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APPEAL (ICA) NO. 1 OF 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 10TH DAY OF MARCH 2026 / 19TH PHALGUNA, 1947

APPEAL (ICA) NO. 1 OF 2026

AGAINST THE ORDER DATED 24.02.2026 IN OP(ICA) NO.1 OF 2025
OF THE HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 E D & F MAN LIQUID PRODUCTS ITALIA SRL.
A COMPANY INCORPORATED UNDER THE LAWS OF ITALY WITH REGISTERED OFFICE AT ALDO MORO, NO. 64, 40127 BOLOGNA, ITALY, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER MR. GOPAKUMAR M.K, AGED 57, S/O LATE KUTTAPPAN NAIR, MUKKADTH HOUSE, KOKKAPPILLY (P.O), THIRUVANKULAM, ERNAKULAM - 682305.
- 2 VOLCAFE IBERIA S.A.
A COMPANY INCORPORATED UNDER THE LAWS OF SPAIN WITH REGISTERED OFFICE AT JOSE ABASCAL 58, 3 IZDA, 28003 MADRID, SPAIN, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER MR. GOPAKUMAR M.K, AGED 57, S/O LATE KUTTAPPAN NAIR, MUKKADTH HOUSE, KOKKAPPILLY (P.O), THIRUVANKULAM, ERNAKULAM - 682305.
- 3 COFI-COM TRADING PTY LIMITED
A COMPANY INCORPORATED UNDER THE LAWS OF AUSTRALIA WITH REGISTERED OFFICE AT SUITE 1, 80-82 BATHURST STREET, LIVERPOOL, NSW 2170, AUSTRALIA, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER MR. GOPAKUMAR M.K, AGED 57, S/O LATE KUTTAPPAN NAIR, MUKKADTH HOUSE, KOKKAPPILLY (P.O), THIRUVANKULAM, ERNAKULAM - 682305.



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**BY ADV. SRI.BHARUCHA ZARIR PESI (SENIOR) ALONG WITH
ADVS. SRI.PRANROY K.KOTTARAM, SRI.SIVARAMAN P.L &
SRI.SREENAND UDAYAN**

RESPONDENT/RESPONDENT:

**EMIL TRADERS PRIVATE LIMITED,
XIII/423, MEENANGADI, WAYANAD- 673 591, KERALA, INDIA,
PIN 673 591, REPRESENTED BY ITS DIRECTOR SAJI CHOLAYIL
KURIAKOSE.**

ADV. SRI.P.B.SUBRAMANYAN

**THIS APPEAL (INTERNATIONAL COMMERCIAL ARBITRATION) HAVING
COME UP FOR ADMISSION ON 10.03.2026, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



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J U D G M E N T

(Dated this the 10th day of March, 2026)

Soumen Sen, C.J.

This appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (in short “A & C Act, 1996”) is filed against the order dated 24 February 2026 in OP(ICA) No.1 of 2025, to the extent it denies an interim relief of securing the awarded sum and disclosing the assets by an affidavit under Section 9 of the said Act.

2. The appellants/petitioners are foreign companies. The Arbitral Award was put to execution and the execution application is pending. During the pendency of the said proceeding, an application under Section 9 of the A & C Act, 1996 was filed praying, *inter alia*, for attachment before judgment. The said application appears to have been



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necessitated by reason of the fact that the appellants were apprehensive of ultimately realising the awarded sum as there has been a failed attempt on the part of the respondent to invoke the provisions of the Insolvency and Bankruptcy Code.

3. Mr. Bharucha Zarir Pesi, the learned Senior Counsel appearing on behalf of the appellants, submitted that when the fraudulent intent of the respondent is clear and borne out from the records, there is an imminent necessity for a direction upon the respondent to deposit the entire awarded sum, apart from filing an affidavit of assets disclosing both movable and immovable properties as well as the details of the bank accounts. The learned Senior Counsel has referred to paragraphs 13 and 16 of the impugned order to show that the learned Single Judge has accepted that under Section 9(1)(ii)(b) of the A & C Act, 1996, the Court has jurisdiction to pass interim orders to secure the amount in dispute in the arbitration even after the arbitral award is passed, until it is



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enforced and the Court has jurisdiction to direct the respondent to deposit the amounts under the arbitral award in exercise of the powers under Section 9 of the A & C Act, 1996, despite the same being the main relief sought in the execution petition. In appropriate cases, when other measures are not effective to secure the amounts in dispute, the Court is required to pass such direction for the ends of justice. The Court has, however, limited its jurisdiction to the extent of granting an order of injunction restraining the respondent from withdrawing any amount from its bank accounts and also from alienating or creating any encumbrance on any movable or immovable properties owned by it, which is inadequate to protect the claim of the appellants.

4. The learned Senior Counsel submitted that the Hon'ble Supreme Court in the case of *Essar House Private Limited v. Arcelor Mittal Nippon Steel India Limited*¹, has analysed

¹ (2022) 20 SCC 178



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the scope and ambit of Section 9 of the A & C Act, 1996 and clearly enunciated the law. The Hon'ble Supreme Court has proceeded even to the extent of observing that besides the specific power of securing the amount in dispute, the Courts have been empowered to pass any interim measure of protection, keeping in view the purpose of the proceedings before it. The technicalities of the Code of Civil Procedure cannot prevent the Court from securing the ends of justice. It is thus submitted that having regard to the fraudulent intent and motive of the respondent as would be reflected from their attempt to invoke the Insolvency and Bankruptcy Code, the learned Single Judge ought to have exercised such power, as envisaged under Section 9(1)(ii)(b) of the A & C Act, 1996, by securing the entire claim of the awarded sum till the enforcement of the award is finally decided.

