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

ARBITRATION PETITION NO.62 OF 2014

Acron Developers Private Limited,
a company registered under the
Indian Companies Act, 1956 having
its Registered Office at Acron Plaza,
Opposite Shah Industrial Deonar,
Mumbai – 400 088.

...Petitioner

...Versus...

Patel Engineering Limited,
a company incorporated under the
Indian Companies Act, 1956 having
its Registered Office at Mumbai Office
at Patel Estate, Patel Estate Road,
Jogeshwari (W), Mumbai – 400 102.

...Respondent

Mr. Shailesh Shah, Senior Counsel with Mr. Nitin Raut i/b P. Vas & Co.
for the Petitioner.

Mr. M.S. Doctor, Senior Counsel with Mr. Rohan Cama i/b Bachubhai
Munim & Co. for the Respondent,

CORAM : R.D. DHANUKA, J.
RESERVED ON : 10TH AUGUST, 2015
PRONOUNCED ON : 21ST AUGUST, 2015.

JUDGMENT :-

1. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996 (for short "Arbitration Act"), the petitioner seeks interim measure i.e. injunction against the respondent from selling, alienating, creating lien, inducting any third party or creating any third party rights in respect of the property of the respondent at Bangalore

described in prayer clause (a) of the petition or in the alternate to deposit a sum of Rs.15,45,13,401/- in this Court. Insofar as injunction in respect of the bank guarantees are concerned, the said relief has become infructuous in view of this Court refusing to grant ad-interim injunction by an order dated 28th November, 2013. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. Some time in the year 2010, the respondent awarded a contract to the petitioner for the work of execution of civil, structural, architectural, finishing works for 7 towers for the “Proposed Smondoville Residential Apartments” at Bangalore for the value of Rs.37,47,59,624/-. The respondent thereafter issued a letter of award dated 23rd June, 2010 for six towers and on 26th July, 2010 for the remaining one tower. Under the said contract, the petitioner furnished various bank guarantees in favour of the respondent. The petitioner was required to submit the running account bills to the respondent for the purpose of the payment for the work done from time to time, which was payable in accordance with the terms and conditions of the contract in the manner provided therein.

3. On 11th November, 2010, the parties executed a contract. The petitioner submitted 26 running account bills for the period from June, 2010 to December, 2013 amounting to Rs.15,45,13,401/-. It is the case of the petitioner that in the course of construction, the petitioner constructed an actual area more than the area as per “good for construction” drawings which amounted to 40,000 sq. ft. of the extra area constructed. The petitioner brought these facts to the notice of the respondent. It is the case of the petitioner that the respondent had agreed to make payment to the petitioner for actual built up area.

4. The respondent however, terminated the said agreement dated 11th November, 2010 by termination notice dated 22nd October, 2011 and threatened to encash the bank guarantees furnished by the petitioner. The parties thereafter executed a Deed of Settlement dated 31st October, 2011 and revised the said agreement dated 11th November, 2010 subject to the modifications contained in the said Deed of Settlement. It is the case of the petitioner that all other terms and conditions contained in the said agreement dated 11th November, 2010 remained unaltered except those specifically altered / modified by the said Deed of Settlement dated 31st October, 2011. Under the said Deed of Settlement, the petitioner agreed to renew the performance guarantee for Rs.85,39,052/- and Rs.8,99,938/- for the period till 29th October, 2012 on or before 15th December, 2011. The petitioner undertook to complete the entire balance work as per milestones on or before 31st January, 2012. The respondent agreed to withdraw the termination notice. It was agreed by and between the parties that the petitioner may raise running account bill every 15 days and the respondent agreed to pay the running account bill within a period of 15 calendar days from the date of submission of the bill.

5. It is the case of the petitioner that since the respondent threatened to encash four performance bank guarantees, the petitioner was forced to renew all such four performance bank guarantees for thirteen months inclusive of defect liability period of 12 months and were valid up to 30th November, 2013. It is the case of the petitioner that the petitioner completed all the block work, internal and external plaster and toilet waterproofing work by December, 2012 and had accordingly submitted its final bill dated 24th August, 2013 in respect of the block work, internal and external plaster and toilet

waterproofing work. The respondent however, did not make any payment.

