

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

% Reserved on : December 08, 2016
Pronounced on: March 10, 2017

+ FAO(OS)(Comm)102/2016

**SUPREME HOUSING AND HOSPITALITY PVT.LTD.&
ORS. Appellants**

Through: Mr. P.Chadambaran, Senior Advocate, Mr.
Dayan Krishnan, Senior Advocate with
Karan Luthra and Ms. Niyati Kohli,
Advocates.

versus

SRS PRIVATE INVESTMENTS PAWAI LTD.& ANR.

..... Respondents

Through: Mr. Arun Kathpalia, Senior Advocate with
Ms. Himanie Kotoch and Mr. Samaksh
Goel, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT

INDIRA BANERJEE, J

1. This appeal is against a judgment and order dated 03.10.2016, passed by the learned Single Judge allowing the application being OMP(I) (Comm). No. 216 of 2016, filed by the respondent No.1 under Section 9 of the Arbitration and

Conciliation Act 1996, hereinafter referred to as the 1996 Act, and confirming the interim orders dated 27.05.2016 and 08.09.2016 whereby the appellants had inter alia been restrained from encumbering, alienating or creating third party rights in respect of the assets and properties of the respondent No.1 including the Supreme Business Park in Mumbai outside the jurisdiction of this High Court.

2. The appellants and the respondents entered into an Investment Agreement dated 13.02.2002, pursuant to which, the respondent no.1 had subscribed to certain “investor securities” representing 37.36% of the share capital of the appellant No.1, hereinafter referred to as the appellant company.
3. Subsequently the appellants and the respondents agreed that the respondent no.1 would be allowed partial exit from the appellant Company. The appellants and the respondents, therefore, executed a Share Purchase Agreement dated 19.03.2015, pursuant to which, the appellants agreed to purchase securities held by the respondent No.1 for a total

consideration of Rs. 1,620,000,000/- which was payable in three tranches from April, 2015 to September, 2015.

4. Some of the Clauses of the Share Purchase Agreement are set out hereinbelow for convenience:-

“2.2. Prior to and in anticipation of execution of this Agreement, the Investor has, as recorded in the letter agreement dated November 22, 2013, sold to the Promoter, the Transferee as referred to in Clause 15.1, 34,472,094 FCD A at a price of Rs.10 each amounting to Rs.344,720,940 and 2,975,059 FCD C at a price of Rs.69 each amounting to Rs.205,279,060 for an aggregate amount of Rs.55,00,00,000/- (Rupees Fifty Five Crore Only). Further, on May 31, 2014, the Investor has sold to the Promoter, the Transferee as referred to in Clause 15.1, 75,314 Equity Shares at a price of Rs.1195 each amounting to Rs.90,000,230 and 5,00,000 FCD C at a price of Rs.54 each amounting to Rs.270,000,000 for an aggregate amount of Rs.360,000,230.

9.1. In terms of the Investment Agreements, in addition to the other rights of the Investor as contained therein, the Investor has an affirmative vote on certain matters as enumerated in the Investment Agreements, whether such matters are tabled at a meeting of the Board of Directors or general body meeting. In view of the Investor having agreed to sell all its Investor Securities to the Promoter and/or its nominees all the affirmative voting rights of the Investor under the

Investment Agreements shall stand withdrawn and revoked, save and except as provided below, upon the successful Closing of SBP Consideration Amount, and thereafter the Investor shall have limited affirmative voting rights only on matters stipulated hereinafter including those actions that may have any relation to the development of the R Zone (or PTC).

18.1 *This Agreement shall be governed by, and construed in accordance with, the laws of India. Subject to Clauses 18.2 and 18.3, the Parties shall submit all disputes, controversies or differences arising out of in connection with this Agreement to the exclusive jurisdiction of the Courts at Delhi.*

18.4 *The place of arbitration shall be Delhi.”*

5. The appellant allegedly failed to pay consideration in terms of the Share Purchase Agreement, whereupon, the respondent No.1 invoked the Arbitration Clause in the Share Purchase Agreement and filed the application being OMP(I) (Comm) No.216/2016, against the appellants and the respondent No.2 under Section 9 of the 1996 Act, which has given rise to the judgment and order under appeal.

