

Delhi High Court

M/S Inter Ads Exhibition Pvt Ltd vs Busworld International ... on 13 January, 2020

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 19.11.2019

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Pronounced on: 13.01.2020

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O.M.P.(I) (COMM.) 273/2019

M/S INTER ADS EXHIBITION PVT LTD Petitioner

Through: Mr. Siddharth Yadav and Ms. Vijeta Mukherjee,
Advocates.

versus

BUSWORLD INTERNATIONAL COOPERATIEVE

VENNOOTSCHAP MET BEPERKTE

ANASPRAKELIJKHEID Respondent

Through: Ms. Malvika Trivedi, Mr. Vasanth Rajasekaran, Mr.
Saurabh Babulkar, Ms. Reshma Ravipati and
Ms.Shivani Garg, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH JYOTI SINGH, J.

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') pertaining to a dispute between the parties with regard to termination of Joint Venture Agreement dated 25.10.2011.

2. Brief facts necessary to adjudicate the present petition are that on 16.10.2003 a Joint Venture Agreement (JVA) was executed between Inter- Ads limited (referred to as IAL hereinafter), an associate concern of the petitioner and the respondent to organize an event 'Busworld India', in India.

3. Petitioner along with IAL executed a Supplementary Agreement dated 24.07.2009. IAL and respondent organized three editions of events i.e. in 2005, 2007 and 2009 as per terms and conditions of the JVA-I. One edition of the event was organized in 2011. On 25.10.2011 the petitioner and respondent executed JVA-II in order to extend the Co-Operations for further editions of events of 'Busworld India'. Thereafter the parties together organized 2013, 2015, 2016 and 2018 edition of the event.

4. It is the case of the petitioner that all the events were successfully organized due to the hard work and dedication of the petitioner. Between 2005-2016 there was no investment made by the respondent and it neither provided a working capital nor made efforts to sell the event services to the clients within their assigned region as per Article 4.2 (f) of the JVA-II. After the 2016 edition of the event, the petitioner has to reimburse Euro 55,949.28 towards expenses to the respondent for the earlier editions of the events on market research, travelling etc.

5. As per the petitioner the respondent along with the petitioner launched the next edition of the event scheduled for August, 2018 at Bengaluru and the respondent for the first time agreed to pay Euro 67,000 towards working capital for the event, pursuant to Article 5.2 (b) of JVA-II. A Memorandum of Understanding was executed on 21.10.2017 and the respondent agreed to set of its dues of the earlier edition with 2018 edition and was to pay to the petitioner Euro 11,050.72. The petitioner was supposed to pay to the respondent Euro 67,000, one week before August, 2018, between 29.08.2019 and 31.08.2019.

6. The petitioner informed the respondent vide e-mail dated 20.08.2018 that it would pay Euro 67,000 in three installments one each in the month of September, 2018, October, 2018 and November, 2018 respectively. Petitioner paid two installments but due to a genuine difficulty, could not pay the third one and thus offered to compensate by paying interest at 12% per annum on the delayed payment, respondent agreed to the same.

7. After successful completion of the 2018 event, the 2020 edition was announced by the respondent in a press release dated 04.09.2018. The petitioner thus took up the matter of venue bookings with the respondent vide e-mails dated 12.10.2018 & 17.10.2018, which were never responded to. However, according to the petitioner, to his utter shock, it received a notice dated 15.03.2019 from the respondent stating that the JVA-II stood terminated and also making a claim of Euro 118,486,34 against the petitioner. This was despite the fact that just 10 days prior thereto, the respondent vide e-mail dated 05.03.2019 had agreed to receive the last installment with interest. Respondent also knew that disputes had arisen between BOCI & the petitioner which had delayed the settling of the accounts with the respondent.

8. The petitioner then replied to the notice dated 15.03.2019 by a letter dated 09.04.2019. Further correspondence was thereafter exchanged between the parties, wherein the petitioner pointed out that for many years there was no default and thus minor default should not result in termination.

9. The petitioner avers that this led to disputes arising between the parties pertaining to JVA-II. The said agreement has an Arbitration Clause which is reproduced hereinunder:-

"10.3 Both the Parties shall make their best endeavor in terms of Article 10.2 to amicably resolve all their differences and disputes pertaining to construction meaning, scope, operation or effect of this contract or the validity or the breach thereof within thirty (120) days from the date the dispute has arisen, failing which the same shall be referred for resolution by arbitration to the International Chamber of Commerce, in terms of the following standard arbitration clause:

(a) All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

(b) The venue of arbitration proceeding shall be New Delhi.

10. The present petition has thus been filed seeking the following reliefs:-

a) the termination notice dated 15.03.2019 issued against the terms of JVA-II, be quashed and set-aside;

b) pass ex-parte ad interim order(s) restraining the Respondent to give effect to the termination notice dated 15.03.2019; and

11. Learned counsel for the petitioner submits that the termination is prima facie illegal as the same is not in accordance with the terms and conditions laid down in the JVA-II. Article 7.1 of the JVA-II provides that an agreement after its commencement shall continue to be in operation until terminated in accordance with event provided under Article 7 and not on completion of the earlier editions of the event from 2013-2018 as has been mentioned in the termination notice.

12. It is further contended that upon occurrence of the alleged default by the petitioner, the respondent was under a mandate to issue a written notice in accordance with Article 7.3(b) of the JVA-II, specifying in detail the nature of the breach. Only upon failure of the petitioner to correct such a default, within 30 days of receipt of the notice, could the respondent have terminated the JVA-II. It is argued that no such notice of default was issued prior to the termination notice dated 15.03.2019. It is also pointed out that the respondent in its notice dated 15.03.2019 has admitted that they have terminated the JVA-II under Article 7.3 (b) and hence the termination without following the procedure laid down therein is invalid.

