

**Misc. Arb (Com) – 15/2025**

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

**CNR: WBNP19-000040-2025  
J.O Code.WB00612**

**3  
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 hazira, 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 enterprise, duly registered as a Micro, Small and Medium Enterprise (MSME), with a long-standing and consistent track record in executing prestigious infrastructure and industrial projects since 1987. The Petitioner enjoys the status of a contractor of repute, having successfully executed works for the Respondent and several other Public Sector Undertakings (PSUs), particularly in the field of erection, fabrication, and commissioning of complex utility systems across India.

The present petition arises out of work executed in connection with the Indian Oil Corporation Limited (IOCL) Paradip Refinery Project, specifically concerning Boiler Units 3 and 4 located at Paradip, Odisha. Pursuant to a Letter of Intent/Work Order dated 26.09.2013 issued by the Respondent, the Petitioner was entrusted with the Erection, Testing, and Commissioning of the Utility Boiler and its auxiliaries, Electrostatic Precipitators (ESP), Rotating Machines, and insulation works for Utility Boiler-4,

**[2]**

under the 366MW Co-generation Package. The Notice Inviting Tender (NIT), Letter of Intent, and related contractual documents form an integral part of the agreement between the parties.

The governing agreement/work order contains an arbitration clause (Clause 40), providing for reference of disputes to arbitration in the event of any unresolved issues between the parties. In accordance with this clause, the Petitioner has duly invoked arbitration by way of a letter dated 04.04.2025 issued 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 the satisfactory and timely completion of the scope of work, and submission of measurement books (MBs) and final bills, the Respondent has failed and neglected to release a sum of Rs.1,15,89,301/- (Rupees One Crore Fifteen Lakhs Eighty-Nine Thousand Three Hundred One Only), representing certified, admitted, and undisputed dues payable to the Petitioner. This amount includes statutory dues and delayed payments, but excludes GST components.

The Respondent's continued withholding of the aforesaid amount is arbitrary, unjustified, and in clear breach of the contractual terms. No legitimate dispute or counterclaim has been raised by the Respondent, and its conduct is devoid of commercial morality and fairness.

The Petitioner has evinced a clear and bona fide intention to arbitrate the disputes and has taken steps accordingly. However, considering that the constitution of the Arbitral Tribunal may require some time and that the Petitioner is presently under severe financial strain, the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 is being filed to seek urgent interim measures for protection of the claim.

The Petitioner, an MSME employing over 400 individuals, undertook the Paradip Project by availing loans and credit facilities from financial

*Cont'd ... P/3*

[3]

institutions. The prolonged non-payment by the Respondent has resulted in the accrual of significant interest liabilities and now jeopardizes the continued operations and survival of the enterprise.

In support of the maintainability of this petition, reliance is placed on the decision in *Valentine Maritime Ltd. & Ors. vs. Kreuz Subsea Pvt. Ltd. & Ors. (2021)*, which affirms the entitlement to interim protection under Section 9 where the claim is unimpeachable, undisputed, and there exists a genuine apprehension of irretrievable loss in the absence of such protection. The facts of the present case squarely fall within these parameters.

The Respondent continues to retain the Petitioner's Security Deposit without cause, even though no counterclaims or set-offs have been raised. In such circumstances, this Court is fully empowered to direct the deposit of the outstanding amounts with the Court in order to safeguard the efficacy of the arbitral process.

The Petitioner has a reasonable apprehension that the Respondent may alienate or divert project-linked receivables or assets in the absence of immediate injunctive relief, thereby defeating the fruits of any arbitral award ultimately passed. The balance of convenience and the interests of justice overwhelmingly favour the grant of interim protection.

It is therefore respectfully submitted that interim measures are necessary to preserve the subject matter of arbitration and to prevent the frustration of the arbitral process. The Petitioner also seeks a direction for the Respondent to furnish a Bank Guarantee or, in the alternative, deposit the outstanding certified amount with this Court.

In view of the foregoing, the Petitioner prays that this Court may be pleased to direct the Respondent to furnish adequate and sufficient security, by way of a Bank Guarantee or such other form as this Court deems appropriate, to the extent of Rs.1,15,89,301/- (Rupees One Crore Fifteen Lakhs Eighty-Nine Thousand Three Hundred One Only), representing the certified and

*Cont'd ... P/4*

[4]

admitted dues of the Petitioner, grant an order of temporary injunction restraining the Respondent from alienating, transferring, disposing of, or creating third-party interests in respect of its assets or project-specific receivables arising out of the Paradip IOCL Project, pending final disposal of the arbitral proceedings and direct the Respondent to deposit the withheld Security Deposit and the outstanding certified amount with this Court, as a condition to secure the Petitioner's claim and hence this petition.

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 is a registered Micro, Small and Medium Enterprise (MSME) with a long-standing history of executing infrastructure and industrial projects of national significance since 1987. The Petitioner was awarded the contract by the Respondent – a Public Sector Undertaking – in relation to the IOCL Paradip Refinery Project, specifically for the erection, testing, and commissioning of Utility Boilers 3 and 4, including associated auxiliaries, under the 366 MW Co-generation Package. The scope of work was extensive, involving critical systems such as Electrostatic Precipitators (ESPs), rotating machinery, insulation, and other allied works.

The Petitioner has placed on record the Notice Inviting Tender (NIT), the Letter of Intent/Work Order, and other contractual documents, which form the foundational basis of the agreement between the parties. Pursuant to the successful execution of the contractual scope, the Petitioner submitted final bills, supported by duly maintained measurement books (MBs). The said bills, amounting to Rs.1,15,89,301/- (Rupees One Crore Fifteen Lakhs Eighty-Nine Thousand Three Hundred One Only), are stated to have been duly certified by the project authorities, and no disputes or objections were raised by the Respondent in relation thereto. The Chartered Accountant

[5]

report filed by the petitioner on this date also certifies that an amount more than the said claim of the petitioner is due from the respondent.

