



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2025

PRESENT



THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

COMMERCIAL APPEAL NO. 430 OF 2025

BETWEEN:

1. VASUDEV GARG
S/O LATE RAKESH KUMAR GARG
AGED ABOUT 33 YEARS
R/O G-17, MAHARANI BAGH
NEW DELHI - 110 065
2. CHAITANYA GARG
S/O LATE RAKESH KUMAR GARG
AGED ABOUT 36 YEARS
R/O G-17, MAHARANI BAGH
NEW DELHI - 110 065
3. RADHIKA BAIG
D/O LATE RAKESH KUMAR GARG
AGED ABOUT 40 YEARS
R/O G-17, MAHARANI BAGH
NEW DELHI - 110 065

...APPELLANTS

(BY DR. MUNISH SINGHVI, SENIOR ADVOCATE AND
DR. HARISH NARASAPPA, SENIOR ADVOCATE A/W
MR. ABHISHEK K. SINGH, MR. APURV SINGHVI,
MS.DEEPIKA HUNGENAHALLY, MS.KONU SAI VEDASVI,
ADVOCATES)





AND:

1. AXIS TRUSTEE SERVICES LIMITED
TRUSTEE EMBASSY REIT
THE RUBY 2ND FLOOR
SW 29, SENAPATI BAPAT MARG
DADAR WEST, MUMBAI
MAHARASHTRA - 400 028

2. EMBASSY OFFICE PARKS MANAGEMENT
SERVICES PRIVATE LIMITED
MANAGER, EMBASSY REIT
ROYAL OAKS
EMBASSY GOLF LINKS BUSINESS PARK
OFF INTERMEDIATE RING ROAD
BENGALURU - 560 071
KARNATAKA, INDIA
ALSO AT 12TH FLOOR
PINNACLE TOWER
EMBASSY ONE, 8, BELLARY ROAD
GANGANAGAR, R T NAGAR
BENGALURU, BENGALURU NORTH
KARNATAKA, INDIA - 560 032

...RESPONDENTS

(MR. HARIKISHNA PRAMOD, ADVOCATE A/W
MR. RAHUL NARAYAN, MR.MEHUL PARTI, MR.ZUBIN P,
MS.AISHWARYA V. RAVINDRANATH, MR.MANICHANDRAN
REDDY, MS. SHIVANGI BAJPAI & MR.GYANENDRA SINGH,
ADVOCATES
MR. K.G.RAGHAVAN, SENIOR ADVOCATE A/W
MR.AJAY J. NANDALIKE, ADVOCATE FOR CAVEATOR/
RESPONDENT No.2)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION
13(1A) OF THE COMMERCIAL COURTS ACT 2015 READ WITH
SECTION 37(1)(b) OF THE ARBITRATION AND CONCILIATION
ACT, 1996, PRAYING TO SET ASIDE THE IMPUGNED ORDER
DATED 10.06.2025 (ANNEXURE-A) PASSED BY THE LEARNED
LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT
BENGALURU (CCH-86) AND ETC.



THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning an order dated 10.06.2025 [**impugned order**] passed by the LXXXV Additional City Civil and Sessions Judge, Bengaluru [**Commercial Court**] in Com A.A No.61/2025.

2. The appellants had filed the aforesaid application under Section 9 of the A&C Act, *inter alia*, praying that the respondents be restrained from selling, transferring, disposing or in any manner encumbering or alienating 76 Acres of land, which form a part of the project named Embassy Tech Village [**ETV Project**]. The appellants also sought orders restraining the respondents from transferring or in any manner alienating the land measuring approximately 1 Acre and 9 Guntas located at Survey No.9/4 in at Devarabeesanahalli Village, Varthur Hobli, Bengaluru East Taluk



[hereafter referred to as '**the 9/4 land**']. Additionally, the appellants sought an order restraining the respondents from creating any rights in respect of equity shares of Vikas Telecom Private Limited [**VTPL**] or changing or altering the authorised or issued (paid-up) share capital of VTPL or creating any encumbrance on the said shareholding.

