

Misc. Arb (Com) – 18/2025

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

**CNR: WBNP19-000043-2025
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 reputed engineering enterprise and a registered Micro, Small, and Medium Enterprise (MSME) under the MSME Development Act, 2006, with a proven track record of successfully executing high-value structural and civil engineering projects across India, including for several Public Sector Undertakings. The Petitioner has been associated with the Respondent since 1987 and has consistently discharged its obligations with diligence and integrity.

The present petition pertains to contractual dues arising out of a project executed at the Sagardighi Thermal Power Project (SgTPP), Murshidabad, West Bengal. Pursuant to a Work Order dated 26.03.2012, the Petitioner undertook the fabrication and erection of structural steel works for the Power Block and Auxiliary Building of Unit 3 (2 x 500 MW Units), forming part of the main plant construction. The Notice Inviting Tender (NIT) and other contract documents form part of the agreement.

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The disputes between the parties are governed by the arbitration clause contained in Clause 41 of the contract. This clause provides that any dispute, controversy, or claim arising out of or relating to the contract, including breach, termination, or invalidity thereof, shall be referred to arbitration. The current dispute, arising out of non-payment of claimed dues, is therefore arbitrable and squarely within the ambit of the agreed dispute resolution mechanism.

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

Despite the satisfactory completion of the work, submission of Measurement Books (MBs), and final bill, the Respondent has wrongfully withheld an amount of Rs.63,25,255/- (Rupees Sixty-Three Lakhs Twenty-Five Thousand Two Hundred Fifty-Five Only), exclusive of statutory dues such as Service Tax/GST.

The Respondent has failed to provide any justification for the withholding of this amount, demonstrating a lack of commercial fairness. The Petitioner, being a registered MSME, is facing acute financial distress due to this arbitrary and unjustified non-payment.

The Petitioner financed the execution of the project through institutional loans and continues to suffer financial consequences, including interest burdens and operational liabilities. Salaries of over 400 employees are at risk. The Respondent has arbitrarily failed to release payment.

Having invoked the arbitration clause, the Petitioner has complied with all statutory requirements. However, given the time that may be consumed in the constitution of the arbitral tribunal, the Petitioner is compelled to seek urgent interim protection under Section 9 of the Act to safeguard its claim.

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The petitioner contends that the balance of convenience lies entirely in favour of the Petitioner. The Petitioner has completed the contractual work to the satisfaction of the Respondent and its principal employer, and is now suffering due to non-payment of the claimed dues. The Petitioner is burdened with debt and obligations, while no prejudice would be caused to the Respondent if the claimed amount is secured or deposited in this Court. On the contrary, denial of interim relief may lead to grave hardship and the risk of insolvency for the Petitioner, making the relief sought both equitable and essential.

The Learned Advocate for the petitioner has contended that as held by the Hon'ble Supreme Court in *Valentine Maritime Ltd. and Ors. vs. Kreuz Subsea Ptd. Ltd. and Ors. (2021)*, courts are empowered to grant protective measures under Section 9 in cases of admitted liability where irreparable harm is reasonably apprehended, even before the arbitral tribunal is constituted.

The petitioner further contends that the Respondent continues to retain the Petitioner's Security Deposit without raising any counterclaim. The Petitioner reasonably apprehends that the Respondent may divert or alienate project-specific receivables unless restrained by appropriate orders. In the interest of justice, this Court should direct the Respondent to deposit the Security Deposit with the Court. This Court has the power to direct the Respondent to furnish a Bank Guarantee or deposit the said dues in Court, particularly in view of the absence of any real dispute as to quantum. Granting such relief is just, equitable, and necessary to ensure that the arbitral process is not rendered infructuous.

The Petitioner further avers that it is on the verge of irreparable harm due to the illegal and unjustified withholding of the said dues. As an MSME with over 400 employees, the Petitioner relies on timely payment of contractual receivables to service debt and maintain operations. The withheld funds have already been spent on executing the project, and the

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Petitioner is now facing deteriorating cash flow, impaired creditworthiness, and the inability to bid for or undertake new work. These damages cannot be compensated adequately by monetary relief at a later stage.

Grant of interim measures is necessary to secure the Petitioner's right to recover dues and to ensure that the arbitration proceedings are not rendered futile. The balance of convenience is clearly in the Petitioner's favour, and failure to grant relief would result in irreparable and irretrievable harm.