13. It is next contended that the attempt to dissolve JVA-II by way of a notice is even otherwise illegal being violative of Article 7.3 (c) which bars the party to the JVA from withdrawing from organizing the event after any edition has been launched. It is submitted that the petitioner has adequate proof to show that the 2020 Event was launched during the 2018 Event. Attention is drawn to a document at page 56.

14. It is further contended that in the light of Article 7.4 (f), in the circumstance where the respondent withdraws from the JVA, despite having launched the 2020 Edition, respondent shall be barred from organizing any event which has the same subject matter and profile as that of 'Busworld India' for a period of four years from the termination date and would also forfeit its ownership in the event.

15. Mr. Yadav learned counsel for the petitioner vehemently contends that the illegal termination of the JVA-II is a predetermined action and is malafide, as the respondent intended to enter into an agreement with a third party, through a back door entry. It is clear that the respondent wants to establish new ties and has thus collaborated with a third party namely, Messe Frankfurt Trade Fairs India Pvt. Ltd., an Indian subsidiary of the Group Messe Frankfurt and is intending to organize the 9th Edition at Bengaluru.

16. In view of the above the petitioner has prayed that balance of convenience being in favour of the petitioner, status quo be maintained. Till such time the Arbitrator is appointed and the dispute resolution starts operation of termination be stayed and the respondent be restrained from proceeding further with the 2020 Event as an interim measure. The main relief sought is that the termination notice dated 15.03.2019 be quashed and set aside.

17. Respondent has filed a detailed reply. At the outset it is contended that the present petition is not maintainable under Section 9 of the Act as it is actually seeking specific performance of the Contract. The Joint Venture Agreement (JVA) entered into between the parties is a determinable contract in as much as it provides for termination of the JVA at the instance of either party to the contract and upon non-occurrence of a particular event. Reliance is placed on Article 7.3(b) of the JVA.

18. It is argued that no pleading has been made by the petitioner to demonstrate that JVA-I is not a determinable contract. Since the JVA is a determinable contract, the two reliefs sought by the petitioner warrant rejection at the very threshold, as no specific performance of a determinable contract can be granted and in any case under Section 9 of the Act, this Court cannot grant restoration of a terminated contract. The respondent argues that the principal requisite for grant of the first relief would require this Court to adjudicate the merits of the case and conclude that the termination notice was bad after entering into the domain of determining which party was in breach. However, this determination would have the effect of granting the ultimate relief which can only be adjudicated by the Arbitral Tribunal.

19. It is further argued that once a contract which is determinable has been terminated by one party, Section 14(1) of the Specific Relief Act, 1963 comes in and the contract cannot be revived or restored by a Court and its specific performance cannot be enforced. Thus, the first prayer of the petitioner cannot be granted in law. Reliance is placed on the following judgments :-

Planet M Retail Ltd. v. Select Infrastructure Pvt. Ltd., [2014 SCC Online Del 4869]-
(Para 29) MIC Electronics Ltd. v. Municipal Corporation of Delhi, (2011) 1 Arb LR
418 (Division Bench) - (Para 12) Rajasthan Breweries Ltd. v. The Stroh Brewery
Company, 2000 (55) DRJ (Division Bench) (Para 19) VF Services (UK) Ltd. v. Union
of India and Ors. 2011 XAD (Delhi) 268 - (Para 7) Bharat Catering Corporation v.
Indian Railway Catering and Tourism Corporation Ltd. (IRCTC) and Ors. 164 (2009)
DLT 530 - (Para 17)

20. Without prejudice to the said contention, it is next contended that even if it is presumed that the old JVA has been wrongly terminated, the only remedy available to the petitioner is to seek damages before an Arbitral Tribunal, constituted in accordance with Article 10 of JVA-I. It is submitted that the petitioner has nowhere pleaded that damages is not an adequate remedy as an alternate to the relief of specific performance.

21. It is argued that even the second relief claimed by the petitioner seeking an injunction is not only vague but not maintainable as it amounts to imposing a blanket restraint on the respondent from

carrying out any business in India. Moreover, the respondent has already entered into an arrangement with a third party, much prior to filing of the present petition and therefore, the relief has in any case become infructuous.

22. On the merits of the case, it is submitted that JVA-IO was executed on 16.10.2003 and thereafter a Supplementary Agreement was executed on 24.07.2009. Learned counsel for the respondent submits that JVA-I was only for four Editions of the exhibition which have been conducted in 2013, 2015, 2016 and 2018 and thus, JVA-I has ceased to be effective on conclusion of the 2018 Edition. In case the petitioner wanted to continue with the Venture, it should have executed a fresh or a supplementary agreement but the same has never been done.

23. It is further submitted that the petitioner is a chronic defaulter under JVA-I and defaulted on numerous occasions in making regular payments and is in breach of the material obligation contained under Article 5.2(C) of JVA- I. Since payment of last 3 editions were pending, the respondent proposed to offset the amount of Euro 55,949.28 against the funds it had to furnish towards working capital for 2018 edition. Thus, a MOU dated 21.10.2017 was entered into wherein it was noted that the petitioner was required to remit money to the respondent of Euro 55,949.28. Respondent had to pay Euro 67,000 for 2018 edition and thus Euro 55,949.28 payable by petitioner was set off against 67,000 Euros. Out of the said amount two instalments are paid but even as on date an amount of Euro 26,500/- is outstanding. Even the payments under 2018 Edition are outstanding towards the respondent.