6. On 27.05.2016, the learned Single Judge passed an interim order in the said application restraining the appellants from acting on any of the affirmative voting matters, without the prior approval of the respondent No.1 and also from alienating, encumbering or creating any third party rights in respect of the assets of the appellant Company.
7. On 08.09.2016, the learned Single Bench passed an interim order restraining the appellants from making any further payments to its related parties.
8. The appellants raised an objection to the application of the respondent on the ground that this High Court lacked territorial jurisdiction to entertain and decide the same.
9. By the judgment and order impugned, the learned Single Bench rejected the objection of the appellants to the jurisdiction of this High Court to entertain the application, and granted interim reliefs as prayed for therein.

10. Mr. P. Chidambaram, Senior Advocate appearing on behalf of the petitioner submitted that this Court did not have territorial jurisdiction to entertain the said application, which gave rise to the judgment and order impugned.
11. Mr. Chidambaram rightly argued that an application under Section 9 of the 1996 Act could only be entertained by the Principal Civil Court of Original Jurisdiction and/or the High Court in exercise of its Ordinary Original Civil Jurisdiction, that had jurisdiction to decide the questions forming the subject matter of the arbitration, as if the same had been the subject matter of a suit, in view of the definition of Court in Section 2(1) (c) of the 1996 Act. This proposition is unexceptionable.
12. Mr. Chidambaram argued that the respondent No.1 was claiming rights in immovable property. In support of such submission Mr. Chidambaram referred to some of the pleadings in the petition under Section 9, which are extracted hereinbelow:-

- (i) *"The Petitioner states that the Respondent does not have any means or ability to repay the Petitioner except by sale and/or leveraging of the said Supreme Business Park. The Petitioner states that the said Share Purchase Agreement read with the R-Zone Term Sheet and the Investment Agreement creates a specific right, title and interest of the Petitioner in the said Supreme Business Park, which right, title and interest continues to subsist until the Respondents make the necessary payments as detailed hereinabove. ..." (Paragraph 9)*
- (ii) *"In the light of the aforesaid, the Petitioner is constrained to file the present Section 9 petition, inter alia, to protect the right, title and interest of the Petitioner in the Supreme Business Park pending the outcome of the arbitration proceedings to be initiated between the parties as also to protect the affirmative voting rights of the Petitioner in this regard." (Paragraph 40)*
- (iii) *"... pass an order of injunction restraining the Respondent... ,from alienating, encumbering or creating any third party rights in respect of any assets of the Respondent No.1 including but not limited to the Supreme Business Park and/or avail any new credit facilities from any lender by creating any rights over the Supreme Business Park..." (Paragraph 52b)*

13. Mr. Chidambaram further argued that, in addition to the interest in the immovable property situated in Mumbai, the Respondent No.1 was claiming Affirmative Voting Rights as enshrined under the Investment Agreement dated 13.02.2007.

14. In support of his submission, Mr. Chidambaram drew the attention of the court to the following reliefs claimed by the Respondent No.1, which he submitted, were of relevance:

- i. *"...an order of injunction restraining the Respondent...to pass any board and/or shareholders resolution and/or act upon any matter set out in Clause 12.10. of the Investment Agreement including but not limited to matters referred in Clause 12.10. (r), (v), (.iii) and (xxvi) of the Investment Agreement."*
- ii. *"...an order of injunction restraining the Respondent ...from passing any Board Resolution/Shareholder Resolution at any Board meeting, calling the Board of Directors/Shareholders of the Respondent No.1 without due notice to the Petitioner and without granting the Petitioner an opportunity to exercise its Affirmative Voting Rights."*

15. Mr. Chidambaram argued that in either of the cases forming the "subject matter of the arbitration", the appropriate court for adjudication of the present dispute had to be the courts in Mumbai, in view of the express jurisdiction clause in the Investment Agreement.
16. Mr. Chidambaram further argued that the pleadings of the Respondent No.1, the reliefs sought, a perusal of the Investment Agreement, the Term Sheets and the Share Purchase Agreement ("SPA") reflect that the investments of the Respondent No. 1 were with a view to develop the Supreme Business Park

Property at Powai, Mumbai. The Delhi High Court did not have the jurisdiction to entertain a dispute pertaining to land in Mumbai.

