



**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

Arb. Case No. 814/2024

Reserved on: 16.04.2026

Decided on: 04.05.2026

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M/s Naveen Auto Store Sole Proprietary

.....Petitioner

Versus

Mahindra & Mahindra Ltd. & ors.

....Respondents

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**Coram:**

***The Hon'ble Mr. Justice Romesh Verma, Judge.***

*Whether approved for reporting?<sup>1</sup>*

For the Petitioner: Mr. Tara Singh Chauhan, Sr. Advocate  
with Mr. Surya Chauhan, Advocate.

For the Respondents: Mr. Subhash Chander, Advocate.

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**Romesh Verma, Judge**

The present petition has been filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity, the Act) for grant of interim directions.

2. The brief facts, for the adjudication of the instant petition, are that the petitioner is a Sole Proprietorship concern having its office-cum workshop, near UCO Bank, Ghumarwin, District, Bilaspur, Himachal Pradesh. It is averred in the

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<sup>1</sup>Whether reporters of the local papers may be allowed to see the judgment? Yes.

petition that the respondents were in need of Service Station for their vehicles at Ghumarwin, District Bilaspur H.P. They issued an advertisement in Punjab Kesari and Divya Himachal for opening of Authorized Service Station in Himachal Pradesh. In response to the advertisement, vide Annexure A-1, the petitioner made an offer to the respondents vide letter dated 21.06.1999 to open authorized service station of Mahindra and Mahindra at Ghumarwin, District Bilaspur. The said offer was made by the petitioner on 21.06.1999 and pursuant to that, the respondents issued letter of intent (Annexure P-4) to the petitioner on non-exclusive basis for a period of six months from 01.08.2000, stipulating therein that based on performance and inspection of the premises of the petitioner, appointment will be confirmed by execution of an agreement.

3. Finally, an agreement (Annexure P-5) was entered between the parties on 28.06.2002, which was deemed to have come into force w.e.f. 1.2.2001 and shall continue to remain in force and also govern all transactions between the parties upto 31.03.2004. To the similar extent, fresh contract (Annexure P-7) was executed on 10.7.2006 which was deemed to have come into force and shall bind the parties w.e.f. 1.4.2004 to 31.3.2008. Another agreement (Annexure P-10) was entered into between the parties in 2015 and the said agreement was

deemed to have come into force and shall bind the parties w.e.f. 1.4.2015 to 31.3.2018. Finally, vide Annexure P-11, an agreement was entered between the parties w.e.f. 1.4.2021 to 31.3.2024. As per terms and conditions of the agreement (Annexure P-11), the respondent-Company granted Mahindra Authorised Service Centre (MASC) non-exclusive rights during the continuance of the agreement to act as an MASC. The respondent-company shall have the liberty to grant a right to one or more person, entities and/or, MASC to service the said products of the Company in the said territory or any part thereof and further the Company shall have the right to service the said products direct to the customers in the said territory. In the agreement, the petitioner has been referred to as MASC. Currency of the agreement, which took place between the parties on 1.4.2021, was from 1.4.2021 to 31.3.2024. As per clause 30 of the agreement, provision of arbitration has been stipulated.

4. As per the case set up by the petitioner, the respondents accepted offer of the petitioner and told him that service team shall visit the Auto store to assess the suitability of the appointment of the petitioner as MASC. After completing codal formalities, the petitioner deposited a sum of Rs. 25,000/-, copy of the letter dated 13.07.2000 along with the

DD (Annexure P-3). Thereafter on 01.08.2000 the letter of intent Annexure P-4 was issued in favour of the petitioner. The petitioner was directed by the respondents to create additional facilities and make major arrangement for the workshop. The respondents asked the petitioner to deposit a sum of Rs.25,000/- as security and the same was deposited on 23.3.2001. Then again respondent demanded a draft of Rs.25,000/- on 30.3.2001, which was again sent by the petitioner as security draft to respondent. It is the case of the petitioner that the respondents repeatedly directed the petitioner to make huge investments like purchase of helpline vehicle amounting to Rs. 5,18,252/-, demo vehicle, which was modified to work as crane. Additional land was purchased by the petitioner for expanding the workshop. The demands were raised by the respondents to purchase, tools, machinery, special tools. The said purchases were made by the petitioner by investing huge amount vide invoice No. 0504 worth Rs.94,725/-; on 15.06.2011, he purchased 2 post lift from National Automobiles against invoice No. 905 worth Rs 1,10,930/- ; on 18.06.2011, he purchased air compressor from National Automobiles against invoice No. 917 worth Rs. 70,800/- and on 25.06.2011 he purchased 5 tool trolleys from

National Automobiles against invoice number 941 worth Rs.25000/-.

