

(2009) 01 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 126 of 2009

Creative Infocity Ltd.

APPELLANT

Vs

Gujarat Informatics Ltd.

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 16, 5, 8

Constitution of India, 1950 — Article 12, 227

Evidence Act, 1872 — Section 91, 92

Gujarat Infrastructure Development Act, 1999 — Section 2, 4, 7

Citation : (2009) 3 GLR 1877

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : D.C. Dave, for the Appellant; S.N. Soparkar, for Singhi and Co., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—Rule. Mr. B.H. Chhatrapati, learned Advocate waives the service of notice of rule on behalf of the respondent.

2. With the consent of the learned Advocates appearing on behalf of the respective parties, the petition is taken up for final hearing today.

3. By way of this petition under Article 227 of the Constitution of India, the petitioner-original plaintiff named Creative Infocity Limited (hereinafter

shall be referred to as ""the petitioner"" for convenience) has prayed for appropriate writ, order and/or directions quashing and setting aside the

impugned order dated 22-12-2008 passed by the learned 8th Additional Senior Civil Judge, Gandhinagar below application Exh. 17 in Regular

Civil Suit No. 427 of 2008, by which, the learned trial Court has allowed the said application Exh. 17 submitted by the respondent - original

defendant named the Gujarat Informatics Limited (hereinafter referred to as ""the respondent"" for short) u/s 8 of the Arbitration and Conciliation

Act, 1996 (hereinafter referred to as ""the Act"" for convenience) referring the parties to arbitration to resolve the dispute as provided in the

Concession Agreement.

4. Few facts necessary for the determination of the present Special Civil Application in nutshell are as under:

4.1. The petitioner is a joint venture Company of one Creative I.T. Inc., a Company registered under relevant laws governing the field thereof in

Florida, the United State of America and Gujarat Informatics Limited, respondent herein. The respondent herein is a wholly owned Government of

Gujarat Company and was incorporated by the State of Gujarat as a ""Government Agency"" within the meaning of Section 2(e) of the Gujarat

Infrastructure Development Act, 1999. That in the year 1999, the State of Gujarat framed a policy for inviting and encouraging private sector

participation in various infrastructure projects. In order to provide necessary legal framework for implementation of the said policy, State of

Gujarat promulgated an ordinance under the nomenclature of ""Gujarat Infrastructure Development Ordinance 1999"". The said Ordinance was later

on given the shape of ""Gujarat Infrastructure Development Act, 1999"". By the promulgations of the said Ordinance, State of Gujarat for the

purpose of ensuring its participation in respect of the infrastructural project in the field of Information Technology with private sector inter alia

decided to form a Company, fully owned by it as its instrumentality and as a result thereof, respondent herein was incorporated as a Company

under the provisions of the Companies Act, 1956. Subsequently, the respondent floated global tender inviting offers from the concerned

Companies for undertaking a project of Infocity near Gandhinagar (Gujarat) in joint venture with the respondent by forming a ""Special Purpose

Vehicle"" for the same in the shape of a Joint Venture Company and by and between the respondent and the concerned successful bidder. In

response to the said global tender, the respondent decided to enter into a joint venture with the said Creative I.T. Inc. for the purpose of

implementing the project of Infocity at Gandhinagar. Accordingly, an agreement dated 1-8-2000 under the nomenclature of ""Concession

Agreement"" as envisaged by the provisions embodied in Section 2(b) read with Sections 4 and 7 of the Gujarat Infrastructure Development Act,

1999 came to be executed by and between the petitioner and the respondent with the said Creative I.T. Inc. as a Confirming Party thereto, in

substance, spelling out, in detail, terms and conditions, subject to which the said project of Infocity would be undertaken by the respondent and the

said Creative I.T. Inc. in joint venture through the instrumentality of the petitioner as a ""Special Purpose Vehicle"".

4.2. It appears that the Concession Agreement contained various provisions with respect to the scope of arrangement namely design, finance, bill,

market, lease, operate and transfer. The said Concession Agreement also contemplates lease in favour of the petitioner of the project site under a

valid and binding lease agreement to be duly executed and specifying the rates as stated in the Schedule 7 to the said Concession Agreement as the

lease rental in respect to the land specified for each activity. The said Concession Agreement also provides for Arbitration Clause (Clause 24.4).

The said Concession Agreement also contemplates as one of its Schedule, Master Lease Agreement. The petitioner and the respondent entered

into a Master Lease Agreement dated 26-2-2001 which inter alia defines lessor, lessee, sub-lessee, development, detailed project report and

other terms. It appears that thereafter a dispute arose between the parties to the said Concession Agreement and Master Lease Agreement and

the respondent issued notice of termination of the said Concession Agreement and Master Lease Agreement pointing out various breaches of the

Concession Agreement and Master Lease Agreement. It appears before issuing the termination notice, the respondent had issued a preliminary

notice in respect in respect to the Concession Agreement and a termination notice in respect to the Master Lease Agreement. That the respondent

issued termination notice dated 12-8-2008. The said termination notices were challenged by the petitioner before this Court by way of Special

Civil Application No. 10840 of 2008 which came to be withdrawn by the petitioner. That thereafter the petitioner had instituted Civil Suit No. 427

of 2008 before the learned Civil Judge (S.D.), Gandhinagar for a permanent injunction only restraining the respondent, its servants and agents from

disturbing the petitioner's possession of the Project/Land/Site/Facility/Building as per the description thereof in the Master Lease Agreement and

from obstructing the petitioner its servants and agents in carrying on activities there at and collecting rent and other amounts from the sub-lessees

and providing facilities to them. It is required to be noted that in the said suit, the petitioner has not challenged the termination of Concession

Agreement and the Master Lease Agreement. The only contention seems to be that they should not be dispossessed without following the due

process of law. In the said suit, the respondent herein submitted application Exh. 17 u/s 8 of the Act invoking arbitration Clause No. 24.4 of the

Concession Agreement and referring the parties for arbitration to resolve the dispute. The said application was opposed by the petitioner

submitting that in the Master Lease Agreement there is no arbitration clause and the arbitration agreement/clause is provided only in the

Concession Agreement and both the Concession Agreement and Master Lease Agreement are independent to each other, and therefore, in

absence of any arbitration agreement/clause in the Master Lease Agreement, there is no question of referring the parties to the arbitration/arbitral

Tribunal, and therefore, the application is not maintainable, and therefore, it was requested to dismiss the application u/s 8 of the Act. It was mainly

contended on behalf of the respondent that the Concession Agreement is the main agreement and the Master Lease Agreement was in furtherance

of Concession Agreement flowing from the Concession Agreement more particularly Schedule 13(2) of the said Concession Agreement, and

therefore, both, the Concession Agreement and Master Lease Agreement to be considered and read together and as Concession Agreement

provides for arbitration, it was requested to allow the said application u/s 8 of the Act and refer the parties for resolving the dispute through

arbitration.

4.3. The learned trial Court after considering the submissions made on behalf of the respective parties and considering the relevant clauses of the

Concession Agreement as well as Master Lease Agreement Exh. 17 by the impugned order dated 22-12-2008 directing the parties to resolve the

dispute through Arbitral Tribunal.

