BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders reserved on : 02.08.2024

Orders pronounced on : **08.08.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P.(PD)(MD).Nos.1830 to 1833 of 2024
and
C.M.P.(MD).Nos.10294, 10296, 10299 and 10301 of 2024

1. AGCO INTERNATIONAL GMBH
Victor-von-Bruns-Strasse 17,
CH 8212 Neuhausen,
Switzerland,
Represented by its Authorised Signatory

2. AGCO CORPORATION
4205, River Green Parkway,
Duluth, 30096, USA
Represented by its Authorized Signatory .. Petitioners
(in all the cases)

Versus

1. TRACTORS ND FARM EQUIPMENT LIMITED
77, Nungambakkam High Road,
Chennai - 600 034
represented by its Company Secretry &
Authorized Signatory, Mr.C.P.Sounderarajan

2. TAFE INTERNATIONAL LLC
SANAYI VE TICARET LIMITED SIRKETI
MOSB 4, Kisim
Ahmet Nazif Zorlu Bulvari No.24,
45030 - MANISA/TURKIYE
Represented by its Authorised Signatory, .. Respondents
(in all the cases)

Prayer in C.R.P.(PD(MD).No.1830 of 2024 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside/quash the impugned common order passed in I.A.No.2 of 2024 in C.O.S.No.2 of 2024 on the file of the Court of Principal District Judge, Dindigul, stay all further proceedings in C.O.S.No.2 of 2024 and refer the parties to the ongoing ICC Arbitration.

Prayer in C.R.P.(PD(MD).No.1831 of 2024 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside/quash the impugned common order passed in I.A.No.3 of 2024 in C.O.S.No.2 of 2024 on the file of the Court of Principal District Judge, Dindigul, stay all further proceedings in C.O.S.No.2 of 2024 and refer the parties to the ongoing ICC Arbitration.

Prayer in C.R.P.(PD(MD).No.1832 of 2024 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside/quash the impugned common order passed in I.A.No.4 of 2024 in C.O.S.No.2 of 2024 on the file of the Court of Principal District Judge, Dindigul, stay all further proceedings in C.O.S.No.2 of 2024 and refer the parties to the ongoing ICC Arbitration.

Prayer in C.R.P.(PD(MD).No.1833 of 2024 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside/quash the impugned common order passed in I.A.No.5 of 2024 in C.O.S.No.2 of 2024 on the file of the Court of Principal District Judge, Dindigul, stay all further proceedings in C.O.S.No.2 of 2024 and refer the parties to the ongoing ICC Arbitration.

In C.R.P.(PD)(MD).Nos.1830 and 1831 of 2024:-

For Petitioners : Mr.Darius Khambata,
Senior Counsel,
for M/s.Shreya Gupta

For Respondents : Dr.Abishek Manu Singhvi,
Senior Counsel &
Mr.Krishna Srinivasan,
Senior Counsel &
for M/s.S.Ramasubramaniam and
Associates

In C.R.P.(PD)(MD).Nos.1832 and 1833 of 2024:-

For Petitioners: Mr.R.Parthasarathy,
Senior Counsel,
for Mr.Allwin Godwinakhila

For Respondents: Dr.Abishek Manu Singhvi,
Senior Counsel &
Mr.Krishna Srinivasan,
Senior Counsel
for M/s.S.Ramasubramaniam and
Associates

COMMON ORDER

These Civil Revision Petitions arise out of the common order, dated 28.06.2024 passed by the learned Principal District Judge, Dindigul made in I.A.Nos.2, 3, 4 and 5 of 2024 in C.O.S.No.2 of 2024. By the said order, while posting the Interlocutory Applications for filing detailed counter by the respondents therein, an ad interim order of *status quo ante* the termination letter by the respondents, dated 26.04.2024, is granted. Aggrieved by the same, the present Civil Revision Petitions are filed.

2. For convenience, the parties are referred to as per their array in the suit.

3. It can be seen that Tractors and Farm Equipment Limited (hereinafter referred to also as '*TAFE*') incorporated under the Companies Act is the first plaintiff. The second plaintiff is TAFE International LLC (hereinafter referred to also as '*TAFE Turkey*') an entity owned, controlled and established by the first plaintiff in Turkey that carries its operations in Turkey. The suit is filed by the plaintiffs against one AGCO International

GMBH, which is a Company registered in Switzerland and AGCO Corporation, which is a Company incorporated in the United States of America.

4. The case of the plaintiffs is that the first plaintiff is a leading manufacturer of tractors. The second defendant is in the business of marketing, and selling tractors and as such, has a long-term relationship with the plaintiffs for over 50 years. In the course of their business relationship, in order to sell tractors, spare parts etc., in Turkey, the first plaintiff and the defendants entered into an agreement. The second plaintiff was incorporated and a facility was set up at Manisa, Turkey. The first plaintiff's state-of-the-art manufacturing facility exports several models of tractors and farm equipment in completely knocked down or partly knocked down conditions and is exported to the second plaintiff's unit in Turkey, from where the parties are selling the same in the said jurisdiction.

5. It is the further case of the plaintiff that in order to stabilise the relationship, the first plaintiff had invested INR 3452 crores in the second defendant Company and the shareholding of the first plaintiff's parties

reached around 10% in the second defendant. As between 2014-2024, the shareholding of the first plaintiff in the second defendant had risen to 16.3% and since the first plaintiff had become the single largest shareholder, the same had made the second defendant uncomfortable. Therefore, to force the plaintiff to a Standstill agreement and to reduce its stake in the second defendant, without any justification whatsoever, the defendants issued a letter, dated 26.04.2024 unilaterally terminating the agreement between the parties concerning Turkey. The same would cause a huge loss to the plaintiffs.

6. It is further averred in the plaint that even in the first plaintiff Company, one of the Group Companies of the first defendant namely, *AGCO* Holdings BV Netherlands holds 20.7%, and Simpson and Company Limited, a subsidiary of Amalgamations Private Limited and certain individuals and the group Companies hold the balance of 79.3%. When the plaintiff has been discharging its obligation and the business has been running smoothly especially when the plaintiffs have set up a huge and exclusive facility to cater to the needs in Turkey by making huge

investments and employing 100's of persons when Turkey agreement was entered into in the year 2015 and after the expiry of the initial five year period, without any fresh written agreement, the parties had extended the contract by mutual consent and the plaintiffs continued the uninterrupted supply of MF Brand Tractors to the defendants on the basis of the explicit conduct and understanding between the parties and the defendants also continued to place orders and providing yearly forecasts for commercial planning and business operations, including assembly line, trading, shipping and other related activities, only to force the plaintiffs to come for certain agreements, otherwise the plaintiffs are not obliged to, the impugned letter, dated 26.04.2024 issued by the defendants. The very many details of the transactions between the parties are given in the plaint running up to 68 pages and 122 paragraphs. With the said detailed averments, the suit is filed for the following reliefs:-

> *"(I) A Decree of Declaration in favour of the Plaintiffs declaring that the rights of the parties in the contract arising out of the Letter Agreement for Turkey dated October 26, 2015 are subsisting, continuing and enforceable.*
>
> *(II) A Decree of Declaration in favour of the Plaintiffs that the Defendant No1's Letter dated April 26, 2024 arising out*

of the Letter Agreement for Turkey dated October 26, 2015 is illegal, mala fide, unjust and invalid and inoperative.

