

Misc. Arb (Com) – 17/2025

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

**CNR: WBNP19-000042-2025
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 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 MSME enterprise engaged in specialized structural and fabrication works, having long-standing credentials and infrastructure to undertake high-value industrial engineering projects. The Petitioner has diligently rendered services to the Respondent, a Government of India Enterprise, for over three decades.

The present petition arises from non-payment of certified and admitted contractual dues relating to a project executed at Durgapur Steel Plant (DSP), Burdwan District, West Bengal. Pursuant to a formal Letter of Intent/Work Order dated 14.05.2011 issued by the Respondent for structural steel works involving fabrication, erection, cladding, and painting in the BOF & CCP Area of DSP, the Petitioner undertook and completed the assigned works to the full satisfaction of the Respondent and its supervising authorities. The Notice Inviting Tender and associated contractual documents, which form an integral part of the contractual framework, are annexed.

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The disputes between the parties fall squarely within the ambit of the arbitration clause contained in Clause 40 of the governing contract. This clause provides that any dispute, controversy, or claim arising out of or in connection with the contract, or the breach, termination, or invalidity thereof, shall be referred to arbitration. Accordingly, the present dispute arising from non-payment of certified and admitted dues under the said contract is clearly arbitrable and subject to the agreed dispute resolution mechanism.

The Petitioner has formally invoked the arbitration clause by its letter dated 04.04.2025 issued under Section 21 of the Arbitration and Conciliation Act, 1996, proposing the name of Shri Suranjan Kundu, Retired District Judge, as the Sole Arbitrator. Despite service of the said notice, the Respondent has not responded, nor has it taken any steps toward constituting the arbitral tribunal.

Although the Petitioner has satisfactorily completed all works, supported by certified Measurement Books and submitted escalation claims, the Respondent has unjustifiably withheld a sum of Rs.74,00,000/- (Rupees Seventy-Four Lakhs Only), exclusive of applicable GST/Service Tax.

The Respondent's failure to respond to the arbitration notice, combined with continued withholding of undisputed dues, reflects an utter disregard of its contractual and statutory obligations. No valid reason or dispute has been raised to justify the withholding of payments, which are otherwise certified and admitted.

The Petitioner has undertaken execution of the contract relying upon institutional credit facilities and term loans. The prolonged non-payment by the Respondent has resulted in serious financial distress, interest liabilities, and disruption of business operations. Over 400 employees of the Petitioner are directly affected due to the inaction and delay on the part of the Respondent.

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The Petitioner has unequivocally expressed its intention to arbitrate and has exercised its rights under the governing contract and the Act. However, in light of the potential delay in constitution of the arbitral tribunal, the Petitioner is constrained to approach this Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking urgent interim protection and security for the claim.

The petitioner contends that the balance of convenience lies entirely in favour of the Petitioner, who has already executed the work to the satisfaction of the Respondent and its principal employer. The Petitioner continues to bear the burden of repaying institutional borrowings, interest charges, staff wages, and other operational liabilities. No prejudice would be caused to the Respondent if the claimed amount is secured or deposited with this Court. On the contrary, denial of interim protection at this stage would result in grave hardship and potentially irreparable harm, including the risk of insolvency.

The petitioner has referred to the Judgement delivered by the Hon'ble Supreme Court in *Valentine Maritime Ltd. and Ors. v. Kreuz Subsea Ptd. Ltd. and Ors. (2021)*, holding that where a party demonstrates a prima facie unimpeachable claim, and where there is a genuine apprehension of loss, particularly in absence of any dispute on the admitted quantum, the Court may grant interim protection even prior to the constitution of the arbitral tribunal.

The petitioner further contends that the Respondent continues to retain the Security Deposit of the Petitioner, without any subsisting claim or lien, and in absence of any justifiable ground for retention. The said amount must also be directed to be deposited with this Court to secure the entitlement of the Petitioner.

In the absence of urgent relief, the Petitioner faces the imminent risk of financial collapse and irreparable harm. There is a reasonable

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apprehension that the Respondent may alienate or otherwise dispose of its assets or receivables to defeat the claim. Section 9 of the Act has been specifically enacted to safeguard the rights of a party facing such exigencies and to prevent the frustration of arbitral proceedings.