4.4. Being aggrieved by the impugned order dated 22-12-2008 passed by the learned 8th Additional Senior Civil Judge, Gandhinagar below

application Exh. 17 in Regular Civil Suit No. 427 of 2008, the petitioner-original

plaintiff has preferred present Special Civil Application under Article 227 of the Constitution of India.

5. Mr. D. C. Dave, learned Advocate appearing on behalf of the petitioner-plaintiff has submitted that the petitioner had instituted the aforesaid suit seeking a permanent injunction restraining the respondent, its agents and servants from disturbing the possession of the petitioner in respect of the concerned property, referred to as ""Project land/site/facilities/buildings"", as per the description thereof, in the Master Lease Agreement executed by and between the petitioner and the respondent on 26-2-2001. It is submitted that for the purpose of claiming the aforesaid relief, it is the case on behalf of the petitioner that they are in settled legal possession of the aforesaid land pursuant to the Master Lease Agreement executed by the respondent in favour of the petitioner for the purpose of leasing out the said land to the petitioner for specified period of 32 years, and therefore, the respondent who is purportedly claiming to have terminated the said Master Lease Agreement, the respondent has no right to dispossess the petitioner without following the due process of law.

5.1. It is submitted by Mr. Dave, learned Advocate appearing on behalf of the petitioner that the Concession Agreement was executed on 1-8-2000 by and between the respondent and subsequent thereto, Master Lease Agreement came to be executed on dated 26-2-2001. It is submitted that Clause 10 of the said Master Lease Agreement provides that provision contained in the said Master Lease Agreement shall override all previous understandings, agreements, contracts, whether oral or written and thereupon the said Master Lease Agreement shall be the only contract governing the rights of the petitioner and the respondent. It is submitted that the term ""override"" figuring in the said clause would mean ""to declare null and void, set aside"". It is submitted that the term ""overriding"" in P. Ramnatha Aiyar's Law Lexicon is defined as ""subordinating all others to itself. It is submitted that in view of the above, the only conclusion which is possible therefrom is to the effect that the said Concession Agreement has no existence with effect from the execution of the said Master Lease Agreement. It is submitted that when the Concession Agreement is not in existence as on the date, the question of there being any right upon the respondent to move the said application Exh. 17 u/s 8 of the Act does not

arise. It is submitted that it cannot be disputed that existence of an arbitration clause is a must for invoking the application of Section 8 of the Act.

Therefore, it is submitted that when the very Concession Agreement in which the said arbitration clause is incorporated is not in existence, it goes

without saying that even the said arbitration clause does not survive. Under the circumstances, the learned trial Court ought to have rejected the

application Exh. 17 by holding that the Concession Agreement containing arbitration clause no longer exists.

5.2. It is further submitted in the alternative that presuming that the said Concession Agreement is in existence and holds the field as on date, the

question of invoking application of Clause 24.4 thereof containing arbitration clause does not arise, as the subject-matter of the suit does not

pertain to any provision contained in the said Concession Agreement. It is submitted that the suit has been instituted by the petitioner simply based

upon the settled possession of the petitioner and only for permanent injunction. It is submitted that for the purpose of deciding the real issue in the

suit, viz. as to whether the respondent is entitled to evict forcibly the petitioner without following due process of law, Court is not required to refer

to any of the provisions of the said Concession Agreement or even Master Lease Agreement. It is submitted that in the suit what is required to be

considered by the Court is only the question as to whether the petitioner is entitled to a limited protection in view of its settled possession or not, on

the premise that the respondent has no right to dispossess the petitioner without following the due process of law. It is submitted that while

protecting the possession of the petitioner, no provision of the Concession Agreement or Master Lease Agreement is required to be interpreted. It

is submitted that Clause 24.4 of the Concession Agreement containing an arbitration clause would come into play if there exists a dispute by and

between the petitioner and the respondent concerning the interpretation or otherwise of any provisions contained in the said Concession

Agreement. Therefore, it is submitted that as such the petitioner has been put in possession of the Project land/site/facility/building pursuant to and

in furtherance of the Master Lease Agreement only, and therefore, if at all any agreement which is required to be gone into in the present suit for

determining the nature of the possession of the petitioner, would be Master Lease Agreement only and not Concession Agreement. It is submitted

that admittedly the Master Lease Agreement does not contain any arbitration clause. It is submitted that even application Exh. 17 is based on the arbitration clause contained in the Concession Agreement. Therefore, it is submitted that when the Concession Agreement is not part and parcel of the subject-matter of the suit and the only agreement which can be said to be part and parcel of the suit is the Master Lease Agreement, the application Exh. 17 can be sustainable only in a case where the Master Lease Agreement provides an arbitration clause like Concession Agreement.

5.3. It is also further submitted that the contention sought to be raised for and on behalf of the respondent to the effect that the Concession Agreement refers to the Indenture of Master Lease as one of the Schedule thereof, and therefore, the Master Lease Agreement would qualify as an integral part of the said Concession Agreement, and hence, the arbitration clause contained in the Concession Agreement would also apply to the Master Lease Agreement, has no substance and cannot be accepted. It is submitted that the Master Lease Agreement is not as per the Schedule. There is nothing on the record to show that the said Master Lease Agreement is as per the Schedule, stated to have been prescribed by the Concession Agreement. Therefore, the question of construing the said Master Lease Agreement as a part and parcel of the Concession Agreement does not arise.

5.4. It is submitted that as referred to in the Concession Agreement, as one of the Schedules thereof, is the land lease agreement, which is distinct and different from the Master Lease Agreement. It is submitted that even assuming that there is reference about the Master Lease Agreement in the Concession Agreement and in that case also the Concession Agreement simply contemplates execution of the Master Lease Agreement at a later point of time, however, that does not mean that Master Lease Agreement is part and parcel of Concession Agreement. It is submitted that Master Lease Agreement has been executed separately and independently of the Concession Agreement, and therefore, it has got a distinct and separate existence from that of the Concession Agreement, and therefore, Master Lease Agreement cannot be said to be a part and parcel of the Concession Agreement, and hence, the arbitration clause contained in the

Concession Agreement cannot have application to Master Lease Agreement.

5.5. It is further submitted that even considering the fact that separate notices have been issued by the respondent for termination of the Concession Agreement and also Master Lease Agreement, that itself suggest that both, Concession Agreement and Master Lease Agreement are distinct and separate agreements. It is rather submitted that even the reliance placed upon Clause 28.3 of the Concession Agreement under the heading ""entire agreement"" can never be understood to have effect of conveying that Master Lease Agreement and other agreements which were not in existence on the date of the execution of the Concession Agreement, would also stand included in the Concession Agreement as a part and parcel. It is submitted that merely because the said Clause 29.3 refers to the Schedules attached to the Concession Agreement, it cannot be said that Master Lease Agreement is part and parcel of the Concession Agreement.

