



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 16<sup>TH</sup> DAY OF APRIL, 2025**

**BEFORE**

**THE HON'BLE MR JUSTICE ASHOK S.KINAGI**

**ARBITRATION PETITION-INTERIM MEASURE NO. 2 OF 2024**

**C/W**

**ARBITRATION PETITION-INTERIM MEASURE NO. 3 OF 2024**

**IN AP.IM No. 2/2024**

**BETWEEN:**

QATAR HOLDING LLC  
A LIMITED LIABILITY COMPANY INCORPORATED IN  
THE QATAR FINANCIAL CENTER WITH LICENSE  
NO.0004 AND HAVING ITS PRINCIPAL PLACE OF  
BUSINESS AT OOREDOO TOWER (BUILDING 14)  
AL DAFNA STREET, (STREET 801) AL DAFNA  
(ZONE 61) DOHA QATAR,  
REP. BY ITS AUTHORIZED REPRESENTATIVE,  
MILAN CHITALIA

...PETITIONER

(BY SRI. UDAYA HOLLA, SR. COUNSEL FOR  
SRI. HARISH B. NARASAPPA, SR. COUNSEL)

**AND:**

1. BYJUS INVESTMENTS PTE LTD  
A COMPANY INCORPORATED UNDER THE LAWS OF  
SINGAPORE WITH AN ADDRESS AT 30 CECIL STREET  
NO.19-08, PRUDENTIAL TOWER  
SINGAPORE 049712  
REP. BY ITS AUTHORIZED SIGNATORY





2. BYJU RAVEENDRAN  
SON OF RAVEENDRA,  
AGED ABOUT 44 YEARS,  
IBC KNOWLEDGE PARK, 2<sup>ND</sup> FLOOR,  
TOWER D 4/1, BANNERGHATTA MAIN RAOD,  
BENGALURU  
KARNATAKA INDIA 560029

...RESPONDENTS

(BY SRI. PRAMOD NAYAR, ADVOCATE)

THIS AP.IM / ARBITRATION PETITION INTERIM MEASURE, IS FILED UNDER SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT, 1996 R/W RULE 9 OF THE ARBITRATION (PROCEEDINGS BEFORE THE COURTS) RULES, 2001 PRAYING TO A. PASS AN ORDER OF INJUNCTION RESTRAINING RESPONDENT NO.1 INCLUDING ITS PARTNERS, OFFICERS, SERVANTS, AGENTS, AND ASSIGNS FROM, IN ANY MANNER DEALING/PARTING WITH, SELLING, CHARGING, PLEDGING, TRANSFERRING, DISPOSING OF, ALIENATING, OR ENCUMBERING, OR IN ANY MANNER CREATING ANY RIGHT, TITLE OR INTEREST IN ANY OF THEIR ASSETS, INCLUDING THE IDENTIFIED ASSETS, WHETHER RESPONDENT NO.1 IS INTERESTED IN THEM LEGALLY, BENEFICIALLY, OR OTHERWISE, UP TO THE VALUE OF USD 235,187,165,.78, UNTIL THE CONCLUSION OF THE ARBITRATION, AND FOR A PERIOD OF NINETY(90) DAYS THEREAFTER.

B. PASS AN ORDER DIRECTION RESPONDENT NO.1 TO DISCLOSE ON OATH FULL AND ACCURATE DETAILS OF ALL ITS ASSETS, INCLUDING THE VALUE, LOCATION AND FULL DESCRIPTION OF EACH OF SUCH ASSETS, AS MAY BE SUFFICIENT TO FULLY IDENTIFY THE SAME, WHETHER IN ITS OWN NAME OR NOT AND WHETHER SOLELY OR JOINTLY OWNED AND WHETHER RESPONDENT NO.1 IS INTERESTED IN THEM LEGALLY, BENEFICIALLY OR OTHERWISE

C. PASS AN ORDER GRANTING AD INTERIM AND INTERIM RELIEF IN TERMS OF PRAYER CLAUSES(A) AND (B) ABOVE.

D. COSTS OF THIS PETITION AND THE ORDER TO BE MADE THEREON BE PROVIDED FOR, AND ETC.



**IN AP.IM NO. 3/2024**  
**BETWEEN:**

QATAR HOLDING LLC  
A LIMITED LIABILITY COMPANY INCORPORATED IN THE  
QATAR FINANCIAL CENTER WITH LICENSE NO.0004 AND  
HAVING ITS PRINCIPAL PLACE OF BUSINESS AT OOREDOO  
TOWER (BUILDING 14) AL DAFNA STREET,  
(STREET 801) AL DAFNA (ZONE 61) DOHA QATAR,  
REP. BY ITS AUTHORIZED REPRESENTATIVE  
MR. MILAN CHITALIA

...PETITIONER

(BY SRI. UDAYA HOLLA, SR. COUNSEL)

**AND:**

1. BYJU RAVEENDRAN  
SON OF RAVEENDRA,  
AGED ABOUT 44 YEARS  
IBC KNOWLEDGE PARK  
2<sup>ND</sup> FLOOR, TOWER D, 4/1  
BANNERGHATTA MAIN ROAD,  
BENGALURU, KARNATAKA, INDIA 560029

2. BYJU'S INVESTMENTS PTE. LTD.,  
A COMPANY INCORPORATED UNDER THE LAWS OF  
SINGAPORE WITH AN ADDRESS AT 30 CECIL STREET  
NO.19-08, PRUDENTIAL TOWER  
SINGAPORE 04971  
REP. BY ITS AUTHORIZED SIGNATORY.

...RESPONDENTS

(BY SRI. PRAMOD NAYAR, SR. COUNSEL)

THE ADVOCATE FOR THE PETITIONER HAS FILED THE  
ABOVE AP.IM/ ARBITRATION PETITION INTERIM MEASURE  
UNDER SECTION 9 OF THE ARBITRATION AND  
CONCILIATION ACT, 1996 R/W RULE 9 OF THE  
ARBITRATION (PROCEEDINGS BEFORE THE COURTS)  
RULES, 2001 PRAYING TO A. PASS AN ORDER OF  
INJUNCTION RESTRAINING RESPONDENT NO.1 INCLUDING



HIS SERVANTS, AGENTS, AND ASSIGNS FROM, IN ANY MANNER DEALING/PARTING WITH, SELLING, CHARGING, PLEDGING, TRANSFERRING, DISPOSING OF, ALIENATING, OR ENCUMBERING, OR IN ANY MANNER CREATING ANY RIGHT, TITLE OR INTEREST IN ANY OF THEIR ASSETS, INCLUDING THE IDENTIFIED ASSETS, WHETHER RESPONDENT NO.1 IS INTERESTED IN THEM LEGALLY, BENEFICIALLY, OR OTHERWISE, UP TO THE VALUE OF USD 235,187,165.78, UNTIL THE CONCLUSION OF THE ARBITRATION, AND FOR A PERIOD OF NINETY(90) DAYS THEREAFTER.