17. In support of his argument, Mr. Chidambaram cited the judgment of the Supreme Court in Sumer Builders Private Limited v. Narendra Gorani reported at (2016) 2 SCC 582 (Paragraph 32) where the Hon'ble Court has been pleased to hold as follows:

"32. The seminal issue is whether on the factual score which has been expositied, the application filed under Section 9 of the 1996 Act before the High Court of Bombay can be regarded as a money claim. On a studied scrutiny of the agreement and the MoU it is clear as day that the development agreement indubitably had created certain interests in the land in favour of the appellant. The assertions made in the application along with the relief clause when react in entirety and appreciated in a holistic manner, it becomes luminescent that the core dispute pertains to possession of the land, for the appellant claims to be in exclusive possession and the respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any order passed under Section 9 of the 1996 Act will have the impact on the land. It is difficult to accede to the submission that it will not conceptually fall within the category of "suit for land" as engrafted under Clause 12 of the Letters Patent... Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the

fundamental claim pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of "suit for land" appearing in Clause 12 of the Letters Patent is unexceptionable. Prayer (a) quoted above seeks restraint by a temporary order or injunction from entering upon the property. It is difficult to accept the submission that it is a money claim and, therefore, the Bombay High Court would also have the territorial jurisdiction and accordingly we unhesitatingly repel the same."

18. Mr. Chidambaram argued that the subject matter of the dispute in this case, is the Supreme Business Park situated at Mumbai as well as the Investor's claims to participate in the development of the Residential Zone, if made available in future. In view of the judgment of the Hon'ble Supreme Court in *Sumer Builders* (Supra), the appropriate court to adjudicate the dispute is the principal Court in Mumbai, having original jurisdiction.

19. Mr. Chidambaram submitted that the cause of action for initiation of arbitral proceedings, therefore, falls within the ambit of the principles enshrined in Section 16(d) of the Civil Procedure Code. Mr. Chidambaram submitted that Section 16(d) of the Civil Procedure Code applied when a suit was

related to interest or right in an immovable property. In such circumstances, a suit could only be filed before a Court having territorial jurisdiction over the subject matter, that is, the immovable property, irrespective of the fact that a part or even the entire cause of action might have arisen outside the jurisdiction of the court where the immovable property was situated. In support of his submission, Mr. Chidambaram cited the judgment of a Division Bench of this Hon'ble Court dated 20.07.2007, in FAO(OS) No.4 of 1998, **Prakash Kaur v. K.G. Ringshia** (Paragraph 10).

20. Mr. Chidambaram submitted that in this case the disputes raised in the pleadings of the Respondent No.1 in the application under Section 9 of the 1996 Act read with the reliefs claimed therein touches upon the right, title and interest in immovable property i.e. the Supreme Business Park situated at Mumbai. Therefore, the principle enunciated in Section 16(d) of the Civil Procedure Code would be applicable to the present arbitration proceedings. In support of his submission, Mr.

Chidambaram cited the judgment of the Federal Court in **Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.** reported in AIR 1950 FC 83 and the judgment of the Supreme Court in **Harshad Chima Lal Modi v. DLF Universal Limited and another** reported at (2005) 7SCC 791 (Paragraphs 15,16, 20, 21 and 26).

21. Mr. Chidambaram also cited the Judgment of the Calcutta High Court in **New Age Realty Pvt. Ltd Vs. Karthikeya Ancillaries Pvt. Ltd. and another** reported in AIR 2011 Calcutta 229 (Paragraph 7,8,12,21,22 and 25) where it was held that the High Court at Calcutta could not entertain a Section 11 application as the land forming subject matter of the Development Agreement was situated at Coimbatore.
22. Mr. Chidambaram argued that the judgment of this Court in **Sumer Builders** (Supra) encapsulates an exception to the principle stated in the case of **Bharat Aluminum Company and others v. Kaiser Aluminum Technical Services Inc. and others** reported in 2012(9) SCC 552. Since the order

passed by the Court under Section 9 has an impact on the land situated in Mumbai, the appropriate Courts for institution of this Section 9 application would be the Courts in Mumbai.