(III) A Decree of Permanent injunction restraining the Defendants, its servants, agents, partners, subsidiaries or assigns in business, its dealers, stockists, distributors from in any manner interfering with the Plaintiffs' right to carry on its business under the Letter Agreement for Turkey dated October 26, 2015,

(IV) A Decree of Permanent Injunction prohibiting and restraining the Defendants, their agents and representatives, from taking any action(s) relating to the alleged termination of the Letter Agreement for Turkey dated October 26, 2015 including circulating, issuing, disseminating any information, to their dealers / distributors / channel partners and any consequence flowing therefrom.

(V) A Decree for Mandatory Injunction commanding and directing the Defendants to continue to abide by the long-standing agreements entered into between the Plaintiffs and the Defendants to procure tractors, spare parts and other farm equipment exclusively from the Plaintiffs including their obligations under the Letter Agreement dated October 26, 2015;

(VI) Cost of the suit be awarded in favour of the Plaintiffs; and

(VII) Any other further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

7. In the above suit, again detailed averments are made by way of a common affidavit and I.A.No.2 of 2024 is made with a prayer to stay the operation and effect of the letter, dated 26.04.2024 purporting the unilaterally declaring the Turkey agreement, dated 26.10.2015 (extended further from time to time) as terminated pending disposal of the suit. I.A.No.3 of 2024 is filed for an ad interim injunction prohibiting and restraining the respondents therein, its servants, agents, partners, subsidiaries or assigns in business from taking any action relating to the alleged termination of the Letter Agreement for Turkey, dated 26.10.2015 including circulating, issuing, disseminating any information, to their dealers/distributors/channel partners and any consequence flowing therefrom pending disposal of the suit. I.A.No.4 of 2024 is filed for an ad interim injunction restraining the respondents therein, its servants, agents, partners, subsidiaries or assigns in business, its dealers, stockists, and distributors from breaching the commitment made to the applicants in April 2024 to source not less than 4,400 tractors for the year 2024 as well as sourcing tractors in future during the operation of the year 2015 Turkey agreement forming the subject matter of the suit. I.A.No.5 of 2024 is filed

again for an ad interim injunction restraining the respondents therein, its servants, agents, partners, subsidiaries or assigns in business, its dealers, stockists, distributors from supplying on its own and/or procuring tractors, its components, spare parts and any other farm equipment from any other manufacturer/supplier/competitors more particularly MF heritage (including MF 2600 series) tractors in 35-85 HP range, which has to be exclusively procured from the applicants as per the agreement, dated 26.10.2015 (extended from time to time) pending disposal of the suit.

8. When the suit was filed on 15.05.2024, it was returned by the Court with an endorsement for the plaintiffs to explain how the suit is entertainable in view of the fact that the notice of termination is issued for Letter of Agreement for Turkey, dated 26.10.2015, in which, it is mentioned that the terms and conditions agreement, dated 29.10.2009 is to be followed, whereunder, in clause No.14, there is an arbitration clause. The plaintiffs complied with the return by making detailed endorsements by relying upon a definition of Arbitration Agreement under Section 7, more specifically, with reference to Section 7(5) of the Arbitration and Conciliation Act, 1996

(hereinafter referred to as 'the *Act*') and it is submitted that the requirements as per Section 7(5) are not satisfied. Further reliance was made on the judgment of the Hon'ble Supreme Court of India in ***M.R. Engineers and Contractors Private Limited Vs. Som Datt Builders Limited***[1] by pointing out the seven tests. By further relying upon the judgment of the Hon'ble Supreme Court of India in ***NBCC (India) Limited Vs. Zillion Infraprojects Pvt. Ltd.,***[2] it was contended on behalf of the plaintiffs that neither the 2009 terms and conditions agreement nor the arbitration clause contained therein in clause-14.2 is applicable or relevant to the 2015 Turkey agreement and the suit was represented.

9. On such representation subject to the question of maintainability, the suit was ordered to be taken on file and initial notice was ordered to the defendants. Upon receipt of the notice, while reserving their right to file a detailed counter, an interim reply was filed by the defendants. In the reply, it was, *interalia*, pleaded that the terms and conditions agreement were entered into between the plaintiffs and the defendants on 29.10.2009. Clause 2 of the said agreement complements the separate territorial

1 (2009) 7 SCC 696
2 2024 SCC Online SC 323

agreement. Even though there is no separate dispute resolution clause in the Territorial Letter Agreement concerning Turkey, given the dispute resolution Clause-14 contained in the terms and conditions agreement, dated 29.10.2009, the disputes have to be resolved through arbitration under the aegis of the International Chambers of Commerce. It is further averred that the respondents have already commenced arbitration proceedings in London against the applicants before the International Court of Arbitration of the International Chambers of Commerce for the said disputes. It is further pleaded that on 26.04.2024, a request for arbitration was made by the first defendant. On 13.05.2024, the Secretary of the International Chambers of Commerce notified the plaintiffs herein of ICC arbitration and provided them with a copy of the first defendant's request for arbitration. It is only thereafter on 15.05.2024, the present suit was filed before the Commercial Court. On 31.05.2024, the Commercial Court issued notice returnable by 23.07.2024. In the meanwhile, on 11.06.2024, the Solicitors of the plaintiffs in London and India issued an e-mail to the Secretary of the International Chambers of Commerce informing them that they represent the plaintiffs in ICC arbitration. They also have given the applicant's nominee Arbitrator and sought time till 12.07.2024 to file their response to the notice of arbitration. On 12.06.2024, an advance hearing application was filed which was not considered by the Trial Court and again on 20.06.2024, the second advance hearing application was filed. In paragraph No.10, it is specifically pleaded that the Commercial Court ought to refer the parties' dispute to ICC arbitration. It is further pleaded in the interim reply that the status *quo* is in the form of an injunction and the same cannot be granted as it would amount to ordering specific performance of the contract which is otherwise determinable in nature.

