in accordance with the Licence Agreements, it received a letter dated 31 December 2024 from the Officiating Airport Director directing it to stop all work relating to the EV project at Juhu Airport because of "administrative reasons" until orders;

e) By its reply dated 10 January 2025, the petitioner requested the respondent to withdraw the above direction. The petitioner stated that no proper reasons had been given for stopping the work and that the order exposed it to financial loss and legal consequences. According to the petitioner, no reply was received from the respondent;

f) As the work on the project had stopped, the petitioner filed the present petition seeking directions to the respondent to withdraw the letter dated 31 December 2024 or, in the alternative, to stay its operation and permit the petitioner to resume the work;

g) The petition was initially listed before this Court on 20 March 2025. It was thereafter adjourned to 21 April 2025 because of the court's cause list. Since the matter was stated to be urgent, the petitioner's advocates mentioned the matter before the Court on 20 March 2025. The request was accepted, and the petition was directed to be listed on 25 March 2025;

h) According to the petitioner, before the matter could be taken up on 25 March 2025, the respondent issued termination notices dated 22 March 2025, which were served on the petitioner on 24 March 2025. By these notices, the respondent terminated the Licence Agreements alleging that the petitioner and its officers had altered certain clauses of the agreements, particularly Clauses 5(a) and 34(b). The petitioner brought these developments to the notice of this Court on 25 March 2025. On that day, this Court granted interim protection in respect of the termination notices as well as the letter dated 31 December 2024 for the reasons recorded in its order;

i) After receiving the termination notices, the petitioner sent two separate preliminary reply letters dated 24 March 2025 requesting the respondent to provide copies of the complaints and the preliminary enquiry reports referred to in those notices.

6. The petitioner states that, during this period and after examining the situation, it formed an opinion that the respondent's

decision to issue the letter directing stoppage of work and the subsequent termination notices was influenced by factors outside the relationship. According to the petitioner, these actions are likely to cause serious financial loss and damage to its reputation. The petitioner contends that the issuance of the letter directing stoppage of work and the termination notices raises serious concerns. According to the petitioner, these actions appear to have been influenced by unknown external factors rather than by any genuine reason. The petitioner submits that merely stating "administrative reasons" for stopping the work does not explain why the project was suspended. According to the petitioner, the sudden direction to keep the work in abeyance has affected the progress of the EV project and has affected its overall objective. The petitioner contends that the respondent terminated the Licence Agreements on false and untenable grounds. According to the petitioner, the reasons mentioned in the termination notices were introduced later and were not the basis for the respondent's action. The petitioner states that the sudden termination, several months after the tenders were issued, has affected the EV project.

7. The petitioner therefore contends that the termination of the Licence Agreements is motivated, lacks bona fides and that the reasons mentioned in the termination notices are an afterthought. In these circumstances, the petitioner states that it had no option but to file the present petition.

8. Mr. Tamboly, learned advocate appearing for the petitioner in Commercial Arbitration Petition No. 219 of 2025, relied upon the order passed by this Court in the review petition and submitted

that the question whether the present dispute is capable of being decided by arbitration has been kept open. He submitted that the petitioner is seeking specific performance of the Licence Agreements, and such a relief cannot be granted by the Eviction Officer while exercising powers under Chapter - VA of the Airports Authority of India Act, 1994. According to him, the Eviction Officer cannot decide whether the petitioner committed any breach which entitled the respondent to terminate the agreements. Placing reliance on the decision of the Seven Judge Bench of the Supreme Court in *Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and Indian Stamp Act, 1899*, he submitted that the question of arbitrability has to be decided by the Arbitral Tribunal. He pointed out that the same principle has been followed in several subsequent decisions, including the judgment of the Supreme Court in *Managing Director, Bihar State Road and Civil Supply Corporation Limited and Another vs. Sanjay Kumar*, 2025 SCC OnLine SC 1604. According to him, these decisions make it clear that while exercising powers under Sections 8 and 11 of the Arbitration Act, the Court is required to examine whether an arbitration agreement exists.

9. Mr. Tamboly relied upon the judgment of the Supreme Court in *Escorts Heart Institute and Research Centre Limited vs. Delhi Development Authority and Others*, 2019 SCC OnLine SC 2299. He submitted that while deciding Commercial Arbitration Petition No. 13393 of 2025 in *Survee Shidal vs. Airports Authority of India* on 7 May 2026, the coordinate Bench did not consider the principles

laid down in *Escorts Heart Institute*. Referring to paragraph 18 of that judgment, he submitted that in the said case a civil suit between the parties was pending, and the lease had not expired by lapse of time. The ground for termination was the alleged breach relating to amalgamation, which was the subject matter of the suit. Therefore, the Supreme Court held that proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 could be initiated after the civil suit was decided. He submitted that in the present case, unless the validity of the respondent's termination of the Licence Agreements is decided in arbitration, the provisions of Chapter - VA of the AAI Act cannot be invoked.

10. He submitted that the interim relief claimed in these petitions is to protect the final relief of specific performance sought by the petitioner. He pointed out that this Court had granted protection to the petitioner for nearly twelve months. According to him, the agreements between the parties were executed after a public tender process and, acting upon those agreements, the petitioner invested substantial amounts and altered its position. Therefore, the parties should be permitted to have their rights decided by the Arbitral Tribunal.

11. Mr. Kulkarni, learned advocate appearing for the petitioners in Commercial Arbitration Petition Nos. 6073 of 2025, 5861 of 2025 and 5932 of 2025, submitted that till date the Eviction Officer has not issued any notice under Chapter - VA of the AAI Act. According to him, no show cause notice has yet been issued under the Act and, therefore, the provisions of Chapter - VA have not come into operation. He submitted that before taking action,

the Eviction Officer is required to record his satisfaction, which has not yet been done. Therefore, according to him, the judgment in *Survee Shidal* does not apply to the present case. He relied upon the judgment of the Supreme Court in *Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and Indian Stamp Act, 1899*.

12. Mr. Paranjape, learned advocate appearing for the petitioner in Commercial Arbitration Petition No. 10397 of 2025, submitted that the Eviction Officer has no authority to decide whether the termination of the Licence Agreement is valid. Referring to Section 28 D of the AAI Act, he submitted that before ordering eviction of an alleged unauthorised occupant, the Eviction Officer must issue a notice and consider the explanation given by the person concerned. According to him, the validity of the termination notice cannot be decided in those proceedings. He drew attention to the reasons mentioned in the termination notice. The reason was that the Airport Director who executed the agreement was not competent to allot the land. The second was that the allotment was contrary to the provisions of the AAI Act. The third was that the Director had committed financial irregularities while granting the licence. According to him, none of these issues falls within the jurisdiction of the Eviction Officer under Section 28 D of the AAI Act. He submitted that the observations made by the coordinate Bench in paragraphs 48 and 49 of the judgment in *Survee Shidal* do not lay down the correct legal position because they deprive the petitioner of the remedy of seeking specific performance. According to him, if the Eviction Officer cannot examine the

validity of the reasons given for terminating the agreement, the petitioner would be left without any effective remedy.

13. He distinguished the judgment in *HLV Limited* by submitting that in that case the lease had come to an end and the lessee had no legal right to continue in possession. According to him, the decision in *HLV Limited* must be understood in the light of those admitted facts and cannot be applied to the present case.

14. Mr. Samdani, learned Senior Advocate appearing for the respondent, submitted that the entire tender process was initiated by an officer who had no authority to lease or grant licence of the property belonging to the Airports Authority of India. According to him, the Board has the power to grant a lease or licence in respect of the Authority's property. Referring to the standard tender conditions, he submitted that they permit the Airports Authority to terminate the licence without assigning any reason. However, in the present case, the Airport Director inserted a clause requiring reasons to be given for termination, thereby giving an undue benefit to the petitioner.