24. It is further contended that Article 7.3 of JVA-I allows either of the parties to terminate the agreement, if the other party is in breach of any material obligations and has failed to correct the same within 30 days of the notice of default. Article 12.4 provides that the notice can be issued through an electronic mode. Numerous notices of defaults were issued by the respondent vide emails, but even after the expiry of 30 days, the petitioner failed to clear the outstanding payments. The respondent was thus justified in issuing the termination notice.

25. It is further submitted that no doubt under Article 7.4 the consequences of termination are set out which provides that a defaulting party must be restrained from conducting any event, which is on the same theme as Busworld India for a period of 4 years. Since in the present case, it is the petitioner who has breached the material obligations, the disability of holding future events would apply to the petitioner and not to the respondent.

26. It is thus submitted by the respondent that for the aforesaid reason, the petitioner is not entitled to any interim relief. The respondent has already executed an agreement with a third party on 16.07.2019, which is 40 days prior to the filing of the present petition and there is no reason why the upcoming event should be stalled at the instance of the petitioner, who has not only defaulted under the earlier JVA but has not approached the Court with promptitude. The petitioner made no bonafide attempts to resolve the disputes with the respondent or clear the outstanding payments. Even on receipt of the termination notice in March 2019, the petitioner did not approach this Court immediately and has waited for months together to file the present petition and that too once it learnt of the agreement entered into by the respondent with the third party in July 2019.

27. I have heard the learned counsels for the parties and examined their contentions. Before deciding the respective contentions, it is appropriate to reproduce the various clauses of JVA relied upon by the parties as under:

7.1 Term of Agreement The term of this agreement commences on execution of this Agreement as mentioned in Article 2.1 and continues until terminated under the provisions of this Article 7. In order for the termination to be valid, the termination must be served in accordance with Article 12.4 of this Agreement.

7.2 Mutually Agreed Termination The parties may mutually agree to terminate this Agreement. The parties may mutually agree to terminate the Agreement after ninety (90) days of the continuation of the Force Majeure Event (as defined in Article 1 of this Agreement) which would make it impossible for this Agreement to be carried out. The notice can be given until sixty (60) days after the end of causes with immediate effect. During the period of the notice, the parties shall not be absolved from their respective obligations, liabilities and responsibilities as stipulated in this Agreement.

7.3 Termination with Penalty At the option of either party this Agreement shall terminate upon the occurrence of any one or more of the following events:

a) In view to obtain the necessary financial transparency, the profit and loss accounts of each individual edition should be finalized and settled between both parties within 180 days after the closure of the respective edition. Any Party may terminate this Agreement not later than 180 days after the closing of the latest edition of the Event in the event of lack of transparency (financially or otherwise) and/or serious disrespect of the terms of this agreement.

b) if either party shall be in default of any material obligation under this Agreement and shall have failed to correct such default within thirty (30) business days of receipt of written notice of default from the other party specifying in reasonable detail the nature of the breach; or

c) if either party unilaterally withdraws from organizing the Event provided that neither party shall withdraw from organizing the Event after any edition of the Event has been launched in pursuance of this Agreement; or

d) if either party shall go into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction of a solvent company) or shall be struck off the Register of Companies (or its equivalent) or if a receiver or receiver and manager or judicial manager (including an interim judicial manager) shall be appointed of its undertaking property or assets or any part thereof or a bankruptcy / winding-up petition is presented against the party;

7.4 Consequences of Termination Upon termination of this Agreement:

a) the parties' rights and obligations with respect to each other in the development and operation of the Event as set forth herein shall terminate, and the parties shall have no further rights and obligations to each other with respect to the Event, other than any obligations which accrued up to the date of termination including, but not limited to a Final Settlement Payment of any Event not settled including but not limited to an event under development or in progress, between the parties as mentioned in Article 7.4 (b) here below.

b) Within a period of three calendar months after the termination of this Agreement howsoever occurring, a final Statement of Account shall be agreed covering all editions of the Event organised during the currency of this agreement and any balancing payments due from either party to the other shall be duly paid within 30 business days thereafter subject to legal & statutory compliance as referred to in this Agreement. If the parties are unable for any reason to agree the final Statement of Account within the time prescribed, the provisions of Article 10 shall apply in relation thereto.

c) Except as provided here below, the rights granted by either party to the other in pursuance of this Agreement shall expire on termination of this Agreement. The Intellectual Property of each party shall remain the property of each party as set forth herein. If BWI-CVBA is forced to withdraw from the Event in pursuance of Article 7.3 of the agreement, BWI-CVBA shall allow IAEPL to use the Title "Busworld India" for the edition which would have already launched prior to the termination of this Agreement as aforesaid till completion of the Event.

d) The termination of this Agreement howsoever occurring shall not effect:

the accrued rights, obligations and/ or remedies of or available to the parties prior to the date of termination; or the continued existence and validity of the rights and obligations of the parties under any provisions of this Agreement intended to survive termination and any provisions of this Agreement necessary for the interpretation and enforcement of these Agreements.

e) the attendee databases and lists created for the Event held immediately preceding the date of termination (the "Termination Date Databases") shall belong equally to both parties, and each party shall be free to use the Termination Date Databases, subject to Articles 6.11, 9.1, 7.4 (f) and 5.2

(d).

f) In the event this Agreement is terminated pursuant to Section 8 or Clause 7.3 ("Termination Event"), the Selling Party (as defined herein) or the defaulting,

withdrawing, or bankrupt party ("Defaulting Party") shall not directly or indirectly through their respective subsidiaries and/ or Affiliates and/ or Related parties be involved, control, own, launch, organize, assist in the organization of, or market, or partner in the organization of, or be involved as principal, agent, shareholder, advisor or in any other manner or capacity whatsoever, or invest in, or otherwise be involved, interested or participate in the management or promotion of or act as a consultant in any Event which has the same or substantially the same theme and profile or that would directly compete with the Event for a period of 4 (four) years from such Termination Event and such Selling Party and Defaulting Party shall also forfeit its ownership in Event Assets and Termination Date Database to the other Party, notwithstanding anything contained herein to the contrary."