10. The defendants prayed further time to file a detailed counter. Based on the advance hearing application, the hearing was advanced and the Trial Court took up the matter for enquiry and however, passed an ad interim order even while adjourning the matter further to 11.07.2024. The operative portion of the order of the Trial Court in the paragraph No.10 is extracted hereunder:-

> *"10. The respondents side strongly opposed to grant any interim relief. Anyhow, considering the above facts of the case, circumstances elicited before this Court by way of documents and the objections raised by the respondents with regard to the*

> *jurisdiction itself, this Court is of the view that reasonable time to be granted to the respondents to file a detailed counter as prayed by them and till then the statusquo has to be maintained by the parties before the issuance of termination letter by the respondents i.e. as on 25.4.2024. After the filing of detailed counter by the respondents with documents and after hearing the both sides in respect of the same, the reliefs sought in these interlocutory petitions will be decided.*
>
> *Hence, detailed counter of R1 and R2 by 11.7.2024 and till then Statusquo is ordered to be maintained by the parties as on 25.4.2024."*

Aggrieved by the same, the present Civil Revision Petitions are filed.

11. Heard *Mr Darvis Khambatta* and *Mr R.Parthasarathy*, learned Senior Counsels for the petitioners/defendants and *Dr Abishek Manu Singhvi* and *Mr Krishna Srinivasan*, learned Senior Counsels for the respondents/plaintiffs.

12. *Mr Darvis Khambatta*, learned Senior Counsel for the petitioners/defendants would first take this Court through the terms and conditions agreement, dated 29.10.2009. Placing reliance on Clause 2 of the said agreement, he would submit that the agreement complements the

separate Territorial Letter Agreement signed by *TAFE* and *AGCO*. If only there is any conflict between the provisions of the Umbrella agreement and the individual agreements, the individual agreements will prevail. As far as the umbrella agreement is concerned, it specifically provides arbitration in case of disputes. There is nothing contrary in the separate agreement concerning Turkey. Therefore, the respondents/plaintiffs cannot maintain the suit. He would further submit that when the suit itself is without jurisdiction and when such a plea has been specifically raised in the interim counter, the Trial Court ought not to have granted an interim order. It is incumbent on the Trial Court to first decide on the question of referring the parties to arbitration. The Trial Court ought to have decided the same at the outset because it goes to the very root of the maintainability of the suit and the jurisdiction of the Court itself. Therefore, he would submit that this is a case for interference under Article 227 of the Constitution of India as the Trial Court has exceeded its jurisdiction. He would further submit that the interim order, actually granted by the Trial Court, is not just status *quo ante*, but, is a mandatory direction that would amount to ordering specific performance of the contract. When the contract itself is determinable in nature, such an interim relief can never be granted.

13. He would further submit that as opposed to Section 8 of the *Act* which would apply in the case of domestic arbitration, in the case of an international arbitration, Section 45 of the *Act* requires only a request to be made by the parties and upon the request being made, the Court concerned has to mandatorily refer the parties to arbitration. He would submit that even though there are different entities under *TAFE* as well as *AGCO*, all are subsidiaries and group companies and by the mutual intent of the parties, considering the relationship between them and considering the commonality of the subject matter and composite nature of the transactions and performance of the contract, it can be seen that the parties can be subject to arbitration as per the Group of Companies doctrine and therefore, he would plead that this Court should set aside the interim order of status *quo* granted by the Trial Court and direct the Trial Court to first decide the question of referring the parties to arbitration. He would also contend that this is not a case of termination of the contract at all. When the original contract, for five years, expired in the year 2019 and it was extendable for another period of five years, the petitioners/defendants did not terminate the

contract at all and the letter impugned in the suit is only informing them that they are not willing for any further renewal of the contract alone. Therefore, he would submit that the entire suit filed by the respondents/plaintiffs itself is a misrepresentation as if the petitioners/defendants have terminated the contract.

14. Complimenting the arguments of *Mr Darvis Khambatta*, learned Senior Counsel, *Mr R.Parthasarathy*, learned Senior Counsel also for the petitioners/defendants, would make a prayer that this Court, in the present Civil Revision Petitions itself, should refer the parties to arbitration. Further, by placing reliance on Section 14 of the *Specific Relief Act*, the learned Senior Counsel would submit that the interim order granted by the Trial Court is an *ex facie* incorrect in law and as such, this makes out a case for interference by this Court under Article 227 of the Constitution of India.

15. On the side of the petitioners/defendants, the judgment of the Hon'ble Supreme Court in ***Asma Lateef and Anr. Vs. Shabbir Ahmad and Ors.***[3] Are relied upon for the proposition that an enquiry concerning the

3 (2024) 4 SCC 696

questions as to the jurisdiction of the Court has to be determined at the commencement and not at the conclusion of the enquiry. Specific reference is made to paragraph No.49 of the said judgment. The judgment of the Hon'ble Supreme Court in ***World Sport Group (Mauritius) Limited Vs. MSM Satellite (Singapore) PTE. Limited***[4] is relied upon for the proposition that any Civil Court in India, which entertains suit, has to follow the mandate of Sections 44 and 45 of the *Act* and a pleading in the counter-affidavit with reference to commencement of arbitration itself would amount to a request to refer the parties to arbitration. Specific reference is made to paragraph Nos.24 and 25 of the said judgment.

16. Reliance is made to the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in ***Cox and Kings Limited Vs. SAP India Private Limited and Anr.***[5], more specifically, to paragraphs Nos.116, 117 and 127 to contend that in the instant case, *prima facie*, the parties are to be referred to arbitration based on the Group of Companies doctrine and even the respondents/plaintiffs want to contend that if any subject is outside the scope of arbitration, then, the same has to be contended only before the

4 (2014) 11 SCC 639
5 (2024) 4 SCC 1

Arbitrators on the basis of the competence-competence principle and it is not for the referring Court to go into in detail about the said disputes. The judgment of the Hon'ble Supreme Court of India in ***Shakti Bhog Foods Limited Vs. Kola Shipping Limited***[6] is also relied upon for the proposition that the Trial Court is duty-bound to stay all further proceedings in the suit and refer the parties to arbitration because of the mandate under Section 45 of the *Act*. Specific reliance is made on paragraph No.16 of the said judgment.