15. In reply to the submission that no eviction notice has yet been issued by the Eviction Officer, Mr. Samdani submitted that the termination notices were issued on 22 March 2025, whereas this Court passed an order directing the parties to maintain status quo on 25 March 2025. According to him, because of the order of status quo, the respondent could not approach the Eviction Officer for action. Therefore, he submitted that the judgments in *HLV Limited vs. Airports Authority of India and Survee Shidal* cannot

be distinguished on that ground.

16. Referring to Chapter - VA of the AAI Act, Mr. Samdani submitted that the said Chapter is a complete code governing eviction of unauthorised occupants. He submitted that the coordinate Bench in *Survee Shidal* has examined the entire scheme of the Act and has considered the petitioners' arguments regarding the validity of the termination notices. He pointed out that in paragraph 42 of the judgment it has been held that if the petitioners are aggrieved by the termination notices dated 22 March 2025 and contend that the termination is illegal or invalid, such contentions can be raised as a defence before the Eviction Officer in eviction proceedings. The coordinate Bench has held that the validity of the termination notices cannot be decided in arbitration. He submitted that in paragraph 47 the coordinate Bench considered the argument regarding "excepted matters" and observed that disputes relating to eviction and recovery of airport premises are clearly excluded from arbitration by Clauses 25.1 and 25.10 of the Licence Agreement as well as by Section 25 M of the AAI Act read with Section 2(3) of the Arbitration Act. He pointed out that in paragraph 49 the coordinate Bench held that the questions relating to the validity of termination and alleged breaches of the Licence Agreement are not arbitrable because they are governed by Chapter - VA of the AAI Act.

17. Mr. Samdani submitted that once the licence is terminated, the course available to the respondent is to approach the Eviction Officer for eviction of the petitioner. According to him, the petitioner cannot take advantage of the interim order of status quo

passed by this Court to contend that Chapter - VA has not become applicable. He submitted that the entire cause of action in the present petitions is based on the allegation that the termination is wrongful and that issue is covered by the judgment in *Survee Shidal*. He therefore prayed that all the petitions be dismissed.

18. Referring to different parts of the judgment in *HLV Limited*, Mr. Samdani submitted that paragraph 66 lays down the principles governing the application of Chapter - VA of the AAI Act to persons occupying airport property. He pointed out that the said judgment has been affirmed by the Supreme Court. He relied upon the Division Bench judgment of this Court in *Edward alias Advard Paul Machado vs. Pawal Kumar Nagpal*, 2012 (5) Mh.L.J. 461. According to him, in that case the Division Bench considered whether the Eviction Officer could proceed with eviction even though a dispute regarding title was pending before the Civil Court. The Division Bench answered that question in the affirmative after discussing the issue in paragraphs 18 to 21 of the judgment.

REASONS AND ANALYSIS:

Whether decisions in *HLV Limited* and *Survee Shidal* conclude controversy regarding arbitrability of present disputes?

19. Respondent has relied upon decisions of this Court in *HLV Limited* and judgment in *Survee Shidal*. According to respondent, in both these judgments this Court has interpreted provisions of Chapter - VA of Airports Authority of India Act and arbitration clause contained in same type of Licence Agreements. Therefore,

according to respondent, controversy raised in present petitions is no more open and stands concluded by those judgments. Petitioners disputed applicability of both these judgments. According to them, those judgments require reconsideration in view of later judgments of Supreme Court and because of peculiar facts arising in present matter. Petitioners submitted that *Survee Shidal* did not consider ratio laid down by Supreme Court in *Escorts Heart Institute* and therefore observations made therein cannot conclude controversy involved in present case. Therefore, it becomes necessary to see reasoning adopted in *HLV Limited* as well as *Survee Shidal*.

20. Judgment in *Survee Shidal* proceeds by making examination of scheme contained in Chapter - VA of Airports Authority of India Act. After considering Sections 28A to 28M, learned Single Judge came to conclusion that Legislature has enacted complete code governing eviction and recovery of airport premises. Court held that Chapter - VA not creates rights and liabilities but provides complete machinery for adjudication including issuance of notice, enquiry, eviction, recovery of damages, appeal, and finality of orders. On that basis, learned Single Judge concluded that disputes falling within said Chapter stand excluded from arbitration. Thereafter, learned Single Judge considered Clause 25.10 of Licence Agreement, which is similar to Clause 27.10 involved in present proceedings. Said clause provides:

"No dispute shall be referred for resolution under this clause through arbitration in matters for which eviction & recovery procedure is provided under Chapter-VA of the Airports

Authority of India Act, 1994..."

21. After reading above clause together with Section 2(3) of Arbitration and Conciliation Act and Section 28M of Airports Authority of India Act, learned Single Judge came to conclusion that exclusion of arbitration is statutory. Respondent strongly relied upon these findings.

22. According to respondent, once parties agreed that disputes relating to eviction and recovery shall not be referred to arbitration, petitioners cannot again invoke arbitration clause for getting same relief. Respondent relied upon paragraph 42 of *Survee Shidal*, wherein learned Single Judge held that though petitioners may contend that termination notices are illegal or invalid, such contention can become defence before Eviction Officer in proceedings under Chapter - VA. Court held that validity of termination notices cannot be adjudicated in arbitration. According to respondent, these observations answer principal argument advanced by petitioners in present proceedings. Learned Single Judge held that disputes relating to eviction from airport premises are "excepted matters". While considering clauses, Court observed that exclusion from arbitration becomes clear both from Licence Agreement as well as provisions contained in Chapter - VA. Therefore, respondent submitted that present petitions are covered by ratio laid down in *Survee Shidal*.

23. Petitioners made several submissions for distinguishing said judgment. Firstly, petitioners argued that *Survee Shidal* was decided without considering judgment of Supreme Court in *Escorts Heart Institute*. According to petitioners, if ratio of *Escorts Heart*

Institute had been considered, learned Single Judge could not have concluded that validity of termination can be examined by Eviction Officer.

24. As noticed earlier, *Escorts Heart Institute*, particularly paragraph 18, lays down that where basis of eviction is alleged breach which is subject matter of pending adjudication, resort to proceedings under Public Premises Act may not be appropriate till such adjudication is completed. However, it appears that *Survee Shidal* was considering different provisions. More importantly, learned Single Judge was dealing with arbitration clause which excluded disputes covered by Chapter - VA. Such exclusion was not before Supreme Court while deciding *Escorts Heart Institute*. Therefore, though *Escorts Heart Institute* gives importance to deciding legality of termination in proper facts, it cannot be said that said judgment answers interpretation undertaken in *Survee Shidal*.

25. Secondly, petitioners argued that *Survee Shidal* overlooked principles later reiterated by Supreme Court in *Managing Director, Bihar State Food & Civil Supply Corporation Ltd.*, following Seven Judge Bench decision in *Re: Interplay Between Arbitration Agreements*. According to petitioners, Supreme Court has held that Court's scrutiny must remain confined to examination of existence of arbitration agreement and questions regarding arbitrability are required to be left before Arbitral Tribunal.

26. It is true that Seven Judge Bench held doctrine of competence and limited role of Court at referral stage. However,

present controversy is not confined to existence of arbitration agreement. Here, arbitration clause contains exclusion relating to disputes governed by Chapter - VA. Where parties have agreed that one particular category of disputes shall not be referred to arbitration, Court cannot ignore such exclusion because agreement contains general arbitration clause. Therefore, principles laid down in *Bihar State Food & Civil Supply Corporation Ltd.* govern extent of judicial scrutiny. At same time, those principles do not remove necessity of interpreting arbitration agreement, including exceptions inserted by parties.

27. Thirdly, petitioners submitted that Eviction Officer cannot adjudicate allegations forming basis of termination notices, namely, lack of authority of Airport Director, validity of tender process, financial irregularities and alleged alterations in clauses.

28. Powers of Eviction Officer relate to deciding whether occupation has become unauthorized. Questions relating to legality of administrative decisions, authority of officers, alleged fraud in tender process or interpretation of obligations may travel beyond scope of eviction proceedings. However, *Survee Shidal* answers this submission by holding that legality of termination notice constitutes defence available before Eviction Officer while deciding whether occupation has become unauthorized. Whether that conclusion is correct or whether some qualification is still necessary is matter which still requires examination.