28. The main and substantive relief claimed in the present petition, as extracted in the earlier part of the judgment is for setting aside the termination notice dated 15.03.2019. Learned counsel for the respondent in my view is right in her contention that the said relief cannot be granted in a petition under Section 9 of the Act. The contract between the parties is clearly determinable in nature. Article 7.3 of JVA-I enables either one of the parties to terminate the agreement, if the other party is in default or is in breach of any material obligation under the JVA and has failed to correct the default within 30 days of the receipt of the notice.

29. Once a contract is determinable in nature and has been terminated by one party to the contract, the same cannot be revived or restored by a Court and specific performance of the same cannot be sought by the defaulting party. This has been clearly held by the Court in the case of RPS Educational Society (Regd.) vs. DDA, OMP 538/2008, decided on 02.09.2009. In the case of RPS Educational Society (Regd.) (supra), the Court was dealing with the principle to be followed by the Court while dealing with a matter under Section 9 of the Act. The Court held as under :

"5. It is apparent that in terms of license deed, the respondent had authority to cancel the license. Under Section 9 of the Arbitration and Conciliation Act, the Court can pass an interim order to preserve such subject matter of dispute which it considered was necessary to be preserved for adjudication of the dispute. However, an order under Section 9 of the Arbitration and Conciliation act cannot be passed by the Court directing specific performance of the contract, the breach of which is alleged by the petitioner. This Court in Excel Generators Pvt. Ltd. Vs. IJ M Corporation Berhad OMP No. 241/09 (decided on 13TH May, 2009) had observed that where a contract is terminable contract and it can be foreclosed, the interim relief under Section 9 of the Arbitration and Conciliation Act cannot be granted for specific performance of the contract. In all those cases where monetary damages can compensate the breach of contract, the Court cannot insist upon the parties that the contract should be specifically performed."

30. In the case of Cotton Corporation Ltd. vs. United Industrial Bank Ltd. and Ors., (1983) 4 SCC 625, the Supreme Court discussed the relevance of Section 41(B) and other provisions of Specific Relief Act with reference to grant of interim injunction and observed as under :-

"9. Mr. Sen, learned counsel for the respondent-Bank, contended that sec. 41(B) is not at all attracted because it deals with perpetual injunction and the temporary or interim injunction is regulated by the Code of Civil Procedure specially so provided in Sec. 37 of the Act. Expression 'injunction' in sec. 41(B) is not qualified by an adjective and therefore, it would comprehend both interim and perpetual injunction. It is, however, true that Sec. 37 specifically provides that temporary injunctions which have to continue until a specified time or until further order of the court are regulated by the Code of Civil Procedure. But if a dichotomy is introduced by confining Sec. 41 to perpetual injunction only and Sec. 37 read with O. 39 of the Code of Civil Procedure being confined to temporary injunction, an unnecessary grey area will develop. It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted."

31. Therefore, it is settled that even at the time of grant of interim injunctions, the court has to take into consideration the relevant provisions of the Specific Relief Act.

32. It is significant to note that in the case of Rajasthan Breweries Ltd. vs. the Stroh Brewery Ltd., 2000 (55) DRJ 68, a Division Bench of this Court held that even in the absence of a specific clause authorizing and enabling either party to terminate the agreement in the event of happening of an event specified therein, in a private commercial transaction, the agreement can be terminated without assigning any reason by serving a notice. At the most, if the termination is found to be bad in law for any reason, the remedy would be to seek compensation for wrongful termination, but there cannot be a claim for specific performance. In fact in the said case, the Division Bench also held that the learned Single Judge had rightly not granted relief under Section 9 of the Act, in view of Section 14(1)(C) read with Section 41 of the Specific Relief Act. Clauses of Section 9 of the Act shall not apply to contracts which are determinable and a prayer to specifically enforce them cannot be granted. Relevant para of the judgment is reproduced hereinunder :-

"19. Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically

enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(1)(C) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same."

33. In M/s. Exclusive Motors Pvt. Ltd. vs. ITDC, OMP 183/2008, decided on 04.04.2008, this Court rejected the prayer for grant of injunction on the ground that the refusal by the respondent to renew the license cannot be interfered with by passing an order of injunction restraining the respondent from taking possession of the premises.

34. In the case of MIC Electronics Ltd. and Ors. vs. Municipal Corporation of Delhi and Ors., 2011 II AD (DEL) 625, a Division Bench of this Court was dealing with an issue whether the contract which was determinable in nature could be enforced. In the said case, the appellant had not paid the licence fee in terms of the agreement and consequently the respondent cancelled the license, after issuance of a show cause notice. The Division Bench held that the learned single Judge had rightly held that the licence stood terminated and the legality of termination would be a matter to be determined in arbitration. Even the justification by the appellant for not paying the licence fee will be examined by the arbitrator. At best, if the respondent is guilty of breach of the contract, the appellant would be entitled to damages. Relevant part of the judgment is as under :-