16. Per *contra*, *Dr Abishek Manu Singhvi*, learned Senior Counsel for the respondents/plaintiffs, would submit that this Court should first consider the background of litigation. The litigation arises out of a long-term relationship of around 50 years between the parties. Both the respondents/plaintiffs and the petitioners/defendants hold shares in each other and the cross-holding of shares is the underlying interest that has driven the parties to the present litigation. By taking this Court through the list of dates starting from 31.10.1960, it is specifically represented by him that *AGCO* Holdings BV Netherlands holds 20.7% in the first

6 (2009) 2 SCC 134

respondent/plaintiff. There is also a trademark user agreement between *AGCO* and *TAFE* concerning various trademarks as of 17.03.1978. A document was entered into between the parties in December 2006 as Safeguards for Effective Alliance between *TAFE* and *AGCO Corporation*. A Letter of Agreement is entered into between the *AGCO Corporation* and *TAFE* on 03.08.2007 with reference to the event that a competitor of *TAFE* acquires a minimum 15% stake or control in *AGCO* or becomes the single largest holder of shareholder in *AGCO* or if *AGCO* merges with competitor, then, the shareholders of *TAFE* shall have the right to purchase *AGCO*'s entire shareholding in *TAFE* and *TAFE* shall also have the right to purchase the Massey Ferguson marks in India, Nepal and Bhutan and *AGCO* would also to grant free-of-charge three-year license to *TAFE* to use the said marks and at *TAFE*'s option to extend all the distribution agreements between the parties. He would submit that the *TAFE* entered the Turkey market in the year 2006 by establishing a partial knocked-down line and sold over 2400 tractors by 2008. It developed 42 dealers in Turkey.

17. While so, on 25.06.2009, the Letter Agreement for Turkey was entered into between the first respondent/plaintiff and the first and second

petitioners/defendants for supply of MF Heritage Tractors in 45 to 85 HP range exclusive to *AGCO*. The nature of the arrangement which is made in Clause-3 is exclusive in nature. Clause-11(a) of the agreement makes the contract terminable only after the first three years with a two-year notice. The agreement was conditional upon *TAFE* establishing a fully operational assembly facility in Turkey within 18 months from the date of the agreement. Pursuant thereto, in the year 2010, *TAFE* established events in Manisa, Turkey by investing about USD 20 million.

18. On 29.10.2009, the Terms and Conditions Agreement was also executed between *TAFE* and *AGCO Corporation* for Heritage Tractors and in Clause-2.2 of the said agreement, it is specifically mentioned that in the event of any conflict between any provisions of the agreement, the territorial agreement would supersede the terms and conditions agreement. Clause-14 of the said terms and conditions agreement only contains arbitration through ICC by a three Arbitrator panel and the place of arbitration is mentioned as London. Between the years 2012 and 2013, owing to the long-standing relationship, *AGCO* also encouraged *TAFE* to acquire cross-shareholdings and at present, *TAFE* and its only Subsidiaries jointly hold around 16.7% in

the common stock of *AGCO Corporation* making them as single largest shareholders of *AGCO Corporation*. On 29.08.2014, an original Standstill Agreement, known as Letter Agreement, was also extended with reference to the shares.

19. He would submit that it is the specific case of the respondents/plaintiffs that it signed the original Standstill agreement in the year 2014 and extended it from time to time in consideration of the reasonable continuation and extension of the commercial agreement. On 26.10.2015, the Letter Agreement for Turkey was entered into between the first petitioner/defendant and the first respondent/plaintiff for the supply of MF Heritage Tractors from 35 to 85 HP range exclusively to the first petitioner/defendant or any of its subsidiaries for resale in Turkey solely through the *AGCO* distribution network. He would specifically point out Clause-3(a) concerning the exclusive arrangement and clause-10(a), whereby, the agreement was made valid for five years unless terminated by either party giving one year prior written notice of termination. By placing specific reliance on the agreement, *Dr Singhvi*, learned Senior Counsel would submit there is no reference in this agreement to the terms and

conditions agreement of 2009 which contains the arbitration clause.

20. He would specifically contend that with reference to certain other jurisdictions, the arbitration clause was specifically included. In the year 2019, an amended and restated letter agreement was entered into between the parties, by which, the original Standstill agreement was extended for a further period of five years. As of 15.04.2024, the said amended and restated letter agreement was extended by a further period of one year until April 2025. Upon signing the said agreement on 15.04.2024, on 25.04.2024, the second petitioner/defendant scheduled a board meeting and even the amended Standstill agreement was taken on record by the board of the second petitioner/defendant. The agenda did not include any discussion with reference to the *TAFE* and *AGCO Corporation* partnership or termination of the commercial agreement. Soon after the conclusion of the board meeting, in April 2024 itself, the management of the second petitioner/defendant proposed two draft notes to *TAFE* titling AGCO Announces Strategic Supplier Changes for public release which turned the agreement of *TAFE* and compelled the *TAFE* to end the contemplated

termination of various agreements between *TAFE* and *AGCO* group. Only in these circumstances, the impugned notice of termination is issued on 26.04.2024.

21. Further making submissions in respect of the hearings of the suit, *Dr Singhvi*, learned Senior Counsel would specifically point out that on 27.06.2024, detailed arguments were heard in I.A.Nos.2 to 5 of 2024 concerning the interim reliefs after filing of the counter-affidavit by the respondents/plaintiffs on 24.06.2024 and the order impugned in the Civil Revision Petitions was passed on 28.06.2024. Further, when the matter was posted for hearing on 11.07.2024, in view of the strike by the local lawyers, memos were filed seeking an extension of the status *quo* order and on 23.07.2024, the petitioners/defendants appeared in the main suit and the matter now stands posted to 08.08.2024 for conduct of further enquiry in the Interlocutory Applications. He would submit that the order, which is passed, is only ad interim in nature. Therefore, he would submit that this Court need not interfere or interject at this stage. The Civil Revision Petitions under Article 227 of the Constitution of India itself are not maintainable.

22. Concerning the arguments on the merits of the interim orders, pointing out to the e-mails and correspondence between the parties from the year 2003 until 22.04.2024, it can be seen that the contract between the parties is subsisting and is being extended not by any express agreement, but, by the express conduct of the parties. While so, when it takes 305 days to receive and process the order regarding the tractors and manufacturing their parts, when everything is underway, even while placing orders as recently just before the impugned letter of termination, suddenly, when the contract is terminated, unless the interim order of status *quo* which was prevailing as on the date of termination, the respondents/plaintiffs would be put to huge prejudice and hardship. In any event, whether the contract is determinable in nature or whether such a relief can be granted is writ large before the Trial Court. Therefore, this Court need not interject. He would further submit that the parties have already extended the 2015 Turkey agreement beyond the alleged date of expiry i.e., with reference to 30.06.2024. The extension was based on the annual produce forecast share between the parties.

