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

**SUBJECT :** ARBITRATION & CONCILIATION ACT, 1996

Judgment delivered on: 16.08.2011

OMP 614/2010

PRIMA BUILDWELL PRIVATE LTD. & ORS. .... Petitioners
Through: Mr. Rajiv Nayyar, Sr. Adv.Ms. Niti Dixit with Mr. Palash Rajan Gupta & Ms. Raunaq Mathur, Advs.

versus

LOST CITY DEVELOPMENTS LLC & ORS. ..... Respondents
Through: Dr. A.M. Singhvi, Sr. Adv. with Mr. Sharan Thakur, Mr. Sidhartha Barua & Mr. Manpreet Lamba, Advs. for R-1.
Mr. Amit Chadha, Sr. Adv. with Mr. Dhirender Negi & Mr. Ananya Kumar, Adv. for R-3.

CORAM:-
HON'BLE MR JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J

1. By this order I shall propose to dispose of the present petition filed under Section 9 of the Arbitration & Conciliation Act, 1996 seeking an interim order inter alia restraining the Respondents, their officers, employees, agents and representatives from : (i) appropriating the funds in the bank account of Cavern Hotel & Resorts FZCO, the respondent No.2, with HSBC Bank Middle East Limited ("HSBC") until conclusion of the arbitration proceedings; (ii) taking any steps to seek additional contribution from the petitioners; (iii) causing the respondent No.2 to make any payments to AI Furjan LIC ("AI Furjan"), a subsidiary of Nakheel PJSC ("Nakheel") and affiliate of respondent No.1, until conclusion of the arbitration proceedings; and (iv) unilaterally operating the bank account of the respondent No.2 with HSBC or any other bank account of the respondent No.2.

2. There are three respondents namely Lost City Developments LLC, Cavern Hotel & Resort FZCO and Dubai World. The case of the petitioners is that

in pursuance to the Joint Venture Agreement dated 15.02.2007 Nakheel and Bharat Hotels Limited, the petitioner No.3, acting through their respective subsidiaries petitioner No.1 and petitioner No.2 and respondent No.1, incorporated respondent No.2 in Dubai, as an equal (50:50) joint venture for the purposes of designing, developing, constructing, marketing and managing a five star luxury hotel and spa in Dubai. The JV Agreement was executed among Lost City Developments LLC, respondent No.1, and Prima Buildwell Private Limited and Premium Holdings Limited, the petitioner No.1 and the petitioner No.2, respectively. The JV Agreement provides that the parties shall be governed by the terms of the JV Agreement and certain agreements collectively referred to as the Hotel Agreements.

3. The JV Agreement provides that disputes between the parties must be referred to arbitration. Further, the Articles of Association of the respondent No.2 incorporates the dispute resolution clause of the JV Agreement by reference.

4. The respondent No.1 is a wholly owned subsidiary of Nakheel, and the petitioner No.1 is a subsidiary of Bharat Hotels Limited. The petitioner No.2 is promoted by Bharat Hotels Limited. The respondent No.3 is an entity owned by the Government of Dubai.

5. The petitioner No.1 and the petitioner No.2 had jointly capitalized respondent No.2 with an equity contribution of approximately AED 300,000. In addition, they had provided shareholder loans in an amount of AED 17.66 million to respondent No.2. While Nakheel was required to provide the land upon which the proposed luxury hotel was to be constructed and contribute its experience in the hospitality sector in managing and operating luxury hotels and to contribute its brand name "Bharat Hotels" to the property.

6. Accordingly, the respondent No.2 entered into a sale and purchase agreement dated February 10, 2008 (the "Plot Sale Agreement") with AI Furjan, a subsidiary of Nakheel, and affiliate of respondent No.1, for the purchase of certain land for constructing the hotel contemplated in the JV Agreement, and paid AED 16.5 million, or 30% of the purchase price, pursuant to the Plot Sale Agreement. This payment was made from funds contributed by the joint venture partners.

7. The petitioners state that in view of the economic recession in Dubai, the respondent No.3 and its subsidiaries (including Nakheel), are admittedly in considerable financial difficulty since the year 2008, and this has resulted in non-availability of financing for the hotel project an in these circumstances his Excellency Sultan Ahmad Bin Sulayem, the Executive Chairman of Dubai World and Nakheel (and, at that time, a director on the board of directors of Cavern nominated by Lost City), agreed that, in addition to changes in the payment schedule, the purchase price under the Plot Sale Agreement will be reduced to reflect the fall in value of real estate in Dubai.