29. Respondent relied upon *HLV Limited*, wherein this Court considered character of proceedings under Chapter - VA and held

that once occupation becomes unauthorized, eviction proceedings under special statute cannot be stopped through arbitration. Respondent pointed out that judgment in *HLV Limited* has been affirmed by Supreme Court, though Supreme Court left all contentions open before Eviction Officer.

30. Confirmation of *HLV Limited* by Supreme Court gives considerable weight to interpretation adopted therein. At same time, it cannot be overlooked that Supreme Court did not decide question whether every challenge to termination falls outside jurisdiction of Arbitral Tribunal. After considering rival submissions, this Court is of opinion that *HLV Limited* and *Survee Shidal* are important judgments while interpreting Chapter - VA of Airports Authority of India Act. Reasoning adopted therein regarding scheme, concept of "excepted matters" and exclusive machinery created for eviction proceedings remains binding. At same time, neither of these judgments removes necessity of examining principles laid down by Supreme Court in *Escorts Heart Institute* and *Bihar State Food & Civil Supply Corporation Ltd.*. Judgments of Supreme Court continue to bind this Court. Therefore, they are required to be read harmoniously together with provisions and exclusion contained in Clause 27.10. Thus, present controversy cannot be decided merely by applying either *Survee Shidal* or *Escorts Heart Institute* separately. If there appears some conflict between these authorities, same has to be understood by finding exact field in which each judgment operates. Therefore, it now becomes necessary to examine whether these authorities are inconsistent with each other or whether every

one of them is operating in separate field.

Reconciliation of authorities. What legal principle comes out.

31. After seeing rival submissions made by both sides and judgments relied upon by them, now it becomes necessary to examine whether judgments of Supreme Court and this Court are conflicting with each other or whether every judgment is operating in its own separate field. Petitioners have relied upon three authorities, namely, Seven Judge Bench decision in *Re: Interplay Between Arbitration Agreements*, later judgment in *Managing Director, Bihar State Food & Civil Supply Corporation Ltd.* and *Escorts Heart Institute and Research Centre Ltd.*. According to petitioners, these judgments show that once arbitration agreement exists, questions relating to validity of termination and arbitrability should be left before Arbitral Tribunal. Respondent relied upon *Edward alias Advard Paul Machado, HLV Limited* and *Survee Shidal*. According to respondent, once licence stands terminated and Chapter - VA becomes applicable, disputes relating to eviction and recovery go outside arbitration.

32. Seven Judge Bench in *Re: Interplay Between Arbitration Agreements* was not considering Airports Authority of India Act or Chapter - VA thereof. Main question before Supreme Court was extent of judicial scrutiny while exercising powers under Sections 8 and 11 of Arbitration and Conciliation Act. It was in that background Supreme Court observed in paragraph 165:

"The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an

arbitration agreement."

33. Thereafter, Supreme Court observed in paragraphs 166 and 167:

"The Referral Court is not the appropriate forum to conduct a mini-trial..."

34. Ultimately, Supreme Court concluded:

"...their scrutiny must be 'confine(d) to the examination of the existence of the arbitration agreement'."

35. These observations lay down principle regarding limited jurisdiction of Court while considering reference to arbitration. However, Supreme Court was not considering arbitration agreement which contained exclusion of one particular category of disputes. Supreme Court was not required to interpret special machinery like Chapter - VA of Airports Authority of India Act creating exclusive forum for deciding specified disputes. Therefore, Seven Judge Bench by does not answer question arising before this Court.

36. Likewise, judgment in *Bihar State Food & Civil Supply Corporation Ltd.* repeats principles laid down by Seven Judge Bench. It does not examine connection between arbitration clause and exclusion similar to Clause 27.10 contained in present Licence Agreement. Therefore, reliance placed by petitioners upon these judgments appears correct to certain extent. Those judgments establish that Court should avoid entering into disputed factual controversies while considering arbitration. But those judgments nowhere say that every dispute must go before arbitration irrespective of exclusion.

37. Next judgment relied upon by petitioners is *Escorts Heart Institute*. There Supreme Court was considering proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Supreme Court found that reason for termination was alleged breach regarding amalgamation and that issue was pending before Civil Court. It was in those peculiar facts that Supreme Court observed in paragraph 18:

"The leases have not expired by efflux of time; the reason for termination is stated to be the breach of the lease qua the issue of amalgamation which is pending decision in the suit..."

38. After noticing those facts, Supreme Court held that proceedings under Public Premises Act would not be appropriate till Civil Suit was decided. Therefore, ratio of *Escorts Heart Institute* appears resting upon two important circumstances. Firstly, validity of termination was under adjudication before competent Civil Court. Secondly, Supreme Court found that lessee continued to remain allottee under existing allotment letters and lease deeds and had not become encroacher merely because termination was alleged. Therefore, that judgment protects allottee against premature use of summary eviction proceedings where basis of termination still remains pending for adjudication. However, *Escorts Heart Institute* did not involve clause like Clause 27.10 excluding arbitration in disputes governed by Chapter - VA. Supreme Court was not interpreting special provisions contained in Airports Authority of India Act. Thus, that judgment appears operating in different field.

39. Coming now to *Edward alias Advard Paul Machado*, Division Bench examined jurisdiction of Eviction Officer under Chapter - VA. In paragraph 18, Division Bench hold that Eviction Officer continues to possess jurisdiction unless dispute raises genuine and bona fide question of title. In paragraph 19, Division Bench held that complicated questions relating to ownership and title cannot be decided by Eviction Officer. , in paragraph 25, Division Bench answered second question in affirmative. Therefore, *Edward* cannot be read in manner that takes away jurisdiction of Eviction Officer. At same time, it cannot be read as giving unlimited jurisdiction to him. What Division Bench hold was limitation attached to summary proceedings.

40. Judgments in *HLV Limited* and *Survee Shidal* go one stage further. Both judgments examine Chapter - VA of Airports Authority of India Act. Both interpret exclusion contained in arbitration clause. Both hold that disputes relating to eviction and recovery are "excepted matters". *Survee Shidal* holds that legality of termination becomes defence which may be raised before Eviction Officer and not separate dispute capable of arbitration. Therefore, unlike judgments relied upon by petitioners, *HLV Limited* and *Survee Shidal* deal with provisions governing airport premises. Still, this Court is unable to hold that *Survee Shidal* closes every controversy arising from termination of airport licences.

41. Issue before this Court is whether every challenge to termination becomes non-arbitrable after issuance of termination notice, whatever may be nature of dispute raised. In opinion of

this Court, authorities referred above do not lay down such absolute conclusion. Seven Judge Bench protects arbitral process. *Escorts Heart Institute*, particularly paragraph 18, protects rights of allottee where validity of termination remains under adjudication. *Edward*, particularly paragraphs 18, 19 and 25, holds limitation upon jurisdiction of Eviction Officer in matters involving complicated civil disputes regarding ownership and title. At same time, it holds that jurisdiction of Eviction Officer does continue. *HLV Limited* and *Survee Shidal* hold exclusive machinery governing eviction from airport premises and exclusion relating to such disputes. All these principles appear capable of operating together without any conflict.

42. Where dispute concerns eviction of unauthorized occupant or recovery of airport premises after determination of licence, Chapter - VA operates as complete machinery and such disputes fall within exclusion contained in Clause 27.10. However, where dispute concerns rights like legality of termination, authority of contracting parties, alleged fraud, mala fides, interpretation of clauses or other matters which Eviction Officer has no jurisdiction to adjudicate, mere existence of Chapter - VA may not by extinguish arbitration agreement. In such matters, proceedings and remedies may continue together, every one remaining confined to its own field. Such interpretation appears to give proper effect to every authority cited before this Court.