23. Even the e-mail exchanges between the parties, just a few days before the impugned letter of termination would prove that the parties have extended the contract beyond 30.06.2024 by their conduct. He would submit that the Turkey agreement cannot be terminated unilaterally and can be terminated only by mutual consent. Therefore, when the termination of the agreement will have a severe and cascading effect on the very relationship between *TAFE* and *AGCO*, the balance of convenience is in favour of passing interim orders and the Trial Court has only passed an interim order. Though the impugned notice states that *AGCO* is not interested in extending the contract, it is a colourable notice which virtually terminates and exits the contract otherwise than by proper notice that too when the contract cannot be terminated at all.

24. Coming to the question as to the arbitration, he would submit that the 2015 Turkey Agreement neither contains an arbitration clause not it does make any reference to the terms and conditions agreement. Therefore, there is no question of incorporation by reference or otherwise of the arbitration clause into the 2015 Turkey Agreement. Even otherwise, what is

mentioned to be referred for arbitration under Clause-4.2 is with reference to the disputes that arise concerning the validity meaning of the said agreement or any rights and liabilities that arise under the said agreement. Therefore, when the letter is issued specifically with reference to the Turkey Agreement, the arbitration clause does not cover the same within its scope. The suit itself is taken on file after considering the relevant judgments of the Hon'ble Supreme Court of India and the same will be considered in the presence of petitioners/defendants once again when the matter is taken up for enquiry on 08.08.2024. As a matter of fact, the respondents/plaintiffs are also contesting the jurisdiction of the Arbitral Tribunal by filing a reply, dated 12.07.2024. They would also contest the maintainability, or otherwise, of the Civil Suit is as per Section 9 of the Code of Civil Procedure and when the dispute is civil in nature, *prima facie*, the Civil Suit is maintainable.

25. *Mr Krishna Srinivasan*, learned Senior Counsel also appearing for the respondents/plaintiffs, would first take this Court through the original return endorsement made by the Trial Court on 17.05.2024 and the endorsements made on behalf of the respondents/plaintiffs on 29.05.2024.

He would submit that only after considering the matter in detail, the suit itself was numbered. He would further submit that a unit was set up within the jurisdiction of the learned Principal District Judge, Dindigul pursuant to the Turkey Agreement which is an exclusive facility for making huge investments. Therefore, the Trial Court had jurisdiction to entertain the suit. When the ad interim orders are passed and the matters are being contested before the Trial Court, the Civil Revision Petitions, under Article 227 of the Constitution of India, are not maintainable. He would submit that the respondents are yet to file their detailed counter-affidavit as well as the written statement before the Trial Court. In spite of the time granted by the Trial Court, only an interim reply alone is filed. He would also submit that the Turkey Agreement does not contain any arbitration clause. The learned Senior Counsel would place strong reliance on Section 8 of the Commercial Courts Act which places an embargo to file revision as against the interim orders of the Commercial Court.

26. On behalf of the respondents/plaintiffs, the judgment of the Hon'ble Supreme Court in ***M.R. Engineers and Contractors Private Limited's*** case (cited *supra*) is relied upon for the proposition that when

there is a main contract and supplementary contract unless the arbitration clause is referred to or incorporated in the supplementary contract and unless and otherwise it is shown that there is an intention to incorporate arbitration clause in the supplementary contract, such arbitration clause cannot be read as part of the contract between the parties. When the terms and conditions of the contract are another document that is sought to be incorporated by reference, Court has to still see whether the reference to the document is with the intention of incorporating the contents of the document in entirety. Specific reference is made to paragraphs Nos.14 to 22 of the said judgment.

27. The law laid down in the above judgment in ***M.R. Engineers and Contractors Private Limited's*** case (cited *supra*) is restated with reference to wherever the parties have two contracts by the later judgment of the Hon'ble Supreme Court of India in ***NBCC (India) Limited's*** case (cited *supra*). The Hon'ble Supreme Court of India held that if the case is one of reference, but, not of incorporation, then, the general reference would not have the effect of incorporating the arbitration clause. Specific reliance is made to paragraphs Nos.15, 21 to 23 of the said judgment. The judgment of

the Hon'ble Supreme Court of India in ***Shah Babulal Khimji Vs. Jayaben D.Kania and Anr.***[7],is relied upon for the proposition that the Trial Court should be trusted to pass discretionary and interlocutory orders and such orders passed by exercise of discretion, should not be interfered with by higher forum nor the jurisdiction be exercised by higher forum when the Trial Court is seized of the matter. Specific reliance is made on paragraph No.119 of the said judgment.

28. The judgment of the Hon'ble Supreme Court of India in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational Society and Ors.***[8], is relied upon for the proposition that the bar for this Court to exercise jurisdiction under Article 227 of the Constitution of India is almost near total if the parties have an alternate remedy under the Code of Civil Procedure and even with reference to the other cases, the power should be used sparingly and if there is an alternate remedy to the parties, the same should not be exercised. Specific reliance is made to paragraphs Nos.11 to 13 of the said judgment, where under, a reference is also made to the earlier judgment of the Hon'ble Supreme Court

7 (1981) 4 SCC 8
8 (2019) 9 SCC 538

of India in ***A.Venkatasubbiah Naidu Vs. S.Chellappan***[9].

29. I have considered the rival submissions made on either side and perused the material records of the case.

30. Upon consideration thereof, the following three questions arise for consideration in the instant case:-

(i) Whether this Court should exercise the powers under Article 227 of the Constitution of India by entertaining the Civil Revision Petitions as against an ad interim order when the matter is posted for further enquiry on 08.08.2024.

(ii) Whether the interim order of status *quo ante* granted by the Trial Court is illegal and unsustainable.

(iii) Whether the parties should be referred for arbitration.

31. Since the answers to the above questions are intrinsically connected, I proceed to answer them together. Firstly, with reference to the submissions made on behalf of the defendants that the Court lacks

9 (2000) 7 SCC 695

jurisdiction, especially, with reference to the arguments made by *Mr Darvis Khambatta*, learned Senior Counsel, I am not in agreement with the same. The dispute is civil in nature. As per Section 9 of the Code of Civil Procedure, the Civil Court has jurisdiction. It is trite that the suit will always be maintainable and arbitration is an alternative. Useful reference, in this regard, can be made to the judgment of the Hon'ble Supreme Court of India in ***M.D. Frozen Foods Exports Pvt. Ltd -Vs- Hero Fincorp Limited***[10] more specifically paragraphs 30 and 31.

32. So long as the parties fail to file an application under Section 8 of the *Act*, in case of a domestic arbitration and fail to make a request under Section 45 of the *Act* in case of an international arbitration, the proceedings shall continue and therefore, I do not find any inherent lack of jurisdiction in the Commercial Court entertaining the suit as such.

