

Misc. Arb (Com) – 16/2025

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

**CNR: WBNP19-000041-2025
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 registered Micro, Small and Medium Enterprise (MSME) and an established engineering enterprise with an unblemished track record, having rendered services to the Respondent, a Government of India undertaking, since 1987.

The present application arises from the failure of the Respondent to release certified and undisputed payments due to the Petitioner under various work orders executed for the APNRL Project (Boiler Units 1 & 2) situated at the 2 x 270 MW APNRL Jamshedpur Project, District Saraikela-Kharasawan, Jharkhand.

The Petitioner duly executed the scope of work comprising Erection, Testing and Commissioning of Electrostatic Precipitator (ESP), Non-Pressure Parts (NPP), Pressure Parts (PP), Rotary Machines, Piping works and other ancillary works for Boiler Unit No. 2, under Work Orders dated 02.08.2010, 03.08.2010, 16.11.2010, 30.05.2011, 11.07.2011, 21.03.2013

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[2]

and 21.05.2013. The project has been successfully completed and duly certified by the Respondent. Notwithstanding submission of Measurement Books (MBs) and final bills, an admitted sum of **Rs. 58,35,104/-** along with applicable statutory dues including Service Tax/GST remains unpaid.

The contractual arrangement between the parties, including the Notice Inviting Tender (NIT) and Work Orders, contains an arbitration clause. Clause 40 of the governing contract/work orders provides that all disputes arising out of or in connection with the contract shall be referred to arbitration.

The Petitioner has invoked the arbitration agreement under Section 21 of the Arbitration and Conciliation Act, 1996, vide letter dated 04.04.2025, and proposed appointment of Shri Suranjan Kundu, Retired District Judge, as the Sole Arbitrator.

Despite invocation, the Respondent has failed to act in accordance with the arbitration agreement, necessitating the filing of the present application for interim protection pending constitution of the Arbitral Tribunal.

The Respondent's conduct is manifestly unjust, lacking in commercial probity. The Petitioner, having executed the works diligently and incurred significant financial liabilities through institutional borrowings, is now under severe financial distress owing to the Respondent's unjustified withholding of certified dues.

The Petitioner employs over 400 personnel whose livelihoods are at risk. It continues to incur interest and loan repayment obligations, solely on account of the Respondent's default. The Petitioner is unable to meet its financial commitments, adversely affecting its creditworthiness, ongoing operations, and reputation.

The Petitioner contends that it has demonstrated a bonafide intent to arbitrate. However, the delay in the constitution of the Arbitral Tribunal

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[3]

threatens to frustrate the very object of arbitration. This application under Section 9 of the Act is, therefore, necessitated to preserve the subject matter of the dispute and secure the fruits of arbitration.

The Petitioner further contends that the balance of convenience is overwhelmingly in favour of the Petitioner. No prejudice shall be caused to the Respondent if the admitted amounts are secured or deposited before this Court. Conversely, denial of interim relief shall result in irreparable harm to the Petitioner.

The petitioner has referred to judgment of the Hon'ble Supreme Court in *Valentine Maritime Ltd. & Ors. vs. Kreuz Subsea Ptd. Ltd. & Ors. (2021)* wherein it has been held that interim relief may be granted where there exists a clear, admitted claim, and a likelihood of irretrievable harm. The present case squarely falls within such parameters.

The Petitioner further contends that the Respondent is also withholding the Petitioner's Security Deposit, despite no subsisting counterclaim or dispute. There is no justification for such continued retention, and the Respondent ought to be directed to deposit the same before this Court.

The Respondent's continued non-payment impairs the Petitioner's ability to undertake new projects and maintain its financial stability. The injuries suffered are not merely monetary, but structural and reputational in nature, thereby qualifying as irreparable injury under the principles governing interim relief.

Granting the reliefs sought is essential to uphold the efficacy of the arbitral process and prevent injustice to the Petitioner.

