



2026-DHC-71



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

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+ O.M.P.(I) (COMM.) 464/2025, I.A. 27581/2025, I.A. 30059/2025

**JLT ENERGY 9 SAS**

THROUGH ITS AUTHORISED REPRESENTATIVE

HAVING ITS REGISTERED OFFICE AT:

26 RUE ANNET SEGERON 86580 BIARD, FRANCE

.....Petitioner

*(Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. V.P. Singh, Mr. Asif Ahmed, Ms. Meherunissa Anand, Ms. Shailja Rawal, Mr. Suneel Kumar, and Ms. Khushi Mittal, Advocates, instructed by AZB & Partners)*

Versus

1. **HINDUSTAN CLEAN ENERGY LIMITED**  
THROUGH ITS AUTHORIZED REPRESENTATIVE  
239, OKHLA INDUSTRIAL ESTATE,  
PHASE - III, NEW DELHI - 110020
  
2. **PERIDOT POWER VENTURES PRIVATE LIMITED**  
THROUGH ITS AUTHORIZED REPRESENTATIVE  
239, OKHLA INDUSTRIAL ESTATE,  
PHASE - III, NEW DELHI - 110020
  
3. **SOLITAIRE BTN SOLAR PRIVATE LIMITED**  
THROUGH ITS AUTHORIZED REPRESENTATIVE  
239, OKHLA INDUSTRIAL ESTATE,  
PHASE - III, NEW DELHI - 110020
  
4. **SUNMARK ENERGY PROJECTS LIMITED**



2026:DHC:71



THROUGH ITS AUTHORIZED REPRESENTATIVE  
239, OKHLA INDUSTRIAL ESTATE,  
PHASE - III, NEW DELHI - 110020

....Respondents

*(Through: Mr. Jayant K. Mehta, Sr. Advocate with Mr. Hemant Sahai, Mr. Tushar Srivastava, Ms. Pragya Ohri, Ms. Kamyा Sharma, Mr. Harshit Dhamija, Mr. Atul S. Mathur, Prabal Mehrotra, Mr. Shubhankar, and Mr. Pallav Arora instructed by Khaitan & Co.)*

+ O.M.P.(I) (COMM.) 489/2025 & I.A. 29582/2025

1. **HINDUSTAN CLEANENERGY LIMITED**  
THROUGH ITS AUTHORIZED REPRESENTATIVE  
239, OKHLA INDUSTRIAL ESTATE,  
PHASE - III, NEW DELHI - 110020

2. **PERIDOT POWER VENTURES PRIVATE LIMITED**  
THROUGH ITS AUTHORIZED REPRESENTATIVE  
239, OKHLA INDUSTRIAL ESTATE,  
PHASE - III, NEW DELHI - 110020

3. **SOLITAIRE BTN SOLAR PRIVATE LIMITED**  
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2026:DHC:71



Versus

**JLT ENERGY 9 SAS**  
THROUGH ITS AUTHORISED REPRESENTATIVE  
HAVING ITS REGISTERED OFFICE AT:  
26 RUE ANNET SEGERON 86580 BIARD,  
FRANCE ...Respondent

*(Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. V.P. Singh, Mr. Asif Ahmed, Ms. Meherunissa Anand, Ms. Shailja Rawal, Mr. Suneel Kumar, and Ms. Khushi Mittal, instructed by Khaitan & Co.)*

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Reserved on: 17.12.2025  
Pronounced on: 06.01.2026

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## **JUDGMENT**

### **INDEX**

<b>I. FACTUAL MATRIX .....</b>	<b>4</b>
<b>II. SUBMISSIONS OF THE PARTIES.....</b>	<b>6</b>
<b>III. ANALYSIS.....</b>	<b>7</b>
A. THE ARGUMENT OF THE NA CONVERSION CONDITION PRECEDENT BECOMING A CONDITION SUBSEQUENT .....	9
B. THE ARGUMENT OF CP REMAINING UNFULFILLED Owing TO THE RESPONDENTS' FAULT .....	20
C. SPECIFIC PERFORMANCE OF THE SAID AGREEMENT .....	25
<b>IV. ORDER.....</b>	<b>31</b>



2026:DHC:71



The petitioner has filed the instant petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter “**the Act**”) seeking a prohibitory injunction restraining the respondents from creating any third-party rights or interest in the assets or securities of respondent nos. 3 and 4, except as expressly permitted under the Securities Purchase Agreements dated 31.12.2024 (‘**SPAs**’) and with the petitioner’s prior written consent.

## **I. FACTUAL MATRIX**

2. The petitioner JLT Energy 9 SAS is a company incorporated under the laws of France, belonging to a multinational group Technique Solaire, engaged in the business of developing renewable energy projects. The respondent no. 1 and 2 are Hindustan Cleanenergy Ltd. and Peridot Power Ventures Ltd. respectively, and they own 100% shareholding of respondent no. 3 and 4 companies, which own and operate ground-mounted solar power projects in the State of Tamil Nadu and Bihar respectively.

3. The dispute between the parties emanates from the execution of two SPAs dated 31.12.2024 (hereinafter “**said SPAs**”) between the petitioner and respondents for the acquisition of the said solar power projects in the State of Tamil Nadu (hereinafter “**said Agreement**”/“**Tamil Nadu SPA**”) and Bihar (hereinafter “**Bihar SPA**”). Importantly, the said SPAs are intrinsically interconnected. Schedule VII of the Bihar SPA stipulates that the Closing of the Tamil Nadu SPA constitutes a Condition Precedent (“**CP**”) to the Closing of the Bihar SPA. Effectively, therefore, the *lis* between the parties pertains to the Tamil Nadu SPA.



2026:DHC:71



4. The said SPAs entered into between the parties contain an arbitration clause at 16.2(b)-(c), which provides that if parties are unable to resolve their dispute within a period of 30 business days, the same shall be resolved by arbitration administered by the Singapore International Arbitration Centre ('SIAC') in accordance with the Arbitration Rules of SIAC (hereinafter "**SIAC Rules**") for the time being in force. The said arbitration clause has been invoked by the petitioner, on 07.08.2025 by filing of an Emergency Relief Application before the SIAC, which ultimately culminated into the order dated 27.08.2025, containing the dispositive section of its award, with the detailed award having been passed on 28.08.2025. The prayer made therein was granted by the learned emergency arbitrator.