3. The learned commercial court had rejected the said application [Com A.A No.61/2025] in terms of the impugned order.

4. The said application was filed seeking interim measure of protection in the context of the disputes raised by the appellant in connection with the Share Purchase Agreement dated 17.11.2020 [**the SPA**]. The appellants had sold their shareholding in VTPL in terms of the SPA and had received the consideration for the same. Thus, indisputably, the appellants neither hold any equity shares of VTPL nor have any interest in the properties in respect of which the interim measures of protection are sought. Notwithstanding the same, the appellants seek to interdict the respondents from dealing with the properties in question. They claim that the SPA, pursuant to which the appellants had sold their minority equity stake in



VTPL, is void. This claim is founded on the assertion that the parties to the SPA had entered into the said agreement under a common mistake. The common mistake being that the parties to the SPA were unaware of the 9/4 land. The respondents dispute that the SPA was entered under a common mistake or that the same is void. The learned commercial court was not persuaded to accept that the SPA, which was fully performed, is void.

Factual context

5. It is relevant to briefly note the factual background and the course of the events leading to the parties entering into the SPA.

6. VTPL (then known as Vikas Telecom Limited) was incorporated in the year 1992 by the appellants and their family members.

7. On 05.08.2004, VTPL purchased the 9/4 land from one M/s. Hi-Tech Parks and Project. At the time of the purchase, the appellants and their other family members collectively held approximately 80% equity capital of VTPL and were in control of its affairs.



8. In the year 2006, the Karnataka Industrial Areas Development Board [**KIADB**] leased 103 Acres and 1¹/₄ Guntas of land in Devarabeesanahalli Village, Bengaluru in favour of VTPL, which was then known as Vikas Telecom Limited. VTPL commenced the development of the ETV Project, which was then known as Vrindavan Tech Village. Admittedly, the ETV Project was the substantial asset of VTPL.

9. In 2007, the Bangalore Development Authority [**BDA**] issued a Revised City Plan [**Master Plan**] classifying a tract of the land, which includes the 9/4 land, as industrial land.

10. Thereafter on 12.02.2018, KIADB sold 100 Acres and 31¹/₄ Guntas of land comprising of a part of the leased land of 103 Acres and 1¹/₂ Guntas, to VTPL. The remaining 1 Acre and 37 Guntas continued to be held by VTPL as leasehold land.

11. In the year 2014, Embassy Office Ventures Private Limited [**EOVPL**] acquired 60% of the equity capital in VTPL pursuant to the Shareholder's Agreement dated 23.04.2014 [**the SHA**] with the appellants. With the acquisition of the majority of equity stake, the management and effective control of VTPL came to be vested with



EOVPL. The SHA also set out the assets held by VTPL and Schedule V to the SHA expressly listed out the 9/4 land as one of the immovable asset of VTPL.

12. On 07.02.2019, VTPL transferred approximately 0.74 Acres of land to Karnataka Power Transmission Corporation Limited [KPTCL] for establishment of a transmission tower to facilitate the supply of electricity to the ETV Project.

13. Embassy Office Parks REIT [**Embassy REIT**] – which is a Real Estate Investment Trust registered with the Securities and Exchange Board of India [**SEBI**] under Regulation 6 of the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 [**REIT Regulations**] – was desirous in acquiring the ETV Project as a part of its portfolio. Respondent No.1 is a Trustee of Embassy REIT and respondent No.2 is its Manager. The appellants, who were holding 40% of the equity shareholding of VTPL, and EOVP, holding the remaining 60%, agreed to sell their equity holding in VTPL to Embassy REIT. In the said context, the parties entered into a Share Purchase Agreement [the **SPA**] dated 17.11.2020, whereby the appellants



agreed to transfer and sell their share in the VTPL in favour of Embassy REIT acting through the respondents. The said SPA was fully performed and the appellants do not hold any equity shares in VTPL.

14. On 18.07.2023, VTPL under the management of the respondents, approached the Karnataka Udyog Mitra [KUM] seeking approval to develop the 9/4 land. On 18.01.2024, the Government of Karnataka permitted the development of 9/4 land. Thereafter, VTPL approached KIADB for revision of the development plan taking into consideration the 9/4 land. And, on 23.04.2024, KIADB issued the revised development plan.

The Dispute

15. The appellants issued a legal notice dated 28.12.2024 claiming that the SPA is void. According to the appellants, the SPA was entered into on the basis of a mutual mistake of fact. The appellants contend that the SPA is void as the parties had entered into the SPA unaware that VTPL also owned the 9/4 land. Additionally, the appellants contend that the SPA is also void as defeats the provisions of Foreign Exchange Management Act, 1999



[**FEMA**], the REIT Regulations, and the Karnataka Land Revenue Act, 1964 [**KLR**].