Whether disputes raised in present petitions are disputes requiring arbitration or whether they are disputes exclusively falling under Chapter - VA of Airports Authority of India Act?

43. After seeing provisions, clauses and judgments relied upon by both sides, now it becomes necessary to find out what is nature of disputes raised in present petitions. Petitioners submitted that present dispute did not start because respondent wanted back possession of airport premises. According to them, dispute had started much earlier when respondent directed petitioners to keep entire EV Project in abeyance by communication dated 31 December 2024 mentioning "administrative reasons". According to petitioners, before issuing said communication they had paid licence fees, deposited performance security, obtained approval of layout plans and after taking possession of respective sites had started construction work. Even after all this, respondent suddenly stopped execution of project without assigning any proper reason. Therefore, according to petitioners, grievance is regarding conduct of respondent and not merely regarding proposed eviction.

44. Pleadings placed on record appear showing that after execution of Licence Agreements, possession of respective sites was handed over to petitioners. Preparatory work had commenced. Performance security had been deposited. Layout plans stood approved. Construction activities had progressed. Thereafter, respondent directed petitioners to discontinue work by issuing communication dated 31 December 2024. Till that point of time, termination notices had not yet been issued. Thus, cause of action pleaded by petitioners was not termination of Licence Agreements but stoppage of performance by respondent. Thereafter, petitioners approached this Court seeking withdrawal of communication dated 31 December 2024 and seeking permission to resume

execution of EV Project. During pendency of these proceedings respondent thereafter issued termination notices dated 22 March 2025.

45. Chronology placed on record appears showing that dispute between parties had arisen even before termination of Licence Agreements. Therefore, it may not be possible to say that entire cause of action has started because of later eviction proceedings. Petitioners submitted that termination notices show that respondent questioned legality of tender process, authority of Airport Director to execute Licence Agreements, validity of allotment and alleged financial irregularities while granting licences.

46. According to respondent, question is whether petitioners continue occupying airport premises without authority. Therefore, according to respondent, every defence regarding legality of termination can be raised before Eviction Officer. This submission appears receiving support from reasoning adopted in *Survee Shidal*. However, some difficulty still appears in accepting this submission in such complete manner. Eviction Officer has jurisdiction to determine whether occupation has become unauthorized. For deciding that limited question, he may have to see whether licence has been terminated. But present controversy appears travelling beyond that limited enquiry. Petitioners seek declaration that respondent acted contrary to terms. Petitioners seek restoration of rights. They seek continuation of Licence Agreements for remaining period. They dispute legality of decisions which resulted in issuance of termination notices. These

are reliefs which flow from contract. Neither Chapter - VA nor provisions relating to eviction appear giving jurisdiction to Eviction Officer for granting specific performance of Licence Agreements or restoring rights if termination is found unlawful. Therefore, petitioners appear justified in submitting that at least one part of present dispute may not be effectively decided within machinery. At same time, submission made by petitioners cannot be accepted without any qualification. Reliefs claimed in present petitions cannot be viewed as reliefs by separating them from possession of airport premises. Prayer clauses A, A-1, B and B-1 seek suspension of termination notices, permission to restart work upon airport land and restraint against respondent from acting upon termination notices. If such reliefs are granted, natural consequence would be that respondent may not be able to proceed under machinery created under Chapter - VA. Therefore, though these reliefs are described as reliefs, their immediate effect affects respondent's right to recover airport premises. Therefore, Court cannot merely see wording of relief claimed. Its practical consequence requires consideration.

47. Petitioners argued that unless validity of termination is decided by Arbitral Tribunal, Eviction Officer cannot assume that occupation has become unauthorized. Respondent, on other hand, submitted that unless Eviction Officer determines whether occupation has become unauthorized, no arbitral remedy survives. In opinion of this Court, neither of these submissions appears reflecting scheme. Eviction Officer is competent to determine whether requirements for eviction are satisfied. Arbitral Tribunal,

if otherwise having jurisdiction, may decide disputes falling within arbitration agreement. One forum cannot take place of other. Statutory jurisdiction cannot be enlarged so as to confer power for granting remedies. Similarly, arbitral jurisdiction cannot be exercised in such manner that machinery created by Parliament for recovery of airport premises becomes ineffective. Thus, dispute placed before this Court does not appear wholly contractual. At same time, it does not appear purely statutory. It appears containing both elements. Challenge to conduct of respondent, legality of termination notices and consequences flowing therefrom forms one part of controversy. Respondent's right to recover possession of airport premises after termination forms another part. The difficulty appears in identifying where one part comes to end and another part starts. This distinction becomes important because Clause 27.10 excludes those matters "for which eviction & recovery procedure is provided under Chapter-VA of the Airports Authority of India Act, 1994." Said clause does not exclude every dispute merely because termination of licence may result in eviction proceedings. Therefore, enquiry is not whether eviction proceedings are contemplated. Real enquiry is whether dispute sought to be referred for arbitration is matter "for which eviction & recovery procedure is provided" under Chapter - VA.

Whether disputes raised by petitioners fall within expression "matters for which eviction & recovery procedure is provided under Chapter - VA" occurring in Clause 27.10 of Licence Agreements?

48. After seeing provisions, rival judgments and controversy

between parties, now principal question requires consideration. Answer to this issue depends upon proper understanding of Clause 27.10 of Licence Agreements. Clause 27.10 reads as under:

"27.10 No dispute shall be referred for resolution under this clause through arbitration in matters for which eviction & recovery procedure is provided under Chapter -VA of the Airports Authority of India Act, 1994 as amended by Act 2003."

49. Respondent submitted that once Licence Agreements stood terminated, every dispute thereafter became dispute relating to eviction and recovery. According to respondent, relationship came to end on 22 March 2025. After that, according to respondent, nothing survived except procedure provided under Chapter - VA.

50. If this submission is accepted, then every challenge to termination notice issued by Airports Authority would become non arbitrable. After issuing termination notice, licensor would have to invoke Chapter - VA. Thereafter, every dispute existing before termination would become part of proceedings. In opinion of this Court, Clause 27.10 may not be capable of such wide interpretation. Words used by parties appear having considerable importance. Clause nowhere says that every dispute arising after termination shall stand excluded from arbitration. It nowhere provides that every dispute relating to a terminated licence shall go outside arbitration. Exclusion appears much narrower. Parties agreed that arbitration shall not be available "in matters for which eviction & recovery procedure is provided under Chapter-VA." Therefore, exclusion appears attaching to nature of dispute and not merely because dispute has arisen after certain stage.

51. Expression "matters for which eviction & recovery procedure is provided" appears referring to those matters which Eviction Officer is authorised under statute to decide while exercising powers under Chapter - VA. Therefore, while interpreting this exclusion, jurisdiction of Eviction Officer appears becoming important. Statutory provisions appear showing that Eviction Officer has jurisdiction to examine whether occupation of airport premises has become unauthorized and whether eviction should follow. Questions arising while deciding unauthorized occupation may come within his jurisdiction. However, neither Chapter - VA nor any provision pointed out by respondent appears giving jurisdiction to Eviction Officer for granting specific performance of obligations. Similarly, statute does not appear authorising Eviction Officer to restore rights arising under Licence Agreement. He cannot compel parties to perform obligations. He cannot revive contract terminated. He cannot direct continuation of licence for remaining period. He cannot award damages arising from alleged breach of obligations. These remedies appear remaining outside statutory framework. Therefore, merely because same facts may result into eviction proceedings, every dispute may not become dispute. Petitioners held that their principal grievance is not merely against proposed eviction. According to them, respondent stopped project by mentioning "administrative reasons". Thereafter, termination notices were issued alleging lack of authority of respondent's own officers, financial irregularities and alleged alteration of clauses.

52. Whether those allegations are true. Whether those allegations constitute valid grounds for termination. Whether respondent acted contrary to tender conditions. Whether respondent committed breach by preventing performance of contract. All these questions appear relating to rights and obligations between parties. These questions do not concern eviction. Respondent, however, submitted that all these questions become defence available before Eviction Officer.