5. Learned senior counsel appearing for the petitioner Mr. Rajshekhar Rao has apprised this Court that the said award has been extended from time to time, and continues to be in force till date. However, he submits that the said award would require enforcement proceedings in Indian courts for the respondents to be meaningfully bound by it, thus the reliefs in the present Section 9 petition are prayed for.

6. The learned senior counsel were then heard on 03.12.2025, 09.12.2025 and 17.12.2025, and the judgements relied upon by them were also carefully perused. The submissions advanced by them could be summed up as under.



## II. SUBMISSIONS OF THE PARTIES

7. Mr. Rajshekhar Rao, learned senior counsel contends that the petitioner is ready and willing to perform its obligations under the said SPAs, and in furtherance of it, is willing to make any payments required, to display its *bona fides*. He submits that a strong *prima facie* case exists in favour of the petitioner as respondents deliberately caused the non-fulfilment of the CPs, breached their good faith obligations under the said SPAs, and evidently caused the said SPAs to collapse owing to their own fault, of which they cannot be allowed to take benefit.

8. It is further argued that despite the said SPAs, today, having stood terminated, the same does not prevent an injunctive protective relief from being granted. It is also contended by Mr. Rao that in actuality the CP concerning the change of land use, became a condition subsequent (“CS”) owing to — (1) a meeting between parties dated 30.01.2025; and/or (2) the amendment to the Tamil Nadu SPA.

9. *Per contra*, Mr. Jayant Mehta, learned senior counsel, and for a brief time Mr. Atul S. Mathur, learned counsel, appearing for the respondents submit that the said SPAs contain a self-collapsing mechanism under Clause 5.6, by the operation of which the SPAs stood terminated. Learned senior counsel contends, that there is no *prima facie* case which the petitioner can establish, *inter alia*, owing to the petitioner seeking specific performance of an agreement which does not subsist as on date. Mr. Mehta submits that the fate of the SPAs was contingent upon the concerned government authorities granting permission under the relevant State Act and the Rules made



2026:DHC:71



thereunder, and if the same did not fructify, specific performance in relation to it cannot be granted.

10. Learned senior counsel submits that the CP pertaining to change of land use was not converted into a CS, and further that it could not have been converted into the same as the Foreign Exchange Management Act, 1999 (hereinafter “**FEMA**”) prohibits purchase of agricultural land by a non-resident.

### **III. ANALYSIS**

11. At the outset, it may be considered that though there is an interim award passed by the emergency arbitrator appointed by SIAC, Mr. Rao fairly submitted that the petitioner has to independently satisfy the Court of it being entitled to interim protection. In support of this proposition, the decision of this Court in ***Raffles Design International (India) (P) Ltd. v. Educomp Professional Education Ltd.***<sup>1</sup> assumes significance. Para. 105 thereof reads as under:

*“105. However, in my view, a party seeking interim measures cannot be precluded from doing so only for the reason that it had obtained a similar order from an arbitral tribunal. Needless to state that the question whether the interim orders should be granted under section 9 of the Act or not would have to be considered by the Courts independent of the orders passed by the arbitral tribunal. Recourse to Section 9 of the Act is not available for the purpose of enforcing the orders of the arbitral tribunal; but that does not mean that the Court cannot independently apply its mind and grant interim relief in cases where it is warranted.”*

(Emphasis supplied)

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<sup>1</sup> 2016 SCC OnLine Del 5521.



12. In light of the nature of controversy, it becomes necessary to begin with an examination of the relevant clauses of the said Agreement. Clause 5 of the Tamil Nadu SPA, entered into between the parties, is titled “*Conditions Precedent and Pre-Closing Actions*” and provides that the obligations of the petitioner/purchaser and the respondents/sellers to purchase/sell securities are subject to the fulfillment of each of the conditions set out in Part A and Part B of Schedule VII (Conditions Precedent), respectively. Clause 11 of Part A of Schedule VII (Conditions Precedent) provides the requirement of the respondents converting the project land into the non-agricultural category (hereinafter “**NA Conversion Condition**”) and it reads as under:

*“The Company shall have obtained: (a) the definitive and final conversion order for the Project Land to non-agricultural from the Local Town Panchayat under Section 47 of the Tamil Nadu Town and Country Planning Act 1971, and (b) a confirmation from the Local Town Panchayat that all applicable fines and penalties in connection with utilisation of agricultural land for non-agricultural purposes have been paid by the Company (collectively, the NA Conversion Condition).”*

13. The consequence of the non-fulfilment of this condition precedent is provided for under Clause 5.6 of the said Agreement, which reads as under:

*“5.6 It is hereby agreed between the Parties, that in the event the Conditions Precedent are not fulfilled by: (a) the Sellers and/or the Company to the Purchaser’s satisfaction (acting reasonably in its sole discretion) or (b) the Purchaser to the Sellers’ satisfaction (acting reasonably in its sole discretion) on or before the Closing Long Stop Date, then this Agreement shall automatically terminate.”*

14. A bare perusal of the aforesaid clause would reveal that in the event the CPs are not fulfilled, to the other party’s satisfaction, on or before the Closing Long Stop Date, the Agreement shall automatically terminate. The



parties are *ad idem* that the NA Conversion Condition has not been fulfilled. However, Mr. Rao seeks to overcome this non-fulfilment on two grounds—*first*, by claiming that the said CP effectively became a CS and, therefore, Clause 5.6 does not apply; and *second*, the non-fulfilment of the NA Conversion Condition is owing to the fault of the respondents, and they cannot take advantage of their own wrong. Both the contentions require a careful consideration.