The continued non-payment of certified dues has severely impaired the Petitioner's cash flow, creditworthiness, and operational viability. Given the Petitioner's MSME status and dependence on contractual receivables for sustaining its operations and meeting debt obligations, the delay has caused substantial and ongoing injury, including reputational damage and disruption of business continuity. Such harm cannot be adequately compensated by monetary relief at a later stage, and therefore warrants urgent judicial intervention.

The petitioner has further submitted that this Court is fully empowered to direct the Respondent to furnish a bank guarantee or deposit the amount of certified and admitted dues with the Court, in order to protect the Petitioner's legitimate claim and preserve the efficacy of arbitration proceedings. Such a direction would meet the ends of justice and ensure parity between the parties during the pendency of arbitration.

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.74,00,000/- (Rupees Seventy-Four Lakhs Only), being the certified and admitted dues of the Petitioner, grant an order of temporary injunction restraining the Respondent from alienating, disposing of, or creating any third-party interest in its assets or project-specific receivables pertaining to the DSP Project, direct the Respondent to deposit the withheld Security Deposit and outstanding project amount with this Court to secure the claim of the Petitioner and pass such other and further orders as this Court may deem just and proper in the facts and circumstances of the case hence this petition.

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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 this matter comes before this Court by way of a petition preferred under Section 9 of the Arbitration and Conciliation Act, 1996, wherein the Petitioner, a registered Micro, Small and Medium Enterprise (MSME), seeks urgent interim protection in relation to certified, admitted, and undisputed contractual dues which are stated to have been arbitrarily and wrongfully withheld by the Respondent, a Government of India Undertaking. The claim arises out of a formal contract executed pursuant to a Letter of Intent/Work Order dated 14.05.2011 issued by the Respondent, involving comprehensive structural steel works comprising fabrication, erection, cladding, and painting undertaken by the Petitioner in the BOF and CCP Area of the Durgapur Steel Plant (DSP), located in Burdwan District, West Bengal.

It is the case of the Petitioner that the entire scope of work was executed diligently and in conformity with the specifications laid down in the contract, and that the same was duly acknowledged and approved by the Respondent's site engineers and competent authorities through recorded Measurement Books and other relevant documentation. The Petitioner has further contended that despite the undisputed nature of the claim and multiple communications requesting release of the outstanding amount, the Respondent has remained recalcitrant in discharging its financial obligations under the contract, thereby causing severe financial strain to the Petitioner.

It appears that the contractual relationship between the parties is governed by the arbitration clause set forth in Clause 40 of the Work Order, which expressly stipulates that any dispute arising from or related to the contract shall be referred to arbitration. In compliance with this provision, the Petitioner initiated the arbitration process under Section 21 of the

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Arbitration and Conciliation Act, 1996, by issuing a formal notice to the Respondent on 04.04.2025. In this notice, the Petitioner proposed the appointment of Shri Suranjan Kundu, a retired District Judge, as the Sole Arbitrator. However, despite the Petitioner's invocation of the arbitration process, the Respondent has failed to take any action to form the Arbitral Tribunal, thereby obstructing the Petitioner's rightful access to arbitration.

Given the Respondent's failure to act, the Petitioner is compelled to seek immediate interim relief from this Court under Section 9 of the Arbitration and Conciliation Act, 1996, in order to protect its rights and prevent further harm. The Petitioner asserts that a prima facie case exists, as the Respondent's refusal to release the undisputed dues is unjustified and has caused significant financial distress.

Under Section 9 of the Act, this Court is empowered to grant interim measures either before, during, or after the arbitral proceedings. These measures are intended to protect the subject matter of the dispute, secure the claim amount, or maintain the status quo. In exercising this jurisdiction, the Court follows the established three-pronged test: (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 the arbitration clause of the governing agreement and has issued the requisite notice under Section 21 of the Act on 04.04.2025, proposing the appointment of a Sole Arbitrator. The Respondent has not contested this invocation. Furthermore, the Respondent has neither disputed the claim amount nor raised any counterclaim. Instead, the Respondent, by an e-mail dated 09.01.2025, merely suggested that the Petitioner approach the relevant site or project head for resolution, effectively avoiding direct engagement with the claim.

The documentary evidence indicates a long-standing business relationship between the parties, with numerous ongoing transactions

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related to various projects. The Petitioner's counsel has stressed that at no point has the Respondent denied liability; it has merely requested certain documents for verification. The claim pertains to long-outstanding dues. While the original Work Order dates back to 14.05.2011, the final payment remains pending, and the security deposit has also not been released, despite the completion of all contractual obligations.