B. PASS AN ORDER DIRECTION RESPONDENT NO.1 TO DISCLOSE ON OATH FULL AND ACCURATE DETAILS OF ALL ITS ASSETS, INCLUDING THE VALUE, LOCATION AND FULL DESCRIPTION OF EACH OF SUCH ASSETS, AS MAY BE SUFFICIENT TO FULLY IDENTIFY THE SAME, WHETHER IN ITS OWN NAME OR NOT AND WHETHER SOLELY OR JOINTLY OWNED AND WHETHER RESPONDENT NO.1 IS INTERESTED IN THEM LEGALLY, BENEFICIALLY OR OTHERWISE.

C. PASS AN ORDER GRANTING AD INTERIM AND INTERIM RELIEF IN TERMS OF PRAYER CLAUSES(A) AND (B) ABOVE

D. COSTS OF THIS PETITION AND THE ORDER TO BE MADE THEREON BE PROVIDED FOR, AND ETC.

THESE PETITIONS, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.03.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

**CORAM: HON'BLE MR JUSTICE ASHOK S.KINAGI**



**CAV ORDER**

These petitions are filed under Section 9 of the Arbitration and Conciliation Act, 1996 read with Rule 9 of the Arbitration(Proceedings before the Court) Rules, 2001.

2. The Petitioner is a company duly incorporated under the laws of Qatar and has its principal place of business at the address as mentioned in the cause title. The Petitioner makes investments in companies world wide with the objective of capital formation for the investee companies, to generate long-term capital appreciation for itself. The petitioner entered into a Cash-Settled Option Transaction pursuant to a long-form confirmation letter dated 7<sup>th</sup> September, 2022 with respondent No. 1 to part-finance the acquisition by the letter of 17,891,289 equity shares ("Aakash Shares") of a public limited company named Aakash Educational Services Limited having its registered office at Bengaluru (Aakash).

2.1. Respondent No. 1 is a company incorporated under the laws of Singapore. Respondent No. 1 is an



investment vehicle of Respondent No. 2; it is a wholly-owned subsidiary of Byju's Global Pte. Ltd., an entity registered under the laws of Singapore ("Global"), in which Respondent No. 2 is the sole shareholder. Respondent No. 1 is also an affiliate of and owns shares in, a company called Think & Learn Private Limited ("T&L"), which is co-founded and majority-owned by Respondent No. 2.

2.2. On 7<sup>th</sup> September, 2022, Global executed a Share Security Agreement in favour of the Petitioner, to secure the Transaction. Respondent No. 2 is an Indian national, and is a co-founder of the ed-tech platform named BYJU which is owned and operated by T&L. Respondent No. 2 executed a Deed of Personal Guarantee in favour of the Petitioner on 7<sup>th</sup> September, 2022 regarding the obligations of respondent No.1 under the confirmation letter (personal guarantee). The Petitioner filed these petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as the "Arbitration Act") seeking specific interim measures of protection for respondent no.1's breaches of its obligations



under the Transaction. The arbitration clause relevant for the purposes of the present petition is Clause 13 of the Confirmation Letter read with the ISDA Master Agreement. On 7<sup>th</sup> March, 2024, the petitioner invoked arbitration under the Singapore International Arbitration Centre (hereinafter referred to as 'SIAC') Rules against the respondents in accordance with, and obtained an interim award dated 28<sup>th</sup> March, 2024 passed by the Emergency Arbitrator appointed by SIAC on 8<sup>th</sup> March, 2024. The Emergency Arbitrator passed an Award restraining the respondents until the conclusion of the Arbitration or until further order from dealing in, parting with, selling, charging, pledging, or in any other way, disposing of or encumbering any of their assets, up to the value of USD 235,187,165.78.

2.3. Respondent No.2 on 18.4.2024 disclosed certain assets of Respondent No.1 and himself, by way of an affidavit filed by him in the arbitration, in partial compliance with the Emergency Arbitrator's direction in the Emergency Arbitrator award. These disclosures further



evidence the malafides of the respondents. Respondent No.2 has failed to specify the value of any of the disclosed assets. It is contended that, the respondents breaches, and their conduct in transferring/encumbering/disposing of their assets, which would inevitably result in the frustration of the petitioner's claim in the arbitration. The petitioner is constrained to approach this Court seeking urgent protective interim relief restraining respondent no.1, including its partners, officers, agents, servants etc. from, in any manner dealing with, transferring, selling, disposing of the alienating, encumbering or creating any rights, title, interest *inter alia*, the assets, more particularly listed in the schedule to the present petition. It is contended that the Arbitral Tribunal has not yet been constituted. In the absence of the constitution of the Arbitral Tribunal, the petitioner is left with no other efficacious remedy in India than to approach this Hon'ble Court Hence, prays to allow the petitions.

3. Respondents No.1 and 2 filed the statement of objections. In the statement of objections, it is contended



that the petitions and I.A.s arise in context of an Arbitration between the parties. The Arbitration is seated in Singapore, and is conducted as per the arbitration rules of SIAC. The petitioner commenced the Arbitration in accordance with the Arbitration Agreement contained in certain financing documents, i.e., the confirmation letter and Deed of personal guarantee, executed between the parties. It is contended that the contractual framework between the parties includes an English law governed by the "confirmation letter" between the petitioner and respondent no.1 and a deed of personal guarantee was executed by respondent no.2 in favour of the petitioner, both dated 7.9.2022. These agreements were to facilitate a loan of USD 150 Million given by the petitioner to respondent no.1, which was to be repaid in accordance with the confirmation letter. The financing documents each contained an arbitration clause which provide for disputes to be referred to arbitration, seated in Singapore, to be conducted in accordance with the Singapore International Arbitration Centre Rules (SIAC Rules).