53. There may not be much dispute that while deciding whether occupation has become unauthorized, Eviction Officer may examine whether licence has come to an end. However, scope of such examination may not become same as complete adjudication of all disputes between parties. Statutory enquiry proceeds for deciding whether occupant has right to continue in possession. Enquiry proceeds for deciding rights and obligations flowing from agreement. Both enquiries may overlap to some extent. Still, both appear remaining different in nature.

54. Respondent argued that if arbitration is permitted, every occupant of airport premises may avoid machinery by challenging termination. This apprehension cannot be said to be wholly without substance. Chapter - VA appears enacted with legislative object of securing speedy recovery of airport premises. That object may not be permitted to become ineffective because of parallel proceedings frustrating provisions of Act. At same time, equally serious consequence may arise if submission of respondent is accepted without any qualification. In that situation, respondent would have to issue termination notice, however arbitrary or unit

may be found, and every remedy agreed by parties would become unavailable. Such interpretation may permit one contracting party, merely by issuing termination notice, to extinguish arbitration agreement in relation to every dispute.

55. Ordinarily, clauses are not interpreted in manner which permits one party, by its own act, to defeat dispute resolution mechanism agreed between parties. Arbitration clause survives termination unless contract provides otherwise. Clause 27.10 nowhere provides that arbitration agreement shall come to an end upon termination. It excludes one specified category of disputes. Therefore, such exclusion appears requiring interpretation which gives proper effect both to arbitration agreement and to scheme. Judgments in *Survee Shidal* and *HLV Limited* hold that disputes relating to eviction and recovery of airport premises are excepted matters. This Court respectfully agrees with that principle.

56. At same time, judgments in *Escorts Heart Institute*, particularly paragraph 18, and Seven Judge Bench in paragraphs 165, 166 and 167 hold that disputes relating to termination may require adjudication before appropriate forum. These principles do not appear destroying one another. Rather, they appear operating in different fields. Accordingly, in opinion of this Court, Clause 27.10 excludes from arbitration those disputes which Eviction Officer is competent to determine while exercising powers under Chapter - VA. Clause may not be interpreted as excluding every dispute merely because respondent has afterwards initiated, or proposes to initiate, eviction proceedings.

57. The respondent strongly relied upon observations made by Coordinate Bench in *Survee Shidal*. According to respondent, even question regarding legality or invalidity of termination notice itself cannot be referred for arbitration. It is submitted that Division Bench has held that once proceedings under Chapter V A are started, every challenge to termination notice only becomes defence before Eviction Officer. Therefore, according to respondent, such dispute cannot be separately referred for arbitration.

58. It is true that in *Survee Shidal* observations have been made that licensee can question legality of termination notice before Eviction Officer and such challenge forms part of defence available in eviction proceedings. If those observations are read in background of controversy before the Bench, they certainly show that Eviction Officer is not expected to proceed only because termination notice has been issued. Before directing eviction, Eviction Officer may have to examine whether licence has really come to an end.

59. Sometimes statutory authority may have to examine one question only for deciding whether conditions necessary for exercising statutory power are satisfied. But merely because such question is examined for that limited purpose, it may not mean that same authority gets exclusive jurisdiction finally to decide every consequence arising from that question. Jurisdiction of Eviction Officer under Chapter V A remains confined to deciding whether occupation has become unauthorized and whether eviction should follow. For deciding that issue, he may examine

whether licence has come to an end. But such examination appears only for deciding whether statutory requirements necessary for eviction are satisfied. Contractual enquiry appears standing on different footing. Where party seeks declaration that termination is contrary to contract, seeks enforcement of contractual rights, alleges breach by licensor, questions authority of officers executing or terminating agreement, alleges mala fides, fraud or violation of contractual obligations and seeks consequences flowing from such acts, those questions appear travelling beyond limited purpose of deciding whether possession should continue. Neither Chapter -VA nor any provision pointed out before this Court appears giving power to Eviction Officer to grant specific performance of Licence Agreement. He cannot finally determine every contractual right arising between parties. Therefore, although invalidity of termination may become defence in eviction proceedings, it may not follow that contractual dispute regarding legality of termination loses its identity for every purpose. If submission made by respondent is accepted, one more consequence may follow which does not appear contemplated either under Arbitration and Conciliation Act or under Clause 27.10. If every challenge to termination becomes non-arbitrable only because termination notice has been issued, then licensor may, by its own act of terminating agreement, become capable of putting end to arbitration agreement regarding every contractual dispute. Such interpretation may enlarge contractual exclusion contained in Clause 27.10 much beyond language chosen by parties. Clause 27.10 excludes only "matters for which eviction & recovery

procedure is provided under Chapter-VA of the Airports Authority of India Act, 1994." It nowhere says that every dispute arising after termination, or every dispute in which termination is questioned, shall become non-arbitrable. Therefore, in opinion of this Court, observations made in *Survee Shidal* require to be understood in background in which they were made. Coordinate Bench held that Eviction Officer is competent to examine legality of termination to limited extent necessary for deciding whether eviction should follow. Those observations, may not be understood as giving exclusive jurisdiction to Eviction Officer finally to decide every contractual consequence arising from alleged invalidity of termination or as excluding arbitration regarding contractual remedies which Eviction Officer has no jurisdiction to grant. Therefore, no real inconsistency appears arising.

60. Eviction Officer may examine validity of termination as incidental defence while deciding statutory eviction proceedings. At same time, Arbitral Tribunal, wherever dispute otherwise survives within arbitration agreement, may decide contractual rights arising from same termination notice. Both enquiries may overlap on some factual aspects. Still, source of jurisdiction, purpose of enquiry and reliefs which both forums can grant appear remaining different. Accordingly, this Court is unable to accept proposition that *Survee Shidal* lays down inflexible rule that every dispute regarding invalidity of termination notice becomes non arbitrable merely because same invalidity may also be raised as defence before Eviction Officer under Chapter – VA.

Whether interim reliefs claimed under Section 9 are in aid of arbitration or whether grant of such relief may defeat machinery under Chapter - VA?

61. After holding that Clause 27.10 excludes those matters for which eviction and recovery procedure is provided under Chapter - VA of Airports Authority of India Act, next question now requires consideration. The question now is whether reliefs claimed in present petitions fall within that excluded category. Petitioners submitted that present petitions have been filed in aid of proposed arbitration proceedings. According to them, final relief proposed before Arbitral Tribunal is specific performance of Licence Agreements. Present interim protection is for keeping relationship alive till Arbitral Tribunal decides legality of action taken by respondent. Therefore, according to petitioners, relief claimed under Section 9 is protective in nature and not intended to avoid or bypass provisions contained in Chapter - VA.

62. Plain reading of prayer clauses extracted earlier appears showing that petitioners have sought withdrawal of communication dated 31 December 2024, stay of termination notices dated 22 March 2025, permission to restart project work and restraint against respondent from acting upon termination notices. Petitioners have not claimed declaration that airport land belongs to them. They have not disputed ownership of respondent over airport premises. Entire case of petitioners proceeds on footing that Licence Agreements still continue to remain enforceable and respondent has wrong prevented performance thereof. To that extent, reliefs claimed appear arising from

relationship between parties.

63. The petitioners argued that Section 9 has been enacted for preserving subject matter of arbitration. According to them, unless interim protection is granted, arbitration proceedings may become meaningless because respondent may complete eviction proceedings before Arbitral Tribunal gets opportunity to examine legality of termination notices. According to petitioners, such situation may frustrate arbitration agreement consciously entered into between both parties.

64. This submission appears having considerable force. Object of Section 9 appears to be preserving efficacy of arbitration proceedings. Ordinarily, interim protection is granted so that final award, if passed, does not become incapable of implementation because subject matter has undergone irreversible change during pendency of arbitration. If petitioners succeed before Arbitral Tribunal and Licence Agreements are held to have been wrong terminated, restoration of relationship may become difficult if possession has changed hands and project has been allotted to some other party. Therefore, petitioners submitted that refusal of interim protection would make arbitration clause illusory.