23. Mr. Chidambaram submitted that even applying the principles enunciated in the judgment of the Hon'ble Supreme Court in *Bharat Aluminium* (Supra), the subject matter of the Section 9 application is the Investment Agreement dated 13.09.2007 as the Respondent No.1 is claiming Affirmative Voting Rights enshrined under Clause 12.10 of the Investment Agreement.
24. Mr. Chidambaram submitted that since the rights claimed and the reliefs claimed by the Respondent No.1 in the application under Section 9 of the 1996 Act, pertain to the Investment Agreement, the Mumbai Courts alone would have the jurisdiction to entertain the dispute, since Clause 18.1 of the Investment Agreement, pertaining to dispute resolution provides:-

“All arbitration proceedings shall be conducted in the English language and the place of arbitration shall be in Mumbai. ...”

25. Mr. Chidambaram also drew our attention to Clause 27 of the Investment Agreement which provides:-

"This Agreement is governed by and shall be construed in accordance with Indian law. The courts in Mumbai shall have jurisdiction" (Page 217)

26. Mr. Chidambaram argued that the entire cause of action relating to the present transaction had arisen at Mumbai since;
- a. The Investment Agreement dated 13.02.2007 had been executed in Mumbai;
 - b. The registered office of the Appellant No.1 was in Mumbai and the business of the Appellants related to the development of an IT Business Park in Mumbai;
 - c. The Appellant Nos. 2 and 3 and the Respondent No.2 are at Mumbai;

- d. The entire investment under the Investment Agreement was advanced to the Appellant No.1 at Mumbai and all investor funds were paid in Mumbai;
- e. All the other agreements including the Term Sheet dated 15.1.2011 (Clause 6); Term Sheet dated 19.07.2013 (Clauses 12 and 13); R Zone Term Sheet (Clause 13) and the Draft of the Share Purchase Agreement contain a jurisdiction clause in terms whereof only Courts in Mumbai might exercise jurisdiction and arbitration was to be held in Mumbai.

Mr. Chidambaram also argued that:

- (i) Clause 5 of the Investment Agreement dated 13.02.2007 shows that the entire Investments were to be made for development of the land in terms of the Development Agreement and that the Investors would be required to subscribe to the Securities in accordance with the funding set out in the Development Agreement for development of the FSI and the Future FSI.

- (ii) Term Sheet dated 15.01.2007 pertains to the additional Development Potential of the Property and the apportionment of the FSI. The Plan annexed to the Term Sheet also reflects the Proposed Residential-Zone Development Areas.
- (iv) Term Sheet dated 19.07.2013 sets out tentative understanding between the Appellants and the Respondent No.1 in relation to the development of the Residential Zone summarizes revised terms.
- (v) While the Share Purchase Agreement is being canvassed as an Agreement only for sale of Securities by the Investors the same provides for the Investors participation in relation to the Residential FSI and other connected matters; Clauses 3.2.1, 5 and 6).

In support of his submission that the Respondent No.1 was, in fact, seeking to invoke the Investment Agreement, Mr. Chidambaram drew the attention of this Court to Clause 10.5.2 of the Share Purchase Agreement and submitted

that the parties intended to modify the Affirmative Voting Rights, as provided under Clause 12.10 of the Investment Agreement and only the limited Affirmative Voting Rights as contained in Clause 9 of the Share Purchase Agreement continued to subsist. In any case, the relief as claimed by the Respondent No.1 in the application under Section 9 of the 1996 Act is in respect of the Affirmative Voting Rights under clause 12.10 of the Investment Agreement. The submission of the Respondent No.1 that it is only seeking to invoke the Share Purchase Agreement is therefore not correct.