5. In 2011-2012, the respondents directed the petitioner to open his personal and commercial codes separately. Petitioner as per the demand again had to purchase special tools as per the requirements of the respondents.

6. As per requirement of the respondents, a sofa set and other furniture was also placed in the customer lounge, which was purchased from Worlds at Home S Daman on 16.04.2012 amounting to Rs.35438/-. Workers were sent for training on 30.04.2013 and the training fees was Rs. 7415/-. Other expenses incurred by the petitioner were Rs 25000/-. Thereafter, two more technicians were sent for training on 20.05.2013 and the petitioner paid fees of Rs. 6540/- and incurred other expenses amounting to Rs.6000/-. The petitioner also purchased posters, sign boards, sun board panels etc from Supreme Graphics, Mumbai, on 12.07.2013 worth Rs. 25,527/-. The respondents again demanded security amount of Rs. 2 Lakhs for the personal code, which was sent on 07.11.2013 vide draft No. 868432.

7. In the year 2012-2013, as per the requirement made by the respondents, the petitioner upgraded and expanded the workshop area, so that the workshop can be used for

commercial & personal vehicles. In order to fulfill the demand of the respondents, the petitioner had to purchase land worth Rs.10 lakhs and get installed Kota stone, tiles, paint shed in the workshop and tiles in the customer lounge amounting to Rs. 64 lacs. The respondents did tie-up with Bosch and through the respondents, the petitioner had to order special tools worth Rs 9 lacs in 2012 and he also sent draft of 9 lakhs to Bosch, which supplied special tools for commercial or personal vehicles to the petitioner from 25.12.2012 to 27.11.2014. The tools were like i-smart Diagnostic tool for personal, MST tools, mini smart for personal and commercial etc.

8. In the year 2013, DMS (Dealer Management System) was installed in computers, which were purchased from Wipro company by petitioner and installation fees of Rs 50,000/- was charged from petitioner for commercial code and Personal Code. On 31.10.2018, the petitioner sent his employees for co-tech training on the request of the respondents and accordingly paid fees of Rs 13,275/- and other expenses of Rs. 28000/-.

9. It is averred that on the demand of the respondents, the petitioner has made huge investment even when the agreement was not renewed by them. After the last agreement having been executed between the parties w.e.f. 1.4.2021 to

31.3.2024, login i.d. of the petitioner for repairing the vehicles was blocked. The petitioner has shared all information regarding the aforesaid inaction to the employees of company like CCM, RCCM, Area office Chandigarh & Delhi office and Head Office Mumbai and informed everyone about this and sent various e-mails, (Annexure P-12 colly.) to the respondents for redressal of his grievance, but till date no steps have been taken by the respondents for the redressal of the grievances of the petitioner. Even, on 30.03.2024 for order, petitioner paid through RTGS Rs 1,10,000/- in commercial code and Rs 30,000/- in personal code for Mahindra. It is further averred that notice to invoke arbitration has already been served upon the respondents vide Annexure P-13. On account of blocking of i.d., the petitioner is not able to get the service of the vehicles and the petitioner has suffered huge financial losses under various heads amounting to Rs.1,05,00,000/-(One crore and five lakhs). Therefore, the petitioner has approached this Court by medium of instant petition praying therein issuance of interim direction to the respondents to restore dealer management system of workshop of the petitioner and allow him to repair the vehicle of the respondents.

10. This Court issued notice to the respondents on 14.11.2024 and on 5.12.2024, Mr. Subhash Chander,

Advocate, appeared for the respondent and time was granted to him to file the power of attorney.