5. The learned counsel for the respondent submitted that, unless the enforceability of the award is finally established, the



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appellants are not entitled to any relief by which the respondent can be directed to secure the entire awarded sum.

6. In the conspectus of the aforesaid facts, the order passed by the learned Single Judge requires consideration.

7. The A & C Act, 1996 is a code in itself and Section 9 has a unique feature in the sense that it is an amalgam of Order XXXVIII and Order XXXIX of the Code of Civil Procedure. Section 9(1)(ii)(b) of the A & C Act, 1996 empowers the Court to pass an order for securing the amount in dispute in the arbitration as an interim measure of protection and in Section 9(1)(ii)(e) such other interim measure of protection as may appear to the Court to be just and convenient.

8. Although the conditions precedent for exercising the power under Order XXXVIII or Order XXXIX of the Code of Civil Procedure have not been specifically mentioned, ordinarily the Court exercising the power under Section 9 of the A & C Act,



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1996 shall be guided by the said provisions, but should not limit its power if it appears to the Court that such interim measure of protection is necessary. This, in effect, permits the Court to exercise its inherent power to pass any such interim measure as it considers just and convenient. The expressions “securing the amount in dispute” and “such other interim measure of protection as may appear to the Court to be just and convenient” are important features of the said section, which confer wide and sweeping powers on the Court to pass interim measures even after an award is passed but before its enforcement. In *Essar House Private Limited* (supra), the Hon’ble Supreme Court in analysing Section 9 of the A & C Act, 1996, has observed that the said provision confers a residuary power on the Court to pass such other interim measures of protection as may appear to be just and convenient. It is reiterated in the said decision that if a strong *prima facie* case is made out and the balance of convenience is in favour of interim



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relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order XXXVIII Rule 5 of the CPC. The proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending arbitral award is not imperative for the grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail.

9. In this regard, we may refer and rely upon the observations of the Hon'ble Supreme Court in paragraphs 38 to



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42 and 47 to 49 of the decision in *Essar House Private Limited* (supra) which read as follows:

“38. In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of CPC. At the same time, the power of the Court to grant relief is not curtailed by the rigours of every procedural provision in CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of CPC.

39. While it is true that the power under Section 9 of the Arbitration Act should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in CPC, the technicalities of CPC cannot prevent the court from securing the ends of justice. It is well settled that procedural safeguards, meant to advance the cause of justice cannot be interpreted in such manner, as would defeat justice.

40. Section 9 of the Arbitration Act provides that a party may apply to a Court for an interim measure or protection inter alia to (i) secure the amount in dispute in the arbitration; or (ii) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making



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orders as it has for the purpose of, and in relation to, any proceedings before it.

41. As argued by Mr Kaul, besides the specific power of securing the amount in dispute, the courts have been empowered to pass any interim measure of protection, keeping in view the purpose of the proceedings before it. The said provision confers a residuary power on the Court to pass such other interim measures of protection as may appear to be just and convenient.

42. Many High Courts have also proceeded on the principle that the powers of a court under Section 9 of the Arbitration Act are wider than the powers under the provisions of CPC.

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47. Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed



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for being granted and whether the applicant has approached the court with reasonable expedition.

48. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5CPC.

49. Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending arbitral award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail.

10. It is equally important to refer to paragraph 43 of the Division Bench judgment of the Bombay High Court in **Essar**



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House (P) Ltd. v. Arcelor Mittal Nippon Steel (India) Ltd.², referred to in paragraph 51 of the decision in ***Essar House Private Limited*** (supra), in which the Division Bench of the Bombay High Court observed as under:

“43. If the Court is required to dismiss the petition under Section 9 of the Arbitration Act on the ground that the opponent has no assets at all or the assets of the opponent are fully encumbered, it will be against the principles of equitable justice required to be exercised by the Court while exercising powers under Section 9 of the Arbitration Act so as to secure the claim of the applicant in the arbitral proceedings though he may have prima facie good chances of succeeding in arbitration.”

11. Even otherwise, all courts dealing with suits and execution proceedings are mandatorily required to follow, *inter alia*, the directions issued by the Hon'ble Supreme Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi and Others***³, which are as under:

² 2021 SCC OnLine Bom 149

³ (2021) 6 SCC 418



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“42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.”

12. In the instant case, award has already been passed and presently, the execution petition is pending. The order of the NCLT dismissing the petition for voluntary winding up by order dated 17 July 2025, making adverse observations against the respondent, is a relevant consideration to find out whether an interim measure of protection by directing the respondent to secure the amount in dispute in the arbitration is necessary, apart from filing a detailed affidavit of assets. A strong



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possibility of diminution of assets in this regard would suffice. However, before an order is made for securing the amount, it has to be seen whether the respondent has sufficient assets to meet and satisfy the awarded sum in the event the enforcement of the award is held in favour of the appellants. The learned Single Judge has overlooked this aspect of the matter and has merely restricted the relief to an order of injunction. Under such circumstances, we direct the respondent and its Directors to make a fair disclosure of its assets, both movable and immovable, with valuation report duly certified by a chartered/accredited valuer to be incorporated in the affidavit of assets to be filed in the pending proceeding and also to disclose the annual accounts and balance sheets of the company for the last three years, duly certified by its auditors on or before 23 March 2026, upon prior service to the appellants, as the matter is made returnable to the learned Single Judge on 25 March 2026. Upon such affidavit being filed



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and examined, in the event a finding is arrived at that the assets available are inadequate to meet the awarded sum, it will be open to the appellants to pray for a direction for securing the awarded sum till the enforceability of the award is decided.

13. The interim order dated 24 February 2026 in OP(ICA) No. 1 of 2025 stands modified to the above extent.

14. The Appeal is allowed in part.

Sd/-

**Soumen Sen,
Chief Justice**

Sd/-

**Syam Kumar V.M.,
Judge**

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