#### **A. THE ARGUMENT OF THE NA CONVERSION CONDITION PRECEDENT BECOMING A CONDITION SUBSEQUENT**

15. The rationale for arguing this point is to exclude the NA Conversion Condition from the lists of CPs, and, therefore, to seek an escape from the consequence of its non-fulfilment under Clause 5.6. The claim of the said condition becoming a CS rests on two submissions. First, that in a meeting of the parties dated 30.01.2025, the said condition became a CS; and second, that vide an amendment to the SPA dated 03.06.2025, the said condition became a CS. Therefore, the submission primary suggests towards a modification/amendment of the relevant clause of the said Agreement to convert the CP regarding NA Land Conversion into a CS.

16. Before delving into the documents filed by the parties, the requirement associated with amendment, modification or waiver of, the terms of the SPAs may be considered. Clause 17.5 of the said Agreement requires a modification, amendment, or waiver of any of the provisions of the contract to be made in writing specifically referring to the contract and duly signed by each of the parties to the agreement. Further, Clause 17.10



titlled “*No waiver*” provides that the rights of the parties under the contract may be waived only in writing and specifically. The said clauses read as under:

#### **“17.5 Amendments**

*No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless made in writing specifically referring to this Agreement and duly signed by each of the Parties.*

...

#### **17.10 No waiver**

*(a) The rights of each Party under this Agreement:*

*(i) may be exercised as often as necessary;*  
*(ii) except as otherwise expressly provided in this Agreement, are cumulative and not exclusive of rights and remedies provided by the Applicable Law; and*  
*(iii) may be waived only in writing and specifically.*

*(b) Delay in exercising or non-exercise of any such right is not a waiver of that right.*

*(c) No forbearance, indulgence or relaxation of any Party at any time to require performance of any provision of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of the same provision, and any waiver or acquiescence by any Party of any breach of any provision of this Agreement shall not be construed as a waiver or acquiescence of any continuing or succeeding breach of such provisions, a waiver of any right under or arising out of this Agreement or acquiescence to or recognition of rights and/or position other than as expressly stipulated in this Agreement.”*

(Emphasis supplied)

17. The only document attached by the petitioner pertaining to the alleged meeting dated 30.01.2025 is an email dated 30.01.2025 sent by the petitioner to the respondents containing a minutes of meeting, the same reads as under:

*“Dear Ratul,*

*Thank you for your time earlier today for the meeting.*

*I am stating out the minutes for everyone’s reference.*

*1. Hindustan power team is arranging an NA document from Tehsildar which should (i) satisfy the Lender (REC) condition on compliance [1% additional penalty as well as continuation of*



*Hindustan power corporate guarantee has to continue until NA condition is satisfied] (ii) serve as an additional interim document for us to proceed with the closing.*

2. *As a CS, Vacant land tax demand issue will be settled by Hindustan power and then Hindustan power team will approach the Town planning department for further issuance of the NA order under Section 47 of the Tamil Nadu Town and Country Planning Act 1971. Technique Solaire will go ahead with the holdback amount in escrow as contemplated in the SPA and proceed with the closing.*
3. *In case closing can be done before the REC compliance condition is fulfilled then the hold back amount has to be topped up with the potential FY2024-25 lender penalty (1% penalty of outstanding). If REC compliance condition is satisfied before closing then there is no need for penalty holdback.*

*With above points in mind, looking forward to receiving the draft closing documents and escrow bank introduction from your team so as to take the process forward to closing.”*

18. The said minutes reflect, not an agreement between the parties, but a proposal made by the petitioner during the course of its interaction with the respondents. Further, agreement if any, is not in writing, nor is signed by the parties to the said Agreement. The purported amendment whereby the CP is claimed/asserted to have been converted into a CS does not comply with the requirement of Clause 17.5 of the said Agreement, and to that extent, it is not a modification which can be recognized in the eyes of law.

19. The petitioner further relies upon an alleged acceptance by the respondent of a draft dated 03.06.2025 to contend that the NA Conversion Condition became an CS. The facts, at this stage become rather interesting.

20. The parties have admitted that the Closing Long Stop Date ('CLSD') under the said SPAs, which originally stood at 30.04.2025 was extended to 31.05.2025 with mutual consent. There is, however, a dispute whether the CLSD was extended till 30.06.2025. The said extension was provided for in



2026:DHC:71



a draft incorporating an amendment to the said Agreement (hereinafter “**said Amendment**”), which also as per the petitioner provided for, *inter alia*, the NA Conversion Condition to become an CS. Specifically, under the said Amendment, it may be seen that Clause 2.1(a) provided that the CLSD was to mean 30.06.2025 under the said Agreement. Further, Clause 2.1(e) deleted the erstwhile Clause 5.7 of the said Agreement, and substituted it with a new Clause 5.7, which made the NA Conversion Condition a CS. The material parts of said Amendment read as under:

**“2. AMENDMENTS TO THE SPA**

*2.1. The amendments to the provisions of the SPA as set out hereinafter are reflected in italicised typeface.*

*(a) The definition of Closing Long Stop Date under Clause 1.1 of the SPA shall be deleted in its entirety and substituted as follows:*  
“*Closing Long Stop Date means 30 June 2025;*”

...  
*(e) Clause 5.7 of the SPA shall be deleted in its entirety and substituted as follows:*

*“5.7 NA Conversion Condition*

*5.7.1. Subject to completion of all other Conditions Precedent, in case the Sellers are unable to satisfy the NA Conversion Condition after completion of the Restructuring Exercise, then in such case the Purchaser shall notify the Sellers of their intention to proceed with Closing (NA Conversion Event Notice).*

*5.7.2. Upon receipt of the NA Conversion Event Notice and subject to compliance with Clause 5.5, the Parties shall proceed with Closing of the Transaction and the NA Conversion Condition shall become a Conditions Subsequent which shall be completed on or before expiry of the Escrow Period (NA Conversion Extended Period) and holdback an amount of INR 100,000,000 (Indian Rupees One Hundred million only) less any amount paid or deposited by the Sellers with the Governmental Authority towards the NA Conversion Conditions (NA Conversion Holdback Amount) from the Purchase Consideration shall be deposited in the Escrow Account and shall be payable to the Sellers in the manner and upon the occurrence of the events specified in Clause 4.4.4(b). Provided that in case the relevant Governmental Authority reduces the amount of vacant land tax or other levy payable by the Company for complying with the NA Conversion Conditions (“NA*