"12. The next question that needs to be considered is the contention of the Respondent that the contract between the parties was in its very nature determinable and consequently could not be specifically enforced by way of the present proceedings. In this behalf, it is observed that the Appellant did not pay the agreed licence fee in terms of the licence agreement. Consequently, after issuance of the show cause notice and calling for a reply from the Appellant the Respondent cancelled the licence under the terms of the agreement between the parties. Therefore, the licence stood terminated, as correctly observed by the learned Single Judge, in the impugned order, and the legality or illegality of termination would be a matter to be determined in arbitration. Further, the justification given by the Appellant for not paying the licence fee will be examined in the arbitral proceedings. The case of the Appellant that, owing to the failure of the Respondent to perform obligations under the agreement, and the latter's refusal to decrease the number of 20 of LED screens in terms of clause 6 of the agreement, would also be considered by the Arbitral Tribunal. In this behalf, we, therefore, find considerable merit in the submission made on behalf of the Respondent that if the cancellation of the contract by the Respondent constitutes a breach of contract on their part, the Appellant would be entitled to damages. In other words, the questions whether the termination is wrongful or not or whether the Respondent was not justified in terminating the agreement, are yet to be decided. However, from the facts of the case there is no manner of doubt that the contract was by its very nature terminable, in terms of the

contract between the parties themselves.

13. In Rajasthan Breweries Ltd. (supra), a Division Bench of this Court observed that, at the most, in case ultimately it is found that termination is bad in law or contrary to the terms of agreement or of any understanding between the parties or for any other reason, the remedy of the Appellant was to seek compensation for wrongful termination and not a claim for specific performance of the agreement. Further, in this view of the matter, there was every reason to come to the conclusion that the relief sought by the Appellant in terms of an injunction seeking to specifically enforce the agreement, by permitting the Appellant to continue to operate the 9 LED screens installed them, was statutorily prohibited with respect to a contract which is determinable in nature."

35. In the case of Planet M. Retail Ltd. vs. Select Infrastructure Pvt. Ltd., 2014 (145) DRJ 654, a Co-ordinate Bench of this Court was examining the question as to whether the petitioner therein could be allowed to run the business in a shop under a license deed which stood determined, in a petition filed under Section 9 of the Act. It was argued by the petitioner therein that the Court had powers under Section 9 of the Act, akin to the powers of a Civil Court under Order 39 Rules 1 & 2 CPC, for grant of interim injunction and that Section 41 of the Specific Relief Act was not applicable to proceedings under Section 9 of the Act. The Court after examining the various judgments on the issue came to a conclusion as under:-

"26. the question whether the licence was by its nature determinable or not is a question which is a subject matter of arbitration proceedings. However, it is an undisputed fact that with effect from 31.05.2013, the licence agreement between the parties to run a trade in the said shop stands determined. Whether such determination is contrary to the terms of the agreement and thus illegal is again the subject matter of arbitral proceedings. This Court, at this stage, cannot enter into this question. The consequences of such determination are relevant factors to judge if the relief claimed by petitioner can be granted to him. Grant of relief to petitioner would mean allowing him to run his trade in the licensed premises without a licence. "

36. In the case of VF Services (UK) Ltd. vs. Union of India and Ors., 2011 X AD (DEL) 269, a Co-ordinate Bench of this Court was dealing with a petition under Section 9 of the Act, whereby a direction was sought to stay the operation of a letter issued by the Embassy of Government of India at Netherlands, terminating a contract entered into between the Embassy of India, the Hague and respondent No. 2 therein. The Court held that the Contract by its very nature was determinable. The facts and circumstances of the case were not extenuating enough to warrant a departure from the settled law that a Court in law will not grant an interim relief of continuing a contract which by its very nature is determinable. The Court observed that it would not be persuaded to overlook the legal bar erected by Section 14(1)(C) read with section 41(E) SRA. Relevant portion of the judgment are as under:-

"7. The VOC is a contract which by its very nature is determinable. Although in exceptional facts of individual cases involving agencies of the State, this Court has granted interim relief even against the termination of a contract (for e.g., Pioneer Publicity Corporation v. Delhi Transport Corporation), the settled law is that even where a contract has been illegally terminated the aggrieved party would be able to only claim damages and no interim relief against termination of the contract. In Indian Oil Corporation v. Amritsar Gas Service, (1991) 1 SCC 533, the Supreme Court explained that even where one of the contracting parties was an agency of state, the constitutional limitations of Article 14 as explained in Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay (1989) 3 SCC 293, Mahabir Auto Stores v. Indian Oil Corporation, (1990) 3 SCC 752 and Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 WOULD not apply since the case was based only on breach of contract and remedies flowing therefrom. Therefore (SCC, p.541) "the further questions of public law based on Article 14 of the Constitution do not arise for decision in the present case and the matter must be decided strictly in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of the Specific Relief Act providing for non- enforceability of certain types of contracts." On the facts of that case it was held that (SCC, p.542) "granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant- Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act.

8. Here the VOC dated 26TH November 2010 is by its very nature determinable. There appear prima facie to be no extenuating circumstances that warrant a departure from the settled legal position that the court will not grant an interim relief of continuing a contract that is by its very nature determinable. In other words, this Court is not persuaded to overlook the legal bar erected by Section 14(1)(C) read with Section 41(E) of the SRA. Clause 11 of the VOC, which has been invoked by Respondent No. 2, envisages either party terminating the contract by giving two months' advance notice "of being unable to carry on the services any longer". Respondent No. 2 did give two months' advance notice to the Petitioner..."