4. The arbitration clause was invoked as the disputes arose between the parties, with the petitioner alleging various breaches of the confirmation letter by respondent no.1. The petitioner on 27.02.2024 issued a notice of termination of the confirmation letter to the respondents on the basis of various alleged events of default. The petitioner issued a demand notice on 4.3.2024 under the Deed of Personal Guarantee. On 7.3.2024, the petitioner commenced the Arbitration by filing its notice of arbitration with the SIAC Registrar. At the same time, the petitioner also filed an application for urgent emergency reliefs in accordance with the Emergency Arbitration procedures under the SIAC Rules. The respondents refuted the petitioner's allegations and disputed the termination notice.

5. It is contended that the Arbitral Tribunal is constituted. An Emergency Arbitrator was appointed. The Emergency Arbitrator allowed the parties to participate in the proceedings. The Emergency Arbitrator has passed an award on 28.3.2024. The said Emergency Award passed



by the Emergency Arbitrator was enforced by the Singapore High Court, and the respondent had already complied with the Emergency Arbitrator's Award, and the Emergency Arbitrator's Order (as converted into the order of the Singapore High Court)

6. Pursuant to the enforcement of the Emergency Arbitration Award by the Singapore High Court, the respondents were required to disclose their assets to the petitioner. Pursuant to the order passed by the Singapore High Court, the respondents furnished sworn affidavits of respondent no.2 to the petitioner's counsel, setting out the details of all the assets of the respondents. The petitioner's counsel wrote to the respondents' counsel, alleging deficiencies, and inconsistencies in the First Disclosure Affidavit, wherein the affidavit did not disclose the value of the respondents' assets. The respondents' counsel responded to the petitioner's counsel by E-mail dated 29.4.2024, clarifying the matters vide Annexure-R.2. It is contended that the respondents have already complied with the Emergency Arbitration Order and Award.



It is contended that, under the Arbitration Agreement, in the Financing Documents, the parties had agreed to refer the disputes between them, to an Arbitral Tribunal comprising of three arbitrators. The Arbitral Tribunal is been constituted and the parties to the agreement have already presented their case before the Arbitrator. It is contended that, in view of the Arbitral Tribunal being constituted, the petitioner cannot obtain efficacious relief from this Court. He also contended that the application filed by the petitioner is not maintainable, after the Arbitral Tribunal is constituted. It is contended that the petitioner has no reason to consider interim relief from the Arbitral Tribunal to be inefficacious as the Arbitral Tribunal cannot pass an award against a person who is not a party to the Arbitration. It is contended that the reliefs sought by the petitioner as sought in the proceedings have to be sought before the Emergency Arbitrator. Substantially, the same is the reliefs; it seeks in the captioned petitions. Hence, on these grounds, prays to dismiss the petitions.



7. The petitioners filed a rejoinder to the statement of objections filed by respondents No.1 and 2. It is contended that, the arbitration has commenced in the Singapore International Arbitration Centre is foreign seated and International Commercial Arbitration. Section 2(2) of the Arbitration Act permits a party to approach the High Court under Section 9 of the Arbitration Act even if the place of arbitration is outside India, subject to an agreement to the contrary. It is contended that the respective agreements between the petitioner and the respondents explicitly permit the petitioner to approach the Courts under Section 9 of the Arbitration Act in India, for interim measures. The petitioner has a cause of action under Section 9 of the Arbitration Act regarding the Emergency Arbitrator Award. It is contended that, under Section 9, the Court can independently apply its mind to the reliefs sought by the petitioner, and thereafter, grant reliefs after satisfying itself. It is contended that, the constitution of the Arbitral Tribunal in a foreign-seated arbitration does not take away the petitioner's right to



approach the High Court under Section 9 of the Arbitration Act. This is because the Section 9 remedy is also a mechanism to enforce the Emergency Arbitrator Award. Therefore, it is the only efficacious remedy available to the Petitioner. Hence, on these grounds, prays to allow the petitions.

8. Heard Sri Udaya Holla, learned Senior counsel for the petitioner and Sri.Harish B Narasappa, learned Senior counsel for the petitioner; and Sri.Pramod Nayar, learned Senior counsel for the respondents.

9. Sri Udaya Holla, learned Senior Counsel for the petitioner, submits that, the Emergency Arbitrator Award does not exclude the Aakash Shares from the purview of the freezing order regarding the respondents' assets, granted in favour of the petitioner. He also submits that the operative portion of the Emergency Arbitrator Award states that the Respondents, whether by themselves, their agents or servants or howsoever otherwise, are restrained from dealing in, parting with, selling, charging, pledging, or in any other way disposing of or encumbering any of



their assets, whether the respondents are interested in them legally, beneficially or otherwise, up to the value of US\$235,187,165.78 until the conclusion of this Arbitration or until further orders. He submits that the Emergency Arbitrator Award specifically covers all assets of the Respondents, insofar as that they are legally, beneficially, or otherwise owned by them. The portion of the transcript immediately after the portion relied upon by the respondents notes that Byju Raveendran is the 100% owner of Beeaar, due to which the relief sought relating to Aakash shares, which are beneficially owned by respondent no.2 won't be futile. He submits that the Emergency Arbitrator noted that, the respondent No.2's actions were not in the ordinary course of business and there were added factors which give rise to the risk of dissipation. On this basis, the Emergency Arbitrator Award was passed for all assets that were legally, beneficially or otherwise, owned by the respondents.

*(Emphasis supplied)*



10. He further submits that, Byju Raveendra beneficially owns the Aakash shares. Beeaar currently holds the Aakash shares and Beeaar is wholly owned by respondent no.2 since 100% of Beeaar's shares are held by respondent No.2. Respondent No.2 has declared himself as the beneficial owner of the Aakash Shares as per Section 90 of the Companies Act, 2013. This is also confirmed by Aakash's BEN-2 form filing, which states that while Beeaar holds the 17,891,289 equity shares in Aakash, the beneficial owner of these shares is respondent No.2. He submits that the Byju beneficially owns Aakash shares, and are, therefore, covered within the ambit of the EA Award. He submits that the High Court, under Section 9 of the Arbitration Act has the jurisdiction to grant an injunctive relief regarding the shares of a company that is incorporated within its jurisdiction. Further, to buttress his arguments, he places reliance on the following judgments:

*1. PASL Wind solutions Private Ltd v. GE Power Conversion India Pvt Ltd [(2021) 7 SCC 1];*



*2. Raffles Design International India Pvt Ltd & Anr. v. Educamp Professional Education Ltd and Ors [2016 SCC ONLINE DEL 5521];*

*3. Shanghai Electric Group Co. Ltd v. Reliance Infrastructure Ltd [2022 SCC ONLINE DEL 2112];*

*4. Arvind Constructions Co.(P) Ltd v. Kalinga Mining Corporation and Others [(2007) 6 SCC 798];*

*5. Essar House Private Ltd v. Arcelar Mittal Nippon Steel India Ltd [2022 SCC ONLINE SC 1219];*

*6. Niko Resources Ltd v. Union of India and Anr [2001 SCC ONLINE DEL 615]*

Hence, prays to allow the petitions.