2026:DHC:71



*Reduction Amount") then such NA Reduction Amount shall stand reduced from the NA Conversion Holdback Amount and only such amount remaining after deduction of the NA Reduction Amount shall be deemed to constitute the NA Conversion Holdback Amount hereunder.*

*5.7.3. If the Sellers are unable to procure completion of the NA Conversion Condition to the reasonable satisfaction of the Purchaser within the time period specified in Clause 5.7.2, then: (a) the Purchaser shall have no obligation to pay, and the Sellers shall not be entitled to receive, the NA Conversion Holdback Amount; (b) the Purchaser shall be entitled to pursue the NA Conversion Condition in the manner determined in its sole discretion, and the Sellers shall reasonably cooperate with the Purchaser with respect to the completion of the NA Conversion Condition; and (c) other than as specified in this Clause 5.7.3, the Sellers shall have no further obligation or liability with respect to completion of the NA Conversion Condition."*

21. Before delving into the communication between the parties pertaining to the said Amendment. A few aspects of the amendment document itself may be considered.
22. The first page of the said Amendment bears an endorsement at the top right the following words—“*Draft for discussion purposes only RS Revised Draft – 2 June 2025*”. Subsequently, every page of the said Amendment contains the words “*Draft for discussion purposes only*”. Internal page 2, which comes after the opening/cover page of the said amendment, begins with the words “*To be executed on stamp paper of adequate value*”. Internal page 7 of the said Amendment then provides the signature page for the petitioner/purchaser which evinces that the said Amendment was to be signed by one Mr. Manu Bishnoi, the authorized signatory of the petitioner. The date importantly, has been left blank. Similarly, internal pages 8, 9, 10 of the said Amendment then provide the signature pages for respondent nos. 1, 2, and 3, to be signed by their respective authorised directors. Again, the



2026:DHC:71



signature dates are left empty. Notably, the said Amendment is also left undated.

23. In terms of the communication between the parties, it appears that on 03.06.2025 at 6:12 PM one Bhavik Oza, from the legal department of respondent no. 1, sent an email to the petitioner which contained the said Amendment document. The said email reads as under:

*“From: bhavik.oza  
Date: Tuesday, 3 June 2025 at 6:12 PM  
To: Prashant SHAH  
Cc: ashok.gupta, deepshikha.singh, sandeep.kaushik, lalit.s, Manu BISHNOI, punit.agrawal  
Subject: RE: Sanctions from REC- Amendment in SPA*

*Dear Prashant,*

*Please find attached the final draft of the Agreement.*

*Bhavik Oza  
Legal  
Hindustan Power”*

24. The said email was replied to on the very same day at 6:17 PM by one Manu Bishnoi, the representative of the petitioner, stating that the amendment is acceptable and that the petitioner await the respondents' instructions to sign. The said email reads as under:

*“From: Manu BISHNOI  
Sent: Tuesday, June 3, 2025 6:17 PM  
To: bhavik.oza; deepshikha.singh; Prashant SHAH  
Cc: ashok.gupta; sandeep.kaushik; lalit.jain; punit.agrawal; Gautier FRANTZ  
Subject: RE: Sanctions from REC- Amendment in SPA*

*Hello Bhavik,*

*Thanks for sharing the final amendment draft. We confirm the*



2026:DHC:71



*amendment is good to go from our side. Based on my call with Deepshikha, we further await your instructions to sign.*

*Best Regards/Cordialement  
Manu Bishnoi  
Director, India”*

*(Emphasis supplied)*

25. Thereafter, on 05.06.2022 i.e., about two days after the last email, the petitioner, through its legal counsel one Prashant Shah sent an email to the respondents attaching a revised draft of the amendment agreement to the said Agreement. The said email reads as under:

*“From: Prashant SHAH  
Sent: 05 June 2025 16:22  
To: Manu BISHNOI; bhavik.oza; deepshikha.singh  
Cc: ashok.gupta; sandeep.kaushik; lalit.jain; punit.agrawal; Gautier FRANTZ  
Subject: Re: Sanctions from REC- Amendment in SPA  
Attachments: First Amendment Agreement (Solitaire SPA) 5 June 2025 VPS Revised.docx*

*Dear all,*

*Please see attached the revised draft of the Amendment Agreement for Tamil Nadu basis our discussions yesterday.  
Please do let us know should you wish to discuss. Look forward to hearing from you soon.*

*Best regards,  
Prashant”*

26. Notably, in the legal notice dated 23.06.2025 (hereinafter “**said Legal Notice**”), the petitioner called upon the respondents to, *inter alia*, sign the said Amendment, thereby, admitting to its non-execution till then. The material portion of the said notice reads as under:

*“24. ...Given Our Client’s continued intent and willingness to complete the transactions agreed upon, Our Client calls upon the*



2026:DHC:71



*Sellers to undertake the following actions in compliance with their obligations under the Agreements:*

...

*(iv) Sellers shall execute the final form amendment agreements (as attached) as agreed by the Parties on June 03, 2025 inter alia extending the CLSD to June 30, 2025 within three [3] business days of receiving this Notice.”*

27. The trailing discussion noted above leads to the *prima facie* conclusions that — *first*, the said Amendment document was non-binding, and contained sufficient textual indications of it being a mere discussion draft; and *second*, the parties to the said Agreement have not till date signed/executed the said Amendment or any other document which modifies/amends the said SPAs so as to extend the CLSD to 30.06.2025 and make the NA Conversion Condition a CS. Thus, the draft never attained finality and assumed binding value, which was contingent upon a specified procedure. Importantly, the signature pages at internal pages 7-10 of the said Amendment, appear to have been put to comply with the procedure provided for under Clause 17.5, which requires each of the parties to the said Agreement, to sign a given amendment, for it to have effect. The rationale for the said Legal Notice seeking the execution of the said Amendment, was again, to comply with the requirements of Clause 17.5. Notably, also, the email dated 03.06.2025 from the petitioner, by using the expression “*we further await your instructions to sign*” further evinces the intention of the petitioner to be bound by, the mechanism for amendment provided for under Clause 17.5.