8. It is also stated by the petitioners that in March 2010 the parties agreed and understood that Al Furjan had not progressed the development of the infrastructure works and the land required for the hotel project in terms of the Plot Sale Agreement. The parties agreed that Al Furjan would be unable to undertake the Al Furjan Development within a reasonable period of time and the proposed hotel project would have to be revisited when Dubai's economy had recovered from recession.

9. However, the petitioners state that without any justification notice of default dated 28.04.2010 was issued by Al Furjan to Cavern, calling upon Cavern to pay an amount of AED 33,137,425 allegedly overdue under the Plot Sale Agreement.

10. Warning notice dated 20.06.2010 was also issued to Cavern which required Cavern to pay an amount of AED 35,930,027 including fine on delayed payments and interest calculated from April 1, 2010 within 15 days of receipt of the warning.

11. The petitioners state that as such the dispute inter alia pertains to the termination Joint Venture Agreement, refund of equity and loan contributions made pursuant to the JV Agreement and termination of the Hotel Agreements which have not been resolved till today despite of number of discussion and communication exchanged between the parties. Therefore, the petitioners are in the process of invoking the dispute resolution procedure contemplated under the Joint Venture Agreement to resolve the dispute between the parties. At the same time the petitioners apprehend that the respondents may, in the meanwhile, appropriate the funds available in the bank account of respondent No.2, operated by a nominee of respondent No.1 and as such the petitioners have filed the present petition to seek the intervention of this court to issue protective orders to secure the amount in

dispute and for an interim measures of protection to secure the petitioners' final relief against the respondents. In case the prayer sought made in the petition are not granted, the petitioners' claims in the arbitration proceedings will be prejudiced.

12. The petition was first time listed on 19.10.2010 when the notice was issued to the respondents. Time was granted to the respondent to file the reply. However, the statement was made by the learned counsel for the respondent No.1 and 3 that they do not intend to file the reply to the petition as the respondents have raised the preliminary objection with regard to the jurisdiction of this court. Despite time granted by the court no reply was filed. The respondent No.2 was proceeded ex parte due to non appearance despite of service and the respondents again maintained the stand before the court not to file the reply and who have raised the preliminary objection about the territorial jurisdiction of this court. The matter was argued by learned counsel for the parties and the order was reserved on 19.07.2011.

13. Dr. Abhishek Manu Singhvi, learned Senior Counsel on behalf of respondent No.1 has argued that the petitioners are not entitled for any relief sought and the petition is liable to be dismissed which is devoid of any jurisdiction, therefore, the court on its own should not exercise its discretion to grant any relief. In support of his submissions he argues that the respondents are domiciled in the Emirates of Dubai and do not carry on any business operations or own any assets in India nor have any office or bank accounts, real property or other assets of any kind in India. Even within the meaning of Section 20 of Code of Civil Procedure, 1908 no cause of action whatsoever has arisen in India, the dispute between the parties pertaining to a Joint Venture Agreement in the Emirates of Dubai.

14. The other submission made by Mr. Singhvi is that the court has no connection with the subject matter of the dispute as no cause of action occurred within the jurisdiction of this court as none of the respondents are domiciled in India. The petitioners have alternative forum to seek the same relief and the appropriate and natural forum for the petitioners to seek interim relief is the Dubai World Tribunal at Dubai, where the obligations flowing from the JVA had to be ordinarily performed and is also the place where the respondents are domiciled as well as the situs of the funds which the petitioners are claiming are in a bank account or at the alternative place where the Arbitral seat exists as per the agreement which contain clause that the dispute shall be finally and exclusively settled by Arbitration in London.

15. Mr. Amit Singh Chadha, learned Senior Counsel appearing on behalf of respondent No.3 submits that it is the admitted case of the petitioners that the respondent No.3 is not a party to the contract with the petitioners. On the other hand, the petitioners' contention is that the contract between the petitioners and respondent No.1 gets extended to the respondent No.3 in view of the statement made in para 5 of the petition. Mr. Chadha has referred the following judgments in support of his submissions:

(i) K.K. Modi Investment and Financial Services Pvt. Ltd. vs. Apollo International Inc. and Ors.; 2009 (6) RAJ 587 (DEL);

(ii) Onyx Musicabsolute.com Pvt. Ltd. and Ors. vs. Yash Raj Films Pvt. Ltd. and Ors. 2008(6) Bom CR 418;

(iii) Indowind Energy Ltd. vs. Wescare (I) Ltd. and Anr. AIR 2010 SC 1793

16. The learned counsel for the petitioners has argued that this court need not satisfy the requirements of territorial jurisdiction under Section 20 of the Code of Civil Procedure, 1908 while entertaining a Section 9 petition relating to an international commercial arbitration.