33. As far as the question relating to the entertaining of the Civil Revision Petition as against an ad interim order is concerned, it is true that alternative remedy available to the parties under the Code of Civil

10 *(2017) 16 SCC 741*

Procedure itself to move the very Court which granted the ad interim order to vacate the order, normally, this Court would not entertain the Civil Revision Petition arising of out an ad-interim order. There is no quarrel over the proposition that the power of this Court under Article 227 of the Constitution of India, in such cases, has to be exercised sparingly only if it finds that even continuation of the proceedings before the Trial Court would amount to injustice or no further time can be lost in terminating such proceedings. Useful reference, in this regard, can be made to the judgment of the Hon'ble Supreme Court of India in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai's*** case (cited *supra*).

34. However, in the instant case, before the Trial Court as well as before this Court, a request is made by the defendants that the parties should be referred to arbitration. It can be seen that the Court is mandated to refer the parties to arbitration if there is an arbitration clause which is based on the mandate of the Arbitration and Conciliation Act and on the primordial principle of enforcing party autonomy which is part of public policy. Therefore, whenever a question is raised/request is made to refer the parties

to the arbitration, the said request cannot be put on the back burner to be decided at a later stage. The policy of the law in India is for the Civil Courts to refer as and when it is pleaded and it is found that there is an arbitration agreement and not to cling on to the suit in one pretext or the other. When a request is made in the course of the proceedings to refer the parties to the arbitration, the Trial Court or the higher fora that are considering the dispute between the parties are expected to consider the issue as to whether the parties are to be referred to arbitration or not immediately without relegating the issue. Therefore, even before considering the question as to the correctness of the impugned order and interference of this Court with reference to the ad interim order under Article 227 of the Constitution of India, I am inclined to consider whether the parties should be referred to arbitration or not. A careful consideration of the jurisdiction vested in this Court under Article 227 of the Constitution would certainly mandate such consideration at the first instance.

35. The scope of enquiry for a Court under Section 8 or 11 was specifically dealt with by the Hon'ble Supreme Court of India in ***Vidya***

Drolia Vs. Durga Trading Corporation[11]. More specifically with reference to Section 45 of the *Act*, the Constitution Bench had considered the issue in ***Cox and Kings Limited's*** case (cited *supra*). The question was specifically framed as to the standards of determination at the referral stage and it is essential to reproduce paragraph Nos.164 to 166 which reads as hereunder:-

> *"164***.** *In* ***Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549]*** *, N.V. Ramana, J. (as the learned Chief Justice then was) held that the amendment to Section 8 rectified the shortcomings pointed out in* ***Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689]*** *with respect to domestic arbitration. He further observed that the issue of determination of parties to an arbitration agreement is a complicated exercise, and should best be left to the* ***Arbitral Tribunals : (Vidya Drolia*** *case* ***[Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549]*** *, SCC p. 161, para 239)*
>
> > *"239. ... Jurisdictional issues concerning whether certain parties are bound by a particular arbitration, under group-company doctrine or good faith, etc. in a multi-party arbitration raises complicated factual questions, which are best left for the tribunal to handle. The amendment to Section 8 on this front also indicates the legislative intention to further reduce the judicial*

11 *(2021) 2 SCC 1*

interference at the stage of reference."

165. In ***Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd. [Pravin Electricals (P) Ltd. v. Galaxy Infra & Engg. (P) Ltd., (2021) 5 SCC 671 : (2021) 3 SCC (Civ) 307]*** *, a Bench of three Judges of this Court was called upon to decide an appeal arising out of a petition filed under Section 11(6) of the Arbitration Act for appointment of sole arbitrator. The issue before the Court was the determination of existence of an arbitration agreement on the basis of the documentary evidence produced by the parties. This Court prima facie opined that there was no conclusive evidence to infer the existence of a valid arbitration agreement between the parties. Therefore, the issue of existence of a valid arbitration agreement was referred to be decided by the Arbitral Tribunal after conducting a detailed examination of documentary evidence and cross-examination of witnesses.*

166. The above position of law leads us to the inevitable conclusion that at the referral stage, the Court only has to determine the prima facie existence of an arbitration agreement. If the referral court cannot decide the issue, it should leave it to be decided by the Arbitral Tribunal. The referral court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction. In ***Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]*** *, this Court observed that there are distinct advantages to leaving the final determination on matters* *pertaining to the validity of an arbitration agreement to the Tribunal : (**Shin-Etsu Chemical Co.** case [**Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234**] , SCC p. 267, para 74)*

> *"74. ... Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not valid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration.""*

Therefore, this Court should only attempt to find out *prima facie* if there is an arbitration agreement and the issues as to the arbitrability of all the disputes, whether the disputes are severable in nature and even detailed contentions regarding the arbitration clauses should be left to the Arbitral Tribunal by following the competence-competence principle. Therefore, I proceed to consider whether *prima facie* their exists an arbitration agreement to refer the parties to arbitration.

36. In this regard, it can be seen that originally, on 29.10.2009, *TAFE* and *AGCO* entered into the terms and conditions agreement. The applicability of the agreement is contained in Clause 2 which is extracted hereunder:-

> ***"2. APPLICABILITY***
>
> *2.1 This Agreement shall be applicable only to the purchase by AGCO of the Products from TAFE.*
>
> *2.2 This Agreement complements separate territorial letter agreements signed by TAFE and AGCO. If for any reason, there is a conflict between any of the provision of this Agreement and the territorial letter Agreements in force / or such territorial agreements that may be entered in to between the Parties, the provision of the territorial Agreement shall prevail."*

37. Clause 3 of the said agreement deals with the purchase procedure and price. Clause 4 relates to the conditions of sale. Clause 5 relates to the specification and standards of quality. Clause 6 relates to the lists and literature, supplying a copy of the Operator's Instruction Manual, Catalogues etc. Clause 7 deals with pricing, payment terms, quality, supply of spare parts and warranty of spare parts, the provisions relating to reject

materials, customer service standards ordering packaging, imaging, labelling, new product introduction and design change etc. Clause 8 relates to the trademarks and imaging of *AGCO*. Clause 9 relates to the mutual warranties of *TAFE* and *AGCO*. Clause 10 deals with intellectual property rights between the parties. Clause 11 relates to the terms and termination of the agreement. Clause 12 is the force majeure clause. Clause 13 prohibits the assignment of contracts to third parties. Clause 14 deals with the applicable law and arbitration which is extracted hereunder:-

> ***"14.APPLICABLE LAW AND ARBITRATION***
>
> *14.1 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales.*
>
> *14.2 Any and every dispute or difference between the Parties concerning the validity meaning or effect of this Agreement or the rights or liabilities of the Parties hereunder shall be settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules.*
>
> *14.3 The place of arbitration shall be London and the language of the arbitration proceedings shall be English.*
>
> *14.4 The arbitration award shall be final and binding on the Parties and shall deal with the question of the costs of the arbitration and all matters relating thereto.*
>
> *14.5 Nothing contained in the foregoing provisions of*

this clause 14 shall prevent either Party from applying to any appropriate Court for an injunction or other like remedy to restrain the other party from committing any breach or anticipated breach of this Agreement and for consequential relief."