28. Reliance on any other document/conduct as amending the said SPAs would fall ill of the mechanism provided for under the said Agreement for



amendment, and naturally, the will of the parties expressed through the said Agreement.

29. At this stage, two specific arguments of Mr. Rao may be considered. First, while relying on Clause 5.8.3 read with Clause 1.2(f) of the said Agreement, it is contended by the learned senior counsel that the CLSD can be extended by way of written email exchange, and there is no need for an amendment to the said Agreement. The said clauses provide, *inter alia*, that “*the parties may discuss in good faith, to extend the Closing Long Stop Date by such number of days as may be agreed by the Parties in writing*”. While a bare perusal of Clause 5.8.3 would reveal its inapplicability, even if for the sake of analysis, the argument was to be accepted, and the CLSD was deemed to have been extended till 30.06.2025, it is rather obvious that the said date has also passed. This argument, in particular, does not relate to the NA Conversion Condition becoming a CS, and in the absence of that, even if CLSD was extended till 30.06.2025, the automatic termination provided for under Clause 5.6 of the said Agreement, would naturally apply. In the absence of any material supporting the formal conversion of the CP into a CS, termination would have its intended effect.

30. Secondly, learned senior counsel argued that the NA Conversion Condition CP was waived by the procedure provided for under the said Agreement. At the outset, there is no “*specific*” waiver of the NA Conversion Condition as is required by Clause 17.10 of the said Agreement. There is but a purported amendment, which also, falls ill of the procedure provided for under the said Agreement. Even if it is assumed that a waiver



was provided for under the said Agreement, it was to be governed by Clause 17.5 which deals with amendments, and includes within it the act of waiver.

31. Further, independent of the above analysis, it could be observed that the NA Conversion Condition also does not appear to be a CP which could be *simplicitor* waived. Clause 5.3 is the general provision which allows a party to waive a CP or to treat it as a CS. A waiver of a CP is fundamentally different from its fulfilment being deferred and it being treated as a CS; and the said Agreement also takes note of the said distinction in its clauses.

32. Importantly, the NA Conversion Condition is the only CP which is specifically dealt with in the substantive part of the contract. While the treatment of other CPs seems to be governed by Clauses 5.3 and 5.5 read with the VII<sup>th</sup> Schedule. Clause 5.7 titled “*NA Conversion Condition*”, on the other hand, is the specific Clause dealing with the manner in which the said CP could be converted into an CS.<sup>2</sup> There is no clause that deals with a waiver of the said Condition.

33. The NA Conversion Condition being governed by Clause 5.7 would not fall within the scope of Clause 5.3, as the specific clause would prevail over the general clause.<sup>3</sup> The lack of a provision dealing with the waiver of the NA Conversion Condition, also appears to be deliberate.<sup>4</sup> It is, therefore, the case that the NA Conversion Condition could not have been waived, but

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<sup>2</sup> The said procedure has also not been followed.

<sup>3</sup> *Generalia non specialibus derogant*, see The Interpretation of Contracts, Sir Kim Lewison, 5th Ed., Sweet and Maxwell, Chapter 7, ‘The Canons of Construction’, Pg. 350 – 352.

<sup>4</sup> *Expressio unius est exclusio alterius*, see The Interpretation of Contracts, Sir Kim Lewison, 5th Ed., Sweet and Maxwell, Chapter 7, ‘The Canons of Construction’, Pg. 352-358.



2026:DHC:71



only converted into a CS as per the mechanism provided for under Clause 5.7.

34. It is possible to also contend that the requirement under the said Agreement, for an amendment to be signed by the parties, could itself be amended through the conduct of the parties. However, the petitioner's email dated 03.06.2025 as also the said Legal Notice, evince the petitioner not having amended/waived such a requirement, assuming such an amendment/waiver is possible in law.

35. It is important to clarify that the finding *qua* the NA Conversion Condition not being capable of being waived is an independent and additional ground, which in exclusion to the findings detailed in paras 29 and 30, which assumes the said CP to be capable of being waived, but ultimately not complying with the requirements of a waiver under the said Agreement. Be that as it may, either way the grounds of waiver or amendment is not made out.

36. Further, it also appears that the decision of the respondents to not extend the CLSD to 30.06.2025 was a conscious commercial decision undertaken by them. The scheme of the transaction, as it bears from the Agreement, appears to be a fast paced acquisition of shares contingent upon the NA Conversion Condition being granted, and but for that happening, the SPA collapsing. For this reason the purchase price under the said Agreement was fixed as on 01.01.2024 and no advance money was paid to the respondents. Naturally, a given party may want to get out of a deal which has lasted its course, and which did not ultimately fructify.



37. The reliance placed by Mr. Rao on *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*<sup>5</sup> is also misplaced as the said case related to the issue of whether an arbitration agreement has come into existence owing to email exchanges. The said case did not deal with the issue of an amendment undertaken in violation of the express procedure provided for in the contract itself.

38. From the discussion above, it could *prima facie* be concluded that the NA Conversion Condition neither became a CS nor was the CLSD extended to 30.06.2025. In light of this finding, the issue as to whether the NA Conversion Condition *could* have ever become a CS owing to it seeking non-compliance with FEMA need not be gone into. However, if the same is considered appropriate, the learned arbitrator, if he is called upon to determine, may adjudicate upon it without being influenced by this Court's observations.

## **B. THE ARGUMENT OF CP REMAINING UNFULFILLED Owing TO THE RESPONDENTS' FAULT**

39. The other ground taken by the petitioner to overcome the rigours of Clause 5.6 of the said Agreement may now be considered. It is submitted by the learned senior counsel for the petitioner that the said clause has no application as the NA Conversion Condition remained unfulfilled owing to the respondents' own fault, and they cannot be allowed to take advantage of their own wrong.

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<sup>5</sup> (2010) 3 SCC 1.