65. Respondent raised equally serious objection. According to respondent, though prayers have been drafted in language, their practical effect is restraining respondent from exercising powers available under Chapter - VA. Respondent submitted that if operation of termination notices is stayed, proceedings contemplated under Airports Authority of India Act become

incapable of implementation. Consequently, according to respondent, Court would achieve what Clause 27.10 prohibits.

66. It cannot be disputed that if this Court stays termination notices, respondent would be prevented from treating petitioners as unauthorized occupants. Consequently, remedy available under Chapter - VA would remain in abeyance. Therefore, though relief is claimed under Section 9, its immediate effect affects machinery created by Parliament. Respondent submitted that powers under Section 9 cannot be exercised in manner defeating remedy. According to respondent, Parliament has consciously created complete machinery for eviction of unauthorized occupants from airport premises. If interim orders are routinely granted restraining operation of termination notices, legislative object behind Chapter - VA may become frustrated. This submission appears deserving acceptance to certain extent. Jurisdiction under Section 9 remains discretionary. Even where arbitration is maintainable, Court has to exercise caution before granting interim relief if such relief interferes with operation of special statute. Court cannot ignore legislative intention merely because rights are involved. However, submission made by respondent in such absolute form cannot be accepted without qualification. If submission of respondent is accepted completely, it would mean that in every dispute relating to airport premises, no interim protection can ever be granted after termination notice is issued. Such interpretation may render Section 9 ineffective in every dispute concerning airport licences, whatever may be facts of individual case. Neither Arbitration and Conciliation Act nor Airports Authority of India Act appears

providing any such blanket prohibition. Therefore, Court has to strike proper balance between rights flowing from arbitration agreement and rights flowing from Chapter - VA. Nature of present controversy appears assuming importance in this background. Petitioners entered into Licence Agreements after public tender process. Possession was handed over. Performance security was accepted. Layout plans were approved. Construction work had commenced. Thereafter, respondent directed stoppage of work for "administrative reasons" without giving any particulars. Termination notices came after present proceedings had been instituted.

67. Whether these circumstances establish mala fides or arbitrariness is not matter requiring final determination at this interlocutory stage. Still, these facts cannot be ignored while considering whether petitioners have raised serious triable issues requiring preservation till competent forum adjudicates controversy. Respondent relied upon principle that once licence stands terminated, specific performance of such contracts cannot be granted. That submission relates to merits of final relief. Present proceedings are not concerned with granting specific performance. At present, Court is concerned with preservation of rights till final adjudication. Whether petitioners become entitled to specific performance is matter which competent adjudicatory forum will decide after recording evidence. At this interlocutory stage, Court is not expected to pronounce upon those questions. After considering rival submissions, this Court is of opinion that reliefs claimed in present petitions appear possessing dual character. On

one side, they seek protection of rights arising from Licence Agreements. On other side, grant of such reliefs affect respondent's remedy under Chapter - VA. Therefore, these reliefs cannot be viewed as being exclusively contractual or exclusively statutory. Court has to examine whether remedy created under Chapter - VA was intended by Legislature to override remedy of arbitration in every case or whether both remedies are capable of operating together without one defeating or destroying the other. Answer to that question will determine whether interim protection under Section 9 can be granted consistently with scheme contained in Airports Authority of India Act or whether present petitions become not maintainable because of exclusion contained in Clause 27.10 of Licence Agreements.

Final determination regarding arbitrability and maintainability of present petitions:

68. After seeing pleadings, clauses, provisions contained in Chapter - VA of Airports Authority of India Act, rival submissions made by learned advocates and judgments relied upon by both sides, now this Court proceeds to decide whether disputes raised in present petitions are capable of being decided through arbitration so as to invoke jurisdiction under Section 9 of Arbitration and Conciliation Act.

69. Submission made by petitioners is that once Licence Agreements contain arbitration clause, this Court cannot enter into enquiry regarding arbitrability. According to them, in view of Seven Judge Bench judgment in *Re: Interplay Between Arbitration*

Agreements and later judgment in *Managing Director, Bihar State Food & Civil Supply Corporation Ltd.*, enquiry by Court has to remain confined to existence of arbitration agreement.

70. This submission appears correct to limited extent. There may not be any dispute that Licence Agreements executed between parties contain valid arbitration clause. Equally, Seven Judge Bench has clearly held in paragraphs 165, 166 and 167 that Referral Court should avoid making adjudication regarding merits of dispute. However, present controversy is not confined to existence of arbitration agreement. Arbitration clause contains exclusion. Clause 27.10 provides:

"No dispute shall be referred for resolution under this clause through arbitration in matters for which eviction & recovery procedure is provided under Chapter-VA of the Airports Authority of India Act, 1994..."

71. Therefore, before referring any dispute for arbitration or granting interim protection in aid thereof, this Court may not avoid examining whether present dispute falls within exclusion voluntarily agreed by both parties. Accordingly, submission advanced by petitioners cannot be accepted in such broad manner as suggested. Judgments in *Managing Director, Bihar State Food & Civil Supply Corporation Ltd.* and Seven Judge Bench do not prohibit Court from examining scope of arbitration agreement, particularly where agreement excludes one particular class of disputes.

72. Second submission advanced by petitioners is based upon judgment of Supreme Court in *Escorts Heart Institute*. According

to petitioners, Supreme Court holdd that where validity of termination remains pending for adjudication, eviction proceedings should not proceed. This submission appears carrying considerable force. Supreme Court indeed observed in paragraph 18:

"...the reason for termination is stated to be the breach of the lease... pending decision in the suit, any action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would not be appropriate."

73. This observation holds that where very basis of eviction remains under adjudication, remedy should not make such adjudication meaningless. However, ratio of *Escorts Heart Institute* cannot be separated from facts in which that judgment was delivered. Supreme Court was considering proceedings under Public Premises Act. Arbitration clause now under consideration was not before Supreme Court. More importantly, Supreme Court was not considering agreement containing exclusion similar to Clause 27.10. Therefore, though *Escorts Heart Institute*, particularly paragraph 18, supports proposition that legality of termination assumes considerable importance, it cannot be read as laying down that Chapter - VA of Airports Authority of India Act becomes wholly ineffective whenever termination is challenged. Accordingly, this submission is accepted to the extent that validity of termination continues to remain substantial issue requiring adjudication. It cannot be accepted to extent of excluding operation of Chapter – VA.

74. Third submission advanced by petitioners is that Eviction Officer has no jurisdiction to decide questions relating to authority of Airport Director, validity of tender process, alleged fraud, mala fides and legality of termination.

75. This submission appears deserving acceptance to some extent. Division Bench in *Edward alias Advard Paul Machado* observed in paragraph 19:

"...the authorities under the 1994 Act do not have the power to adjudicate such complicated questions of title..."

76. Though present dispute is not regarding title of property, above judgment holds that jurisdiction of Eviction Officer is not unlimited. Neither Chapter - VA nor any provision pointed out before this Court appears giving power to Eviction Officer to grant specific performance. He cannot revive terminated contracts. He cannot direct continuation of commercial licences. He cannot adjudicate claims relating to damages. These remedies appear remaining outside framework. To that extent, petitioners appear justified in contending that rights do not disappear merely because Chapter - VA becomes applicable.

77. Respondent equally relied upon *HLV Limited* and *Survee Shidal*. Respondent submitted that these judgments have conclusively held that disputes relating to eviction and recovery of airport premises are excepted matters and therefore remain outside arbitration. This submission appears deserving substantial acceptance. Both *HLV Limited* and *Survee Shidal* examine Chapter - VA in detail. Both hold that Parliament has enacted complete

machinery governing eviction from airport premises. Both hold that Clause 27.10 excludes disputes relating to eviction and recovery from arbitration. This interpretation appears consistent with language chosen by parties . Therefore, this Court finds no reason to differ from proposition that disputes relating to eviction and recovery of airport premises fall outside scope of arbitration. Ordinarily, arbitration agreement survives termination. Those disputes which parties have excluded cease to remain arbitrable. Clause 27.10 excludes "matters for which eviction & recovery procedure is provided under Chapter-VA." It does not exclude every dispute arising after termination. Therefore, exclusion may not be enlarged beyond language used by parties.