27. Mr. Chidambaram finally submitted that consequences of default, if any on the part of the Appellants and the remedies available to the Respondent No.1 have been specifically provided under Clause 10.2 of the Share Purchase Agreement. The application under Section 9 of the 1996 Act having been filed, without resorting to specific remedies

provided under the agreement, the application was liable to be rejected.

28. Mr. Kathpalia appearing on behalf of the respondents submitted that the contention of the appellants, that this High Court lacked territorial jurisdiction to decide the dispute was contrary to the clear provisions of the Share Purchase Agreement.

29. Mr. Kathpalia referred to Clause 18.1 of the Share Purchase Agreement, which inter alia provides:-

“The parties shall submit all disputes, controversies or differences arising out of and in connection with this agreement to the exclusive jurisdiction of the Courts at Delhi.”

30. Relying on the aforesaid provisions, Mr. Kathpalia submitted that it was patently clear that Courts in Delhi had exclusive jurisdiction under the Share Purchase Agreement. Mr. Kathpalia argued that the Share Purchase Agreement had been executed in Delhi. In terms of the said agreement, and in particular Clause 18.4 thereof, the parties had agreed that the place of arbitration would be Delhi. The non-judicial Stamp

Papers for the agreement were purchased in Delhi. The appellant No.3 was a resident of Delhi. It was thus not correct to contend that this Court lacked jurisdiction.

31. Mr. Kathpalia further argued that the subject matter of the Share Purchase Agreement pertained to the sale of securities held by the respondent No.1 to the appellants. Clause 2.2 of the Share Purchase Agreement provides for the Schedule of payments required to be made by the appellants to the respondent No.1. Mr. Kathpalia argued that the Share Purchase Agreement did not relate to immovable property. It rather related to the sale and purchase of securities.
32. Mr. Kathpalia referred to Clause 2.2 of the Share Purchase Agreement, set out hereinbelow for convenience.

2.2 The Parties have further agreed that the Investor will sell, and the Promoters will purchase, certain additional Investor Securities, in the following manner:

<i>Particulars</i>	<i>Date of Purchase</i>	<i>Consideration Amount</i>
3.	<i>On or prior to April 30, 2015 (“SBP</i>	<i>850,000,000</i>

	<i>Consideration Date 1”)</i>	
4.	<i>On or prior to September 30, 2015</i>	770,000,000
	<i>Total Amount Payable as on September 30, 2015</i>	1,620,000,000(<i>“SBP Consideration Amount”</i>)”

33. Mr. Kathpalia also argued that in the application under Section 9 of the 1996 Acct, the respondent No.1 sought to secure the share purchase consideration amount along with interest thereon. There was no prayer for possession or title. All reliefs sought were to ensure that the assets of the Company were not decapitated to defeat the claims of the appellants.
34. Mr. Kathpalia next argued that the appellants were trying to mislead this Court by emphasising on Clause 27 of the Investment Agreement dated 13.02.2007. Mr. Kathpalia argued that the claim of the appellants that the respondents had invoked rights under the Investment Agreement was misconceived and contrary to Clause 9.1 of the Share Purchase

Agreement, the relevant portion whereof is set out hereinbelow:-

9.1. ... In view of the Investor having agreed to sell all its Investor Securities to the Promoter and/or its nominees, all the affirmative voting rights of the Investor under the Investment Agreements shall stand withdrawn and revoked, save and except as provide below, upon the successful Closing of SBP Consideration Amount, and thereafter the Investor shall have limited affirmative voting rights only on the matters stipulated hereinafter including those actions that may have any relation to the development of the R Zone (or PTC)."