38. Clause 15 contains miscellaneous proceedings. Therefore, on cursory glance at the said agreement, it is clear that it relates to the sale of products of *TAFE* to *AGCO* and it contemplates separate territorial agreement with reference to each country and it states that the terms and conditions agreement would be complementing the separate agreements and in case of any conflict between the terms and conditions agreement and the specific agreement, the specific agreements will override. Thus, it can be seen that the terms and conditions agreement, dated 29.10.2009 is in the nature of an umbrella agreement. It contemplates entering into individual agreements in respect of the separate jurisdictions containing specific clauses. Therefore, Umbrella Agreement provides for arbitration clause and the same would complement the individual agreement. If only anything contrary is mentioned in the individual agreement with reference to dispute resolution, then, the arbitration clause would not apply.

39. A perusal of the Letter Agreement for Turkey, dated 26.10.2015, it can be seen that nothing contrary to Clause 14 of the terms and conditions contract is found. The letter agreement is also with reference to the supply of *TAFE* and *AGCO* regarding the same subject matter. Therefore, *prima facie*, at a glance, this Court finds that there is an arbitration agreement in writing between the parties. The contention on behalf of the plaintiffs is that this is a case of two contracts unless and otherwise the Letter Agreement for Turkey specifically refers to and incorporates the arbitration clause also, the Court cannot presume the existence of the arbitration clause. In this regard, it can be seen that as far as the judgment in ***M.R. Engineers and Contractors Private Limited's*** case (cited *supra*) is concerned, while the main contract between the P.W.D and the supplier contained the arbitration clause, by placing reliance upon the printed forms of invoices with the sub-contractor, it was pleaded that there was also arbitration agreement which was rejected by the Hon'ble Supreme Court of India and it was relevant to extract paragraph No.22 which is as hereunder:-

> *"22. A general reference to another contract will not be sufficient to incorporate the arbitration clause from the referred*

contract into the contract under consideration. There should be a special reference indicating a mutual intention to incorporate the arbitration clause from another document into the contract. The exception to the requirement of special reference is where the referred document is not another contract, but a standard form of terms and conditions of trade associations or regulatory institutions which publish or circulate such standard terms and conditions for the benefit of the members or others who want to adopt the same."

40. The matter has been considered in detail in ***NBCC(India) Limited*** *(cited supra)* and it has been held that it should be considered with the matter is of a single contract or two contract basis and whenever it is of two contracts, then the mere reference is not enough and incorporation would be necessary. Relevant paragraphs 15, 22 and 23 are extracted hereunder:

"15. No doubt that this Court in the case of Inox Wind Limited v.Thermocables Limited[4] has distinguished the law laid down in the case of M.R. Engineers and Contractors Private Limited (supra). In the said case (i.e.Inox Wind Limited), this Court has held that though general reference to an earlier contract is not sufficient for incorporation of an arbitration clause in the later contract, a general reference to a standard form would be enough for incorporation of the arbitration clause. Though this Court in the case of Inox Wind Limited (supra) agrees with the

judgment in the case of M.R. Engineers and Contractors Private Limited(supra), it holds that general reference to a standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause. In the said case (i.e. Inox Wind Limited), this Court found that the purchase order was issued by the appellant therein in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The respondent therein by his letter had confirmed its acceptance. This Court found that the case before it was a case of a single-contract and not two-contract case and, therefore, held that the arbitration clause as mentioned in the terms and conditions would be applicable.

22. As already discussed herein above, when there is a reference in the second contract to the terms and conditions of the first contract, the arbitration clause would not ipso facto be applicable to the second contract unless there is a specific mention/reference thereto.

23. We are of the considered view that the present case is not a case of 'incorporation' but a case of 'reference'. As such, a general reference would not have the effect of incorporating the arbitration clause. In any case, Clause 7.0 of the L.O.I., which is also a part of the agreement, makes it amply clear that the redressal of the dispute between the NBCC and the respondent has to be only through civil courts having jurisdiction of Delhi alone."

41. Further, in the said case, it was found that in the later contract, contains specific reference to the redressal of the disputes, especially by

filing Civil Suits having Delhi alone. Therefore, on a careful reading of the said judgment, I am of the view that the parties intended to refer the disputes arising out of the Letter of Agreement for Turkey also by way of arbitration as per Clause 14 contained in the original terms and conditions of the contract. The above findings are made *prima facie* to refer the parties to the arbitration and this Court refrains from considering the same in greater detail. There are also further factors such as the subject matter of the issue with reference to the cross holdings of the parties and if so, the same would also be referable, the meaning of the arbitration clause-14.2 i.e., when it relates to the rights and liabilities of the “parties hereunder" whether the rights and liabilities arising outside the scope of the contract are also referable. Further, whether the very many details/issues between the parties would come within the scope of reference under Section 14(2) are all should be not commented upon by this Court in view of the pronouncement of the Constitution Bench of the Hon'ble Supreme Court of India in ***Cox and Kings Limited's*** case (cited *supra*). It is for the Arbitral Tribunal to decide upon the same.

42. In this case, it can be seen that after issuing the notice impugned in the suit, strangely, the defendants themselves have invoked arbitration to declare that the notice of expiration is valid and that the Turkey Letter Agreement was expired on 30.06.2024. Of course, the consequential reliefs are also prayed. The respondents herein have also filed their detailed response objecting that the subject matter will not come with the purview of the Arbitral Tribunal and also risen objections as to the severebility/ clubbing of the claims. Therefore, these questions have to be normally decided by the Arbitral Tribunal.