11. Per contra, the learned counsel for the respondents submits that, the petitions are filed on the ground that, no arbitral Tribunal was constituted. He submits that, the Arbitral Tribunal is constituted. Hence, the petitions filed under Section 9 of the Arbitration and Conciliation Act is not maintainable. He also submits that the Aakash shares could not have been the subject matter of the Emergency Arbitrator Award. He further submits that the Aakash Shares are now held by a third party, not a party



to the present proceedings or the SIAC Arbitration. He submits that this Court has no jurisdiction to pass orders on behalf of an entity that, is not a party before this Court. He submits that since the Arbitral Tribunal has been seized of the dispute, the jurisdiction to determine the beneficial ownership vests only with the Arbitral Tribunal and not under Section 9 of the Arbitration and Conciliation Act. He submits that the EA Award is detailed and well-reasoned. It is an accepted position that no application has been moved by either the petitioner or the respondents to clarify/modify/supplement the EA Award. The petitioner has enforced the Emergency Arbitration Award in Singapore, and the same has attained the status of a decree passed by a court of law. The respondents have complied with the Emergency Arbitration Award and filed the requisite disclosure affidavits pursuant to the Emergency Arbitration Award. By filing the present petitions under Section 9 of the Act of 1996, the petitioner has sought reliefs over and above, what was contemplated in the Emergency Arbitration Award, and the petitioner is



attempting to modify/supplement or better the scope of the Emergency Arbitration Award, which is legally untenable. The competent forum to approach in such a situation, as per the SIAC Rules, is the duly constituted Arbitral Tribunal. It is a settled position of law in India that the Court cannot sit in appeal over an emergency award passed in a foreign seated arbitration. To buttress his argument, he has places reliance on the following judgments, and accordingly, prays to dismiss the petitions.

- 1. Arcelar Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd [(2022) 1 SCC 712];*
- 2. Ashwani Minela v. U Shin Ltd [ 2020 SCC ONLINE DEL 721];*
- 3. Jaya Industries v. Mother Dairy Calcutta and Anr [2023 SCC ONLINE Cal. 2051];*
- 4. Pacific Development Corporation Ltd v. DMRC Ltd [2023 SCC ONLINE DEL 521];*
- 5. Ganga Prasad Memorial Trust and Anr. v. DHK Eduserve Limited [2024 : AHC : 76378-DB]*
- 6. Welspun Enterprises Ltd v. Kasturi Infra projects (P) Limited [2024 SCC ONLINE DEL 4849];*
- 7. M. Ashraf v. Kasim V.K., [2018 SCC ONLINE KAR 4913];*



8. *Kundan Lal v. Jagan Nath Sharma [1962 SCC ONLINE AII 38];*
9. *Sunita Garg v. Scraft Product (P) Limited and Ors [2023 SCC ONLINE DEL 2668];*
10. *Fedders Electric and Engineering Ltd v. Srishi Constructions [2023 SCC ONLINE DEL 2356];*
11. *Asad Mueed and Anr v. Hammad Ahmed and Others [2023 SCC ONLINE DEL 820];*
12. *A.V. Venkateswaran v. Ramchand Sobhraj Wadhvani [1961 SCC ONLINE SC 16]*
13. *Uphealth Holdings INC v. Global Healthcare Systems Pvt Ltd and Ors [2023 SCC ONLINE CAL 2442];*
14. *RKD Niraj JV v. Union of India and Ors [2024 SCC ONLINE CAL 4027];*
15. *Manbhupinder Singh Atwal v. Neeraj Kunarpal Shah [2019 SCC ONLINE GUJ 6871];*
16. *Natrip Implementation Society v. IVRCL limited [2016 SCC ONLINE DEL 5023];*
17. *Sanghi Industries Ltd v. Ravin Cables Ltd [2022 SCC ONLINE SC 1329];*
18. *Skypower Solar India (P) Ltd v. Sterling and Wilson International FZE [2023 SCC ONLINE DEL 7240];*
19. *Shoney Sanil v. Coastal Foundations (P) Ltd. [2006 SCC ONLINE KER 38];*
20. *Asma Lateef v. Shabeer Ahmed [(2024) 4 SCC 696];*
21. *Ashwani Minda v. U.-Shin Ltd [2020 SCC ONLINE SC 1123].*



12. Per contra, learned Senior counsel for the petitioner, in reply, submits that the petitioner has sought a relief under Section 9 of the Act, and the interim application that, are in furtherance of the Emergency Arbitrator Award. No attempt has been made by the petitioner to modify the EA award. In the event, the petitioner has an independent right under Section 2(2) of the Arbitration Act r/w. Section 13b of the ISDA Agreement (Master Agreement) and clauses 17.3 to 17.7 of the Personal Guarantee to approach the High Court for interim reliefs under Section 9 of the Arbitration Act, 1996. He submits that this Court has jurisdiction to entertain the petitions filed by the petitioner, and he prays to restrain the respondents from parting with or disposing of or alienating or creating encumbrance on all the assets, including the Aakash shares. Hence, on these grounds prays to allow the petitions.