5.6. It is also further submitted that as such it is not open for the respondents to now contend that the suit is not maintainable and the dispute is required to be referred to the arbitral Tribunal in view of the their stand before this Court in Special Civil Application No. 10840 of 2008. It is submitted that when Special Civil Application was preferred by the petitioner earlier, the civil suit was pleaded by the respondent, as remedy available to the petitioner and it was contended by the respondent before this Court that the petitioner should be relegated to the remedy of a Civil Suit.

5.7. Mr. Dave, learned Advocate appearing on behalf of the petitioner, replying upon the decision of the Hon''ble Supreme Court in the case of Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, more particularly on Paras 12, 15 and 16,, has submitted that as held by the Hon''ble Supreme Court in the said decision, if part of the cause of action for the concerned suit is not covered by the arbitration clause, Section 8 of the Act will not have any application. It is submitted that, therefore, when the Master Lease Agreement does not contain any arbitration clause, a cause of action to institute the present suit on the part of the petitioner, referable to the same would not fall within the scope and purview of Section 8 of the Act. It is submitted that similar view is taken by the Bombay

High Court in the case of Garden Finance Ltd. Vs. Prakash Inds.

Ltd. and Another, while dealing with identical situation with respect to the appointment of arbitrator u/s 11 of the Arbitration and Conciliation Act, 1996.

5.8. Lastly, it is submitted that as stated above in the suit instituted by the petitioner the only prayer is with respect to the permanent injunction

protecting their possession contending inter alia that the petitioner cannot be dispossessed without following due process of law when they are in

settled legal position. It is submitted that in view of the following decisions of the Hon"ble Supreme Court, the petitioner is entitled to the protection

of the settled possession and pray that the respondent should not dispossess the petitioner without following due process of law:

(i) Ram Rattan and Others Vs. State of Uttar Pradesh,

(ii) Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao,

(iii) AIR 2000 SC 900 (Ramji Rai and Anr. v. Jagdish Mallah (Dead) Through LRs. and Ors.)

6. The petition is opposed by Mr. S. N. Soparkar, learned Senior Advocate appearing on behalf of the respondent.

6.1. It is submitted by Mr. Soparkar, learned Senior Advocate appearing on behalf of the respondent that in view of specific arbitration Clause

24.4 in the Concession Agreement, Court is required to refer the parties to the arbitration. It is submitted that Section 8 of the Arbitration Act

creates an obligation upon the Civil Court to refer the parties to arbitration. It is submitted that in Section 8 the word used is ""shall"", and therefore,

Civil Court has to refer the parties to arbitration in view of arbitration clause. He has relied upon the decision of the Hon"ble Supreme Court in the

case of Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, and submitted that as held by the Hon"ble Supreme Court in the

aforesaid decision, language of Section 8 is mandatory. It is submitted that considering the fact that Concession Agreement and Master Lease

Agreement are already terminated, the respondent was to take possession as provided in the respective agreements which is objected by the

petitioner, and therefore, as there is a dispute with respect to the interpretation of the relevant clauses of Concession Agreement and Master Lease

Agreement, it can be said that the dispute will squarely fall within the four

corners of the Concession Agreement which contains arbitration agreement, and therefore, the respondent was justified in submitting application u/s of the Act. It is further submitted that non-existence of an arbitration clause in the Master Lease Agreement is irrelevant and of no consequence. It is submitted that as such the Master Lease Agreement is in furtherance of Concession Agreement, and therefore, both the agreements are required to be read together. It is submitted that the Master Lease Agreement is as per Schedule - Schedule 13 of the Concession Agreement and the execution of the Master Lease Agreement was one of the condition of the Concession Agreement. It is submitted that even as per the letter of the petitioner to the respondent dated 24-1-2005 (Exh. 39/13 before the trial Court) the petitioner has admitted that Master Lease Agreement is as per Schedule 13 of the Concession Agreement. Therefore, Master Lease Agreement being a part of the Concession Agreement, assuming while denying that it can be said that the dispute arises under Master Lease Agreement, in that case also such dispute would be governed by the arbitration provision contained in Concession Agreement. It is further submitted that even as per Clause 24.9 of the Concession Agreement, in case of any conflict with any other agreement unless otherwise agreed between the parties, Concession Agreement would take priority.

6.2. It is further submitted that as such the petitioner has accepted continuing validity of the Concession Agreement and has never disputed its existence after execution of the Master Lease Agreement. Therefore, the contention on behalf of the petitioner that on execution of Master Lease Agreement, Concession Agreement comes to an end, cannot be accepted. It is further submitted that even the conduct of the petitioner after Concession Agreement providing development security, appointing internal auditor and internal engineers, all were in terms of the Concession Agreement. It is further submitted that even in the letter dated 12-6-2001, the petitioner has clearly stated that the Concession Agreement is followed by the Master Lease Agreement and both the parties would abide by all the terms and conditions mentioned in the Concession Agreement and Master Lease Agreement. It is also further submitted that after the execution of the Master Lease Agreement, whenever there was

any dispute, the petitioner always referred to the clauses of the Concession Agreement and always wanted to resolve the dispute according to

Concession Agreement. It is further submitted that even in the petition filed before this Court being Special Civil Application No. 10840 of 2008,

the petitioner has specifically and categorically accepted the existence of the Concession Agreement and it was the specific case on behalf of the

petitioner that Concession Agreement continues to operate and it was specific case on behalf of the petitioner that the matter should have been

resolved under the provisions of the Concession Agreement by arbitration.

6.3. It is further submitted that in various correspondence after the dispute arose between the parties, the petitioner has always insisted to resolve

the dispute amicably otherwise they can consider resolving the dispute provided under Clause 24 of the Concession Agreement (letter dated 26-3-

2008). It is also further submitted that the Concession Agreement is a Master or an umbrella agreement, governing the entire relationship between

the parties, which is apparent from not only the overall scheme of the transaction but also from the recitals and the terms contained in the

Concession Agreements, and therefore, it cannot be said that the execution of the Master Lease Agreement has resulted into termination of

Concession Agreement. It is further submitted that the Concession Agreement does not contemplate termination on account of the execution of the

Master Lease Agreement. Relying upon Clause 3 of the Concession Agreement it is submitted that overall transaction entails various aspects and

the lease of land being only one of the facet. Concession Agreement records the concession granted to the petitioner to construct, develop and

operate the Infocity project, whereas the Master Lease Agreement merely deal with the lease of the land and is in fact, for the performance of and

not in supersession of the Concession Agreement. It is submitted that the Concession Agreement contemplates various details in respect of the

particular facets of the overall transaction and one of the recital is Schedule 13 being land lease agreement. It is submitted that all the Schedules are

part and parcel of the Concession Agreement and necessary for overall working and implementation of the project along with the Concession

Agreement and does not envisage or even practicable or possible for the Concession Agreement or the Schedules to operate independently or for

the Master Lease Agreement to operate without existence of Concession Agreement. It is further submitted on behalf of the respondent that

Master Lease Agreement being a Schedule to the Concession Agreement, cannot, by any provision, result into termination of the Concession

Agreement. It is submitted that so far as reliance placed upon Clause 10 of the Master Lease Agreement is concerned, it is a general provision

which speaks of over-riding all the previous understanding, agreements, contracts but the same can only mean and refer to such understandings,

agreement or contracts which pertain to lease of land and not to an agreement like the Concession Agreement, the scope of which is far wider than

the Master Lease Agreement. It is submitted that at the best, Clause 10 can only mean that the provisions of Concession Agreement that

specifically deal with the issues of the land lease, would stand modified or overridden by the Master Lease Agreement, in case of any

inconsistency.