40. The respondents have issued on 30.01.2025, 12.02.2025, 16.03.2025, 16.05.2025 letters (hereinafter “**said Letters**”) to the Executive Officer, Gangavarpatti Town Panchayat, Theni District, which is the appropriate “*Local Authority*” under Rule 2(v) read with Rule 9 of the Tamil Nadu Change of Land Use (From Agricultural to Non Agricultural Purposes in Non Planning Areas) Rules, 2017, for the purposes of obtaining a change of land use for satisfying the NA Conversion Condition.

41. The petitioner contends more was to be done, to which the respondents have put on record flight tickets of their officers visiting the office of the concerned authority; the veracity of the intended purpose of the visits is then doubted by the petitioner. The Court is a bit unsure what really would satisfy the petitioner. If there was in fact a particular form of effort that was required on the part of the respondents, the same should have been provided for in the said Agreement. Additionally, on the respondents *bona fides*, it may also be noted that without there being an obligation, in good faith, the respondents extended the CLSD from 30.04.2025 to 31.05.2025.

42. Thus, at the stage of this Section 9 petition, in the absence of evidence having been led, strictly on the basis of the material on record, a *prima facie* conclusion regarding the respondents’ bad faith cannot be made out. Assuming, however, that bad faith is indeed made out, the consequences may be analysed.

43. Clause 5.6 of the said Agreement, does not in itself, create a distinction between cases where non-fulfilment of CP is due to a party’s fault and where it is as a consequence of no-fault. The said clause



categorically provides that in the event a CP is not fulfilled by the sellers and/or the company (i.e., the respondents), to the purchaser's satisfaction (acting reasonably in its sole discretion), on or before the CLSD, the agreement shall automatically terminate. The clause resembles the classic condition of satisfaction. Chitty on Contracts<sup>6</sup> has dealt with such clauses in the following words:

***“Condition of “satisfaction”***

*The possibility of excluding the implied term discussed in para. 2-162 above by an express contrary provision<sup>889</sup> is further illustrated by a provision making the operation of a contract depend on the “satisfaction” of one of the parties with the subject-matter or other aspects relating to the other's performance.<sup>890</sup> Thus it has been held that there was no contract where a house was bought “subject to satisfactory mortgage”,<sup>891</sup> and where a boat was bought “subject to satisfactory survey”<sup>892</sup> it was held that the buyer was not bound if he expressed his dissatisfaction,<sup>893</sup> in spite of the fact that such expression was a deliberate act on his part which prevented the occurrence of the condition. The same is true where goods are bought on approval and the buyer does not approve them,<sup>894</sup> and where an offer of employment is made “subject to satisfactory references”, and the prospective employer does not regard the references as satisfactory.<sup>895</sup> There is some apparent conflict in the authorities on the question whether the law imposes any restriction on the freedom of action of the party on whose satisfaction the operation of the contract depends. In one case<sup>896</sup> a proposed royalty agreement relating to the use by a manufacturer of an invention was “subject to detailed evaluation of production and marketing feasibility” by the manufacturer. It was held that his discretion whether to enter into the contract was “unfettered by any obligation to act reasonably or in good faith”<sup>897</sup> and that, as his satisfaction had not been communicated<sup>898</sup> to the other party, the agreement had not acquired contractual force. On the other hand, where a ship was sold “subject to satisfactory completion of two trial voyages” it was said that such a stipulation was to be construed as “subject to bona fides”.<sup>899</sup> The distinction between the two lines of cases turns, ultimately, on the construction of the agreement. Even if this requires the discretion to be exercised in good faith, it does not follow that it must be exercised reasonably; the matter may be left to the relevant party's “subjective*

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<sup>6</sup> Chitty on Contracts, 33rd Ed., Sweet and Maxwell, Volume 1, Pg. 305-306, para. 2-164.



**decision”.**<sup>900</sup> *It has also been held that the party on whose satisfaction the operation of the contract depends must at least provide facilities for, or not impede, the inspection referred to in the agreement.*<sup>901</sup> *Of course if the result of the inspection is unsatisfactory, the principal obligation of the contract will not take effect.*<sup>902</sup> ”

(Emphasis supplied)

44. Evidently, the CP relating to the NA Conversion Condition has not been fulfilled to the purchaser/petitioner's satisfaction, and resultantly, the other obligations under the contract did not come into effect, and the said Agreement automatically terminated. Effect must be given to the word “*automatic*” as it appears in Clause 5.6. If contingencies and carve-outs were to be read between the stage of a CP(s) not being fulfilled on CLSD, and that of termination of the said Agreement, the word “*automatic*” would lose its meaning. It would be unwise to re-write the terms of the contract, or to read into it an implied term, where a CP's non-fulfilment, owing to the fault of the other party, would act as an exception to the automatic termination under Clause 5.6. The court, especially while dealing with matters based on written contracts, must adopt a hands-off approach from such creative indulgence which could frustrate the contractual wisdom of the parties.

45. The argument of the respondent not complying with Clause 5.3 may also be considered at this stage, the said clause reads as under:

**“5.3 The Seller and/or the Purchaser (as the case maybe) shall, upon becoming aware of anything which shall or may prevent any of its respective Conditions Precedent from being satisfied, shall forthwith notify the other Party in writing as soon as practicable. The other Party may, in its sole discretion (acting reasonably) and to the extent permitted under Applicable Law, waive any or all such Conditions Precedent in whole or in part, or defer the completion of such Conditions Precedent by a later date as a Conditions Subsequent, subject to any indemnification obligation in relation to breach or non-completion of any such Conditions Precedent as deemed necessary by**



2026:DHC:71



*such other Party.”*

It is contended that the respondents' did not inform the petitioner of the circumstances which would or could have prevented the fulfilment of the CP, which is a breach of Clause 5.3. Further, under Clause 5.7.1, if the respondents were unable to satisfy the NA Conversion Condition, they were to notify, not earlier than 28.02.2025, the petitioner of the same.