In view of the foregoing, the Petitioner prays that this Court may be pleased to direct the Respondent to furnish adequate security for a sum of **Rs.58,35,104/-** (Rupees Fifty-Eight Lakhs Thirty-Five Thousand One Hundred and Four only), being the certified and undisputed dues payable to

[4]

the Petitioner, pass an order of temporary injunction restraining the Respondent from alienating, encumbering, or creating third-party rights in respect of the assets and project-specific receivables of the APNRL-Kandra Project, Jharkhand, during the pendency of the arbitration proceedings, direct the Respondent to deposit with this Court the withheld Security Deposit and other outstanding amounts due to the Petitioner and pass such other or further orders as this Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice 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, a registered MSME, has, since 1987, diligently provided engineering services to the Respondent, a Government of India enterprise, under a series of work orders for the APNRL Project (Boiler Units 1 & 2) located at 2 x 270 MW APNRL Jamshedpur Project, Sareikela-Kharasawan District, Jharkhand. These work orders included the execution of the Erection, Testing, and Commissioning of critical machinery such as Electrostatic Precipitators (ESP), Pressure and Non-Pressure Parts (NPP), Rotary Machines, Piping Works, and other allied works under Work Orders dated 02.08.2010, 03.08.2010, 16.11.2010, 30.05.2011, 11.07.2011, 21.03.2013, and 21.05.2013. The completion of the work has been certified, and the Petitioner has duly submitted Measurement Books (MBs) and final bills to the Respondent.

However, despite the clear completion of the contractual obligations by the Petitioner, and the certification of the work performed, the Respondent has failed to release the dues amounting to Rs. 58,35,104/- along with the applicable statutory dues, including Service Tax/GST. The withholding of these certified dues is both arbitrary and unjustifiable.

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[5]

The Petitioner has made repeated attempts to resolve the issue amicably, but the Respondent has failed to respond adequately to the Petitioner's requests for payment, leaving the Petitioner with no option but to invoke the arbitration clause under the agreement.

The contractual framework between the parties is governed by the arbitration clause in Clause 40 of the Work Orders. This clause clearly provides that any dispute arising out of or in connection with the contract shall be referred to arbitration. In line with this, the Petitioner invoked the arbitration process under Section 21 of the Arbitration and Conciliation Act, 1996, by submitting a formal notice to the Respondent on 04.04.2025, proposing the appointment of Shri Suranjan Kundu, a retired District Judge, as the Sole Arbitrator. However, despite this invocation, the Respondent has failed to take any steps to constitute the Arbitral Tribunal, thereby frustrating the Petitioner's right to arbitrate.

Given these circumstances, the Petitioner is constrained to approach this Court seeking urgent interim reliefs under Section 9 of the Arbitration and Conciliation Act, 1996, in order to safeguard its rights and prevent any further prejudice. The Petitioner submits that it has made out a prima facie case, as the Respondent's refusal to release the admitted dues is patently unjust and has caused severe financial distress to the Petitioner.

Legally, Section 9 of the Arbitration and Conciliation Act empowers this Court to grant interim measures whether prior to, during, or subsequent to the arbitral proceedings aimed at safeguarding the subject matter of the dispute, securing the claim amount, or maintaining the status quo. While exercising such jurisdiction, the Court is guided by the well-established three-pronged test: (i) the existence of a prima facie case; (ii) the balance of convenience; and (iii) the risk of irreparable harm if relief is denied.

The Petitioner has duly invoked the arbitration clause in the governing agreement, and through its notice dated 04.04.2025 under Section 21 of the Act, has proposed a Sole Arbitrator. The Respondent has not disputed this

[6]

invocation. Notably, there has been no rebuttal to the Petitioner's claim amount, nor has the Respondent asserted any counterclaim. Instead, an e-mail dated 09.01.2025 merely advised the Petitioner to approach the relevant site or project head for resolution thus avoiding direct engagement with the claim.

The documents on record demonstrate a long-standing commercial relationship between the parties, with various ongoing transactions across different projects. The Petitioner's counsel has emphasized that the Respondent has never denied the underlying liability; rather, it has sought supporting documents for verification. The claim relates to longstanding unpaid dues. Though the original Work Orders date back to 02.08.2010, 03.08.2010, 16.11.2010, 30.05.2011, 11.07.2011, 21.03.2013, and 21.05.2013, the final payment remains pending. Additionally, the security deposit has not been released, despite completion of all contractual obligations.