Despite the admitted and certified nature of the claims, the Respondent has, for reasons best known to it, failed and neglected to release the outstanding dues. The Petitioner has further submitted that even the Security Deposit retained by the Respondent has not been refunded, notwithstanding the completion of work and the absence of any pending liabilities or defects.

The Petitioner, having invoked the arbitration clause under Clause 40 of the Work Order, issued a formal notice under Section 21 of the Arbitration and Conciliation Act, 1996, on 04.04.2025, proposing the name of a Sole Arbitrator Shri Suranjan Kundu, Retired District Judge. However, the arbitral tribunal has not yet been constituted, and the Petitioner now seeks interim protection under Section 9 of the Act.

From a legal standpoint, Section 9 empowers this Court to grant interim measures before, during, or after the arbitral proceedings, for the purpose of securing the amount in dispute, preserving the subject matter, or maintaining the status quo. The three-fold test that a court must consider while granting interim relief under this provision is: (i) the existence of a prima facie case; (ii) the balance of convenience; and (iii) the likelihood of irreparable injury in the absence of such relief.

The Petitioner has invoked Clause 40 of the governing contract, which stipulates arbitration as the mode of dispute resolution, and has issued a notice dated 04.04.2025 under Section 21 of the Arbitration and Conciliation Act, proposing the appointment of a Sole Arbitrator. This invocation has not been contested by the Respondent. Notably, the Respondent has neither challenged the claim amount nor raised any counterclaim. Instead, via an e-mail dated 09.01.2025, the Respondent merely directed the Petitioner to approach the concerned project head/site for resolution.

It is evident from the available documents that the parties have had a

*Cont'd ... P/6*

**[6]**

longstanding business relationship, with ongoing transactions in connection with other projects. The learned Advocate for the Petitioner has submitted that at no point has the Respondent denied its liability; rather, it has only sought relevant documents for verification. The Petitioner's claim appears to be for long-pending dues. Although the original work order dates back to 2013, the final payment remains unsettled. The security deposit too has been withheld, despite completion of the contracted work.

This scenario necessitates the issuance of an injunction to safeguard the Petitioner's dues during the pendency of the dispute. Given the circumstances, the issue of limitation does not arise, as the final settlement has not yet been concluded. The Petitioner has made repeated attempts through written correspondence seeking release of the outstanding payment, but without any substantive redress. The Respondent's prolonged inaction retaining the Petitioner's funds for nearly a decade without closing the account coupled with its recent request for documents, precludes it from now claiming the protection of limitation.

It is also relevant that the Respondent is a prominent public sector enterprise, possessing significant administrative and financial influence. Despite this, the Petitioner has diligently pursued its claims in good faith, in the face of institutional delay and indifference. The Petitioner's claim appears bona fide and ought not to be rejected on mere technicalities, particularly where the Respondent's conduct has itself contributed to the delay. The ongoing exchange of communications and the Respondent's demand for documents clearly indicate that the dispute remains active and under consideration. The correspondence from the Respondent, on its face, is sufficient to negate any contention regarding limitation.

As regards jurisdiction, Clause 40 of the General Conditions of Contract (GCC) specifies Kolkata as the venue of arbitration. In the absence of any contrary evidence, and considering that the monetary value of the claim meets the threshold prescribed for Commercial Court jurisdiction, it is

[7]

evident that this Court possesses both territorial and pecuniary jurisdiction to entertain the present application.

Upon careful evaluation, this Court finds that the Petitioner has established a strong prima facie case. The claim raised is based on executed and certified works under a formal contract, and the dues appear to be both admitted and undisputed. The Respondent has not raised any credible challenge to the veracity or correctness of the amounts claimed by the Petitioner, nor has it placed on record any counterclaim, defense, or justification for withholding the said amount.

The Petitioner has also demonstrated that it is undergoing financial hardship, having undertaken the project through borrowings and credit facilities from financial institutions. The non-payment of certified dues has resulted in a mounting interest burden and serious financial constraints. The Petitioner, being an MSME employing over 400 workers, is at risk of being pushed into insolvency if its legitimate claims continue to be withheld.

This Court is also persuaded by the balance of convenience, which clearly tilts in favour of the Petitioner. On one hand, the Petitioner is suffering continuing harm due to the non-release of funds; on the other hand, the Respondent, being a state-controlled entity, cannot claim prejudice or hardship in furnishing security or making a deposit for admitted contractual dues.

Further, this Court is satisfied that the Petitioner is likely to suffer irreparable loss and injury in the absence of interim protection. Monetary compensation at a later date may not be an adequate remedy, particularly if the Respondent were to divert, alienate, or encumber its receivables or assets, thereby frustrating the arbitral award. The apprehension raised by the Petitioner is not illusory, particularly in light of past conduct where the Respondent failed to release even certified and undisputed amounts.

The law as laid down by the Hon'ble Courts, including in ***Valentine***

*Cont'd ... P/8*

*Maritime Ltd. and Ors. vs. Kreuz Subsea Pvt. Ltd. and Ors. (2021)*, supports the grant of interim protection in cases where clear, unimpeachable claims are met with silence or evasion, and where there is a genuine risk of the award being rendered meaningless due to potential frustration of enforcement.

In light of the foregoing, this Court is satisfied that a fit case has been made out for the grant of ad-interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, to secure the subject matter of the dispute and prevent irretrievable injustice.

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

**O R D E R E D**

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.1,15,89,301/-** 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.1,15,89,301/-** 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