11. The instant petition has been duly replied by the respondent. Various preliminary objections with regard to maintainability, petition being pre-mature, agreement being over between the parties etc. were raised. On merits, it was submitted that since agreement, which was entered between the parties expired on 31.3.2024, therefore, the respondents have closed the DMS code, as there is no enforceable right available to the petitioner to restore the same in absence of any valid agreement. All the averments as made in the petition have been denied in toto, though the execution of the agreements from time to time has been admitted. They denied the claim as put forth after expiry of the agreement in March, 2024 as no cause of action accrues to the petitioner. It is admitted by the respondents that dealer management system code has been blocked and the petitioner has requested through e-mails for restoration of the DMS code, however it is averred that the dealership has been given to the petitioner on the basis of the agreement for a particular period nor for infinity. Therefore, the respondent has prayed for dismissal of the present petition.

**12.** The petitioner has filed rejoinder reiterating therein the averments as taken in the petition and denying the averments, which are contrary to record, as contained in the reply and submitted that the application bearing Arbitration Case No. 16/2025 for appointment of the Arbitrator filed by him is pending adjudication before this Court.

**13.** I have heard the learned counsel for the parties and have also gone through the case file in detail.

**14.** The petitioner has approached this Court seeking interim relief under Section 9 of the Act, which reads as under:

*9. Interim measures by Court etc.-A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-*

*(I) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or (II) for an interim measure of protection in respect of any of the following matters, namely:-*

- (a) the preservation interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*
- (b) securing the amount in dispute in the arbitration;*
- (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be*

*taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;*

*(d) interim injunction or the appointment of a receiver;*

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

15. It is the precise case of the petitioner that since the year 2000, the respondents have entered various agreements from time to time with the petitioner for the establishment of the service station and letter of intent was given to the petitioner to that effect and after finding suitability of the petitioner, the agreements were entered between the parties. Currency as well terms and conditions have been stipulated in each of the agreements.

16. The qualification which the person invoking jurisdiction of the Court under Section 9 of the Act must possess is of being a party to an arbitration agreement. A person not party to an arbitration agreement cannot enter the Court for protection under Section 9 of the Act. This has relevance only to his locus standi as an applicant. This has nothing to do with the relief which is sought for from the Court or the right which is sought to be canvassed in support of the

relief. The right conferred by Section 9 of the Act is on a party to an arbitration agreement. The time or the stage for invoking the jurisdiction of Court under Section 9 of the Act can be (i) before, or (ii) during arbitral proceeding, or (iii) at any time after the making of the arbitral award, but before it is enforced in accordance with Section 36 of the Act. The reliefs, which the Court may allow to a party under clauses (i) and (ii) of Section 9 of the Act, flow from the power vesting in the Court exercisable by reference to 'contemplated', 'pending' or 'completed' arbitral proceedings. The Court is conferred with the same power for making the specified orders as it has for the purpose of and in relation to any proceedings before it though the venue of the proceedings in relation to which the power under Section 9 of the Act is sought to be exercised is the arbitral tribunal. Filing of an application by a party by virtue of its being a party to an arbitration agreement is for securing a relief which the Court has power to grant before, during or after arbitral proceedings by virtue of Section 9 of the Act. The Court under Section 9 of the Act is only formulating interim measures so as to protect the right under adjudication before the arbitral tribunal from being frustrated.

17. In **Firm Ashok Traders vs. Gurumukh Das Saluja, (2004) 3 SCC 155**, the Hon'ble Supreme Court has held as under:-

13. The A & C Act, 1996 is a long leap in the direction of alternate dispute resolution systems. It is based on UNCITRAL Model. The decided cases under the preceding Act of 1940 have to be applied with caution for determining the issues arising for decision under the new Act. An application under Section 9 under the scheme of A & C Act is to a suit. Undoubtedly, such application results in initiation of civil proceedings but can it be said that a party filling an application under Section 9 of the Act is enforcing a right arising from a contract? "Party" is defined in Clause (h) of sub-Section (1) of Section 2 of A & C Act to mean 'a party to an arbitration agreement'. So, the right conferred by Section 9 is on 'a party to an arbitration agreement'. The time or the stage for invoking the jurisdiction of Court under Section 9 can be (i) before, or (ii) during arbitral proceeding, or (iii) at any time after the making of the arbitral award but before it is enforced in accordance with Section 36. With the pronouncement of this Court in *M/s Sundarum Finance Ltd. v. M/s NEPC India Ltd.*, AIR (1999) SC 565 the doubts stand cleared and set at rest and it is not necessary that arbitral proceeding must be pending or at least a notice invoking arbitration clause must have been issued before an application under Section 9 is filed. A little later we will revert again to this topic. For the moment suffice it to say that the right conferred by Section 9 cannot be said to be one arising out of a contract. The qualification which the person invoking jurisdiction of the Court under Section