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.63,25,255/- (Rupees Sixty-Three Lakhs Twenty-Five Thousand Two Hundred Fifty-Five Only), being the claimed 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 arising from the Sagardighi Thermal Power Project, Murshidabad, direct the Respondent to deposit the Security Deposit and the withheld amount before this Court to secure the Petitioner's claim and pass such other or further orders as this Court may deem fit and proper 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 dispute between the parties is governed by an arbitration clause (Clause 41 of the Work Orders), which mandates arbitration for any conflicts arising from the contract. The Petitioner invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, by proposing a Sole Arbitrator via a notice dated 04.04.2025. However, the Respondent failed to act on this, frustrating the Petitioner's right to arbitrate.

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Consequently, the Petitioner seeks interim relief under Section 9 of the Act, arguing that the Respondent's refusal to pay the said dues has caused financial distress. The Petitioner claims to meet the legal requirements for interim relief viz. prima facie case, balance of convenience, and risk of irreparable harm.

It appears that despite ongoing communications and document submissions, the Respondent has not disputed the claim amount or proposed a counterclaim. The dues date back to a 2012 Work Order, with the final payment and security deposit still unpaid. The Respondent's conduct, including a request for additional documents, shows the dispute is still active and undermines any limitation defense.

Jurisdiction lies with the Kolkata Court, as specified in the arbitration clause, and the claim satisfies the commercial threshold. Given the Respondent's inaction and the ongoing nature of the dispute, interim protection is warranted.

In view of the above it appears that the Petitioner has successfully demonstrated a prima-facie case in its favour.

Upon a thorough review of the petition and the supporting documentation, particularly the work order dated 26.03.2012, the final bills submitted by the Petitioner, and the invocation of the arbitration clause under Section 21 of the Arbitration and Conciliation Act, 1996, the Court is prima-facie satisfied that the Petitioner has executed its contractual obligations in a satisfactory manner, as per the terms agreed with the Respondent. The petitioner claims a definite amount as its dues having completed the work in terms of the work order. Despite this, the Respondent has unjustifiably withheld the payment owed to the Petitioner. This raises a presumption of an unfair and inequitable commercial practice on the part of the Respondent. In the absence of any valid justification from the Respondent for withholding the payment, this Court finds it appropriate to

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intervene to safeguard the Petitioner's rights and ensure that it is not deprived of its lawful dues.

Furthermore, when considering the balance of convenience, this Court is of the firm view that it clearly lies in favour of the Petitioner. The Petitioner, as a registered MSME, has fully completed the work as per the contract, and the dues owed have not yet been cleared by the Respondent. The withholding of payment has caused severe financial hardship to the Petitioner, which is evidenced by the financial strain arising from obligations such as loan repayments, interest liabilities, and the risk of non-payment of salaries to its employees. Denying interim relief to the Petitioner will likely lead to irreparable damage to its financial health, possibly resulting in insolvency or business discontinuity. In contrast, no prejudice would be caused to the Respondent if the claimed dues are secured or deposited with this Court, thereby preserving the Petitioner's rights while awaiting the resolution of the dispute. Hence, the balance of convenience strongly favours the Petitioner's request for relief.

The Petitioner has also demonstrated, with sufficient clarity, that the non-payment of the alleged dues is causing substantial and ongoing financial distress. The continued withholding of these dues puts the Petitioner at significant risk of insolvency, which would have a catastrophic effect on its business operations. As an MSME that employs over 400 people, the Petitioner relies heavily on the timely receipt of contractual payments to ensure financial liquidity and operational stability. The loss caused by the Respondent's failure to release these payments is both severe and irreparable. This harm cannot be compensated by monetary relief at a later stage, as it affects not only the financial health of the Petitioner but also its reputation and its ability to continue executing further projects. The sustained financial distress resulting from this delayed payment poses an existential threat to the Petitioner's business, which further underscores the urgency of the relief sought.

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In light of the aforementioned facts and legal position, this Court is of the opinion that the Petitioner has made out a compelling case for the grant of urgent interim relief. The balance of convenience is overwhelmingly in favour of the Petitioner, and the Petitioner has clearly established that it stands to suffer irreparable harm and injury if relief is not granted. The continuation of the Respondent's failure to pay the said dues would lead to irreversible damage to the Petitioner's operations, reputation, and financial viability. As such, the Petitioner is entitled to the interim protection sought

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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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.63,25,255/-** 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.63,25,255/-** 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.

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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