78. After harmoniously considering all authorities, this Court is of opinion that no conflict appears existing between judgments relied upon by either side. Seven Judge Bench governs limited scope of judicial scrutiny at referral stage. *Escorts Heart Institute*, particularly paragraph 18, governs situations where validity of termination remains under adjudication. *Edward alias Advard Paul Machado*, particularly paragraphs 18, 19 and 25, defines limits of jurisdiction of Eviction Officer. *HLV Limited* and *Survee Shidal* govern disputes relating to eviction and recovery under Chapter - VA. Every one of these judgments appears operating in its own field. Legal principle emerging from all these authorities appears to be this. Where dispute concerns eviction of unauthorized occupants or recovery of airport premises, Chapter - VA constitutes exclusive machinery and such disputes stand excluded from arbitration because of Clause 27.10. However, where dispute

concerns rights which Eviction Officer has no jurisdiction to determine, arbitration agreement does not disappear merely because eviction proceedings have become available. Therefore, both remedies may continue together, every one remaining confined within its own legally permissible field. Applying above principles to facts of present case, this Court finds that disputes raised by petitioners are not confined to eviction.

79. Petitioners question legality of respondent's conduct beginning from communication dated 31 December 2024 directing stoppage of work. They question authority of respondent to terminate agreements executed after completion of public tender process. They dispute allegations forming basis of termination notices. They seek enforcement of rights flowing from Licence Agreements. At same time, it is true that immediate reliefs claimed by petitioners seek suspension of termination notices and continuation of occupation of airport premises, which affects machinery contained in Chapter - VA. Therefore, present controversy appears containing both as well as statutory elements. In such circumstances, jurisdiction under Section 9 may not be exercised in manner neutralising Chapter - VA. Similarly, Chapter - VA may not be interpreted in manner destroying arbitration agreement executed between parties. Therefore, final relief which may be granted, and extent to which interim protection may be moulded with both enactments, still requires separate examination on well settled principles governing grant of interim measures under Section 9 of Arbitration and Conciliation Act, namely existence of prima facie case, balance of convenience, irreparable

injury and whether relief presently sought would amount to grant of final relief.

Whether petitioners have made out case for grant of interim protection under Section 9 of Arbitration and Conciliation Act?

80. Even assuming for sake of arguments that some part of disputes raised by petitioners still remains available for arbitral adjudication, next question now requiring consideration is whether petitioners have become entitled to interim reliefs prayed under Section 9 of Arbitration and Conciliation Act. Jurisdiction under Section 9 is wide. At same time, it is well settled that such power remains discretionary. Interim measures are meant for preserving subject matter of arbitration till rights of parties are decided. Such jurisdiction should not be exercised in manner by which disputes get decided, or same relief comes to be granted which is intended to be claimed before Arbitral Tribunal. Petitioners submitted that every requirement necessary for grant of interim protection stands satisfied in present matter. According to them, respondent invited tenders for establishment of EV Charging Stations on airport premises. Petitioners participated in tender process. They were declared successful bidders. Thereafter, Letters of Intent came to be issued. Subsequently, formal Licence Agreements were executed. Possession of respective sites was handed over. Petitioners deposited required performance security, obtained approval of layout plans and thereafter commenced execution of project. According to petitioners, acting upon representations made by respondent, they changed their position by making substantial investments. Petitioners submitted that even after

permitting commencement of work, respondent suddenly directed stoppage of entire project by mentioning "administrative reasons". No particulars regarding such administrative reasons were disclosed. Even after petitioners sought clarification, no satisfactory explanation was given. According to them, termination notices came to be issued after present proceedings had been instituted and before matter came to be taken up by this Court. Therefore, according to petitioners, entire sequence of events prima facie appears showing arbitrariness and mala fides.

81. Material placed before Court prima facie appears showing that actual possession was handed over. Performance security was accepted. Layout approvals were granted. Construction activities had commenced. Respondent acted upon Licence Agreements for several months before issuing communication dated 31 December 2024. Therefore, petitioners have shown that substantial rights had accrued under Licence Agreements. Petitioners submitted that unless interim protection is granted, arbitration proceedings may become meaningless. According to them, if eviction proceedings continue and respondent again resumes possession, restoration of project after several years of arbitration may become impossible. Subject matter of arbitration may disappear.

82. Respondent disputed maintainability of reliefs claimed. According to respondent, petitioners have in substance prayed for suspension of termination notices and continuation of occupation of airport premises. If such relief is granted, respondent would be prevented from exercising powers available under Chapter - VA. Therefore, according to respondent, under cover of interim

protection petitioners are seeking same relief which they propose to claim before Arbitral Tribunal.

83. Plain reading of prayer clauses show that petitioners seek withdrawal of communication dated 31 December 2024, stay of termination notices, permission to restart execution of project and restraint against respondent from acting upon termination notices. If all these reliefs are granted without any qualification, practical consequence would be that respondent may become disabled from proceeding under Chapter - VA during pendency of arbitration. Such order would grant petitioners benefit which forms subject matter of final arbitral proceedings. Ordinarily, Section 9 is not intended for granting final relief at interlocutory stage. Therefore, Court has to balance competing interests of both sides. Petitioners possess rights which deserve protection if strong prima facie case is shown. At same time, respondent cannot be deprived of remedies provided by Parliament merely because arbitration has been invoked. Therefore, balance of convenience has to be examined by keeping both these aspects in mind.

84. Petitioners argued that respondent created present situation by directing stoppage of work and thereafter terminating Licence Agreements. According to them, party which commits breach cannot afterwards rely upon consequences of such breach for defeating remedies. The respondent submitted that Licence Agreements stood law terminated. According to respondent, once termination has taken effect, specific performance may become unavailable and therefore interim protection restoring performance should not be granted.

85. Whether termination is valid constitutes principal dispute between parties. While considering interim protection, Court cannot proceed on assumption that termination notices are valid. Such approach would amount to deciding very dispute which still remains pending for adjudication. Similarly, Court cannot proceed on opposite assumption that termination notices are invalid. Interim jurisdiction requires Court to maintain neutrality till final adjudication. One more important aspect requires consideration. Reliefs claimed by petitioners appear mandatory in nature to considerable extent. Petitioners do not merely seek preservation of existing position. They seek permission to restart work. They seek continuation of construction activities. They seek restoration of performance. Grant of such relief would change existing position instead of merely preserving it. It is well settled that mandatory interim orders restoring performance are granted in exceptional cases where unusually strong prima facie case is shown and refusal of relief may result into manifest injustice which later may not be corrected.

86. Whether present case satisfies such higher standard still requires separate examination on facts available before Court. Respondent submitted that public interest cannot be ignored. Airport premises belong to statutory authority. Management of airport property involves larger public considerations. Delay in implementation of airport projects or continued occupation after termination may affect public administration. This submission deserves due consideration. At same time, public interest requires that public authorities honour contracts validly executed after

completion of transparent tender process unless grounds for termination actually exist.

87. After considering rival submissions, this Court is of prima facie opinion that petitioners have shown existence of triable issues arising from Licence Agreements. Petitioners have shown that they altered their position acting upon agreements executed by respondent and that substantial obligations had been performed before present disputes arose. However, reliefs presently claimed cannot be viewed from framework governing airport premises. Granting every relief exactly in manner prayed for would suspend operation of Chapter - VA and, in practical effect, may grant petitioners entire benefit flowing from Licence Agreements even before final adjudication. Section 9 does not contemplate grant of such extensive mandatory relief unless facts disclose exceptional circumstances. Therefore, Court has to mould interim relief, if otherwise found necessary, in such manner that rights claimed by petitioners remain protected while at same time machinery contained in Chapter - VA does not become ineffective.