13. Perused the records, and considered the submissions of the learned counsels for the parties.

14. The point that arises for consideration is,

*"Whether the petitioner has made a grounds to grant an interim injunction restraining the respondents from creating any charge over the assets of respondents' Company ?"*

15. It is not in dispute that the petitioner provided US \$ 150 Million to respondent No.1 to part finance the purchase of 17,891,289 shares under a long-form confirmation letter, which was executed between the petitioner and respondent No.1, supplementing/amending the 2002 ISDA Master Agreement. As a security for the US \$ 150 Million, respondent No.2 had undertaken that the Aakash shares would not be disposed of and/or alienated which provides as follows :

Section 5(a)(ii) of the confirmation letter :

"ii) Paragraph (i) above does not apply to:

(A) any sale, lease, transfer or other disposal of T&L Shares for the purpose of funding the payment of the Mandatory Exchange Amount, the Option Cash



Settlement Amount or any other amount due to Party A under or in connection with any Transaction Document;

(B) the conversion and/or exchange of the Aakash Shares into T&L Shares pursuant to the Framework Agreement;

(C) any Excluded Transfer (provided that in the case of an Excluded Transfer to a holding company not already listed, all or substantially all of the T&L Shares are intended to be transferred to such holding company and an IPO completes within the period stipulated by the Calculation Agent acting reasonably and provided further that Party B receives shares in the relevant transferee entity in connection with such Excluded Transfer corresponding to the T&L Shares subject to the Excluded Transfer and contemporaneously therewith);

(D) any sale, lease, transfer or other disposal of any assets other than Security Assets or Funded Shares provided that the proceeds of such sale, lease, transfer or other disposal are applied by Party B towards the repayment of its Specified Indebtedness;

or

(E) any sale, lease, transfer or other disposal of Aakash Shares provided that at a time substantially contemporaneously as such sale, lease transfer or other disposal, Party B acquires T&L Shares intended to be funded by the Initial Exchange Amount or the proceeds of a Parallel Transaction."

As per the confirmation letter, the respondent no.2 has to repay US \$ 300 million to the petitioner by March 31<sup>st</sup> 2025, the end of the term under the transaction.



Respondent No.1 provide a personal guarantee up to US \$300 Million to secure the respondent no.2's obligation under the transaction. Respondent No.2 purchased 1, 78,91,289 shares in Aakash on 21.9.2022.

16. The dispute between the parties arises about respondent No.1's alleged failure to comply with its obligations under the ISDA agreement, giving rise to multiple events of default under the ISDA agreement and entitling the petitioner to terminate the transaction and to demand the payment of early termination amount in the sum of US \$235,187,165.78 thereby also engaging respondent no.2 liability under the personal guarantee.

17. Respondent No.2 is the founder of Think and Learn Private Ltd., an Educational Technology Company in Bengaluru, India, and he being major shareholder, acquired an interest in the Company called Aakash Educational Services Ltd. The original co-founders of Aakash is one Mr J C Chaudhry and Mr Aakash Chaudhry. The T&L and the Blackstone Entities entered into an Option



Agreement dated 30 July 2022 granting respondent No.1 the option to acquire the part of the Blackstone Entities shares in Aakash, amounting to 26.8% of Aakash's total share capital price of around US\$270 million. The source for acquiring 26.8% stakes in Aakash came from three different sources. Pursuant to the ISDA Agreement, the petitioner agreed to advance an Initial Exchange Amount of US\$150 million to Investments to part-finance the purchase of a certain number of shares in Aakash, which would convert upon completion of the Merger into 50,561 T&L Shares. Respondent No.2 executed a personal guarantee to set out the Aakash merger, and conversion process for respondent No.1. The condition mentioned in the personal guarantee is that, if Aakash shares have not been exchanged pursuant to the merger of Aakash and T & L Private Ltd. by 3.10.2022, then, respondent No.2 shall take the necessary action to procure the issuance of series F CCCP shares in T & L to respondent no.1 in exchange for Aakash shares held by respondent no.1. The transaction documents were executed. The plan merger



between T & L and Aakash failed to take place, and the respondent, did not acquire an additional 50,561 unencumbered T & L shares. The petitioner requested the respondents, detailed information, and relevant documentary evidence concerning those matters, i.e., copies of the register of shareholder of Aakash as well as confirmation by the following day that, the respondents would abide by their obligation, and would not enter into any transaction affecting the Aakash shares. On 5.2.2024, the Solicitor sent a letter to the respondent requesting *inter alia*, an undertaking by them that they would not dispose of their shares either T & L or Aakash.

18. From the perusal of the informal list of Aakash shareholders and an informal capitalisation table in relation to T & L, respondent no.1 was not listed as a shareholder in the list. However, BEEAAR was shown as a shareholder having a 16% stake (diluted from 26.8%). According to the list, the Manipal Group held a 39.94% stake in Aakash. In response to the petitioner's repeated requests for signed non-disposal undertakings regarding



the holding in Aakash and T & L shares, respondent No.1 provided the petitioner with a signed non disposal undertaking regarding the shares held by respondent no.1. The petitioner immediately drew respondent No.2's attention to the fact that the document was not signed, and full details of the shares were not completed in the documents.

19. Respondent No.2 replied through E-mail that, he corrected the number of shares held by respondent no.1, although the figure of 1,42,996 series F CCCP shares in T & L was unchanged from the original draft prepared by the petitioner. The respondents due to non-disposal undertaking given to the petitioner, the petitioner terminated the transaction based on the occurrence of several events of default, and demanded early termination amount to US \$235,187, 165.78 in accordance with the ISDA agreement and called upon the respondents to pay the amount on or before 1.3.2024. The respondents have not paid the said amount. The petitioner invoked the arbitration clause, and approached the Emergency



Arbitrator at Singapore International Arbitration Centre.

The Emergency Arbitrator, after perusing the records produced by the parties, has passed an award, which reads as under :

*"(1) Subject to the provision by the Claimant of the undertaking set out in paragraph (3) below, the Respondents, whether by themselves, their agents, or servants or howsoever otherwise, are restrained from dealing in, parting with, selling, charging, pledging or in any other way disposing of or encumbering any of their assets, whether the Respondents are interested in them legally, beneficially or otherwise, up to the value of US\$235,187,165.78, until the conclusion of this arbitration or until further order, save that this injunction shall not prohibit the Respondents from:*

*1. spending such sums as are reasonably necessary for legal advice and representation at a rate to be agreed between the Claimant and the Respondents; and*

*ii. dealing with or disposing any of their assets in the ordinary and proper course of business, provided that any disposals be at fair market value and the proceeds of such disposal remain subject to the injunction and their identity be disclosed to the Claimant.*