6. It is the case of the petitioner that though the respondent had assured and agreed to clear the running account bills of the petitioner, the respondent did not pay as assured to the petitioner and as agreed under the terms of the contract. By a letter dated 24th August, 2013, the petitioner called upon the respondent to certify and release the payment quantified at Rs.11,92,13,401/- for the work done and aggregating in the sum of Rs.15,45,13,401/- which was inclusive of damages and loss for underutilized tools, plant machinery, overhead losses etc. but excluding compensation for the breach of contract within 30 days from the date of receipt of the said notice. The petitioner also addressed a letter to the Citizen Co-operative Credit Bank Limited on 11th September, 2013, calling upon it not to allow encashment of the bank guarantees furnished by the petitioner.

7. The respondent by its e-mail dated 16th September, 2013, called upon the petitioner to send a technical person to help the respondent in certification of the bill and/or asked to co-ordinate with one Mr.Raghavendra, Site Engineer of the respondent for more details. The petitioner accordingly by its e-mail dated 22nd September, 2013 informed the respondent that the representative of the petitioner would be available on 25th September, 2013 and reminded that the bill no.26 which was submitted on 12th February, 2013 was still not paid.

8. The respondent by its e-mail dated 25th September, 2013 addressed to the petitioner asked the petitioner to co-ordinate with Fusion India to close issues and get their certification to process its

bill. The petitioner by its e-mail dated 5th October, 2013, informed the respondent that they would depute Mr. Anju Gadekar and called for amicable closure of issues of payments.

9. It is the case of the petitioner that on 25th October, 2013, the petitioner received from the respondent, one hand written unsigned sheet of paper purported to be joint inspection report setting out certain pending external work. The petitioner by a letter dated 31st October, 2013 called upon the respondent to give the final version in respect of the complete and comprehensive list in respect of the matters to be attended under the signature of the respondent and assured to do the needful. The petitioner asked the respondent to ensure payment of 50% of the dues of the petitioner and called upon to pay the balance within two weeks upon the petitioner attending the snags.

10. The petitioner thereafter by its e-mails dated 15th November, 2013 and 18th November, 2011 recorded the failure on the part of the respondent to co-operate with the representative of the petitioner while in Bangalore for the joint measurement and certification of the final bill for payment under final bill. The respondent thereafter addressed a letter to the bank for encashing all the performance bank guarantees. By an order dated 28th November, 2013, this Court refused to grant any ad-interim relief in favour of the petitioner insofar as encashment of the bank guarantees was concerned, this Court having found that the bank guarantees furnished by the petitioner were unconditional and thus no injunction in respect thereof could be granted.

11. Mr. Shah, learned senior counsel appearing for the

petitioner invited my attention to various annexures to the petition and also the annexures filed with the affidavits by both the parties and would submit that though the respondent had agreed to pay to the petitioner amounts under the running account bills, within the time prescribed, the respondent did not pay such amounts. The amounts payable even under the final bill have not been paid. It is submitted that the respondent is facing tremendous financial constraints and has been transferring several properties of the respondent with an intention to deprive the creditors, including the petitioner.

12. In support of this submission, learned senior counsel invited my attention to the averments made in the arbitration petition and also to the consolidated balance sheet as on 31st March, 2013, consolidated statement of profits and loss account for the year ended 31st March, 2014, Director's report and comparative consolidated finance statement of the respondent company. My attention is also invited to various newspaper clippings annexed to the additional affidavit dated 18th December, 2014 showing the financial condition of the respondent. Learned senior counsel for the petitioner also placed reliance on the notice issued by the respondent to the members of the respondent and also minutes of the 65th Annual General Meeting of the respondent. He placed reliance on the public notice dated 12th September, 2014 in the Times of India.

13. Learned senior counsel for the petitioner also invited my attention to the correspondence exchanged between the respondent and the arbitral tribunal whereby the respondent seeking an extension of time for filing its pleadings on one or other ground and delaying the arbitral proceedings.

14. Learned senior counsel for the petitioner also invited my attention to the affidavit in reply dated 28th November, 2014 filed by the respondent and also affidavit in sur-rejoinder dated 23rd February, 2015. It is submitted that it is an admitted position that the respondent had already sold all 1161 flats in the project Townsville and said flats have been handed over to the respective flat purchasers which were subject matter of the contract awarded to the petitioner. He submits that the respondent is heavily indebted and has to clear huge amounts towards the statutory dues, which fact has not been disputed by the respondent.