6.4. Relying upon Clause 22.5 of the Concession Agreement it is submitted that considering the said clause, certain clauses of the Concession

Agreement, survive the termination of the agreement and such Clauses are 6, 9, 22, 24 and 28.6. Thus, arbitration clause being Clause 24

accordingly survives the termination of the Concession Agreement.

6.5. Therefore, it is submitted by Mr. Soparkar, learned Senior Advocate for the respondent that Concession Agreement being a principal

agreement and Master Lease Agreement is flowing from Concession Agreement, both are required to be read together and in the Concession

Agreement when there is specific Clause 24 with respect to resolving the dispute through arbitration, looking to the dispute which requires

interpretation of clauses of Concession Agreement as well as Master Lease Agreement, the learned trial Court has rightly allowed the application

Exh. 8 by referring the parties to the arbitration. Submitting accordingly, it is requested to allow the present Special Civil Application.

6.6. In the rejoinder, Mr. Dave, learned Advocate appearing on behalf of the petitioner has submitted that the contention on behalf of the

respondent that at no point of time in the past, the petitioner pleaded about non-existence of the Concession Agreement, and therefore, the

petitioner cannot be heard in the present suit to contend that the Concession

Agreement does not survive, cannot be accepted in view of Section

91 read with Section 92 of the Evidence Act. It is submitted that in view of the provisions contained in Section 91 read with Section 92 of the

Evidence Act, when it comes to the interpretation of a contract, no evidence other than the concerned term of the contract is permissible. In

support of his above submission, he has relied upon the decision of the Hon''ble Supreme Court in the case of Tamil Nadu Electricity Board and

another Vs. N. Raju Reddiar and another, (relevant Paras 7 and 9). It is further submitted that as it is evident from the order passed by this Court

in earlier petition being Special Civil Application No. 24767 of 2006, a contention about non-existence of the Concession Agreement was

specifically raised by the petitioner, and therefore, the respondent cannot read the contention of Special Civil Application No. 10840 of 2008 in

isolation. It is further submitted that even the said contention raised by the petitioner in the said petition with regard to the Concession Agreement

are on the assumption that even if Concession Agreement survives, purported permanent thereof is not sustainable for multiple reasons, however,

such a contention of the petitioner cannot have effect of nullifying of the flows from the plain reading of the Clause 10 of the Master Lease

Agreement.

6.7. It is further submitted that even the reliance placed by the respondent on Clause 22.5 of the Concession Agreement is also misplaced, as after

the Concession Agreement has come to an end on account of its replacement of the Master Lease Agreement, the said Clause 22.5 has no

application. It is further submitted that the Master Lease Agreement has provision to continue with the project of Infocity and therefore, the

contention on behalf of the respondent that if the Concession Agreement is not in existence, then in that case, it is very difficult as how the petitioner

would continue with the project of the Infocity, cannot be accepted. It is further submitted that even reliance placed upon the other clauses like

Clause 24.9 etc. would have no application in view of the contention on behalf of the petitioner that on Master Lease Agreement being executed,

Concession Agreement has ceased to exist. Submitting accordingly, it is requested to allow present Special Civil Application.

7. Heard the learned Advocate appearing on behalf of the respective parties.

8. Considering the above submissions, the main question which is posed for the consideration of this Court are as under:

(i) On execution of the Master Lease Agreement, whether Concession Agreement will come to an end, and therefore, as in the Concession

Agreement only there is an arbitration clause and in the Master Lease Agreement, there is no arbitration clause, and therefore, the plaintiff and the defendant are not required to be referred to arbitration?

(ii) Whether in view of Clause 10 of the Master Lease Agreement, can it be said that the Concession Agreement has come to an end?

(iii) When the suit is filed only for permanent injunction restraining the defendants from dispossessing the plaintiff except following due process of

law, whether such a dispute is required to be referred to arbitration, as such dispute will not fall within the Concession Agreement and/or even

Master Lease Agreement more particularly when the termination of the agreements is not under challenge?

9. Before considering the above question, the background of Concession Agreement and Master Lease Agreement is required to be considered.

10. In the year 1999, the State of Gujarat framed a policy for inviting and encouraging private sector participation in various infrastructural

projects. In order to provide necessary legal frame-work for implementation of the said policy, the State of Gujarat, promulgated an Ordinance,

under the nomenclature of ""The Gujarat Infrastructure Development Ordinance, 1999"". The said Ordinance was later on, given the shape of the

Gujarat Infrastructure Development Act, 1999. Upon promulgation of the said Ordinance, the State of Gujarat for the purpose of ensuring its

participation in respect of infrastructural project in the field of Information Technology, with private sector, inter alia, decided to form a Company,

fully owned by it as its instrumentality and as a result thereof, the respondent-defendant was incorporated as a Company under the provisions of

the Companies Act, 1956. Subsequently, the respondent floated global tender, inviting offers from the concerned Companies for undertaking a

Project of Infocity, near Gandhinagar, in joint venture with the respondent by forming a ""Special Purpose Vehicle"" for the same, in the shape of a

Joint Venture Company by and between the respondent and the concerned successful bidder. In response to the said global tender the respondent

decided to enter into a joint venture with the said Creative I.T. Inc. for the purpose of implementing the Project of Infocity at Gandhinagar.

Accordingly, in due furtherance thereof, an agreement dated 1st August, 2000, under the nomenclature of ""Concession Agreement"" (C.A.), as

envisaged by the provisions embodied in Section 2(b) read with Sections 4 and 7 of the Gujarat Infrastructure Development Act, 1999 came to be

executed by and between the petitioner and the respondent with the said Creative I.T. Inc. as a confirming party thereto, in substance, spelling out,

in detail, the terms and conditions, subject to which the said project of Infocity would be undertaken by the Respondent and the said Creative I.T.

Inc. in joint venture through the instrumentality of the Petitioner as a Special Purpose Vehicle.

11. On considering the Concession Agreement as a whole and various clauses in the Concession Agreement, it appears that the said provides the

implementation of the project and providing for necessary particulars with respect to the design, finance, bill, market, lease, operate and transfer. It

appears that certain concessions were also granted under the said agreement between the parties for implementation of the project. Under the said

agreement, it was agreed by the company/State Government to provide 150 acres of land and certain other concessions were also provided.