46. The respondents' case is not that they were prevented by anything, or they could not, owing to their own disability, obtain the permissions required to satisfy the NA Conversion Condition. Rather, it is that despite their efforts, the said permissions could not be obtained. Assuming, however, that there was in fact a breach of the said Clauses, the consequence does not appear to be Clause 5.6 becoming infructuous or non-applicable. Rather, it is the ability of the petitioner to treat the CP as a CS which gets compromised owing to the conscious drafting of the parties.

47. Clause 5.6, it must be stressed, is without any qualification, caveat, or *proviso*. It is, read with Clause 15, a mechanism through which the said Agreement, would automatically terminate. To use Mr. Mehta's words, the said clause is a self-collapsing mechanism agreed to by the parties to the contract. Therefore, even assuming there has been a breach of Clauses 5.3 and 5.7.1 of the said Agreement, the same would not prevent the application of Clause 5.6, as *first* there is no contractual stipulation which makes Clause 5.6 subject to a compliance with Clauses 5.3 and 5.7.1, and *second*, the said Agreement when read as a whole, evinces the primacy of Clause 5.6.



48. Having said so, it does not imply that the petitioner is remediless. The petitioner could have, certainly, sought enforcement of its rights, upon there being a breach of Clauses 5.3 and 5.7.1, but the said action ought to have been initiated before Clause 5.6 was triggered. For the purposes of Clause 5.7.1, in light of the findings that the CLSD was extended only till 31.05.2025, there were effectively, three long months with the petitioner to approach a court of law, and pray for appropriate reliefs. Admittedly, the same was not done. The petitioner waited for the CLSD to arrive, the automatic termination to happen, and then ask this Court to resurrect a dead contract from its ashes. The same reasoning applies to an argument of the respondents' breaching their general obligations, under Clauses 5.4 and 17.9 of the said Agreement, to act in good faith towards each other, to comply with obligations, including fulfilments of CPs, and refrain from acts which could damage the lawful rights and interests of the parties, under the said Agreement.

49. From the discussion above, it can be safely concluded that owing to the NA Conversion Condition CP not being satisfied to the petitioner's satisfaction, the said Agreement automatically terminated on the CLSD i.e., 31.05.2025. Before analysing the effect of this conclusion on the reliefs sought in the instant petition, it would also be apposite to analyse whether, assuming Clause 5.6 of the said Agreement did not apply, and there was in fact a breach/fault on the part of the respondents', specific performance could be granted in such a scenario or not.

### **C. SPECIFIC PERFORMANCE OF THE SAID AGREEMENT**



50. Specific performance entails a claimant insisting upon, and the Court in turn directing, the defendant to perform a contract in accordance with its terms.<sup>7</sup> In the instant case a decree for specific performance of the said Agreement would naturally, owing to the conclusion reached above that the NA Conversion Condition did not become a CS, require the said CP to be satisfied. The respondents' would have to satisfy the said condition and get a conversion order from the Local Town Panchayat, as also a confirmation from the Local Town Panchayat that all applicable fines and penalties in connection with the utilisation of agricultural land for non-agricultural purposes have been paid.

51. It does not, however, appear that specific performance could ever be granted for such a condition. Reliance may be placed on the decision of the Supreme Court in *Nandkishore Lalbhai Mehta v. New Era Fabrics Pvt. Ltd. and Ors.*<sup>8</sup>, para. 43 of which reads as under:

*“43. The submission that the appellant has waived the condition regarding taking of consent from the labour for the proposed sale and, therefore, this could not be a ground for cancelling the contract is misconceived. In the agreement dated 19-10-1977, it was specifically mentioned that the sale also be subject to your (the defendants) being able to settle with your labour and your labour agreeing to the sale contemplated herein and if you are not able to settle with your labour and to get them to agree to the sale herein contemplated you will not be bound to complete the sale. The moment labour do not agree to the sale contemplated, under the terms of the contract, the respondents were not bound to complete the sale. The maximum period of nine (9) months does not mean that once the labour had declined to give their consent for the proposed sale, the contract subsists for a period of nine (9) months and it cannot be terminated before that period. The*

<sup>7</sup> See Anson's Law of Contract, Sir Jack Beatson, Andrew Burrows, John Cartwright, 29th Ed., Oxford University Press, Pg. 575 and A Treatise on the Specific Performance of Contracts, Fry L.J., 6th Ed., Pg. 21.

<sup>8</sup> (2015) 9 SCC 755.



*agreement for sale is a contingent agreement depending upon obtaining permission under Section 22 and Section 27 of the ULC Act, property being converted from industrial zone to residential use and settlement with the labour and the labour agreeing to the sale contemplated therein. If any of the conditions are not fulfilled, the respondents were not bound to complete the sale and the appellant was only entitled for return of the money with interest @ 18% p.a. from the date of refusal of any of the permission or consent or agreement mentioned above. As in the present case we find that the Mill Mazdoor Sabha has not given its consent to the proposed sale, agreement for sale could not have been performed and had ceased. The appellant is only entitled to refund of the amount along with interest @ 18% p.a. stipulated therein.”*

Further, in Chitty on Contracts<sup>9</sup> under the heading “*Conditional contracts*”, the following position of law has been taken note of:

***“Conditional contracts”***

*On a principle similar to that stated in para. 27-058 above, an obligation which, under the contract alleged to give rise to it, is subject to a condition precedent not within the control of the party seeking the remedy will not be specifically enforced before the condition has occurred; here too the making of the order could turn out to be nugatory if the condition were not satisfied. The occurrence of the condition removes this obstacle to specific performance.”*

(Emphasis supplied)

52. Granting specific performance of such a contract, and particularly the NA Conversion Condition, also, effectively amount to compelling the government authorities, who are not privy to the said Agreement, to grant the change of land use permission. It is but obvious that such a decree cannot be granted by a Court. Reliance may be placed on para. 25 of ***Puravankara Projects Ltd. v. Hotel Venus International and Ors.***<sup>10</sup> which reads as under:

*“25. Government by a contract cannot be compelled to grant*

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<sup>9</sup> *Supra* note 5, Pg. 2021, para. 27-059.

<sup>10</sup> 2007 SCC OnLine SC 154.