16. In the aforesaid context, the appellants seek interim measures of protection, as noted above.

Reasons and Conclusion

17. *Prima facie*, we find little merit in the case set up by the appellants for seeking interim measures of protection. The SPA was entered into between the appellants to divest their shareholding in VTPL. Undisputedly, the primary object of the respondents to enter into the SPA was for Embassy REIT to acquire interest either directly or indirectly in the ETV Project. However, the said object was served by acquisition of the entire issued and paid equity shares of VTPL. The appellants divested of the entire equity shareholding in VTPL, which came to be vested with Embassy REIT (acting through the respondents). As noted above, the appellants only held minority equity stake in VTPL. It is also important to bear in mind that VTPL is an independent juristic entity. The appellants cannot claim that the SPA was confined to sale of some assets of VTPL. The only asset that the appellants



held, which was subject matter of the SPA, were the shares of VTPL. Having divested their assets (shares of VTPL) for a valuable consideration, *prima facie*, it is not open for the appellants to claim that the transaction was entered into between the parties was confined to transfer of the ETV project. Their contention that the SPA was entered under a common mistake because the appellants had not factored in the value of the 9/4 land is equally unpersuasive. The 9/4 land did not belong to the appellants as it was purchased by VTPL. The appellants held shares of VTPL, which they had sold in terms of the SHA and the SPA.

18. Even if it is accepted – which we do not – that the SPA is void. The same does not confer the appellants any rights in respect of the properties of VTPL. Their rights would be confined to the rights of a minority shareholder of VTPL.

19. *Prima facie*, it is also difficult to accept that the appellants were unaware that VTPL was the owner of 9/4 land. The 9/4 land was specifically included in the schedule of properties annexed to the SHA, whereby the EVOPL had acquired the majority stake in VTPL.



20. *Prima facie*, we are also not persuaded to accept that the SPA falls foul of the FEMA, REIT Regulations and/or the KLR. The appellants' contention that the terms of the SPA are contrary to FEMA is premised on the basis that 9/4 land is vacant land and the sponsors of Embassy REIT have acquired the same. The schematic representation of the ETV Project indicates that the 9/4 land is almost in the centre of the said development. More importantly, as noted above, Embassy REIT had acquired shares of VTPL, which was engaged in development of the ETV Project and not the 9/4 land. The shares of VTPL are held by respondent no.1, which is the trustee of Embassy REIT and respondent No.1 is an Indian entity. *Prima facie*, the contention that SPA is contrary to REIT regulations and KLR is also insubstantial.

21. The interim measures of protection sought by the appellants are also required to be rejected on the anvil of the balance of convenience and irreparable loss. Embassy REIT is registered with SEBI and the persons who are not parties to the present dispute have acquired units of Embassy REIT on the basis of the underlying assets including the shares of VTPL and the interests of



VTPL in immovable properties. These interests of third party investors cannot be jeopardized by any interim orders only on the basis that appellants seek to dispute a concluded transaction, to which they are party, after over four years. There is also no ground to accept that the appellants would suffer any irreparable loss if the interim orders as sought for are not granted.

22. We are of the *prima facie* view that, the proceeding commenced by the appellant is a speculative one. They seek to question a commercial transaction, which was voluntarily entered into by them four years ago and one which stands performed. During the course of submissions, on a pointed query of this court as to what was the quantum of consideration received by the appellants, the learned counsel for the appellants informed this court that the appellants had received Rs. 2,300 crores for sale of the shares of VTPL. Whilst, the appellants seek to challenge their sale of shares of VTPL, there is no averment in the appeal expressing their willingness to immediately disgorge the consideration received by them.



23. It is also relevant to note that the present appeal was taken up as the learned counsel had mentioned that it was a matter of grave urgency. Considering the facts in the present case including that the SPA was entered into in on 17.11.2020, we find no substance in the submission that the present appeal involved grave urgency.

24. We find no infirmity with the decision of the learned Commercial Court in rejecting the application for interim measures filed by the appellants.

25. The present appeal is unmerited.

26. In view of the above, the appeal is dismissed with costs quantified at ₹1,00,000/-.

27. All pending applications stand disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C M JOSHI)
JUDGE**