Clause 3 of the Concession Agreement refers to the implementation of the project and gives an indication of the scope of the arrangement, namely

design, finance, bill, market, lease, operate and transfer, which reads as under:

3.1. Design, finance, bill, market, lease, operate and transfer.

3.1.1. Develop the financing plan for the Project and carry out all necessary steps for Financial Closure as defined in Schedule 1, which shall be

the sole responsibility of the Concessionaire;

3.1.2. Incorporate into its Memorandum and Articles of Association Sections specified in the Shareholders's Agreement regarding the day to day

management and operation control of Concessionaire and take steps for completing and executing all other necessary Project Agreements;

3.1.3. ""Carry out detailed design and engineering of the Project (as specified in the R.F.P. and finalized in the D.P.R.) to be approved by the

Independent Engineer and build the Project Facilities and Information Technology Infrastructure of the first phase of the Infocity (Phase-I) as

described in Schedule 3 at its own cost and risk as per the provisions of R.F.P. as finalized in the D.P.R.;

3.1.4. Carry out marketing of the Infocity to potential users of the specified categories of I.T. companies ("Users") as specified in the I.T. Policy of

the State, and also to supportive and complimentary facilities and service provides ("Supplementary Users") like Banks, Insurance Companies,

retail shopping centres and malls, hotels, restaurants, schools, day-care centres, hospitals, educational fun parks, sports facilities, exhibition centres,

theatre and entertainment facilities as listed in Schedule 10 and enter into contracts with the Users and Supplementary Users for lease and regular

use as per prescribed policies, to generate the necessary revenues as per the rates for different facilities;

3.1.5. Carry out Operation and Maintenance of the Project Facilities in accordance with prudent standards of such operations specified in the

D.P.R. during the Concession Period unless terminated earlier in accordance with the provisions of this Agreement; and

3.1.6. Carry out improvements on the Infocity and further extension thereof ("Phase-II") subject to and in accordance with the provisions of this

Agreement, the detailed project report for Phase II and such other agreements to be entered into from time to time.

3.1.7. Transfer, at the end of the Concession Period or upon termination, the Project Assets to G.I.L. in accordance with the provisions of this

Agreement.

3.1.8. The Developer hereby agree that though G.I.L. may review the terms of such further agreements as the Construction Contract, the

Marketing Contract, the Security Agreement, the Financing Agreement, and Operations and Maintenance Agreement and other Agreements, the

Developer shall be responsible for ensuring that all the conditions agreed in those Agreements are such which enables Concessionaire to comply

and fulfill the provisions of this Agreement.

12. Clause 3.2 of the Concession Agreement provides condition precedent for conditions qua the rights and obligations of the parties under the

said agreement inclusive of the acquisition and lease to the plaintiff by G.I.L. (defendant) of the project site; granting of specified concession etc.

Clause 3.2 of Concession Agreement reads as under:

3.2.1. The acquisition and lease to Concessionaire by G.I.L. of the project site ("Project Site") as specified in the R.F.P. and described in

Schedule 8 of this Agreement;

3.2.2. The granting of the Specified Consents ("Specified Consents") as described in the Schedule 2 by the State Government and the Central

Government free from any conditions which materially affect the interests of the Concessionaire, the Lenders, the Investors or Users; and

3.2.3. Review and approval of the D.P.R. by G.I.L., prepared by the Developer by appointing a competent and qualified consultant ("D.P.R.

Consultant") in accordance with the provisions of the R.F.P. and incorporation of the terms and conditions of the, D.P.R. in this agreement and

such other agreement as may be necessary from time to time.

3.2.4. Finalisation of mutually acceptable Schedules 2 to 4 to be attached with this agreement.

13. Clause 3.3 of the Concession Agreement provides for satisfaction of conditions precedent. Clause 3.3.1 provides that upon compliance in full

of all conditions precedent set forth in Clause 3.2 above the Concessionaire shall be obligated to issue to G.I.L., a Certificate of Compliance with

Conditions Precedent. Under Clause 3.3.2 the defendant company was required to make best effort to ensure that all conditions precedent

mentioned in Clause 3.2 are satisfied within a period of six months. Clause 3.3 of the Concession Agreement reads as under:

3.3.1. Upon compliance in full of all conditions precedent set forth in Clause 3.2 above the Concessionaire shall be obligated to issue to G.I.L., a

Certificate of Compliance with Conditions Precedent (the "Certificate of Compliance"). The Concessionaire shall issue such Certificate within four

(4) weeks of its determination that all conditions precedent set forth in Clause 3.2 above have been complied with. In the event that the

Concessionaire has not issued the Certificate of Compliance within four weeks, G.I.L. can refer the matter to the Independent Engineer who shall

then determine if the Certificate of Compliance can be issued or not. If the Independent Engineer is satisfied with documented evidence that a

Certificate of Compliance can be issued it can issue the certificate to G.I.L.

3.3.2. G.I.L. shall make best efforts to ensure that all the Conditions Precedent mentioned in Clause 3.2 above are satisfied within a period of six

months from date hereof.

3.3.3. Notwithstanding anything contained in Clause 3.2 to the contrary, either party may expressly waive, in writing, any of the conditions

precedent set forth in Clause 3.2 above in its sole discretion, provided, however, that the Concessionaire shall have been granted or obtained all

Specified Consents that are required to be obtained prior to commencement of the construction; and provided further that no such waiver shall be

construed as a waiver by either party of any of its rights under this Agreement.

3.3.4. If the Conditions Precedent are not satisfied within a period of twelve months from the date of execution of this Agreement. Either Party

shall be entitled to terminate the agreement pursuant to the provisos of Clause 21.1 of this Agreement.

3.3.5. Notwithstanding anything contained in this Clause, the Developer shall provide all assistance and shall be under an obligation to provide such

assistance to the Concessionaire to design, finance, market, build, lease and operate the project so that the latter can comply with the provisions of

this Agreement. The Developer acknowledges that as a confirming party to this Agreement, G.I.L., shall have the right to proceed against the

Developer in respect of non-compliance by the Concessionaire of its obligation relating to performance of payment as the case may be.

14. The said Concession Agreement also contains various Schedules for being part of Concession Agreement for implementation for carrying out

further functions provided under the Concession Agreement and the project. Schedule 13 provides for leasing out the land for project site to lease

out the land as provided under the Concession Agreement.

15. Therefore, on 26-2-2006, in furtherance of said Concession Agreement, land admeasuring 116 Acres has been leased out to the plaintiff for

project site by executing an agreement which is known as Master Lease Agreement.

16. Clause 4.1 of the Concession Agreement provides right in favour of the Petitioner, by way of lease of the project site, to develop, design,

finance, construct, complete and market the project facilities in accordance with the R.F.P. and the approved D.P.R. and sub-lease project

facilities or portion of project site for the benefit of the users and the supplementary users.

Clause 4.1 reads as under:

Clause. 4. Grant of Concession and Vacant Possession:

4.1. G.I.L. hereby grants the Concessionaire by way of lease of the Project Site, the exclusive right to develop, design, finance, construct and

complete and market the project facilities in accordance with the R.F.P. as finalized in the D.P.R. and sub-lease the project facilities or portion of

project site, for the benefit of the Users and the Supplementary Users, and operate and maintain the same, and transfer at the end of the

Concession Period to G.I.L., the Project Assets in accordance with the terms and conditions of this Agreement for the duration of the Concession.