9 must possess is of being a party to an arbitration agreement. A person not party to an arbitration agreement cannot enter the Court for protection under Section 9. This has relevance only to his locus standi as an applicant. This has nothing to do with the relief which is sought for from the Court or the right which is sought to be canvassed in support of the relief. The reliefs which the Court may allow to a party under clauses (i) and (ii) of Section 9 flow from the power vesting in the Court exercisable by reference to 'contemplated', 'pending' or 'completed' arbitral proceedings. The Court is conferred with the same power for making the specified orders as it has for the purpose of and in relation to any proceedings before it though the venue of the proceedings in relation to which the power under Section 9 is sought to be exercised is the arbitral tribunal. Under the scheme of A & C Act, the arbitration clause is separable from other clauses of the Partnership Deed. The arbitration clause constitutes an agreement by itself. In short, filing of an application by a party by virtue of its being a party to an arbitration agreement is for securing a relief which the Court has power to grant before, during or after arbitral proceedings by virtue of Section 9 of the A & C Act. The relief sought for in an application under Section 9 of A & C Act is neither in a suit nor a right arising from a contract. The right arising from the partnership deed or conferred by the Partnership Act is being enforced in the arbitral tribunal; the Court under Section 9 is only formulating interim measures so as to protect the right under adjudication before the arbitral tribunal from being frustrated. Section 69 of the Partnership Act has no bearing on the right of a party to an arbitration clause to file an application under Section 9 of A & C Act.

14. In *Jagdish Chandra Gupta's case (supra)* Constitution Bench approved of a liberal and full meaning being assigned to the phrase 'other proceedings' in sub-Section (3) of Section 69 of the Partnership Act untrammelled by the preceding words 'a claim of set-off'. The Court refused to countenance the plea for interpreting the words 'other proceedings' ejusdem generis with the preceding words 'a claim of set-off'. *M/s. Shreeram Finance Corporation. (supra)* calls for the effect of bar created by Section 69 being determined by reference to the date of institution of the suit and not by reference to any subsequent event. In *Delhi Development Authority's case*, this Court held Section 69 of Partnership Act applicable to an application under Section 20 of the Arbitration Act, 1940 as such an application (under the scheme of that Act) would be included within the meaning of 'other proceedings' in Section 69(3) of Partnership Act. In *Kamal Pushpa Enterprises*, this Court held that the bar under Section 69 of Partnership Act is not applicable at the stage of enforcement of the award by passing a decree in terms thereof because the award crystallises the rights of the parties and what is being enforced at that stage is not any right arising from the objectionable contract. None of the cases throws any direct light on the issue at hand. Rather, the undercurrent of dictum in *Kamal Pushpa Enterprises* lends support to the view we are tentatively taking herein. We leave the matter at that and proceed to examine the merits of the appeal as agreed to by all the learned counsel appearing.

15. The most basic principle governing the discretion of the Court in appointing a receiver is whether it is 'just and convenient' to do so. A few factors are of relevance which we proceed to record dispensing with the need of delving

into any detailed discussion. On the own showing of Group "A", they have 20% share in the partnership business and Group "B" has 18% share. The stand taken by Group 'C', which according to Group "A" holds 62% share, was not known before the High Court, and therefore, so far as the High Court is concerned the tussle was between the holders of 20% interest (Group "A") and holders of 18% interest (Group "B"). In this appeal, Group 'C' is represented and has vocally supported Group "B" standing by its side. Before us it is a case of holders of 20% interest claiming against the holders of 80% interest.