17. It is argued by the counsel appearing on behalf of the petitioners that the JVA was negotiated in Delhi, and that the investments in the form of equity contribution and shareholder loans were made by the petitioners from Delhi. Further, the petitioners did receive certain correspondences and demand notices at their address in Delhi.

18. It is further submitted by the petitioners that in any event the parties to the JVA had impliedly excluded the operation of Part I of the Act. The learned counsel has referred the case of Bhatia International v. Bulk Trading S.A. and Anr. 2002 (1) RAJ 469 (SC), wherein the principle was first discussed by the Supreme Court in the case, in which a three member Bench held that "In cases of international commercial arbitration held outside India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions". So it is argued by the counsel that the abovementioned decision is directly applicable to the present case and thus this court is competent to pass the interim order as prayed in the petition.

19. The other submission of the learned counsel for the petitioners is that the Articles 23 of the ICC Rules provides that any party can approach a 'competent judicial authority' for interim or conservatory measures. The counsel argued that this Court is a 'competent judicial authority' for the purposes of Article 23 of the ICC Rules and on this ground alone they are entitled to get relief, therefore, there is no bar to pass an interim order by exercising its power and the petitioners, in fact, have rightly chosen the jurisdiction to pass such relief. Counsel says that it is choice of the petitioners to select the form to invoke the jurisdiction to entertain the matter.

20. Before dealing with the rival submissions of the parties, there are certain admitted facts between the parties. The same are:

(i) The present petition arises out of a joint venture agreement (the 'JVA') dated February 15, 2007 by the terms of which petitioner No.1, petitioner No.2 and respondent No.2, as a joint venture company in Dubai for the purpose of developing and construction of a Hotel and the sale and leasing of apartments in connection with the Hotel.

(ii) In accordance with the terms of the JVA the shareholding in respondent No.2 i.e. the Joint Venture Company ('JVC') was to be held 50/50 between the petitioner No.1.

(iii) The JVA contains an arbitration clause according to which any dispute shall be finally and exclusively settled by arbitration in London under the rules of the ICC. The JVA is governed by the laws of England and Wales.

(iv) The JVC entered into a Plot Sale Agreement dated February 10, 2008 with Al Farjun for the sale and purchase of plot. The said agreement contained a separate and distinct arbitration clause. The petitioners were not a party to the Plot Sale Agreement.

(v) The respondents (including the JVC) are admittedly in the Emirates of Dubai and incorporated under the laws of the Emirates of Dubai. The respondents do not have any office or establishment in India nor to the fact that they do not carry out any business in India.

21. There is no doubt in my mind that if this Court does not also have jurisdiction to entertain a suit on the facts and circumstances of the case, then this court is also have no jurisdiction to entertain an application under Section 9 of the Arbitration and Conciliation Act, 1996. It is also not denied by the parties that the petition under Section 9 of the Act has to be filed before a 'Court' as defined in Section 2(1)(e) of the Act, according to which

a Court shall be such which is competent under law to decide the questions forming the subject matter of the arbitration. The provisions of Section 2(1)(e) of the Act would also be applicable to international commercial arbitrations outside India, as it is evident from Bhatia International v. Bulk Trading S.A. & Anr. (supra) where the Supreme Court referring to the definition of the Court under Section 2(1)(e) observed that:
"a court is one which would otherwise have jurisdiction in respect of the subject matter"

22. Thus it is clear that while entertaining a Section 9 petition relating to an international commercial arbitration, a court must have territorial jurisdiction with regard to the subject matter of the arbitration proceedings in a same way as determined in any suit.

23. While determining territorial jurisdiction, Courts have always considered the location where the cause of action has substantially arisen. In the similar circumstances, the Supreme Court in case of South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd., (1996) 3 SCC 443 held that the admitted position was that performance of the obligations and liabilities under the contract was to be carried out in Bombay. The Court found it wholly irrelevant that the subject Bank Guarantee had been executed at Delhi and transmitted for performance at Bombay an held that Delhi Courts did not possess jurisdiction to decide the dispute.