Clause 6.1.3 of the Concession Agreement contemplates lease in favour of the Petitioner of the project site under a valid and binding Lease

Agreement, to be duly executed and specifying the rates as stated in Schedule 7 to the Concession Agreement as lease rental in respect to the land

specified for each activity. Clause 6.1.3 of the Concession Agreement reads as under:

6.3.1. Lease of Project Site

(a) G.I.L. shall lease to Concessionaire the project site under a valid and binding lease agreement (the ""Project Site Lease Agreement""). The said

Project Site Lease Agreement shall be duly executed and registered with the competent authorities. The lease of the land specified for each activity

shall be as per the final land use plan agreed in the D.P.R., at rates stated in the R.F.P., and as stated in Schedule 7 to this Agreement. The

Concessionaire shall abide by the final agreed land use plan, and accordingly, carry out the development of Common Area, leased at a

concessional rate, as specified in the R.F.P. as finalized in the D.P.R.

Clause 28.3 provides that the Concession Agreement including the Schedules, the finally agreed Technical Bid, R.F.P. as finalized in the D.P.R.,

L.O.I. represent the entire understanding between the parties. Clause 28.3 of the Concession Agreement reads as under:

Clause 28.3 : Entire Agreement

This Agreement, including the Schedules, the finally agreed Technical Bid, R.F.P. as finalized in the D.P.R., L.O.I. represents the entire

understanding between the parties in relation to the subject-matter hereof and supersedes any or all previous agreements or arrangements between

the parties in respect of the Project (whether oral or written).

In case of any conflict with any other agreement, the Concession Agreement would prevail. This is contemplated by Clause 24.9. Clause 24.9 of

the Concession Agreement reads as under:

24.9. In case of any conflict with any other agreement, unless otherwise agreed between the Concessionaire and G.I.L., this Agreement would

take priority.

The Concession Agreement provides arbitration clause. Clause 24.4 of the Concession Agreement, which reads under:

24.4. Arbitration

(a) In the event that the parties are unable to resolve any dispute, controversy, or claim in accordance with Sections 22.1 or 22.2, such dispute,

controversy or claim shall be finally settled by a panel of arbitrators (the "Arbitration Panel") in accordance with the Arbitration and Conciliation

Act, 1996. The Arbitration Panel shall consist of three parties. The Concessionaire and G.I.L. shall appoint one arbitrator each and such

arbitrators shall, within seven days of their appointment, designate a third person to act as an arbitrator in order to organize an Arbitration Panel.

The arbitral proceedings shall take place in Ahmedabad. The Arbitration shall be conducted in English in accordance the Rules of Indian Council of

Arbitration. The arbitrators shall award speaking orders.

(b) Any dispute, controversy or claim referred to the Arbitration Panel in accordance with 24.4 (a) above shall be considered a commercial

dispute arising under the Arbitration and Conciliation Act, 1996.

(c) Any award by the Arbitration Panel shall be final and binding on the parties.

(d) The parties shall bear their respective costs of arbitration.

17. As stated above, the Master Lease Agreement was entered into between the defendant and the plaintiff and 116 acres of the land came to be

leased to the plaintiff as per Concession Agreement. Therefore, it can be said that the Master Lease Agreement is in furtherance of Concession

Agreement and the parties were to act as provided in Concession Agreement as well as in Master Lease Agreement. Therefore, it can be said that

the Concession Agreement can be said to be the main agreement, and therefore, as such both the agreements, Concession Agreement and Master

Lease Agreement are required to be read together and cannot be read in isolation, as sought to be contended on behalf of the plaintiff. As stated hereinabove, the Concession Agreement contemplated as one of its Schedule Master Lease Agreement. It appears that thereafter dispute arose between the plaintiff and the defendant with respect to various breaches by the plaintiff, and therefore, the defendant issued Preliminary Notice with respect to the Concession Agreement and a termination notice in respect to the Master Lease Agreement providing an opportunity to the plaintiff to cure and remedies the breaches within 60 days. Thereafter, as the defendant (G.I.L.) was satisfied with the cause of issuance of the notices were largely unresolved, despite the lapse of more than 15 months, the defendant issued the notice of termination of Concession Agreement and the Master Lease Agreement vide Termination Notices dated 12-8-2008. The said termination notices were challenged by the plaintiff before this Court by way of Special Civil Application No. 10840 of 2008 which came to be withdrawn by the plaintiff. It is to be noted at this stage that in Special Civil Application No. 10840 of 2008, it was specifically contended on behalf of the plaintiff that the Concession Agreement takes part and does not stand terminated upon execution of the Master Lease Agreement and it was also specifically pleaded while challenging the termination notices in the said Special Civil Application that the dispute was required to be resolved through arbitration as provided under Clause 24 of the Concession Agreement and a grievance was made that the defendant had not proceeded thereunder. It is also to be noted that in Para 33(a) in the said Special Civil Application No. 10840 of 2008 even the plaintiff had prayed for writ, direction and/or order commanding the respondent herein-original defendant to annul the termination notices dated 12-8-2008 and to hold that the aforesaid Concession Agreement and the Master Lease Agreement continue to operate and hold the field. Even considering various correspondences between the plaintiff and the defendant i.e. documents which are produced at Exh. 39/1 to 39/9, all throughout the case of the plaintiff is that both the agreements, Concession Agreement and Master Lease Agreement exist and in fact even the plaintiff has admitted the shelter of the Arbitration Clause provided in Concession Agreement . Therefore, the contention on behalf of the plaintiff that on execution of the Master Lease Agreement, Concession Agreement does not exist and/or

has come to an end cannot be accepted.

18. Plaintiff has heavily relied upon Clause 10 of Master Lease Agreement. Clause 10 of the Master Lease Agreement reads as under:

Clause 10 : The provision of this Master Lease Agreement shall override all previous understandings, agreements, contracts whether oral or in writing and shall be deemed to be the only contract governing the rights of parties herein.

It is sought to be canvassed on behalf of the plaintiff that the Concession Agreement does not exist and/or has come to an end on execution of the

Master Lease Agreement. It is sought to be contended on behalf of the plaintiff that the word ""overriding"" mentioned in the said Clause 10 of the

Master Lease Agreement, shall construe to mean that all other agreements shall come to an end. The aforesaid submissions cannot be accepted.