37. Reference is also required to be made to another decision of a Division Bench of this Court in Bharat Catering Corporation vs. Indian Railway Catering and Tourism Corporation Ltd. (IRCTC) & Ors., 164 (2009) DLT 530 wherein the Division Bench was called upon to decide the correctness of a judgment passed by a learned Single Judge of this Court dismissing a petition under Section 9 of the Act. A contract was entered into between the parties which was ultimately cancelled due to certain disputes between the parties and this led to the filing of the petition under Section 9 of the Act wherein ex-parte order of injunction was sought staying the operation of the letter dated 06.05.2009 whereby the contract was cancelled. The learned Single Judge while dismissing the petition held as under:-

"5 the scope and ambit of Section 9 is not to restore the contract which has already been terminated. The contract between the respondent and the petitioner created a

commercial relationship between the parties. The termination of contract is one of the facets of the contract and as per contract entered into between the parties, the contract could be terminated by respondent for various reasons given therein. If the petitioner is aggrieved by the act of the termination of the contract by respondent and considers that the termination was bad or illegal, the petitioner is at liberty to invoke the arbitration clause and claim damages, if any, suffered by the petitioner. The contract cannot be restored by the Court under Section 9 ··nor is it a case where the Court should interfere. In my view prima facie there is no case made out in favour of petitioners. The petitioners' conduct, as reflected from the impugned letter of termination justifies termination of the contract."

38. Upholding the order of the learned Single Judge, the Division Bench held as under:-

"17. Apart from merits, even otherwise, in our view, the scope and ambit of Section 9 do not envisage the restoration of a contract which has been terminated. The learned Single Judge, in our view, rightly held that if the petitioner is aggrieved by the letter of termination of the contract and is advised to challenge the validity thereof, the petitioner can always' invoke the arbitration 'clause to claim damages, if any, suffered by the petitioner. It is not open to this Court to restore the contract under Section 9, which is meant only for the sole purpose of preserving and maintaining the property in dispute and cannot be used to enforce specific performance of a contract as such. A bare glance at the said Section will suffice to show that pending arbitration proceedings, the Court and the Arbitral Tribunal have been vested with the power to ensure that the subject matter of the arbitration is not alienated or frittered away..."

39. Having traversed the law as above, it is clear that a determinable contract can be terminated by either party. Courts under Section 9 of the Act cannot interfere to grant injunction against the operation of termination or enforce the agreement. Even a bare perusal of the provisions of the SRA clearly bar the grant of the first relief by this Court. Section 14(D) clearly provides that a contract which in its nature is determinable cannot be specifically enforced. Section 14(D) is reproduced hereunder:-

"14. Contracts not specifically enforceable - The following contracts cannot be specifically enforced, namely xxx

(d). a contract which is in its nature determinable"

40. Section 41(E) of the SRA further provides that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not be specifically enforced. In my view the contract between the parties herein being determinable and granting the right to either of the parties to terminate the same, on breach of the obligations under the contract, cannot be enforced due to the legal bar under 14(D) of SRA. Since the contract cannot be enforced, the bar under Section 41(E) prevents this Court from granting any injunction. Thus, the first relief prayed by the petitioner is declined.

41. Learned counsel for the respondent is also right in her contention that the question whether the contract has been illegally terminated or not can only be decided by the Arbitral Tribunal and is not in the domain of this Court. Learned counsel is also right in her contention that even if the termination is ultimately held to be bad in law, in the Arbitration Proceedings before the Tribunal, the petitioner would have an adequate remedy of claiming damages. As far as the arguments of the respondent that the petitioner is guilty of the breach of the conditions of the contract, suffice would it be to state that this question would be decided by the Arbitral Tribunal as and when constituted, while deciding the question of legality or otherwise of the termination of the contract.

42. In so far as the second relief in the petition is concerned, the respondent rightly contends that this would be imposing a blanket restraint on the respondent from carrying any business in India. This would also amount to granting the first relief sought in the petition in an indirect manner, which this Court has declined above. A stay on the operation of the termination letter, would lead to enforcing the contract between the parties which cannot be done for the several reasons aforementioned.

43. I also find merit in the contention of the respondent that even otherwise the petitioner is not entitled to the relief of injunction which is in the nature of an equitable relief, since it has chosen to wait from March, 2019 till the end of August, 2019, when this petition was filed. Another factor that weighs with this Court is also the fact that the respondent has in the meantime entered into a contract with a third party on 16.07.2019 i.e. 40 days prior to the present petition. The contract is with respect to a 2020 Busworld India Event and the Court finds no extenuating circumstance to restrain the respondent from going ahead with the Event as scheduled, under the said agreement.

44. I am fortified in my view by the judgment of a Co-ordinate Bench of this Court in Jindal Steel and Power Ltd. vs. SAP India Pvt. Ltd., 221 (2015) DLT 708 where one of the questions before the Court was whether in view of the agreement having been terminated an injunction could be granted against the operation of the termination notice. The Court held that the contract being determinable could not be enforced due to the legal bar under the SRA. It answered the question in the negative holding that no injunction on the termination order could be granted, the same having taken effect and damages was an adequate remedy.

45. I may now refer to the judgment of a Division Bench of this Court in Indian Railway Catering and Tourism Corporation Ltd. (IRCTC) vs. Cox and Kings India Ltd. and Anr. and Arup Sen and Anr., 186 (2012) DLT 552 WHICH although has been relied upon by the petitioner, but in the opinion of this Court enures to the advantage of the respondent. The controversy in the said case was similar and the facts were very close to the present case. The issue was whether a direction in the nature of mandatory injunction amounting to specific performance or directing continuation of an arrangement which stood terminated, could be given.

46. A Joint Venture Agreement was terminated by one party to the contract. The Division Bench relying on the judgment in the case of Rajasthan Breweries Ltd. (supra) as well as Section 14 of the SRA held that once the lease had been terminated, passing of mandatory injunction would amount to first creating an agreement between the parties and then enforcing the same. The Division Bench

set aside the judgment of the learned Single Judge whereby the learned Single Judge had by way of an interim measure allowed the running of the train under the contract in question on the ground of irreparable loss to the Company and inconvenience to public. The Division Bench held that the interim arrangement was neither justified nor legally sustainable. Reliance was placed on para 19 of the judgment in the case of Rajasthan Breweries Ltd. (supra), which has been quoted in the earlier part of this judgment.