These facts necessitate the issuance of interim relief to safeguard the Petitioner's claims while the arbitration is pending. The issue of limitation does not arise, as the final settlement has not been concluded. The Petitioner has made repeated efforts through written communication to secure payment, yet the Respondent has failed to act. The Respondent's prolonged withholding of the Petitioner's dues, despite holding onto the funds for nearly a decade, combined with its recent request for further documentation, bars it from now invoking the defense of limitation.

It is noteworthy that the Respondent is a prominent public sector enterprise with significant financial and administrative resources. Nevertheless, the Petitioner has pursued its legitimate claims in good faith, despite facing bureaucratic delays and indifference. The Petitioner's claim is genuine and should not be dismissed on procedural grounds, especially when the Respondent's conduct has contributed to the delay. The ongoing correspondence and the Respondent's request for documents indicate that the dispute remains unresolved, and these communications, by themselves, negate any assertion of a time-barred claim.

In terms of jurisdiction, Clause 40 of the General Conditions of Contract (GCC) clearly designates Kolkata as the seat of arbitration. Given the absence of any contrary clause or evidence, and since the monetary value of the claim satisfies the jurisdictional threshold set under the Commercial Courts Act, this Court has both territorial and pecuniary jurisdiction to hear and determine the present application.

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Upon a careful and considered perusal of the petition, the documents annexed therewith, and the oral and written submissions advanced on behalf of the parties, this Court is of the considered opinion that the Petitioner has succeeded in establishing a prima facie case warranting interference at the interim stage. The materials on record demonstrate that the Petitioner has completed the assigned contractual work to the satisfaction of the Respondent, and the dues in question amounting to Rs.74,00,000/- (Rupees Seventy-Four Lakhs Only), exclusive of taxes have been certified and acknowledged without demur by the Respondent through internal records including certified Measurement Books, escalation bills, and communication exchanges. No document or correspondence has been placed before this Court to indicate that any formal dispute, counterclaim, or notice of defect has been raised by the Respondent in respect of the executed work. As such, there appears to be no bonafide justification for the continued withholding of payments.

Furthermore, this Court is satisfied that the balance of convenience tilts overwhelmingly in favour of the Petitioner. The Petitioner is a long-standing MSME unit with a workforce of over 400 employees, and it has been compelled to finance the execution of the contract through institutional credit, loans, and working capital borrowings. The prolonged non-payment by the Respondent has not only resulted in mounting interest liabilities and operational disruption but has also materially impacted the Petitioner's ability to sustain its business, meet its payroll commitments, and maintain statutory and financial compliance. On the contrary, the Respondent, being a Government of India Undertaking, is financially secure and no demonstrable hardship or prejudice would be caused to it in complying with an interim direction to secure the certified dues by way of a court deposit or bank guarantee, pending the constitution and adjudication of the arbitral tribunal.

This Court also finds persuasive merit in the Petitioner's plea that it

would suffer irreparable loss and injury in the absence of interim protection. The continued and unjustified withholding of certified contractual dues has already disrupted the Petitioner's financial health, severely affecting its liquidity position and creditworthiness in the eyes of lending institutions. The Petitioner has made out a credible apprehension that unless protective orders are issued by this Court, there exists a real and present risk that the Respondent may take steps to alienate or divert project-specific receivables or other assets, thereby undermining the effectiveness of the arbitration process and rendering any eventual award illusory and unenforceable. The Petitioner's injury, in such circumstances, would not be merely financial in nature, but would also extend to loss of reputation, employee attrition, and potential winding down of its operations consequences that cannot be remedied merely by a money decree at a later stage.

Having regard to the above facts and circumstances, and the legal principles governing the grant of interim measures under Section 9 of the Arbitration and Conciliation Act, 1996, this Court is of the considered view that the Petitioner has made out a strong case for grant of interim protection, in order to safeguard the subject matter of arbitration and ensure that the arbitral proceedings are not rendered infructuous by reason of delay, inaction, or asset dissipation on the part of the Respondent.

In view of the foregoing, this Court is satisfied for the grant of ad-interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, in order to preserve the subject matter of the dispute and to prevent irreparable harm and the possibility of 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

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ORDERED

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.74,00,000/-** 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.74,00,000/-** 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 **(12.06.2025)** for SR/AD and appearance.

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