On fair reading of Clause 10; it appears to the Court and it would mean that whenever there is a dispute with respect to any terms and conditions

with respect to anything provided in the Master Lease Agreement and Concession Agreement and there is a conflict between the same in that case

Master Lease Agreement shall override all the previous understanding, agreements, contracts whether oral or in writing and shall be deemed to be

only contract governing the rights of the parties. By no stretch of imagination it can be construed that Clause 10 of the Master Lease Agreement

provides that even Concession Agreement has come to an end on execution of the Master Lease Agreement. The word ""override"" means having

an overriding effect, meaning thereby, in case of conflict, Master Lease Agreement shall have to be construed against all other earlier agreements,

contracts etc. and in that case all understanding and all other agreements, contracts will have to give way to clauses provided in Master Lease

Agreement. The word ""override"" cannot be construed as ""putting an end"" as sought to be contended on behalf of the plaintiff. Therefore, the

contention on behalf of the plaintiff that on considering Clause 10 of the Master Lease Agreement, Concession Agreement has come to an end,

cannot be accepted. As stated above, whatever is got by the plaintiff from the defendant under the Master Lease Agreement i.e. land for project

site etc. are flowing from the rights of the parties under the Concession Agreement. In other words it can be said that the Concession Agreement is

heart/soul without which rights under the Master Lease Agreement will not be there. Concession Agreement is the base under which various other

agreements as per the Schedules to the Concession Agreement, agreements were required to be executed to fulfill the entire project for which

Concession Agreement was executed. Under the circumstances, the contention on behalf of the plaintiff that both Concession Agreement and

Master Lease Agreement are to be read independently and/or on execution of the Master Lease Agreement, Concession Agreement has come to

an end and/or is not in existence cannot be accepted. As observed above, both the Concession Agreement and Master Lease Agreement are

required to be considered and read together and cannot be read in isolation.

19. Now, so far as the question with respect to invocation of the arbitration as provided under Clause 24 of the Concession Agreement is

concerned, Clause 24.4 of the Concession Agreement provides for arbitration which reads as under:

Clause : 24.4 : Arbitration

(a) In the event that the parties are unable to resolve any dispute, controversy, or claim in accordance with Sections 22.1 or 22.2, such dispute,

controversy or claim shall be finally settled by a panel of arbitrators (the ""Arbitration Panel"") in accordance with the Arbitration and Conciliation

Act, 1996. The Arbitration Panel shall consist of three parties. The Concessionaire and G.I.L. shall appoint one arbitrator each and such

arbitrators shall, within seven days of their appointment, designate a third person to act as an arbitrator in order to organize an Arbitration Panel.

The arbitral proceedings shall take place in Ahmedabad. The Arbitration shall be conducted in English in accordance the Rules of Indian Council of

Arbitration. The arbitrators shall award speaking orders.

(b) Any dispute, controversy or claim referred to the Arbitration Panel in accordance with 24.4(a) above shall be considered a commercial dispute

arising under the Arbitration and Conciliation Act, 1996.

(c) Any award by the Arbitration Panel shall be final and binding on the parties.

(d) The parties shall bear their respective costs of Arbitration.

20. As per Clause 24.4 in the event that the parties are unable to resolve any dispute, controversy or claim in accordance with Section 22.1 or

22.2, such dispute, controversy or claim shall be finally settled by a panel of arbitrators in accordance with Arbitration and Conciliation Act, 1996.

It is the contention on behalf of the plaintiff that as in the Master Lease Agreement there is no arbitration clause and arbitration agreement provides

in the Concession Agreement only, and therefore, the dispute is not required to be referred to the arbitration, cannot be accepted. As held

hereinabove, both the agreements, Concession Agreement and Master Lease Agreement are required to be read together.

21. At this stage, it is required to be noted that in Special Civil Application No. 10840 of 2008, while challenging the termination notice, the

plaintiff has taken shelter of aforesaid Clause 24 of the Concession Agreement. Ground B, C, D and G of the aforesaid Special Civil Application

read as under:

B. As a matter of fact, when the said preliminary termination notices were caused to be issued by the respondent as back as on 21st April, 2007

and further, when subsequent thereto, in response thereto, various representations were made by the petitioner for resolving the controversy in an

amicable manner, through the mechanism provided for vide Sections 24.2 and 24.3 of the said Concession Agreement, with the reiteration that if it

is not possible to resolve the controversy in an amicable manner, recourse be made to the mechanism of arbitration provided for vide Section 24.4

of the said Concession Agreement for adjudication of the dispute, which can be said to be subsisting by and between the petitioner and the

respondent on account of the issuance of the said preliminary termination notices by the respondent, it was obligatory on the part of the respondent

to afford a hearing to the petitioner....

C. That at this juncture, and in furtherance of the aforesaid, it would be most relevant and pertinent to refer to the fact that a specific

communication dated 4th August, 2008, addressed by the petitioner to the respondent, invoking the application of Section 24 of the said

Concession Agreement for resolution and adjudication of the dispute by and between the petitioner and the respondent arising from the said

preliminary termination notices dated 21st April, 2007, was belatedly, responded to by the respondent, vide its communication dated 13th August,

2008, after purportedly deciding to terminate the said Concession Agreement

and the Master Lease Agreement....

D. That, at this juncture, apropos and in furtherance of the aforesaid, it would be most relevant and pertinent to mention that the mechanism of

amicable settlement contemplated by Section 24.2 of the said Concession Agreement specifically and categorically refers to the event of default on

the part of a party to the said Concession Agreement for the purpose of invoking the application of the said mechanism of amicable settlement, and

therefore, when the petitioner and the respondent were at variance on the issue arising from the said preliminary termination notices on the aspect

as to whether an event of default on the part of the petitioner, as contemplated by the said Concession Agreement and the said Master Lease

Agreement has arisen or not, warranting initiation of action on the part of the respondent for terminating the said Concession Agreement and the

said Master Lease Agreement, it was absolutely incumbent upon the respondent before arriving at any unilateral decision, purportedly, to terminate

the said agreements, to exhaust the mechanism for resolution in the first place provided for in the said Concession Agreement, vide Section 24

thereof, and therefore, if it was not possible to resolve the controversy amicably, to resort to the mechanism of adjudication through the process of

arbitration provided for vide Section 24.4 of the said Concession Agreement. However, as it appears, the respondent has proceeded on the

premise as if the respondent has got an unfettered right to terminate the said agreements in a unilateral manner. It is needless to mention that such

an approach on the part of the respondent, apart from being high-handed in nature, not befitting the stature of the respondent as an instrumentality

of the State under Article 12 of the Constitution of India, is having the effect of rendering nugatory the provision contained in Section 24 of the said

Concession Agreement....

G. In view of this, it is absolutely impermissible on the part of the respondent to resort to the impugned course of action without resorting to the

mechanism for settlement and if required, adjudication of the dispute provided for vide Clause 24 of the said Concession Agreement. Thus, even

on this count also, the impugned course of action on the part of the respondent would qualify as absolutely non est in nature.

In view of the above, it is not open for the plaintiff now to contend that the

arbitration clause provided in the Concession Agreement cannot be invoked by the defendant.

22. It was next submitted on behalf of the plaintiff that so far as the reliefs sought in the said suit of permanent injunction restraining the defendants their agents and servants from dispossessing the plaintiff without due process of law, cannot be subject-matter of the dispute referred to the arbitration, as the plaintiff has not challenged the termination notices in the suit and the suit is only for permanent injunction, and therefore, even the dispute in the suit is not required to be referred to the arbitrator. The aforesaid submissions cannot be accepted. It is the case on behalf of the defendant that on termination of the agreements, considering various clauses under the Concession Agreement as well as Master Lease Agreement, which are not challenged, they are entitled to recover the possession. Under the circumstances, even interpretation of certain clauses under the aforesaid agreements are required to be considered, whether under various clauses under the Concession Agreement and Master Lease Agreement, the defendant is entitled to get possession or not on termination of two agreements and what is the procedure to be followed. Under the circumstances, it can be said that there is a dispute arising between the parties under the aforesaid two agreements which is required to be referred to arbitration. Considering Clause 24.4 of the Concession Agreement and the for the reasons stated hereinabove, the dispute for the relief of permanent injunction as sought is also required to be referred to the arbitration as contemplated under Clause 24.4 of the arbitration clause.