*(2) Subject to the provision of the undertaking referred to in paragraph (3) below, the Respondents shall disclose, under a sworn affidavit, to the Claimant, full and accurate details of all their assets, whether in their own name or not and whether solely or jointly owned and whether the Respondents are interested in them legally, beneficially or otherwise, within 21 days from the date of this Award.*



*(3) The Claimant shall forthwith provide the Respondents with an undertaking in the following terms:*

*"If the Arbitral Tribunal in SIAC ARB093/24/RHM later finds that this order has caused loss to the Respondents or either of them and decides that the Respondents or either of them are to be compensated for that loss, the Claimant undertakes to comply with any order the Arbitral Tribunal may make."*

*(4) The legal costs of the Application are initially apportioned such that the Respondents shall pay the Claimant the sum of SGD 800,000.00 in respect of its legal costs of the Application, subject to the power of the arbitral tribunal to finally determine the apportionment of such costs.*

*(5) The costs of arbitration in relation to the Application are initially apportioned such that the Respondents shall bear in full such costs of arbitration to be determined by the Registrar of the SIAC Court at the conclusion of the arbitration, subject to the power of the arbitral tribunal to finally determine the apportionment of such costs.*

20. After passing of the award by the Emergency Arbitrator dated 28.3.2024, the petitioner approached the Singapore High Court for an enforcement of the Emergency Award passed by the Emergency Arbitrator, wherein the Singapore High Court passed an order enforcing the Emergency Arbitrator's award vide order



dated 1.4.2024. The petitioner has given an undertaking as set out in Schedule I to the order of the Singapore High Court.

21. Pursuant to the order passed by the Singapore High Court, respondent No.2 filed an affidavit on 18.4.2024 disclosing the assets and liabilities, and also shares held by respondent No.1. Which discloses that respondent no.2 is holding 17,891,289 ordinary shares in Aakash Educational Services Ltd. The petitioner Solicitor issued a communication dated 23.4.2024 to the respondents' Solicitor stating that, the respondents have failed to comply with the disclosure orders i.e., the unnotarised affidavit filed by respondent No.2, signed on 18.4.2024, is deficient, inadequate; and utterly lacking as to the extent, value and location and details of the respondents' assets, and it is also stated that the respondents have not disclosed the value of the assets' list therein. It is stated that respondent No.2 has suppressed the shares, and the value of shares in the Aakash shares.



22. Respondent No.2 has submitted a supplementary affidavit as per Annexure-N. He has stated that he is the director of respondent No.1, and is authorised to make a supplementary affidavit on behalf of respondent No.1 in SIAC ARB No.93/24. He has taken a contradictory stand in the supplementary affidavit stating that he had set out all the shares he owned, and he had inadvertently omitted to list out the fact that he also owned 1000 ordinary (fully paid up) shares in 'Byju holdings 2 Pte. Ltd.' and that he had inadvertently omitted BIPL (respondent no.1) as a non operating entity with no assets. He had inadvertently listed out 17,891,289 ordinary (fully paid up) shares in Aakash Educational Services Ltd as BIPL's (respondent No.1's) assets. This is erroneous, and the Aakash shares are not, in fact, part of the respondent's assets.

23. The respondent no.2 took a contradictory stand in the supplementary affidavit vide Annexure-N. A litigant can take a different stand at different times, but cannot take a contradictory stand in the same case. A party cannot approbate and reprobate on the same facts, and



take inconsistent shifting stands. The doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel), a rule in equity. Taking inconsistent pleas by a party makes its conduct far from satisfactory. A party should not blow hot and cold by taking inconsistent stands, and prolong proceedings unnecessarily. The said view is supported by the Hon'ble Apex Court in the case of ***Suzuki Parasrampuriah Suinting Private Limited vs. Official Liquidator of Mahendra Petrochemicals Limited (in liquidation) and Others*** reported in **(2018) 10 SCC 707**.

24. The perusal of the award passed by the Emergency Arbitrator discloses that the Emergency Arbitrator has passed an award restraining the respondents from encumbering any of the assets where the respondents are interested in them legally or beneficially or otherwise.

*(Emphasis supplied)*



25. Rule 2(h) of the Companies (Significant Beneficial Owners) Rules, 2018 (hereinafter referred to as 'SBO Rules') defines the term "significant beneficial owner", which reads as follows:

*"2(h) "significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-*

*(i) Holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;*

*(ii) Holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;*

*(iii) Has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;*

*(iv) Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:*

*Explanation 1. For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.*

*Explanation II. For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely.-*



*(i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;*

*(ii) the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of section 89, and has made a declaration in this regard to the reporting company.*

*Explanation III. For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely:-*

*(i) Where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual,-*

*(a) Holds majority stake in that member; or*

*(b) Holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;*

*(ii) Where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;*

*(iii) Where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-*

*(a) Is a partner; or*

*(b) Holds majority stake in the body corporate which is a partner of the partnership entity; or*



*(c) Holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.*

*(iv) Where the member of the reporting company is a trust (through trustee), and the individual,-*

*(a) is a trustee in case of a discretionary trust or a charitable trust;*

*(b) is a beneficiary in case of a specific trust;*

*(c) is the author or settlor in case of a revocable trust.*

*(v) Where the member of the reporting company is,-*

*(a) a pooled investment vehicle; or*

*(b) an entity controlled by the pooled investment vehicle, based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-*

*(A) is a general partner; or*

*(B) is an investment manager; or*

*(C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.*

*Explanation IV. Where the member of a reporting company is,*

*(i) a pooled investment vehicle; or*

*(ii) an entity controlled by the pooled investment vehicle,*



*based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.*

*Explanation V. For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be 'acting together'.*

*Explanation VI. For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as 'shares'.*

*(i) "significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.]*

*(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of Definitions Details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and the said Rules.*

26. Rule 3 and 4 of the said Rules reads as follows :

*"3 Declaration of significant beneficial ownership under section 90.-(1) On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, every individual who is a significant beneficial owner in a reporting company, shall file a declaration in Form No. BEN-1 to the*



*reporting company within ninety days from such commencement.*

*(2) Every individual, who subsequently becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of acquiring such significant beneficial ownership or any change therein.*

*Explanation. Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly."*

*4. Return of significant beneficial owners in shares. Upon receipt of declaration under rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014."*

27. A perusal of Rule 3 of the SBO Rules contemplates that, every individual, who is a significant beneficial owner in a reporting company, shall file a



declaration in Form No. BEN-1 to the reporting company within ninety days from the commencement.