47. It is clear that in law, once termination of contract takes effect the operation cannot be stayed by an interim injunction. Thus, the second relief sought in the present petition cannot be granted and is hereby rejected.

48. Learned counsel for the petitioner has placed reliance on several judgments which I shall now deal.

49. The petitioner first places reliance on the judgment of the High Court of Bombay in the case of Board of Control for Cricket in India vs. KPH Dream Cricket Pvt. Ltd., 2011 (113) BLR 749. In the said case the Division Bench of the Bombay High Court was examining a judgment passed by the learned Single Judge of the said Court whereby in a petition under Section 9 of the Act, the learned Single Judge had enjoined the BCCI from acting on the termination of a Franchise Agreement entered into between the parties. The Division Bench examined the letter of termination and came to a finding that the same was erroneous and flawed. The appellant had urged that Clause 21.6 of the Franchise Agreement interposes a bar upon the remedy of a franchisee to seek injunctive or equitable relief and that the remedy of the franchisee could only be to claim damages upon termination. The Court after examining Clause 21.6 observed that under the said clause, BCCI had the right to bring an action for injunctive or equitable relief, if it reasonably believed that damages may not be the adequate remedy for a breach by the franchisee of the Agreement. Thus, the Court came to a finding that it would be wholly destructive of the principals of Section 28 of the Contract Act to allow a party to assert that the effect of a contractual term is to prohibit access to a Court in a petition under Section 9 of the Act for an injunctive relief, even if, damages were not to provide an adequate recompense. The Court, therefore, declined to read Clause 21.6 as enabling BCCI to set up a defense that the remedy of injunction is barred, even if the franchisee is able to establish that damages would not provide an adequate remedy. The Court also took notice of the various reasons set out by the respondent in the petition under Section 9 of the Act for seeking interlocutory injunction, which are extracted in the judgment of the Division Bench. A perusal of the circumstances enumerated therein clearly shows that the petitioner in the petition under Section 9 of the Act had clearly stated that looking at the nature of the Franchise Agreement compensation in money would not afford an adequate relief and that the petitioner would be precluded from participating in the auction for cricketers which were scheduled to take place in the near future, though, contracts had been signed with the cricket players up to two years. Having examined the special circumstances, the Division Bench was of the view that the respondent had made out sufficient ground for establishing that damages would not provide adequate remedy and an interim order to stay the termination was warranted. What also weighed with the Division Bench was that the action of an abrupt termination of the contract which had a life co-extensive with duration of the IPL was unjust and unfair and the damages in a case of this nature would not be an adequate

recompense. In fact, the Division Bench relied on the judgment of the Supreme Court in Hindustan Petroleum Corporation Ltd. vs. Sriman Narayan, 2002 (5) SCC 760 where the Court retreated the principles in Dorab Cawasji Warden vs. Coomi Sorab Warden, 1990 (2) SCC 117 for grant of interlocutory mandatory injunctions. One of the principles laid down is that the plaintiff must establish that it is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

50. As noted above the petitioner in the present case has not set out or pleaded in the petition that if the relief sought is not granted, he cannot be compensated by way of damages. Thus, in my view the judgment of BCCI Supra would not apply to the present case. Besides, it is also significant to note that in the present case the earlier JVA envisaged only holding events upto 2018 edition and as rightly contended by the respondent in order to participate in the 2020 Event, the petitioner had to enter into a fresh Agreement which has not happened in the present case. Therefore, in any case, the petitioner unlike in the case of BCCI cannot even lay a claim to participate in the 2020 Event or much less prevent the respondent from proceeding with the said Event.

51. The petitioner has next relied on the judgment of the Supreme Court in the case of Olympus Superstructures Pvt. Ltd. vs. Meena Vijay Khetan and Ors., (1999) 5 SCC 651. Reliance is placed on paras 10, 31, 32 and 33 of the judgment. Perusal of para 10 of the judgment clearly shows that the issue involved in the said case was whether the Arbitrator is entitled to pass an award directing specific performance of an agreement of sale and whether the subject matter of the dispute is capable of Arbitration under Section 34 (2) (b)(i) of the Act. The Supreme Court held that the view taken by Punjab and Haryana High Court and the Bombay and the Calcutta High Courts was the correct view that the arbitrator can grant specific performance of a contract and the contrary view taken by the Delhi High Court is not correct. The Court further observed that the right to specific performance of an agreement of sale deals with contractual rights and it is certainly open to the parties to agree, with a view to shorten litigation in regular Courts, to refer the said issue to arbitration. In my view the said issue does not arise for consideration in the present petition and therefore the said judgment has no application.

52. Learned counsel for the petitioner has next relied upon the judgment of a Division Bench of this Court in Indian Railway Catering and Tourism Corporation Ltd. (IRCTC)(supra). As already noted above, in the said judgment, the Division Bench has clearly held that mandatory injunction amounting to specific performance or continuation of an arrangement under an agreement which stands terminated, cannot be directed. The said judgment is therefore in favour of the respondent and does not help the petitioner.