These facts warrant interim protection to secure the Petitioner's claims during the pendency of arbitration. In this context, limitation does not present an issue, as the matter of final settlement has not been closed. The Petitioner has persistently pursued payment through written communications, all to no avail. The Respondent's prolonged failure to release the Petitioner's dues despite retaining funds for nearly a decade coupled with its recent request for further documentation, estops it from now asserting the bar of limitation.

It is pertinent to note that the Respondent is a large public sector entity with significant financial and institutional clout. Yet, the Petitioner has, in good faith, continued to pursue its legitimate dues despite bureaucratic delay and lack of responsiveness. The Petitioner's claim is genuine and should not be dismissed on procedural technicalities, especially when the Respondent's own conduct has contributed to the delay. The ongoing communications, including requests for supporting documents,

[7]

affirm that the dispute remains active and unresolved. These exchanges, on their face, dispel any allegation of the claim being time-barred.

Regarding jurisdiction, Clause 40 of the General Conditions of Contract (GCC) specifies Kolkata as the designated seat of arbitration. There being no contrary clause or evidence, and given that the value of the claim satisfies the threshold under the Commercial Courts Act, this Court clearly holds both territorial and pecuniary jurisdiction to adjudicate the present application.

The Petitioner has successfully made out a prima facie case for interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, and is entitled to the urgent protective reliefs sought in the present application.

The balance of convenience clearly lies in favour of the Petitioner. The Petitioner is a small and medium-sized enterprise (SME) that has executed the contractual work in a timely manner, meeting all specifications and requirements set forth by the Respondent. The Petitioner has relied upon institutional loans to finance the execution of the work, and continues to bear significant financial obligations, including the repayment of loans and payment of salaries to over 400 employees. These financial commitments have become increasingly difficult to meet, as the Respondent has unlawfully withheld the Petitioner's dues.

The Petitioner's financial hardship is compounded by the fact that it is unable to take on new projects, as its cash flow has been severely affected by the Respondent's failure to release the certified dues. This has also impacted the Petitioner's ability to meet operational expenses, further risking the stability and viability of the business. The livelihood of over 400 employees and their families is at stake, and the Petitioner's ongoing business operations are in jeopardy due to the non-payment of the admitted dues.

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On the other hand, the Respondent will suffer no significant prejudice if the sum of Rs. 58,35,104/- is secured or deposited with this Court pending the outcome of the arbitration proceedings. The Respondent has not raised any valid or disputed claim over the amount due and has, in fact, certified the work performed by the Petitioner. As such, there is no reason why the Respondent should be allowed to retain the Petitioner's dues, especially when the Petitioner faces imminent financial distress.

In the absence of interim relief, the Petitioner is likely to face severe consequences, including insolvency and the collapse of its business, which could ultimately hinder its ability to pursue its legitimate claim in arbitration.

The Petitioner has demonstrated that it will suffer irreparable loss and injury if the interim relief is not granted at this stage. The loss to the Petitioner is not limited to mere financial damages, but includes severe damage to its reputation and its ability to continue operations. The Petitioner's position as a registered MSME and a vital supplier to the Respondent is jeopardized by the non-payment of dues. Furthermore, the Petitioner has incurred institutional loans to fund the project, and failure to receive payment for the completed work has significantly impaired its ability to service these loans, resulting in a high-interest burden and an increasing risk of default.

The Petitioner's ability to continue with ongoing and future projects is at risk, as is the livelihood of its employees, many of whom depend on the Petitioner's business for their livelihood. The Petitioner's creditworthiness and business reputation are also at risk of permanent harm. These damages cannot be compensated by monetary relief at a later stage and thus constitute irreparable injury requiring immediate interim protection.

The Petitioner seeks immediate ad-interim reliefs in the form of securing the dues and preventing the Respondent from diverting the project-specific receivables to third parties. The Respondent is still holding the

[9]

Petitioner's Security Deposit without any justifiable reason, despite the absence of any subsisting counterclaim. The Respondent should be directed to deposit this amount with the Court in order to prevent further prejudice to the Petitioner's rights.

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.58,35,104/-** 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.58,35,104/-** 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