15. The sale of the various properties by the respondent also has not been disputed. There is a charge in respect of Jogeshwari property of the respondent in favour of Dena Bank. It is submitted that if the reliefs as claimed in the petition are not granted, the respondent who is in such a financial condition would not be able to pay any amounts to the petitioner even if the petitioner succeeds in the arbitral proceedings. He submits that the petitioner has good chances of succeeding in the arbitral proceedings.

16. It is submitted by learned senior counsel for the petitioner that the principles laid down in the Code of Civil Procedure, 1908 for grant of interlocutory reliefs furnish a guide to the Court when the Court decides the petition under section 9 of the Arbitration Act. It is submitted that in an application for attachment underlined basis of order XXXVIII Rule 5 of the Code of Civil Procedure though has to be kept in mind, however, rigors of order XXXVIII Rule 5 does not apply to the arbitration proceedings.

17. Mr.Doctor, learned senior counsel for the respondent on

the other hand submits that the claims made by the petitioner in the correspondence clearly indicates that the same is arising out of an alleged oral agreement which is disputed by the respondent. He submits that the claims are not in the nature of the liquidated claims. In support of this submission, learned senior counsel invited my attention to the notice of demand dated 24th August, 2013, in which the petitioner has claimed Rs.2,87,00,000/- towards the damages excluding interest and costs of the bank guarantee, insurance etc. and also a sum of Rs.66.00 lacs due to the alleged loss towards underutilized tools, plant and machinery out of the total sum of Rs.15,45,13,401/-.

18. It is submitted that insofar as the amount of Rs.11,92,13,401/- towards the alleged work done is concerned, the petitioner has made claim for the additional work based on the oral agreement, which is disputed. He submits that the claims as demanded by the petitioner which are subject matter of the arbitral proceedings, will have to be adjudicated upon by the arbitral tribunal and thus the petitioner has not made out any case for securing such disputed claim made by the petitioner. Learned senior counsel also invited my attention to the averments made in the arbitration petition in support of this submission and submits that the petitioner has not even pleaded as to why the petitioner deserves to be granted the reliefs in the nature of attachment before judgment against the respondent.

19. It is submitted by learned senior counsel for the respondent that even according to the documents produced by the petitioner in the arbitration petition as well as in the affidavits, the respondent was still making profit. He submits that even according to

those documents, the assets of the respondent company are more than the liabilities. He submits that the turn over of the respondent company has increased. Insofar as the submission of learned senior counsel that though the respondent had alleged payment of Rs.53.00 crores to the petitioner, the respondent could not produce any document is concerned, it is submitted by learned senior counsel for the respondent that the respondent has paid a sum of Rs.31,75,00,000/-. The respondent however, has made various adjustments from the amount due and payable by the respondent to the petitioner towards tax deducted at source, adjustments against the material supplied by the respondent to the petitioner, recreational amount etc. After making the aforesaid adjustments, the respondent has paid a sum of Rs.53.00 crores to the petitioner.

20. It is submitted by learned senior counsel for the respondent that merely because few properties are sold by the respondent in the ordinary course of business, it cannot be construed that those properties were sold with an intention to deprive the creditors of their legitimate dues against the respondent.

21. It is submitted by learned senior counsel for the respondent that even if the financial condition of the respondent is strained, that would not be sufficient for passing the order of attachment before judgment of the properties of the respondent by applying the principles of Order XXXVIII Rule 5 of the Code of Civil Procedure. He submits that the properties in respect of which the petitioner seeks attachment are not the properties offered as security to the petitioner to secure the claim of the petitioner. He submits that even the prayer for deposit prayed by the petitioner against the respondent is also in the nature of the order attachment before

judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure.

22. It is submitted that the claim of the petitioner is in any event unsecured claim and cannot be allowed to be converted into secured claim. In support of this submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of **Raman Tech & Process Engg. Co. & Anr. vs. Solanki Traders, (2008) 2 SCC 302** and in particular paragraphs 4 to 6. Reliance is also placed on the judgment of this Court in case of **Saraswat Co-operative Bank Ltd. vs. Chandrakant Maganlal Shah & Ors., AIR 2002 Bombay 203,** and in particular paragraphs 23 and 24.