53. The petitioner has next relied upon a judgment of a Co-ordinate Bench of this Court in the case Danieli Corus BV vs. Steel Authority of India., OMP (I) (COMM) 189/2017, decided on 24.11.2017 wherein the Co- ordinate Bench had restrained the respondent therein from disclosing to a third party the propriety drawings or information, which bear a Disclaimer, in a petition under Section 9 of the Act. Granting the said restraint order, the Court observed that this was prima-facie in nature and left it to the Arbitral Tribunal to decide the inter-se disputes between the parties. As far as the said judgment is concerned, this Court is of the view that the issue involved in the said case was

different and the case turned on his own facts. The facts of the said case were that the petitioner had entered into a contract with the respondent which had certain provisions relating to copyright and sharing of confidential information qua third parties. The petitioner claimed that under the contract it had provided various drawings to the respondent which were covered under the confidentiality Clause or having a disclaimer and despite this the drawings had been disclosed to third parties by the respondents in its 'online competitive bidding event' and also on an online tender and it was further urged that the said tender had been awarded to the third party. The Court having analysed the Clauses of the contract and the facts of the case came to a conclusion that once the parties to a contract have treated certain drawings to be confidential, they were bound by it and relied on a judgment in the case of John Richard Brady & Ors. vs. Chemical Process Equipment Pvt. Ltd. & Anr. AIR 1987 Delhi 372 in this regard. In the said case the Court had held that invoking general rule of equity and breach of confidence injunction can follow, when use of such drawing amounts to unauthorized use of labour of the person and which gives to the infringer an unfair advantage over competitors. The Bench had also relied on the judgment in the case of Zee Telefilms Ltd. & Anr. Vs. Sundial Communications Pvt. Ltd. & Ors., 2003 (27) PTC 457 (Bom) (DB) where the Bombay High Court held that in appropriate case interlocutory injunction may be issued restraining breach of confidentiality. The Co-ordinate Bench thereafter held that the law is settled that a party to a contract having obtained certain information on the basis of its term cannot pass the information to a third party in breach of the confidentiality Clause. The argument of the respondent in the said case was that no injunction should be granted as damages would be an adequate remedy. This was rejected by the Bench on the ground that the issue was about confidential drawings and once they came in the public domain, this would be an irreparable damage, which cannot be compensated in terms of money. Moreover, in the said case the injunction restrained the respondent or its agent from disclosing to a third party, the proprietary drawings or information which had a disclaimer and thus it was really in the nature a prohibitory injunction in the fact of that case. The present petition seeks quashing of termination of a determinable contract and an interim injunction against its operation. In my view, the said judgment would, therefore, have no application to the present case for the additional reason at the cost of repetition that the petition has not even entered into any MOU or Agreement for the upcoming 2020 Event.

54. Lastly, reliance is placed by the petitioner on a judgment by a Co- ordinate Bench in the case of KSL and Industries Ltd. vs. National Textiles Corporations Ltd., 2012 (6) RAJ 570 (DEL). In the said case a petition was filed under Section 9 of the Act wherein a stay was sought on a letter dated 14.09.2010 issued by the respondent terminating the MOU dated 14.11.2008 entered into between the petitioners and the respondent. A direction was also sought to the respondent not to create third party rights and dispose of any assets covered by the MOU. In the said case, the Termination Clause in the MOU provided that the respondent had the right to terminate the MOU in the event the Definitive Agreements were not executed to the full satisfaction of the respondent, within 240 days of the execution of the MOU. It was a categorical case of the petitioner that the termination could not have taken place as the respondent by its own conduct had extended the period of performance of its own obligations after the expiry of 240 days and continued to require the petitioner to undertake expenditures and perform tasks premised on mutual extension of the MOU. Since the MOU had been extended by conduct, time was no longer of the essence of the contract and therefore the right to terminate had been waived by the respondent. In so far as the question of interpretation

of the terms of the MOU as well as the determination of the scope of the MOU was concerned the Court held that the same would fall for determination of the Arbitral Tribunal. In so far as the relief of injunction was concerned the Court as a matter of fact in the said case found that the extension of time by the respondent was essentially a novation in the contract and therefore the MOU would continue to bind till the Definitive Agreements were executed. The Court also found that there was no clause other than 5.0 which stood exhausted, which conferred any right to terminate the contract. The Court had thus come to a finding that the contract ceased to be determinable on the expiry of the period mentioned in the MOU. In fact, the judgment in the case of Rajasthan Breweries Ltd. (supra) was also distinguished on the ground that the agreement in question no longer remained determinable. Similarly, the bar of Section 14 (1) of SRA was distinguished in the said case in the following manner: -

"87. So far as clause (b) of Section 14(1) of the Specific Relief Act is concerned, the purpose of execution of the MOU was to secure the execution of the definitive agreements. The forms of these agreements are annexed to the MOU itself and the terms and conditions thereof are not open to negotiation. If one party does not agree to any proposal made by the other to alter or amend any term of the definitive agreements, the parties have no option but to proceed to execute the definitive agreements in the form which they exist.

88. The petitioner is only seeking specific performance of the terms of the MOU, i.e. execution of the definitive agreements. In itself, the execution of the definitive agreements cannot be said to be imbued with minute or numerous details, or to be dependent on personal qualifications or volition of either of the parties, or of a nature of which the Court cannot enforce specific performance. Consequently, the bar under Section 14 of the Specific Relief Act urged by the respondent, in my view, prima facie, is not made out in the present case."

55. Thus, in my view this judgment in no way comes to the rescue of the petitioner.

56. The respondent has in its detailed reply taken a clear stand that the contract (JVA) was determinable and has been terminated for breach on the part of the petitioner. It is also stated that the JVA was for only four editions upto 2018 and the respondent has already entered into an agreement with third party for 2020 Event. No rejoinder was filed by the petitioner, and hence none of the said averments are disputed.

57. For all the foregoing reasons, I find no merit in the petition. The same is hereby dismissed.

I.A. No. 14808/2019 In view of the above, the present application is hereby dismissed.

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