27.1 Pursuant to Sub Rule (1) of Rule 3 of the said Rules, respondent no.2 has filed Form No.BEN-1 on 15.5.2023, wherein the name of the significant beneficial owner is shown as respondent No.2 Annexure-P discloses the company's name as Aakash Educational Services Ltd. and the significant beneficial owner is respondent No.2. Rule 4 states that upon receipt of the declaration under Rule 3, the reporting company shall file a return in Form No.BEN-2 with the Registrar in respect of such declaration, within thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014. Pursuant to Rule 4 of the said Rules Aakash Educational Services Ltd., submitted a Form in BEN-2 showing the name of respondent no.2 as the significant beneficial owner.



28. Though, the petitioner has filed these petitions on the ground that the Arbitral Tribunal is not yet been constituted, in the absence of constitution of Arbitral Tribunal, the petitioner is left with no other efficacious remedy in India than to approach the Court by way of the present petition. It is brought to the notice of this Court that the Arbitral Tribunal is constituted, and the proceedings are currently in progress.

29. To consider the case on hand, it is necessary to examine Section 9 of the Arbitration and Conciliation Act, 1996, which reads as follows :

*"9. Interim measures, etc., by Court - (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—*

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

*(ii) For an interim measure of protection in respect of any of the following matters, namely:—*

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

*(b) Securing the amount in dispute in the arbitration;*



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

*(d) Interim injunction or the appointment of a receiver;*

*(e) Such other interim measure of protection as may appear to the Court to be just and convenient,*

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

*(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.*

*(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.*

29.1. Section 9(1) enables the parties to an arbitration agreement to approach the appropriate court for interim



measures before the commencement of the arbitral proceedings, during arbitral proceedings or at any time after the making of an arbitral award, but before it is enforced and in accordance with Section 36 of the Arbitration Act. The bar of Section 9(3) operates where the application under Section 9(1) had not been entertained till the constitution of the Arbitral Tribunal. Of course, it hardly need be mentioned that even if an application under Section 9 had been entertained before the constitution of the Tribunal, the Court always has the discretion to direct the parties to approach the Arbitral Tribunal, if necessary, by passing a limited order of interim protection, particularly when there has been a long time gap between hearings and the application has for all practical purposes, to be heard afresh, or the hearing has just commenced and is likely to consume a lot of time.

30. The Hon'ble Apex Court in the case of ***Arcelor Mittal Nippon Steel India Limited vs. Essar Bulk Terminal Limited*** reported in **(2022) 1 SCC 712** has held that, with the law as it stands today, the Arbitral



Tribunal has the same power to grant interim relief as the Court, and the remedy under Section 17 is as efficacious as the remedy under Section 9(1). There is, therefore, no reason why the Court should continue to take up applications for interim relief, once the Arbitral Tribunal is constituted, and is in seisin of the dispute between the parties, unless there is some impediment in approaching the Arbitral Tribunal, or the interim relief sought cannot expeditiously be obtained from the Arbitral Tribunal.

Further, in the case of ***Natrip Implementation Society v. IVRCL Limited***, reported in **2016 SCC OnLine Del 5023** the Hon'ble Delhi High Court held as under:

*"18. It is also well settled that the granting of orders under section 9 of the Act are discretionary in nature and equitable considerations would apply for grant of such orders. Thus, orders as prayed under section 9(1) of the Act would be granted only if it is necessary and equitable."*



In the case of ***Manbhupinder Singh Atwal v. Neeraj Kumarpal Shah***, reported in ***2019 SCC OnLine Guj 6871*** the Hon'ble Gujarat High Court held as follows:

*"7. The proceedings under Section 9 are not appellate proceedings. Nor Section 9 of the Act can be converted or used as an appeal when the Arbitral Tribunal is available to look into the merits for the similar prayers which is pending in this case, or in a given case could be made to the Tribunal, under Section 17 of the Act.*

*8. The whole arbitral dispute is pending consideration before the Arbitral Tribunal. The interim measures prayed for by the applicant has a necessary interaction to the aspects of main controversy. The issues relate to main controversy and the question of interim measures prayed for have to be decided in that light and context. Therefore when the dispute is already before the Arbitral Tribunal, the proper and expedient remedy for interim protective measures is, in all ordinary circumstances, under Section 17 of the Act. It is before the Arbitral Tribunal that the dispute between the parties regarding interim protection could be better appreciated and adjudicated".*



In the case of ***Sunita Garg v Scraft Product (P) Limited & Ors.***, reported in ***2023 SCC OnLine Del 2668***, the Hon'ble Delhi High Court held as under:

*"12. According to Section 9(3) of the Act, 1996 the remedy under Section 9 can be availed after the commencement of the Arbitral Tribunal only if the Court is of the view that remedy cannot be efficaciously rendered by the Arbitral Tribunal. Thus, it must be exercised only in exceptional cases."*

31. Admittedly, in the instant case, the Arbitral Tribunal is constituted. The proceedings are currently in progress. The petitioner can approach the Arbitral Tribunal, and seek an interim relief. The petitioner, instead of seeking for an interim relief before the Arbitral Tribunal, has continued this proceeding even after constituting the Arbitral Tribunal. Hence, this Court is of the opinion that, in view of the subsequent development i.e., the Arbitral Tribunal has already been constituted, the parties have appeared before the Arbitral Tribunal, and the proceedings are pending before the Arbitral Tribunal, the petitioner can



approach the Arbitral Tribunal, and can make an application seeking for an interim measure. The petitioner can also seek for clarification and modification of the Emergency Arbitrator's Award. The Tribunal may reconsider, modify or vacate any interim order or award issued by the Emergency Arbitrator, including a ruling on its on jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or award issued by the Emergency Arbitrator was, in any event, ceases to be binding if the Tribunal is not constituted within 90 days of such order or award or when the Tribunal makes a final order if the claim is withdrawn.

32. In view of the said provision, the petitioner can seek a clarification from the Emergency Arbitrator regarding the significant beneficial owner, whether the injunction granted by the Emergency Arbitrator covers the shares of Aakash *or* the petitioner can approach the Arbitral Tribunal and seek an interim relief. This Court granted interim orders, and the same was extended from



time to time to safeguard the interest of the petitioner. If the said interim orders are continued for limited purpose, no injustice would cause to the respondents. However, a liberty is reserved to the petitioner to make necessary application before the Emergency Arbitrator, seeking clarification or before the Arbitral Tribunal, seeking an interim relief.