23. Mr. Shah, learned senior counsel for the petitioner in rejoinder submits that the work awarded to the petitioner was already complete by the petitioner long back and the respondent has admittedly sold all such flats in the building constructed by the petitioner. The respondent thus could not allege that the work of the petitioner was not complete or that the respondent was entitled to retain any amount payable to the petitioner. He submits that since the respondent has failed to produce any proof before this Court that as against the work of Rs.53.00 crores carried out by the petitioner, the respondent has already paid the said sum as alleged in the affidavit in reply, it is clear that the respondent has admitted the quantum of work done by the petitioner. He submits that the respondent is deliberately delaying the arbitral proceedings pending before the arbitral tribunal on one or other ground. In support of this submission, learned senior counsel invited my attention to the minutes of the meeting of the arbitral tribunal.

24. It is submitted that the status of the financial condition of

the respondent highlighted by the petitioner in the petition as well as in the additional affidavits are not disputed by the respondent in their sur-rejoinder dated 23rd February, 2015 or also in its affidavit in reply dated 28th January, 2014. Insofar as the alleged adjustments made by the respondent from the bills of the petitioner alleged across the bar by learned senior counsel for the respondent on behalf of his client is concerned, it is submitted by learned senior counsel for the petitioner that the respondent had never alleged such adjustments alleged to have been made at any point of time to the petitioner nor the same have been demonstrated by the respondent in any of the affidavits by the respondents and the said submission is factually incorrect.

25. A perusal of the correspondence annexed to the petition and the affidavits clearly indicates that the respondent had agreed to withdraw the letter of termination and also had agreed to pay the running account bill within a period of 15 calendar days from the date of submission. The petitioner had furnished various fresh bank guarantees in favour of the respondent. A perusal of the record also indicates that the petitioner has completed the work awarded to the petitioner. A perusal of the correspondent further *prima-facie* indicates that the petitioner had already rectified all snags whatsoever work pointed out by the respondent. The respondent encashed the bank guarantees furnished by the petitioner. Since those bank guarantees were unconditional bank guarantees, when the petitioner applied for injunction against the respondent from encashing those bank guarantees, by an order dated 28th November, 2013, this Court had refused to grant any ad-interim relief in favour of the petitioner. The petitioner was also called by the respondent for deputing a person for helping the respondent for certification of the bills. Though representative of the petitioner attended the office of the respondent,

the respondent did not release any payment.

26. The petitioner has thereafter filed additional affidavit in the present proceedings and has annexed various financial documents and minutes of the meeting of the arbitral tribunal and also notices issued by the respondent to its members, minutes of 65th Annual General Meeting of the respondent and certain newspaper clippings.

27. A perusal of the minutes of the meeting of the arbitral tribunal *prima-facie* indicates that the respondent has been delaying the arbitral proceedings on one or other ground.

28. On perusal of the affidavit in reply filed by the respondent on 28th January, 2014, it appears that it is the case of the respondent that the total assets for the year ending 31st March, 2013 of the respondent were to the tune of Rs.55618.44 million and liabilities to the tune of Rs.41036.51 million.

29. A perusal of the sur-rejoinder filed by the respondent indicates that it is an admitted position that the respondent has already sold all 1161 flats in the project Townsville and those flats have been already handed over to the respective flat purchasers. It is alleged that third party rights have been already created as far back in the year 2011-2012. Insofar as the financial documents and the minutes book etc. produced by the petitioner in the additional affidavit filed by the petitioner is concerned, the respondent has not disputed the existence of those documents but has only alleged that the interpretation of the petitioner in respect of those documents is erroneous and is denied.

30. It is stated in the affidavit that it is well known fact that the construction industry is facing difficult time and the financial difficulty assumed it exists, cannot be the ground for seeking an order in the nature of attachment before judgment. It is alleged that the respondent is involved in the development / construction of various projects with various contractors all over India for which the funds of the respondent company has been diverted. It is stated that the property stated in Andra Pradesh partly belongs to the director, partly belongs to Mr.Rupen Patel, director of the respondent and partly belongs to the respondent company and the same has not been sold. The respondent however, has not denied that various properties are sold by the respondent as pointed out by the petitioner in the additional affidavit.

31. Insofar as Jogeshwari property is concerned, the respondent has not admitted that due to debt liability amounting to Rs.44.78 crores, the respondent company was selling the said property as well as Bandra-Kurla complex property. It is alleged that Dena Bank has a charge on the said Jogeshwari property. The respondent company has entered into a Memorandum of Understanding with the developer, so as to release the said charge from Dena Bank and to reduce its secure creditors. Insofar as the property located at Bandra-Kurla complex is concerned, it is alleged that the development rights of the said property had been acquired by the associated company of the respondent and the same associated company has assigned the development rights of the said property to another developer.