*permission. The statutory parameters have to be kept in view. A condition may be there, as appears to be in present case, to take steps to obtain permission. An agreement may fail because of absence of permission. Then it becomes unenforceable.”*

53. Cumulatively, since the petitioner has not been able to overcome the application of Clause 5.6 of the said Agreement, and the contract between the parties as on date stands terminated, specific performance for it cannot be granted. The reason being that there is no breach, as such of the contract, which would inhere in the petitioner the right to insist upon the performance of the contract. The automatic termination clause being paramount, shall be enforced, and the contract would meet a peaceful death.

54. Even otherwise, assuming Clause 5.6 was not attracted, the Court cannot lose sight of the fact that the satisfaction of NA Conversion Condition was dependent upon the government authorities granting an approval, which is beyond the control of the respondents', and it is trite that specific performance for such a contract, cannot be granted.

55. Reverting to the authorities cited by Mr. Rao, the decisions in **K.S. Manjunath v. Moorasavirappa**,<sup>11</sup> **Narendra Hirawat and Co. v. Sholay Media Entertainment Pvt. Ltd.**,<sup>12</sup> **Narendra Hirawat & Co. v. Sholay Media Entertainment (P) Ltd.**,<sup>13</sup> and **A. Murugan v. Rainbow Foundation Ltd.**<sup>14</sup> pertain to the determinability of the contract. The said issue did not really arise in the present case. The findings relating to the said Agreement not being capable of specific performance is not because of there being an

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<sup>11</sup> 2025 SCC OnLine SC 2378.

<sup>12</sup> 2020 SCC OnLine Bom 391.

<sup>13</sup> (2023) 16 SCC 102.

<sup>14</sup> 2019 SCC OnLine Mad 37961.



inherent flaw in the contract,<sup>15</sup> or it being in the nature of a determinable contract, but rather because the terms of the contract, particularly Clause 5.6, are such that the very enforcement of the terms of the said Agreement would prevent, post its automatic termination, the re-birth of the contract. The contract has come to an end on its own strength in the manner contemplated therein, and not due to any factor attributable to either side.

56. The discussion in *Annamalai v. Vasanthi*<sup>16</sup> at para. 33, was in the context of whether the plaintiff therein was required to seek a declaratory relief, and the same has no bearing to the facts of the instant case. Similarly, *DLF Home Developers Limited v. Shipra Estate Limited*<sup>17</sup> involved a clause fundamentally different from those in the said Agreement. The decision of *Global Music Junction (P) Ltd. v. Shatrughan Kumar*<sup>18</sup> was also delivered in the context of the plaintiff therein approaching the Court during the subsistence of the agreement.

57. The decision of the Bombay High Court in *Sekura Roads Ltd. v. IL&FS Transportation Networks Ltd.*,<sup>19</sup> is also distinguishable on facts. In para. 14 of the judgement, it narrates that there was no provision for an automatic termination in the agreement in issue; and the observations made by the learned judge at para. 29 are to be appreciated in that very context.

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<sup>15</sup> To the contrary, see para. 48 of this judgement.

<sup>16</sup> 2025 SCC OnLine SC 2300.

<sup>17</sup> 2021 SCC OnLine Del 4902.

<sup>18</sup> 2023 SCC OnLine Del 5479.

<sup>19</sup> 2021 SCC OnLine Bom 13991.



58. Lastly, while the principle in *Upma Khanna v. Tarun Sawhney*,<sup>20</sup> that no person can be allowed to take benefit of their own wrong is not doubted, the same does not really apply to the instant case. In *Upma Khanna* (supra), the agreement to sell therein required the sellers to convert the land, subject matter of the agreement, from leasehold to freehold under L&DO. In para 7, the said judgement records that L&DO would not have executed the conveyance deed unless the demand outstanding in its records was cleared. This was, unequivocally, not been done by the sellers. It, thus, allowed the Court, to conclusively arrive at the finding of fault *qua* the sellers. In the instance case, as is noted in paras 40-42 of this judgement, such a view at this stage cannot be taken.

59. Further, even if fault is attributed on the part of the respondents, the consequence of the fault appears to be provided for in the agreement itself. Specific performance to enforce the said Agreement, in any case, will not lie. In light of the discussion above, it is clear that out of the triple test which a claimant needs to satisfy for an interim injunction, it being a *prima facie* case in its favour, balance of convenience, and irreparable injury, the petitioner has faltered on the very first step. There is no *prima facie* case made out for the grant of an interim injunction.

60. However, since the present dispute would be the subject matter of arbitration to be conducted before the arbitral tribunal. It would be appropriate to secure the interest of the petitioner insofar as its investment in securing a credit line is concerned. The petitioner, if in case it succeeds

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<sup>20</sup> 2012 SCC OnLine Del 2716



2026:DHC:71



before the tribunal, depending upon the satisfaction of the learned arbitrators, may be awarded either a decree for specific performance or damages, but in either case, it becomes important to secure the monies spent by it in maintaining the credit line to close the SPAs. The amount so spent as interest payments in maintaining the credit line is, as per the petition, €208,532/- which is equivalent to INR 2,20,85,783.52/-. The respondents are, therefore, directed to deposit a lump sum amount of INR 3,00,00,000/-, or furnish a bank guarantee of an equivalent amount with the arbitral tribunal, so constituted, within a period of 15 days from today.

61. In light of the submission made by Mr. Mehta in O.M.P. (I) (Comm.) 489/2025, that the fate of their petition is contingent on the outcome of O.M.P. (I) (Comm.) 464/2025, and that their petition would be infructuous if the latter petition is dismissed, O.M.P. (I) (Comm.) 489/2025 also, deserves to be, dismissed.

#### **IV. ORDER**

62. Accordingly, the present petition O.M.P. (I) (Comm.) 489/2025 is disposed of. O.M.P. (I) (Comm.) 464/2025 is hereby dismissed as having been rendered infructuous. Pending applications, if any, in the said petitions, also stand disposed of.

**PURUSHAINDRA KUMAR KAURAV, J**

**JANUARY 06, 2026**

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