Further, Clause 16.8 clearly provides as follows:

"16.8 Entire Agreement: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein, i.e. the sale and purchase of the Investor Securities, and the exit of the Investor from the Company on terms contemplated herein. ... Provided however that the provisions of the Investment Agreements and/or the Development Agreements and/or the R Zone Term Sheets which are not contrary to the provisions of this Agreement, shall subsist and remain binding upon the Parties; until payment of SBP Consideration Amount; and (b) of the obligations, covenants, representations and warranties of each of the Promoters, the Owner and the Company under the Investment Agreements; the R Zone Term Sheets

*and the Development Agreements respectively,
shall continue to bind each of them.”*

35. Mr. Kathpalia argued that the Investment Agreement cannot be relied upon to confer jurisdiction on the Court of Mumbai, when it was clear from Clause 16.8 of the subsequent Share Purchase Agreement that only terms, which were not contrary to the provisions of the Share Purchase Agreement, would subsist and remain binding upon the parties.
36. Mr. Kathpalia argued that a simple reading of the Share Purchase Agreement clearly demonstrates that the jurisdiction Clause in the Share Purchase Agreement overwrites all conflicting clauses in other agreements.
37. Mr. Kathpalia submitted that the argument of the appellants that the respondent No.1 was trying to enforce its rights in the land at Supreme Business Park located in Bombay was without merit. The application under Section 9 of the 1996 Act, sought to secure amounts due to the respondent No.1 under the Share Purchase Agreement.

38. Mr. Kathpalia submitted that the prayers for orders restraining the respondents from alienating, encumbering or creating any third party rights over any of the assets, including Supreme Business Park was for the purpose of ensuring that the respondent No.1's rights under the Share Purchase Agreement did not stand defeated.
39. By the order impugned, the learned Single Bench rejected the arguments of the appellants that this High Court lacked territorial jurisdiction to entertain the application under Section 9 of the 1996 Act.
40. The learned Single Bench, in effect and substance, accepted, and, in our view, rightly, the submission of the respondent, being the applicants under Section 9 of the 1996 Act, that the application had been filed for securing the dues of the respondent towards consideration for shares transferred by the respondent No.1 in terms of the Share Purchase Agreement.

41. Dealing with the objection of the appellants to the territorial jurisdiction of the Delhi High Court, to entertain the application under Section 9 of the 1996 Act, the learned Single Bench referred to Clause 18 of the Share Purchase Agreement and in particular Clause 18.1, which provided that the parties would submit all disputes with regard to the Share Purchase Agreement, to the exclusive jurisdiction of Courts in Delhi.
42. As argued by Mr.Kathpalia the Investment Agreement has been superseded by the Share Purchase Agreement. However some rights such as affirmative voting rights as provided in the Investment Agreement are to continue till such time as consideration as paid in terms of the Share Purchase Agreement.
43. Some of the terms of the Investment Agreement have been made part of the terms of the Share Purchase Agreement. Exercise of affirmative voting rights until such time as consideration for the shares is paid in full has been made a condition of the Share Purchase Agreement, executed in Delhi

and conferring exclusive jurisdiction on Courts in Delhi to adjudicate disputes arising out of the said agreement.

44. It is well settled that when two or more Courts have territorial jurisdiction to adjudicate a dispute, the parties may mutually agree to submit their disputes to the jurisdiction of one or more Courts to the exclusion of others. However, parties cannot by consent confer jurisdiction on a Court, which inherently lacks jurisdiction.
45. The question before this Court is, whether the proposed arbitration proceedings are in pith and substance proceedings in the nature of a money suit for realization of the consideration due and payable to the respondent no.1 by the appellants for transfer of the securities held by it in the appellant company, in terms of the Share Purchase Agreement or whether the proceedings were in the nature of a suit for land situate in Mumbai. If the proceedings were in the nature of a suit for land, only Courts within whose jurisdiction, the land is situate would have jurisdiction to entertain the proceedings. The

Courts in Delhi would then lack jurisdiction and the jurisdiction clause in the Share Purchase Agreement would be unenforceable.

46. In *Adcon Electronics Pvt. Ltd. Vs. Daulat* reported in (2001) 7 SCC 698, the Supreme Court held:

“15. From the above discussion it follows that a ‘suit for land’ is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a ‘suit for land’ or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a ‘suit for land’. We are in respectful agreement with the view expressed by Mahajan, J. in *Moolji Jaitha case*.”