32. A perusal of the additional affidavit filed by the petitioner *prima-facie* indicates that the respondent had deducted income tax at

the rate of 2% under section 194(C) of the Income Tax Act, 1961 being the payment to the contractor. The respondent has thus provided in its account a sum of Rs.1,72,28,704/- payable to the petitioner. The respondent has however, not paid the said amount to the petitioner. The respondent has also failed to clear its statutory dues to the Government to the tune of Rs.22.39 crores due to cash flow, mis-match / liquidated issue. The respondent has admitted this position in the minutes of the Annual General Meeting of the respondent dated 26th September, 2013. The petitioner also relied upon various newspaper clippings.

33. The respondent in the sur-rejoinder has not denied the correctness of such press clippings or other allegations relating to the alleged financial condition of the respondent. The respondent has also not denied the sale of the Jogeshwari property in the sur-rejoinder. A perusal of the record indicates that the earnings per share of the respondent which was at Rs.30.96 per share in the year 2009-2010 is reduced to Rs.2.15 per share in the year 2012-2013. The respondent has admittedly not paid any dividend during the years 2012-2013 and 2013-2014 to its shareholders. According to the petitioner, the respondent is liable to pay the petitioner a sum of Rs.21,22,20,023/- with further interest thereon.

34. A perusal of the sur-rejoinder clearly indicates that the respondent has not denied that there are statutory dues payable by the respondent to the Government. It is however, alleged that the respondent is in process of paying the said statutory dues to the extent the same are payable. The respondent has not denied that the respondent has deducted the tax at source and has reflected the same in its books of account.

35. A Division Bench of this Court in the case of **Nimbus Communications Limited vs. Board of Control For Cricket In India, 2012(5) Bom.C.R. 114**, has after adverting the judgment of the Supreme Court in the case of **Adhunik Steel Limited vs. Orissa Manganese & Minerals (P) Limited, (2007) 7 SCC 125**, has held that exercise of power under Order XXXVIII Rule 5 of the Code of Civil Procedure is conditioned by two requirements, the first being in regard to the conduct of the defendant, that he is about to alienate his property or to remove it from the jurisdiction of the Court and the second, the intention of the defendant to obstruct or delay the execution of a decree that may be passed against him. It is held that the Parliament in the provisions of section 9(ii)(b) contemplated an interim measure of protection to secure the amount in dispute in the arbitration. The object underlying conferment of the power upon the Court is to ensure that the fruits of an arbitral award which may eventually be passed against the defendant to the claim are not lost to the claimant by a dissipation of the property in the meantime. It is held that though the Arbitration & Conciliation Act, 1996 is a special statute, section 9 does not either attach a special condition for the exercise of the power nor does it embody a special form of procedure for the exercise of the power by the Court.

36. The Division Bench of this Court held that the Court deciding a petition under section 9 must have due regard to the underlying purpose of the conferment of the power upon the Court which is to promote the efficacy of arbitration as a form of dispute resolution. It is held that just as on the one hand the exercise of the power under section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code

of Civil Procedure, 1908, rigors of every procedural provision in the Code of Civil Procedure, 1908 cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case. By the said order passed by a Division Bench of this Court, the Division Bench upheld the order passed by the learned single Judge, directing the respondent therein to furnish the security by depositing in this Court the amounts so as to secure the claim of the petitioner therein. This Court in the said judgment observed that the possibility of the respondent facing financial crises in the event of its not succeeding in the dispute with the petitioner cannot be ruled out. A Special Leave Petition against the said judgment is rejected.

37. Insofar as the judgment of the Supreme Court in case of **Raman Tech & Process Engg. Co. & Anr. vs. Solanki Traders** (supra) relied upon by learned senior counsel for the respondent is concerned, while dealing with Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, the Supreme Court has held that the scheme of Order XXXVIII and the use of word “to obstruct or delay the execution of any decree that may be passed against him” in Rule 5 make it clear that before exercising power under the said rule, the Court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. The Court should be satisfied that the plaintiff has *prima-facie* case. It is also held that merely having just and valid claim or *prima-facie* case, will not entitle the plaintiff the order of attachment before judgment unless he also establishes that the defendant is attempting to remove or dispose of his assets with an intention of defeating the decree that may be passed. It is held that the purpose of Order XXXVIII Rule 5 of

the Code of Civil Procedure, 1908 is not to convert the unsecured debt into secured debt. The Supreme Court has held that the plaintiff should show, *prima-facie*, that his claim is bona-fide and valid and also satisfy the Court that the defendant is about to remove or dispose of the property or part of his property with an intention to obstruct or delay the execution or a decree that may be passed against him. The Supreme Court in the said judgment was dealing with the provisions of Order XXXVIII Rule 5 of the Code of Civil Procedure in the proceedings arising out of a suit.

