

Misc. Arb (Com) – 14/2025

**Present: Rupanjana Chakrabarti
Judge, Commercial Court at Rajarhat,
North 24 Parganas**

**CNR: WBNP19-000039-2025
J.O Code.WB00612**

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25.04.2025**

Today is fixed for further hearing of the application under Section 9 of the Arbitration & Conciliation Act, 1996.

The learned Advocate for the petitioner files a supplementary affidavit enclosing additional documents as Annexure – A covering four sheets praying for acceptance of the same.

The prayer is allowed.

The record is taken up for hearing of the application under Section 9 of the Arbitration & Conciliation Act, 1996.

No caveat is pending as per the note of the Office.

Perused the instant petition along with its annexures as well as the materials on record.

Heard the learned Advocate for the petitioner.

The case of the petitioner is that, the Petitioner is a reputed engineering and construction company and a registered Micro, Small and Medium Enterprise (MSME), with a longstanding history of executing industrial and infrastructure projects across India, including for Public Sector Undertakings. The Petitioner has maintained a commercial relationship with the Respondent since 1987.

The present petition arises from non-payment of the dues relating to work executed under the CPCL Refinery Project, Manali, Chennai, awarded through Work Orders dated 10.11.2008. The Petitioner undertook Fabrication, Erection, Welding, and Testing of Heater Structures of the HDS Reactor Feed Heater and DHDT Reactor Heater with Outboard APH System. Engineers India Ltd. acted as the Project Management Consultant (PMC) for the project.

The governing contract contains an arbitration clause under Clause

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41, which provides that any dispute, controversy, or claim arising out of or in connection with the contract, including those related to its breach, termination or invalidity, shall be referred to arbitration.

The Petitioner has invoked the arbitration clause by issuing a notice dated 04.04.2025 under Section 21 of the Arbitration and Conciliation Act, 1996, proposing the appointment of Shri Suranjan Kundu, Retired District Judge, as the Sole Arbitrator.

Despite full and satisfactory execution of the contractual work, and submission of final bills and measurement books, the Respondent has failed to release payment of Rs.58,53,243/- (Rupees Fifty-Eight Lakhs Fifty-Three Thousand Two Hundred Forty-Three only), representing certified and admitted dues for additional work undertaken. The stated amount does not include statutory dues such as Service Tax and GST.

The Respondent has neither disputed the claim nor raised any counter-claim, thereby acting in violation of its contractual and legal obligations. Its continued inaction is devoid of commercial fairness.

The Petitioner has diligently followed up through written communications and personal meetings, but the Respondent has not responded meaningfully or remitted the dues. As a registered MSME employing over 400 workers, the Petitioner is facing substantial hardship due to the withholding of funds.

Given that arbitral proceedings have been triggered but the Arbitral Tribunal is yet to be constituted, the Petitioner is constrained to approach this Court under Section 9 of the Arbitration and Conciliation Act, 1996, for urgent interim reliefs to protect its interest.

The petitioner contends that the balance of convenience lies entirely in favour of the Petitioner, who has already completed its obligations under the contract and is now suffering due to non-payment. The Petitioner financed the project execution through institutional borrowings and

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continues to bear interest and operational liabilities. The Respondent, on the other hand, will suffer no prejudice if the amount is secured or deposited with this Court.

The Petitioner reasonably apprehends that, unless the interim relief is granted, the Respondent may divert or dissipate funds, frustrating the Petitioner's legitimate claim.

The learned Advocate for the petitioner has referred to the Judgement of the Hon'ble Supreme Court in *Valentine Maritime Ltd. & Ors. vs. Kreuz Subsea Ptd. Ltd. & Ors. (2021)* wherein it has been held that a party with a prima facie strong claim and a legitimate apprehension of irretrievable loss is entitled to interim relief under Section 9.

The petitioner contends that the present case fits squarely within this legal standard.

The petitioner further contends to safeguard the Petitioner's rights and the efficacy of the arbitral process, the respondent may be directed to secure the said amount.

The Petitioner submits that it is under extreme financial duress on account of the Respondent's unjustified non-payment. As an MSME dependent on timely realization of receivables, the Petitioner's operations, creditworthiness, and ability to undertake further projects have been severely impacted. The harm caused, including reputational damage and financial distress, is irreparable and cannot be compensated by damages at a later stage. Interim relief is, therefore, necessary not only to secure the dues but also to preserve the sanctity of the arbitral process. The Petitioner prays that the Respondent be directed to either furnish a Bank Guarantee or deposit the claimed amount of Rs.58,53,243/- with this Court.

In view of the above, the Petitioner prays that this Court may be pleased to direct the Respondent to furnish adequate and sufficient security to the extent of Rs.58,53,243/- (Rupees Fifty-Eight Lakhs Fifty-Three

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Thousand Two Hundred Forty-Three only), being the certified and admitted dues of the Petitioner, grant an order of temporary injunction restraining the Respondent from alienating, transferring, or otherwise dealing with project-specific assets or receivables related to the CPCL Refinery Project at Manali, Chennai and/or direct the Respondent to deposit the withheld Security Deposit and outstanding dues with this Court and hence this application.

Considering the factual circumstances of the case, the contentions made out in the Section 9 application, the submissions of the learned Advocate for the petitioner, the case-law relied upon by the learned Advocate for the petitioner, the materials on record as revealed through the relevant annexures, it appears that the petitioner filed this application under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim protection in the form of security for the Petitioner's claim amounting to Rs.58,53,243/-, stated to be certified and admitted dues arising from the work executed under the CPCL Refinery Project at Manali, Chennai.