23. The relevant clause 11.3 of the JVA in the present case provides
"any Dispute that has not been resolved following the procedures set forth in Articles 11.1 and 11.2 shall be finally and exclusively settled by arbitration which shall be conducted in London."

The JVA also provides that the governing law shall be that of England and Wales. Therefore, in the absence of any other agreement to the contrary, the law governing the arbitration agreement where the arbitration is agreed to be held that is the law of England and Wales.

24. It is also held by various courts that the law of the arbitration agreement would be the same as the law governing the main contract unless it is explicitly stated to be so. Some of the case on this proposition are wherein similar finding arrived i.e. Shreejee Traco(I) Pvt. Ltd. v. Paperline International Inc. (2003) 9 SCC 79 and National Thermal Power Corporation v. Singer Company and Others (1992) 3 SCC 551.

25. Assuming in the present case the contract negotiations occurred at Delhi, or that the funds for investment in the share capital of the JVC were remitted from Delhi does not automatically confer any jurisdiction on this court.

26. The similar question of jurisdiction was also considered in detail in Oil and Natural Gas Commission v. Utpal Kumar Basu (1994) 4 SCC 711 wherein it was held that merely because the writ petitioner submitted the tender and made the representation from Calcutta in response to an advertisement inviting tenders which were to be considered at New Delhi and work was to be performed in Hazira (Gujrat) and also receives replies to the fax messages at Calcutta, could not constitute facts performing an integral part of the cause of action. It was further held that the High Court could not assume jurisdiction on the ground that the writ petitioner resides in or carries on business from a registered office in State of West Bengal.

27. In the present case the parties by agreeing that arbitration was to be conducted in London had agreed that the seat of arbitration was to be London, and accordingly English courts will have supervisory jurisdiction to grant any supportive measure to the arbitration proceedings. The seat of the arbitration is specified in the arbitration agreement by the selection of a particular place or country in which the arbitration is to be held. In the absence of a clear indication to the contrary, there is a presumption that the place where the arbitration is to take place will constitute its seat of arbitration.

28. (i) In the case of Shashoua & Ors v. Sharma ("Sharma"), (2009) 2 Lloyd's Law Reports 376 where the English court of Appeals had held that "When…..there is an express designation of the arbitration venue as London and no designation of any alternative place as the seat, combined with a supranational body of rules governing the arbitration and no significant contrary indicia, the inexorable conclusion is… that London is that juridical seat and English law the curial law".

(ii) Also in the case of Dozco India Pvt. Ltd. v. Doosan Infracore Co. Ltd. JT 2010 (12) SC 198 where the Supreme Court has held that when parties agree that all dispute to be settled in South Korea
"there is a prima facie impression that the seat of arbitration was only in Seoul, South Korea".

(iii) In the Halsbury's Laws of England (Volume 2 (2008) 5th Edition) referring to the approval of the classic statement by the House of Lords in Whitworth Street Estates v James Miller (1970) AC 583, or to quote the words of Lord Justice Kerr in Nav. Amazonica v Cle.Internat. de Seguros (1998) 1 Lloyd's Rep. 116 … in the absence of some express and clear provision to the contrary, it must follow that an agreement that the curial or procedural law of an arbitration is to be the law of X has the consequence that X is also to be the 'seat' of the arbitration. The lex fori is then the law of X, and accordingly X is the agreed forum of the arbitration. A further consequence is then that the courts which are competent to control or assist the arbitration are the Courts exercising jurisdiction at X.

29. In view of above, I feel that prima facie in the absence of agreement otherwise, the selection of a place of seat for an arbitration determines curial law or "lex fori" or "lex arbitri" By providing London as the seat of the arbitration the parties had necessarily agreed that the curial law or law which governed the arbitral proceedings was that of England and Wales. Therefore, English Courts shall also have jurisdiction to grant any interim measure in relation to the arbitration proceedings.

30. It is correct that choosing a seat of arbitration is akin to choosing an exclusive jurisdiction clause. Therefore, it is rightly held in the case of A v B (2007) 1 All E.R. (Comm) 591 "an agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause."). Looked I this light when the parties by express agreement have agreed that the law juridically controlling the arbitration being English law, the seat of arbitration to be in London and by all references agreeing that the curial law or law which governed the arbitral proceedings that of England and Wales, thus impliedly one can easily say that they have excluded Part I of the Act. Although, it is not expressly excluded.