23. Even otherwise, considering the scheme of the Arbitration Act and as held by the Hon"ble Supreme Court as well as this Court in catena of decisions, all these aspects can be considered by the learned arbitral Tribunal u/s 16 of the Arbitration Act. However, on the aforesaid ground, arbitration proceedings cannot be stalled.

24. Now, in view of the above finding to the effect that both the agreements, i.e. Concession Agreement and Master Lease Agreement are in existence and on execution of the Master Lease Agreement, Concession Agreement has not come to an end, and both the agreements, Concession Agreement and Master Lease Agreement are required to be read together and Concession Agreement can be said to be pilot

agreement and Master Lease Agreement is as per Schedule 13 of the Concession Agreement and considering Clause 24.4 of the Concession

Agreement, the next question which is required to be considered is what relief can be granted.

25. Reliance placed upon the decision in the case of Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, would not be helpful and/or

of any assistance to the petitioner. In the case before the Hon''ble Supreme Court, the main dispute was with respect to bifurcation of the cause of

action i.e. subject-matter of the suit between the parties, who were parties to the arbitration agreement and others. In the case before the Hon''ble

Supreme Court, the question was when a suit is commenced - ""as to a matter"" which lies outside the arbitration clauses and is also between some

of the parties who are not parties to the arbitration agreement, whether Section 8 of the Arbitration Act would be applicable?

26. Similarly decision relied upon by the learned Advocate appearing on behalf of the petitioner in the case of Garden Finance Ltd. Vs. Prakash

Inds. Ltd. and Another, will also be of no assistance of the petitioner on facts. In the case before the Hon''ble Bombay High Court, the subject-

matter of the arbitration agreement was only the Lease Agreement and not Guaranteed Agreement and the Bombay High Court found on facts,

that, there was no identity of the of the subject-matter of the suit and the arbitration agreement and the suit was basically for the recovery of the

lease of equipments of the Company and on those facts, the Bombay High Court held that Section 5 of the Arbitration Act would not come in the

way of the High Court entertaining the said suit.

27. Similarly in the decision relied upon by the learned Advocate appearing on behalf of the petitioner in the case of Krishna Ram Mahale (Dead),

by his Lrs. Vs. Mrs. Shobha Venkat Rao, as well as in the case of Ramji Rai and Another Vs. Jagdish Mallah (Dead) through L.Rs. and Another,

in support of his submission that the petitioner plaintiff cannot be dispossessed without due process of law, are concerned, the same is not the

subject-matter of the present Special Civil Application. As such it is on merits of the dispute which is required to be referred to the arbitration.

28. As observed and held by the Hon''ble Supreme Court in the case of Bharat Sewa Sansthan v. U.P. Electronics Corporation Ltd. reported in

2007 (7) SCC 737, the main objective of Arbitration and Conciliation Act, 1996 is to make provision for an arbitral proceedings which is fair,

efficient and capable of meeting the needs of the specific arbitration and to minimise the supervisory role of the Courts in the arbitral process and to

permit the arbitral Tribunal to use mediation, conciliation or other procedure through arbitral proceedings.

29. As observed by the Hon"ble Supreme Court in the case of India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd.,

where existence of an arbitration agreement can be found, apart from the existence of the original agreement, the Courts would construe the

agreement in such a manner so as to uphold the arbitration agreement, except when a question of fraud is raised.

30. As observed and held by the Hon"ble Supreme Court in the case of P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others,

Part-I of the Arbitration Act deals with the domestic arbitration and Section 5 of the said act defines the extent of judicial intervention in arbitration

proceedings. It says that notwithstanding anything contained in any other law for the time-being in force in the matter governed by Part-I, no

judicial authority shall intervene except where so provided in that Part. Section 5 brings out clearly the object of the new Act, namely, that of

encouraging resolution of disputes expeditiously and less expensively and when there is an arbitration agreement, the Court's intervention should be

minimal. It is further observed by the Hon"ble Supreme Court that keeping the legislative intention in mind. Section 8 of the new Act may be

construed.

31. So far as reliance placed by the learned Advocate appearing on behalf of the petitioner upon Sections 91 and 92 of the Evidence Act and the

decision relied upon the learned Advocate appearing on behalf of the petitioner in the case of State of Maharashtra (supra) is concerned, in view of

the finding recorded hereinabove, the said aspect is not required to be considered in detail, as on considering both the agreements, Concession

Agreement and Master Lease Agreement, this Court has held that both the agreements are not required to be read independently and/or in

isolation and both are required to be read together, and therefore, Clause 24.4 of the Concession Agreement would be applicable. Suffice it to say

that earlier conduct of the petitioner reflected in various correspondences and pleadings in the Special Civil Application No. 10840 of 2008 is

required to be considered while considering the intention of the parties to refer the dispute to arbitration. When earlier it was the specific case on

behalf of the petitioner to consider Concession Agreement and Master Lease Agreement together and prayed to declare that the both the

agreements are in existence and when the petitioner has come out with a case that the dispute was required to be resolved through arbitration in

light of Clause 24.4 of the Concession Agreement, now it is not open for the petitioner to contend that the Concession Agreement is not in

existence and as in the Master Lease Agreement arbitration clause is not provided, the dispute is not required to be referred to the arbitration. For

the reasons stated above, it is held that on execution of the Master Lease Agreement, Concession Agreement has not come to an end and/or it

cannot be said that the Concession Agreement is not in existence; Concession Agreement is a pilot agreement and the Master Lease Agreement is

as per Schedule 13 of the Concession Agreement; rights under the Master Lease Agreement flow from Concession Agreement; both, Concession

Agreement and Master Lease Agreement cannot be considered independently and in isolation, and both the agreements are required to be

considered and read together as per Clause 24.4, the dispute raised in the suit is required to be referred to arbitration.

32. In view of the above finding that arbitration clause/arbitration agreement is applicable considering Section 8 of the Arbitration Act, as all the

conditions provided u/s 8 of the Arbitration Act are satisfied, Court has to refer the dispute to the arbitration and under the circumstances, it cannot

be said that the learned trial Court has committed any error in allowing the application submitted by the defendant u/s 8 of the Arbitration Act

referring the parties to the arbitration. It appears that this is an attempt on the part of the petitioner-plaintiff to sabotage arbitration and as observed

by the Hon"ble Supreme Court in the case of Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd., process of arbitration is

dependent on the underlying support of the Courts who alone have power to rescue the system when one party seeks to sabotage it.

33. For the reasons stated hereinabove, there is no substance in the present Special Civil Application. It deserves to be dismissed and is

accordingly dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.