Whether interim reliefs sought by petitioners can be granted consistently with scheme under Chapter - VA of Airports Authority of India Act?

88. After reaching prima facie view that some disputes raised by petitioners may still remain available for arbitration and may not become non-arbitrable, next question now requires consideration. That question is whether interim reliefs claimed under Section 9 deserve to be granted in same way as prayed by petitioners. This

question requires separate examination. Reason is that maintainability of petition under Section 9 and actual entitlement for interim relief are two different things. Merely because some disputes may be capable of arbitration, it does not mean that every interim protection claimed by party has to be granted. Petitioners submitted that interim reliefs prayed are for preserving subject matter of arbitration. According to them, unless operation of termination notices is stayed and unless they are permitted to continue execution of EV Project, arbitration may become useless. They submitted that if after several years arbitration ends in their favour, restoration of possession alone may not compensate huge investments made by them.

89. Material placed before Court prima facie appears showing that petitioners participated in tender process, deposited earnest money, paid performance security, obtained approval of layout plans and thereafter commenced execution of project after possession was handed over. According to petitioners, they changed their position and invested substantial amount acting upon Licence Agreements executed by respondent. Ordinarily, where one party has acted upon commercial contract and later dispute arises regarding termination, Court while exercising powers under Section 9 may try to preserve subject matter of arbitration so that final award, if passed, does not become incapable of proper implementation. However, present matter appears standing on somewhat different footing. Property involved is not private property. Land belongs to Airports Authority of India which is statutory authority created under enactment passed by

Parliament. Parliament has enacted Chapter - VA providing special machinery for recovery of airport premises from unauthorized occupants. Therefore, while exercising powers under Section 9, this Court cannot ignore scheme governing such public property.

90. Respondent submitted that if interim reliefs are granted exactly in manner prayed, it may amount to suspending operation of machinery created under Chapter - VA. Prayer clauses A and A 1 seek stay of communication dated 31 December 2024 and stay or withdrawal of termination notices dated 22 March 2025. Prayer clauses B and B 1 or C seek injunction restraining respondent from taking any action pursuant to those notices. If all these reliefs are granted without any limitation, natural consequence may be that respondent would remain prevented from invoking machinery prescribed under Chapter - VA during whole period arbitration remains pending. Effect of such order cannot be ignored. Though reliefs are described as interim measures, practical result may be continuation of relationship. Petitioners may continue occupying airport premises. They may continue execution of EV Project. Respondent may remain restrained from exercising powers. In substance, petitioners may receive same commercial benefit which forms principal relief proposed before Arbitral Tribunal.

91. It is well settled that interim order should not amount to granting final relief. Jurisdiction under Section 9 is meant for preserving rights and not deciding them. Petitioners submitted that respondent acted unfairly by directing stoppage of work for "administrative reasons" and thereafter issuing termination notices before matter was taken up before this Court. Whether such

conduct establishes mala fides is matter which requires evidence. At present stage, this Court is concerned with prima facie position. Chronology relied upon by petitioners appears raising arguable questions. Still, merely because arguable questions are raised, every interim relief cannot follow without seeing legal consequences likely to arise. Court has to see nature of relief claimed. Petitioners seek permission to restart execution of EV Project. Grant of such relief may amount to directing specific performance of Licence Agreements at interlocutory stage. Respondent may be compelled to continue relationship despite taking decision to terminate agreements. Such relief appears mandatory in nature. Settled principles governing mandatory interim injunctions require Court to exercise considerable restraint. Such relief is granted where applicant establishes exceptionally strong prima facie case and refusal of relief may result into injustice which later may not be corrected. Present material, though appearing to disclose triable issues, contains substantial disputes regarding authority of officers, legality of tender process and validity of termination notices. These questions require evidence. While exercising jurisdiction under Section 9, this Court may not decide those disputed questions. Respondent relied upon public interest. According to respondent, airport property cannot remain tied up indefinitely in litigation because efficient management of airport infrastructure affects larger public interest. Public authorities owe obligations towards private parties. At same time, they perform duties affecting larger public interest. Therefore, while granting interim relief, Court has to maintain

proper balance between both these considerations.

92. Petitioners submitted that public interest is not served by permitting arbitrary termination of contracts entered into after transparent public tender process. Public interest requires fairness in governmental contracts just as it requires efficient management of public property. Therefore, Court cannot proceed on assumption that public interest always supports one side. Both competing considerations require due weight. After considering entire material placed before Court, this Court is of prima facie opinion that petitioners have shown existence of serious disputes requiring adjudication. Petitioners have shown that they acted upon Licence Agreements and altered their position. However, interim reliefs claimed cannot be granted exactly in manner prayed because grant of such relief may effectively continue Licence Agreements throughout pendency of arbitration and prevent operation of machinery contained in Chapter - VA. Such order may amount to granting principal relief even before final adjudication. Ordinarily, jurisdiction under Section 9 may not be exercised in such manner.

93. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The preliminary objection raised by the respondent regarding complete absence of arbitral jurisdiction is rejected;
- (ii) It is held, prima facie, that disputes exclusively relating to eviction of unauthorized occupants and recovery of airport premises are governed by Chapter - VA of the Airports

Authority of India Act, 1994 and, by virtue of Clause 27.10 of the Licence Agreements, constitute excepted matters not referable to arbitration;

(iii) It is held, prima facie, that the arbitration agreement does not stand extinguished merely because the respondent has issued the termination notices dated 22 March 2025. Disputes concerning the legality of the respondent's actions, continue to survive subject to the limitations recorded in this judgment;

(iv) It is held that the jurisdiction of the Eviction Officer under Chapter - VA of the Airports Authority of India Act, 1994 and the remedies available under the Arbitration and Conciliation Act, 1996 operate in their respective fields and neither jurisdiction excludes the other except to the extent provided by statute and by Clause 27.10 of the Licence Agreements;

(v) Having considered the nature of the interim reliefs sought, this Court is of the prima facie opinion that grant of the reliefs as prayed would amount to granting the final relief and would have the effect of restraining the respondent from exercising its powers under Chapter - VA of the Airports Authority of India Act, 1994;

(vi) The petitioners have failed to make out a case for grant of mandatory interim relief directing restoration or continuation of the Licence Agreements or permitting resumption of the EV Project pending adjudication of the

disputes;

(vii) Consequently, the prayers seeking stay of the communication dated 31 December 2024, stay of the Termination Notices dated 22 March 2025, permission to resume execution of the EV Project and injunction restraining the respondent from acting upon the said termination notices are rejected;

(viii) The Commercial Arbitration Petitions accordingly stand dismissed;

(ix) It is clarified that all observations made in this judgment are prima facie in nature and confined to adjudication of the present petitions under Section 9 of the Arbitration and Conciliation Act, 1996;

(x) It is clarified that all contentions of both parties on merits, including the legality and validity of the Licence Agreements, the communication dated 31 December 2024, the Termination Notices dated 22 March 2025, the authority of the officers concerned, the applicability of Chapter - VA of the Airports Authority of India Act, 1994, the maintainability of arbitral proceedings and all other and issues are kept open for adjudication before the appropriate forum in accordance with law;

(xi) It is clarified that dismissal of these petitions shall not preclude the respondent from adopting such proceedings as may be permissible under Chapter - VA of the Airports Authority of India Act, 1994, nor shall it preclude the

petitioners from raising all such objections and defences as are available to them in law before the competent authority or forum;

(xii) In the facts and circumstances of the case, there shall be no order as to costs.

(xiii) Pending Interim Applications, if any, do not survive and are accordingly disposed of.

94. At this stage, learned Advocates for the respective petitioner requests for continuation of ad-interim order for a further period of four weeks from today. However, for the reasons recorded in this judgment, said request is rejected.

(AMIT BORKAR, J.)