31. In Bhatia International, where the parties had agreed to arbitrate under ICC Rules, the local court had the jurisdiction to grant interim relief as a competent judicial authority. This was because the local court was a court within the meaning of Section 2(1)(e) of the Act, since in that case (unlike in the present Petition) the assets in question and which were the subject matter of the dispute itself were situated within the confines of its local jurisdiction. The situation in the present case is different.

32. The answer to the contention of the petitioners about the application of Bhatia International can be found in re Dozco where the Supreme Court again considered the issue of exclusion of application of Part I. in Dozco, the impugned arbitration clause in the distribution agreement provided all disputes in connection with the Agreement to be settled in Seoul, Korea, the governing law to be the law of the Republic of Korea, and the procedural rules to be the International Chamber of Commerce (ICC) Rules. The Supreme Court after considering the language and terms contained in the distribution agreement held that the language of the arbitration clause was clearly indicative of express exclusion of application of Part I. The Hon'ble Supreme Court in this context stated that

"The language is a clear indicative of the express exclusion of part I of the Act……. a clear language of Articles 22 and 23 of the Distributorship Agreement the parties spell out a clear agreement between the parties excluding Part I of the Act" (emphasis added).

33. An implied exclusion of Part I of the Act was considered by the division Bench of this court in Max India Limited v. General Binding Corporation 2009 (3) Arb. LR 162 (Delhi) (DB) ("Max India") where this court held that choosing a foreign law substantively and procedurally including the law governing the arbitration proceeding leads to the exclusion of Part I of the Act. In such as situation the court held that an application under Section 9 of the Act is not maintainable. The court in para 40 stated that :

"Once it is accepted that the laws for interpretation of contract as well as arbitration proceedings which are to be applied are Singapore Laws which means the provisions of Singapore Arbitration Act are applicable, can there be a situation where the Indian Arbitration and Conciliation Act shall apply at the same time (even to the limited extent of Section 9 thereof) as is sought to be contended. Answer has to be negative."

34. In the very recent case decided by the Supreme Court between Videocon Industries Limited v Union of India Civil Appeal No.4269 of 2011 the finding of the Supreme Court as to an implied exclusion of Part I of the Act was on the fact that the arbitration agreement was governed by laws of England. The Supreme Court referring to Bhatia International, Venture Global and another case of the Gujarat High court Hardy Oil and Gas Limited v Hindustan Exploration company Limited and Ors 2005(3) G.L.H. held that the parties by agreeing that the arbitration agreement is to be

governed by laws of England and Wales had excluded the provisions of Part I. Therefore the Delhi High court did not have the jurisdiction.

35. The submission of the learned counsel for the Petitioners is also meritless that Part I of the Act would not be impliedly excluded. In answering the above question the reliance of paragraph 31 has been placed by the respondent in the decision of this itself between Bhushan Steel Ltd v Singapore International Arbitration Centre 2010(3) Arb. LR 70 (Delhi) where this Court clearly stated the circumstances under which Part I of the Act would not apply. This Court stated that Part I of the Act would apply only if the parties have failed to do one or more of the following:

(a) There must be no agreement as to what would be governing law of the contract, governing law being presumed to be law of the arbitration also;

(b) There must be no agreement as to the place of the arbitration; and/or

(c) It must be shown that if no interim action is taken the parties will be remediless.

36. Thus, there is no force in the submission of the petitioners that in the present case Part I was not impliedly excluded. The parties by agreeing to arbitration in a particular place must normally be taken to have expected the courts in that place to exercise supervisory jurisdiction including granting interim relief in support of the arbitration and to apply the law of that place in granting such interim relief.

37. In the present case, the parties have specifically agreed that the law England and Wales shall be applicable and the place of arbitration is London. I am of the view that the Petitioners have alternative remedies in other jurisdictions (i.e. London as well as Dubai) to press their claims as there is an implied exclusion of Part I of the Act in the facts and circumstances of the matter in hand.

38. As regard the next submission of the petitioners that under Article 23 of ICC Rules which proves any party can approach a competent judicial authority and this court according to the counsel is a competent court to pass such order.

39. No doubt, the ICC Rules empower an arbitral tribunal to render conservatory and interim measures. Article 23.1, provision concerning provisional remedies, provides in pertinent part:

"Unless the parties have otherwise agreed, as soon as the file has been transmitted to it, the Arbitral Tribunal may, at the request of a party, order

any interim or conservatory measure it deems appropriate. The Arbitral Tribunal may make the granting of any such measure subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order, giving reasons, or of an Award, as the Arbitral Tribunal considers appropriate".