43. Yet another issue with reference to the parties also arises. It is not the case of the plaintiffs that the second plaintiff is totally a third party. In the plaint itself, it is pleaded that it is the subsidiary of the plaintiffs and therefore, would come within the meaning of the Group of Companies doctrine. Then, with reference to the defendants also, it is not pleaded that they are different entities and they would also come within the meaning of Group of Companies doctrine. The question as to the imposition of the arbitration agreement on such parties was specifically considered by the

Constitution Bench of the Hon'ble Supreme Court of India paragraphs Nos. 121 and 122 read as follows:-

"121. In case of a composite transaction involving multiple agreements, it would be incumbent for the Courts and tribunals to assess whether the agreements are consequential or in the nature of a follow-up to the principal agreement. This Court in ***Canara Bank [MTNL v. Canara Bank, (2020) 12 SCC 767****] observed that a composite transaction refers to a situation where the transaction is interlinked in nature or where the performance of the principal agreement may not be feasible without the aid, execution, and performance of the supplementary or ancillary agreements.*

122. The general position of law is that parties will be referred to arbitration under the principal agreement if there is a situation where there are disputes and differences "in connection with" the main agreement and also disputes "connected with" the subject-matter of the principal agreement. [Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651] In Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689], this Court clarified that the principle of "composite performance" would have to be gathered from the conjoint reading of the principal and supplementary agreements on the one hand, and the explicit intention of the parties and attendant circumstances on the other. The common participation in the commercial project by the signatory and non-signatory parties for the purposes of *achieving a common purpose could be an indicator of the fact that all the parties intended the non-signatory party to be bound by the arbitration agreement. Thus, the application of the Group of Companies doctrine in case of composite transactions ensures accountability of all parties who have materially participated in the negotiation and performance of the transaction and by doing so have evinced a mutual intent to be bound by the agreement to arbitrate."*

Therefore, *prima facie*, I am of the view that there are no third parties involved in the present case and from the threshold standard required by this Court, I am of the considered view that the parties have to be referred for arbitration.

44. Given the aforesaid answer, once this Court is inclined to refer the parties to arbitration, it would not be appropriate to comment on the validity of the ad interim order and no further adjudication is also necessary as to whether this Civil Revision Petitions, as against the ad interim order, are entertainable or not. The plaintiffs have to now pray for interim orders before appropriate forum and it is for the said forum to consider about the same. However, it is stated on behalf of the plaintiffs that a huge facility is established and is being run and is dedicated exclusively to the supply

concerning Turkey. Even on behalf of the defendants, by placing reliance on Clause 11.5 of the Terms and Conditions contract, it is represented that as orders have been placed, the units are run and the supply is in process, there will not be any imminent change in the status *quo* at least for three months as the orders placed have to be completed and that everything will not come into standstill immediately. Therefore, there is enough breathing time for the plaintiffs to approach the appropriate forum for getting interim relief(s) if any.

45. Before proceeding to the operative portion of the order, this Court also notices that there is a long-standing commercial relationship between the parties. Even though it can be said that to part ways is a matter of commercial prudence, still, in this case, in view of the cross holdings between the parties, the umbilical chord is not cut. In this case, the defendants themselves, after issuing the letter, approached the Arbitral Tribunal with the prayer to declare the validity of their own letter, which is a novelty. It is pleaded on behalf of the plaintiffs that there are concerns of the parties with reference to the cross holdings as to the apprehensions of both sides concerning the cross holdings. Therefore, in my considered view,

a long standing relationship is at stake and there are large underlying interests between the parties. Therefore, the present case is also a fit case for mediation.

46. Both parties have a lot of stakes. An interest-based bargaining with the able guidance and assistance of a Mediator would very much help the parties in discussing all the issues both referable and not referred etc., and they can do so not only about the jurisdiction of Turkey but in respect of other jurisdictions also. The same can lead to unique options which may be suitable to both parties since the parties can indulge in collaborative exercise and attempt to resolve the matter with an open mind. Given the nature of dispute between the parties, the same would certainly save the time, money and energy of the parties and the earlier resolution will result in the parties to quickly refocus on their business. While referring the parties to the arbitration, this Court can thus also refer the parties to mediation. The parties have already invoked arbitration and the same is going to continue. In the meanwhile, they can also make a genuine attempt to

mediate the dispute and if there is any agreement, it can be recorded before the appropriate forum. Considering the *lis* between the parties, I deem it fit to request the services of Hon'ble Mr Justice V. Ramasubramanian, Retired Judge, Supreme Court of India, to be the Mediator in the present case and I refer the parties to mediation. The Hon'ble Mediator is entitled to fix his remuneration in consultation with the parties. The parties shall appear for mediation on any other convenient date as may be fixed by the Mediator at the earliest.

47. In view thereof, these Civil Revision Petitions are disposed of on the following terms:-

(i) The parties in C.O.S.No.2 of 2024 are referred to arbitration as per clause-14.2 of the Terms and Conditions Agreement, dated 29.10.2009 before the International Chambers of Commerce, before whom the parties already are and the suit stands disposed of accordingly;

(ii) The submissions made on behalf of the learned Counsel for the petitioners/defendants that there will not be any imminent change of status *quo* and the orders which are already made will be processed and received and the supplies will not be immediately stalled atleast for a period of three months, is recorded;

(iii) The respondents/plaintiffs will be entitled to approach appropriate forum for such interim reliefs in accordance with law;

(iv) The findings regarding the arbitration clause, its validity, arbitrability of the issues etc., are *prima facie* made for the purpose of exercise of power under Section 45 of the *Act* to refer the parties for arbitration and it will be open for the respondents/plaintiffs to raise the said issues before the Arbitral Tribunal in accordance with law;

(v) The parties are also referred to mediation and Hon'ble Mr.Justice V. Ramasubramanian is kindly requested and appointed as Mediator and the parties concerned namely *TAFE* and its subsidiaries and *AGCO* and its subsidiaries/Group of Companies are referred to the mediator for the conduct of mediation concerning all the issues between them and the Mediated Settlement Agreement if any can be recorded before the appropriate forum;

(vi) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.08.2024
(½)

Neutral Citation : yes/no
grs

D.BHARATHA CHAKRAVARTHY, J.

grs

C.R.P.(PD)(MD).Nos.1830 to 1834 of 2024
and C.M.P.(MD).Nos.10294, 10296, 10299 and 10301 of 2024

08.08.2024

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and
C.M.P.(MD).Nos.10294, 10296, 10299 and 10301 of 2024

D.BHARATHA CHAKRAVARTHY, J.

After the pronouncement of the Judgment and after going through the same, Mr.Krishna Srinivasan, the learned Senior Counsel would mention the matter before the Court stating that he has to express certain things about the order. He would also fairly submit that he would make the said submissions in the presence of the other side and requested that the matter be listed on 16.08.2024 under the caption 'for being mentioned'. He also undertakes to inform this mentioning to the other side.

2.List the matter under the caption 'for being mentioned' on **16.08.2024.**

08.08.2024
(2/2)

sji

D.BHARATHA CHAKRAVARTHY,J.

sji

CRP(PD)(MD)Nos.1830 to 1833 of 2024
and
C.M.P.(MD).Nos.10294, 10296, 10299 and 10301 of 2024

08.08.2024