33. Learned senior counsel Sri. Uday Holla places reliance on the following judgments:

i) **PASL WIND SOLUTIONS PRIVATE LIMITED v/s GE POWER CONVERSION INDIA PRIVATE LIMITED reported in (2021) 7 SCC 1**, wherein, the Hon'ble Apex court has held that, a proviso inserted to Section 2(2) which only makes it clear that where, in an arbitration which takes place outside India, assets of one of the parties are situated in India and interim orders are required qua such assets, including preservation thereof, the courts in India may pass such orders. The factual matrix of this case is different from the case on hand. This case revolves around the question as to whether an award made at a forum outside India, to which the New York Convention applies, can be said to be a Foreign Award and enforceable as such. This case does not deal with Emergency Arbitrator's Award and subsequent constitution of



Arbitral tribunal. Accordingly, this case does not apply to the case on hand.

ii) ***Raffles Design International India Private Limited & Anr. V/s Educomp Professional Education Limited & Ors reported in 2016 SCC OnLine Del 5521***, wherein, the Delhi High Court has held that, a party seeking interim measures cannot be precluded from doing so only for the reason that it had obtained a similar order from an arbitral tribunal, that the question whether the interim orders should be granted under section 9 of the Arbitration Act or not would have to be considered by the courts independent of the orders passed by the Arbitral Tribunal, and that the court can independently apply its mind and grant interim relief in cases where it is warranted. Also held that, a court would be unfettered by the findings or the views of the Arbitral Tribunal. To the contrary, in Para 99, the Delhi High Court has held that the Emergency Award cannot be enforced under the Arbitration Act. Though, this case is similar to the case on hand, in this case the parties had expressly agreed that seeking interim order from the courts would not be incompatible with the arbitration proceedings, and moreover, in this case, an application to set aside the Award passed by the Emergency Arbitrator was filed under Para 7 to Schedule I of the SIAC Rules. Hence, this case is not aptly applicable to the case on hand.

iii) ***Shanghai Electric Group Co. Ltd v/s Reliance Infrastructure Ltd. Reported in 2022 SCC OnLine Del 2112***, wherein, the Delhi High Court held that, the applicability of Section



9 stands excluded by choosing foreign seated arbitration cannot be countenanced. An award of emergency arbitrator cannot be enforced directly since there is no provision corresponding to Section 17 for enforcing the interim orders and the meaningful provisional reliefs could be granted by the courts of competent jurisdiction in India. The remedy under Section 9 can be invoked notwithstanding the constitution of Arbitral Tribunal. A party can invoke the jurisdiction of the Court under Section 9 of the Act on the basis of location of the assets. In this case, however, the Arbitral Tribunal was constituted, and though, the court held that, Section 9 application is maintainable. The court dismissed the petition on the ground of not satisfying the ingredients of interim injunctions and kept all the contentions of the parties open before the Arbitral tribunal already constituted. Hence, this case does not apply to the present case as this case does not deal with EA Award, and subsequent constitution of Arbitral Tribunal.

iv) **ARVIND CONSTRUCTIONS CO. (P) LTD. V/s KALINGA MINING CORPORATION AND OTHERS reported in (2007) 6 SCC 798**, the Hon'ble Apex court held that, the court entertaining an application under Section 9 of the Act shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it and that the general rules that govern the court while considering the grant of an interim injunction at the threshold are attracted even while dealing with an application under Section 9 of the Act. There is also the principle that when a power is conferred under a special statute and it is conferred on an ordinary court of the land, without laying down any special



condition for exercise of that power, the general rules of procedure of that court would apply and that the exercise of power under Section 9 of the Act must be based on well recognized principles governing the grant of interim injunctions. The case quoted above is not applicable to the case on hand, as this case does not deal with Emergency Arbitrators Award or the Foreign Seated Arbitration. It merely states that, section 9 application must be entertained taking into consideration the well recognized principles governing the grant of interim injunctions.

v) ***Essar House Private Limited v/s Arcellor Mittal Nippon Steel India Limited reported in 2022 SCC OnLine SC 1219***, wherein, the Hon'ble Apex court held that, the proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realization of an impending Arbitral Award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail. Since, the case on hand revolves around a question, whether the Award passed by the Emergency Arbitrator includes the Shares of Aakash, however the Arbitral Tribunal is constituted subsequent to the E A Award, the relief sought before this Hon'ble court is same as that of the relief before the Emergency Arbitrator, and the Emergency Arbitrator has passed an Award, no question of



assessing the consequence of refusal of interim relief would arise. Accordingly, this case is not applicable to the case on hand.

vi) ***Niko Resources Ltd v/s Union of India & Anr. Reported in 2001 SCC OnLine Del 615***, wherein, the Delhi High Court held that, it cannot be disputed that the three basic legal principles of existence of prima facie case, balance of convenience and irreparable loss and injury have always to be taken into account before any interim order is passed either under Order 39 Rules 1 and 2 or under Section 9 of the Act. While the aforesaid principles cannot be given a go-bye the power to grant interim measures of protection under Section 9 of the Act is wider in view of the phraseology used in Section 9 of the Act. This case does not apply to the instant case, as this case does not deal with Emergency Arbitrators Award / Subsequent constitution of Arbitral Tribunal or with the foreign seated Arbitration. It merely states that, the ingredients of Order 39 Rule 1 and 2 have to be looked into before granting an interim order under section 9. In the present case, as the Arbitral Tribunal is already constituted and the parties have appeared before it and participated in its proceedings, the question of looking into the ingredients of granting interim order does not arise. Hence, this case is not aptly applicable to the case on hand.

34. In view of the above discussion, I answer the point for consideration in the *negative* and proceed to pass the following order :



**ORDER**

- i) The petitions are rejected;
- ii) However, the liberty is reserved to the petitioner to make necessary application either before the Emergency Arbitrator, seeking clarification *or* before the Arbitral Tribunal, seeking interim relief.

In the meantime, the interim orders, undertaking and status-quo, shall continue for a period of three months.

In view of the disposal of the petitions, all pending applications are disposed of.

**Sd/-**  
**(ASHOK S.KINAGI)**  
**JUDGE**

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