40. In the similar circumstances as provided Article 23 of the ICC Rules, the LCIA Arbitration Rules also provide that a party to LCIA arbitration has the right to apply to any judicial authority for interim or conservatory measures. The proposition of similar nature was examined in the matter of Hardy Oil & Gas Limited v Hindustan Oil Exploration Company Limited 2005(30G.L.H.135 which was upheld by the Supreme Court in the matter of Videocon Supra.

41. The question of what constitutes a competent court was also considered by a Division Bench of this court in re. Max India (supra), where it was held that courts of the country whose substantive laws govern the arbitration agreement are the competent court in respect of all matters arising under the arbitration agreement.

42. It is also observed by author Michael W. Buhler and Thomas H. Webster in the second edition of their authoritative book "Handbook of ICC Arbitration" Commentary, Precedents, state that the relevant national court for conservatory or interim measures under ICC Rules is the court where the conservatory or interim measure is to be carried out. In other words, a competent court under the ICC Rules is the court which is closest to the subject matter of arbitration. However, in the present case, there is hardly any indication or whisper in this regard.

43. The next submission of the petitioners is that the petitioners may not be able to get interim relief from the Dubai World Tribunal in view of the present financial position and circumstances in UAE. The learned counsel appearing on behalf of the respondents has referred the specimen order dated 14th December, 2009. His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President and Prime Minister of UAE, Ruler of Dubai issued Decree No. 57 of 2009, establishing a Tribunal to decide the Disputes Related to the Settlement of the Financial Position of Dubai World an it's Subsidiaries. The Decree was issued to provide a comprehensive legal framework, consistent with international standards, to govern any dispute

with Dubai World and its subsidiaries by establishing the Tribunal also known as the Dubai World Tribunal ('Tribunal').

44. The respondents have also referred profile of three judges in support of his submissions that the Tribunal comprises of three senior international judges from the Dubai International Finance Centre ('DIFC') Courts. Two of the judges, Sir Anthony Evans and Sir John Chadwick are both former English Courts of Appeal Judges. Sir Anthony Evans is the former Chief Justice of the Dubai International Financial Centre Court. Sir John Chadwick is an insolvency specialist and has just completed a high profile report into the collapse of Equitable Life, an English mutual investment fund. The third member of the Tribunal is Michael Hwang SC, an eminent Singaporian lawyer who is the current Chief Justice of the DIFC.

45. Article 3 of the Decree states that the Tribunal shall have the jurisdiction to hear and decide any demand or claim submitted against (a) the Corporation (Corporation has been defined in the decree to include Dubai World and its Subsidiaries), including hearing and deciding any demand or dissolve or liquidate the Corporation; (b) any person related to the settlement of the financial obligations of the Corporation, including the Chairman and the members of the Board of Director, as well as all the employees and workers of the Corporation.

46. All judgments and orders including interim relief granted by the Tribunal can be executed and enforced by the competent courts in the Emirate of Dubai as well as the courts of other emirates where applicable (Article 6 of the Decree). The Tribunal is empowered to issue the interim and interlocutory orders and decisions, including injunctions to any person to act or not to act, or other order as the Tribunal considers appropriate. Thus the arguments made by the petitioners are totally meritless as the Tribunal has the jurisdiction and power to grant the petitioner the interlocutory ad-interim relief sought by them.

47. It is also undisputed fact that under Section 44 of the English Arbitration Act 1996 (the "English Act"), English courts have the power to grant interim injunction in respect of arbitration proceedings. A broad range of injunctions are available under Section 44 of the English Act, for example, orders passed by an English court under Section 44 permit the taking of evidence, the preservation of evidence and assets and the granting an interim injunction. The English Act also authorizes orders regarding

property and assets at issue in order to support and aid English arbitration proceedings.

48. For the aforesaid reasons, this Court is of the considered view that this Court has no territorial jurisdiction to entertain the petition, hence the same cannot be entertained.

49. As regard the objection raised by the respondent No.3 is concerned, it shall be kept open and in case the petitioners will initiate any steps before the appropriate forum for the similar relief, the respondent No.3 is at liberty to re-agitate the same objection and same has to be considered as per law.

50. Consequently, the present petition is dismissed with no order as to costs.

Sd/-
MANMOHAN SINGH, J