47. In *M/s Moolji Jaitha & Co. Vs. The Khandesh Spinning and Weaving Mills* reported in AIR 1950, Federal Court 53,

Mahajan J observed:-

“...If an attempt is made to find a comprehensive definition of the phrase, it will eventually be discovered that it has created further complications. I therefore content myself by saying that where the nature of the suit is such that in substance it involves a controversy about

land or immovable property and the court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land or immovable property; but where incidentally in a suit, the main purpose of which or the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the term, then such a suit cannot fall within the four corners of this expression.”

48. Some of the pleadings in the petition filed by the respondent no.1, to which reference has been made, make it clear that the proceedings are essentially for recovery of the consideration payable to the respondent no.1 for securities transferred by the respondent no.1 in terms of the Share Purchase Agreement.
49. The reliefs claimed in respect of Supreme Business Park in Mumbai are incidental to the main relief of recovery of consideration for transfer of securities in terms of the Share Purchase Agreement. In the absence of any interim order, any money award made and published by the Arbitral Tribunal would remain a paper award impossible to execute.

50. As observed by Majahan, J in Moolji Jaitha (supra):-

“...In my opinion, if the suit is for specific performance and a decree for possession of the land sold is claimed, such a suit would certainly be a suit for land; but if the suit is simpliciter for specific performance, i.e., for the enforcement of the contract of sale and for execution of a conveyance, in that event there can be no good ground for holding that such a suit is a suit for determination of title to land or that the decree in it would operate on the land.”

51. The law which emerges from the judgments referred to above is that when the primary object of the suit is different, some relief in respect of land would not bring the suit within the four corners of the expression suit for land. In this case the primary object of the Section 9 application is to secure consideration payable to the respondent under the Share Purchase Agreement for transfer of shares and to enforce certain rights conferred on the respondent by the Share Purchase Agreement, which continues the application of certain provisions of the Investment Agreement till full payment of the consideration for sale of shares.

52. The suit is essentially for enforcement of the Share Purchase Agreement, under which the parties have agreed to submit to the jurisdiction of Courts in Delhi. It cannot also be said that no part of the cause of action arose in Delhi within the Original Side jurisdiction of the Court, since the agreement was executed in Delhi within the jurisdiction of this High Court.
53. The judgments of the Supreme Court in Sumer Builders Pvt. Ltd. Vs. Narendra Gorani reported in (2016) 2 SCC 582 and the judgment of Calcutta High Court in ***Debendra Nath Chowdhury Vs. Southern Bank Ltd.*** reported in 1960 SCC Cal 109 are distinguishable on facts since disputes arose out of a development agreement requiring adjudication of disputes regarding proportional allocation, of immovable property, possession title, in relation to immovable property extent and quality of construction on land.
54. The learned Single Bench also noticed, and very rightly, that the seat of arbitration was in Delhi. In Bharat Aluminium Company and Ors. (supra) the Supreme Court held: -

“We are of the opinion, the term "subject matter of the arbitration" cannot be confused with "subject matter of the suit". The term "subject matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, O.M.P.(I) 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be

performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located."

55. As observed by the learned Single Bench, the aforesaid judgment has been followed by a Division Bench of this Court in *Ion Exchange (India) Ltd. Vs. Panasonic Electric Works Co. Ltd.* Reported in 208 (2014) DLT 597 (DB). Relying on the aforesaid judgments, the learned Single Bench rightly found that the objection of the appellants to the maintainability of the Section 9 application, in this High Court, bereft of any merit.
56. The rights of the respondent under the Investment Agreement stood altered and modified by the Share Purchase Agreement. The right of the respondent under the Investment Agreement is to stand revoked and withdrawn upon closing of the consideration amount under the Share Purchase Agreement.

57. It is not disputed that consideration under the Share Purchase Agreement has not been paid to the respondent. The respondent is, therefore, entitled to exercise its rights under the investment agreement, until the consideration payable to the respondent under the Share Purchase Agreement.
58. The respondent has a legitimate right to be paid the consideration. This observation is a prima facie observation which will not affect the result of arbitration.
59. For the reasons discussed above, the appeal is dismissed.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

March 10, 2017/ n