38. A Division Bench of this Court in the case of **Saraswat Co-operative Bank Ltd. vs. Chandrakant Maganlal Shah & Ors.** (supra) has held that the circumstances that can show any financial strains would not be sufficient for passing order for attachment of its property before judgment. On the other hand, the Division Bench of this Court in the case of **Nimbus Communications Limited vs. Board of Control For Cricket In India, 2012(5) Bom. C.R. 114** has dealt with the powers of the Court under section 9 and after adverting to the judgment of the Supreme Court and this Court has held that while exercising power of the Court under section 9 of the Arbitration & Conciliation Act, 1996, the rigors of every procedural provision in the Code of Civil Procedure, 1908 cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of justice. In my view, the respondent has admittedly sold several properties and is heavily indebted to various creditors.

39. Though the respondent had agreed to pay to the petitioner payments due under the running account bills, the respondent has not cleared such bills *prima-facie* for no fault of the petitioner. The respondent is delaying the outcome of the arbitral proceedings. In my

prima-facie view, the petitioner has good chance of succeeding in the arbitral proceedings to the extent the petitioner proposes to make a claim for the work done in respect of which running account bills were submitted by the petitioner and which the respondent had agreed to pay. A perusal of the record *prima-facie* does not indicate that the respondent has disputed the correctness of such bills submitted by the petitioner. In my view, the judgment of the Division Bench of this Court in the case of **Nimbus Communications Limited vs. Board of Control For Cricket In India, 2012(5) Bom.C.R. 114** squarely applies to the facts of this case insofar as the claim in respect of the work done to the tune of Rs.11,92,13,401/- is concerned. Insofar as the claim towards damages and loss due to underutilized tools, plant and machinery which the petitioner proposes to claim in the arbitral proceedings is concerned, the same is disputed by the respondent and such claims will have to be proved by the petitioner.

40. Insofar as the submission of learned senior counsel for the respondent that since the part of the work is alleged to have been done by the petitioner on the basis of the oral contract is concerned, in my *prima-facie* view, the respondent has not disputed the quantum of the work carried out by the petitioner. Even under the contract, entered into between the parties, the petitioner was entitled to recover payment for the work done. In the Deed of Settlement entered into between the parties, the respondent had agreed to pay to the petitioner running account bills within a period of 15 calendar days from the date of submission of the bills. It is not in dispute that the respondent has not refused to accept the work carried out by the petitioner even under an oral agreement, if any.

41. In my *prima-facie* view, considering the facts of this case

and also considering the present financial position of the respondent and in view of obstructing attitude of the respondent in proceeding with the arbitral proceedings without delay and the respondent selling the property one after another with an intention to deprive the petitioner of its legitimate claim, if the petitioner succeeds in the arbitral proceedings, the petitioner would not be able to get the fruits of such arbitral award. I therefore pass the following order :-

a). The respondent is directed to furnish a security in the sum of Rs.11.00 crores in favour of the petitioner by way of deposit of the said amount with the Prothonotary & Senior Master of this Court or to furnish a bank guarantee of like amount of a nationalized bank in the name of the Prothonotary & Senior Master of this Court within four weeks from today so as to secure the claim of the petitioner in the arbitral proceedings which shall be subject to the final outcome of the arbitral proceedings.

b). If the respondent deposits such amount in this Court, the Prothonotary & Senior Master shall invest the said amount in a fixed deposit of a nationalized bank initially for a period of three years and thereafter renew the same after obtaining further directions from this Court. If the respondent furnishes a bank guarantee, the same shall be of a nationalized bank and shall be initially for a period of three years and shall be extended till the arbitral proceedings are over and for a period of four weeks thereafter.

c). Till the respondent complies with the directions issued in the aforesaid paragraphs, the respondent is restrained from creating any third party rights and/or encumbering the Andhra Pradesh property of the respondent referred in paragraph 8 of the affidavit in

sur-rejoinder dated 23rd February, 2015.

d). There shall be no order as to costs.

42. The arbitration petition is disposed of in the aforesaid terms.

(R.D. DHANUKA, J.)