Upon perusal of the petition, supporting documents, and legal submissions, this Court finds that the Petitioner is a registered MSME enterprise and a reputed engineering and construction company that has executed work for the Respondent pursuant to Work Orders dated 10.11.2008. The Petitioner has placed on record work completion documents, bills signed by both parties, and correspondence showing continuous follow-up with the Respondent. The scope of work was performed to the satisfaction of the Respondent and its principal employer, and the certified amount remains unpaid. The petitioner has filed a report of the Chartered Accountant showing the summary of financial position that a sum of Rs.28,14,059.00/- is outstanding in favour of the petitioner on account of the additional work as per MOM dated 25.01.2016 and 05.03.2016 which along with interest @ 12 per cent per annum for 9 years summing up to Rs.30,39,184.00/- adds up to Rs.58,53,243.00/- in total which is the claim of the petitioner from the respondent.

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The Petitioner has invoked Clause 41 of the governing contract, which provides for arbitration, and has issued notice dated 04.04.2025 under Section 21 of the Arbitration and Conciliation Act, proposing the appointment of a Sole Arbitrator. The invocation of arbitration remains uncontested, and the Respondent has neither disputed the amount claimed nor raised any counterclaim. Rather, by an e-mail dated 09.01.2025, the respondent has directed the petitioner to contact the concerned project head/site for resolving the issue. There are documents to show that the parties to this application have long standing relationship and transaction between them regarding other projects is still ongoing. The learned Advocate for the petitioner has submitted that the respondent has never denied that it will pay the dues of the petitioner but has asked for production of the relevant documents. It appears that, the claim is undoubtedly regarding long outstanding dues. The work order was of 2008. Completion certificate was issued in 2016 but the amount was kept pending. The petitioner has made several correspondences requesting the respondent for disbursement of the outstanding payment without any effective remedy. Having retained the petitioner's fund for nearly a decade without closure of account and having demanded documents recently, the respondent cannot now take advantage of his own inaction. It is also noteworthy that the respondent is a large public sector undertaking with immense administrative and financial power. The petitioner has repeatedly pursued its claim in good faith, despite facing institutional indifferent and delay. It appears that the petitioner has a genuine claim which should not be defeated on technical ground particularly when the respondent's own conduct contributed to the delay. The ongoing correspondence and demand for documents between the parties indicates that the dispute is not stale and the claim remains under active consideration. The letter or call from the respondent prima-facie suffices to counter any objection on the limitation point. So far as the jurisdiction of the Court is concerned, as provided in the Arbitration Agreement. The venue of arbitration is fixed at Kolkata jurisdiction as per Clause 41 of the GCC.

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In absence of any other proof to the contrary in view of the venue mentioned in the arbitration clause and the amount involved in this case fulfilling the specified value for filing a case before the Commercial Court, it appears that the case has been filed before this Court having both pecuniary and territorial jurisdiction to consider the instant application.

On the basis of the documents placed on record, this Court is satisfied that the Petitioner has made out a prima facie case for grant of interim protection. There is, also a strong prima facie indication of liability, and the Petitioner's claim appears to be unimpeachable at this stage.

The balance of convenience also clearly tilts in favour of the Petitioner. It is evident that the Petitioner, having executed and completed the contracted work, is facing financial hardship due to the withholding of dues. The Petitioner has financed the project through institutional loans and continues to bear interest obligations, staff salaries, and operational liabilities. Being an MSME entity, the Petitioner's ability to sustain its business operations is severely impaired by the non-payment. On the other hand, no substantial prejudice will be caused to the Respondent if the claim amount is secured, either through a deposit or by way of a Bank Guarantee, pending arbitration.

This Court is also of the opinion that denial of interim relief at this stage would result in irreparable loss and injury to the Petitioner. The Petitioner has demonstrated that the continued withholding of certified and admitted dues is causing not just financial strain but also affecting its credit-worthiness, operational sustainability, and ability to undertake future projects. Such loss cannot be adequately compensated through monetary relief at a later stage. Moreover, there exists a reasonable apprehension that, in the absence of interim measures, the Petitioner's claim may be frustrated by possible dissipation or diversion of funds by the Respondent, thereby defeating the very purpose of the arbitration.

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In view of the above, and considering the principles laid down in *Valentine Maritime Ltd. & Ors. vs. Kreuz Subsea Ptd. Ltd. & Ors. (2021)*, where the Hon'ble Supreme Court upheld interim protection under Section 9 for a party with an established claim and likelihood of irretrievable harm, this Court is inclined to grant ad-interim relief to secure the claim.

In view of the above, the application under section 9 of the Arbitration & Conciliation Act, 1996 filed by the petitioner is considered and **allowed** ex-parte.

Hence, it is

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that

the respondent is restrained by ex-parte ad-interim injunction order from dealing with its Bank Accounts without keeping apart the sum of **Rs.58,53,243/-** as claimed by the petitioner in the instant application till **02.06.2025.**

The order, however, does not restrain the respondent from operating its accounts so long the disputed/claimed amount of **Rs.58,53,243/-** being the subject-matter of the instant application is kept apart.

The petitioner is hereby directed to communicate the Order to the respondent within 24 hours.

The petitioner is also directed to strictly comply the provision of Section 9(2) of the Arbitration and Conciliation Act, 1996 within the stipulated time.

To date (**10.06.2025**) for SR/AD and appearance.

Sd/- Rupanjana Chakrabarti
Judge
Commercial Court,
Rajarhat, North 24 Parganas