16. The finding recorded by the High Court is that it was Group "B" which was running business upto the date of passing of the order by it and was found entitled to continue the same upto 31.12.2003, meaning thereby, for nine months out of the total twelve months' period for which the business is to run, it is Group "B" which has been running the business. Excepting bald and general allegations of mismanagement and siphoning off of the fund nothing concrete has been alleged muchless demonstrated to give real colour to the averments made. The High Court has thought it proper to appoint Group "A" as captain of the ship, which is the running business, to sail for the remaining period of three months. We fail to understand the logic behind such a change. It is a serious matter to appoint a receiver, on a running business. The High Court in spite of having formed an opinion in favour of directing the appointment or receiver has rightly observed that retail liquor trade is an intricate and tricky trade and hence cannot be entrusted to a third party. If that be so, we fail to appreciate the justification behind turning out the persons in actual management of business and passing on the reins in the hands of those who were

not holding the same for nine months out of the twelve. We do not say that such a course has any prohibition in law on being followed. But we do not think a case oppression of minority by majority- the sense in which their term is understood in law-having been made out on the material available in the present case. A better course would have been to allow the conduct of the business continuing in the hands of persons who were doing so still now but at the same time issuing such directions and/or devising such arrangement as would protect and take care of the interest of those who are not actually running the business and that is what we propose to do.

17. There are two other factors which are weighing heavily with us and which we proceed to record. As per the law laid down by this Court in *M/ s. Sundaram Finance Ltd an application under Section 9 seeking interim relief is maintainable even before commencement of arbitral proceedings. What does that mean?* In *M/s. Sundaram Finance Ltd.*, itself the Court has said-

"It is true that when an application under Section 9 is filed before the commencement of the arbitral proceedings there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings".

Section 9 permits application being filed in the Court before the commencement of the arbitral proceedings but the provision does not give any indication of how much before. The word 'before' means *inter alia*, 'ahead of; in presence or sight of; under the consideration or cognizance of. The two events sought to be interconnected by use of the term 'before' must have proximity of relationship by reference to occurrence; the later event proximately

following the preceding event as a foreseeable or 'within sight' certainty. The party invoking Section 9 may not have actually commenced the arbitral proceedings but must be able to satisfy the Court that the arbitral proceedings are actually contemplated or manifestly intended (as M/s Sundaram Finance Ltd. puts it) and are positively going to commence within a reasonable time. What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself give an indication thereof. The distance of time must not be such as would destroy the proximity of relationship of the two events between which it exists and elapses. The purposes of enacting Section 9, read in the light of the Model Law and UNCITRAL Rules is to provide 'interim measures of protection'. The order passed by the Court should fall within the meaning of the expression 'an interim measure of protection' as distinguished from an all-time or permanent protection.

18. Under the A & C Act 1996, unlike the predecessor Act of 1940, the arbitral tribunal is empowered by Section 17 of the Act to make orders amounting to interim measures. The need for Section 9, in spite of Section 17 having been enacted, is that Section 17 would operate only during the existence of the arbitral tribunal and its being functional. During that period, the power conferred on the arbitral tribunal under Section 17 and the power conferred by the Court under Section 9 may overlap to some extent but so far as the period pre and post the arbitral proceedings is concerned the party requiring an interim measure of protection shall have to approach only the Court. The party having succeeded in securing an interim measure of protection before arbitral proceedings cannot afford to sit and sleep over the relief, conveniently

forgetting the 'proximately contemplated' or 'manifestly intended' arbitral proceedings itself. If arbitral proceedings are not commenced within a reasonable time of an order under Section 9, the relationship between the order under Section 9 and the arbitral proceedings would stand snapped and the relief allowed to the party shall cease to be an order made 'before' i.e. in contemplation of arbitral proceedings. The Court, approached by a party with an application under Section 9, is justified in asking the party and being told how and when the party approaching the Court proposes to commence the arbitral proceedings. Rather, the scheme in which Section 9 is placed obligates the Court to do so. The Court may also while passing an order under Section 9 put the party on terms and may recall the order if the party commits breach of the terms.

18. The Hon'ble Supreme Court in **Adhunik Steels Ltd. vs. Orissa Minerals and Minerals (P) Ltd., (2007) 7 SCC 125**, has held as under:-

"18. The approach that at the initial stage, only the existence of an arbitration clause need be considered is not justified. In *The Siskina* [1979] AC 210, Lord Diplock explained the position:

"A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of

*action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."*

*He concluded:*

*To come within the sub-rule the injunction sought in the action must be part of the substantive relief to which the plaintiff's cause of action entitles him; and the thing that it is sought to restrain the foreign defendant from doing in England must amount to an invasion of some legal or equitable right belonging to the plaintiff in this country and enforceable here by a final judgment for an injunction.*

*19. Recently, in Fourie Vs. Le Roux [2007] 1 W.L.R. 320, the House of Lords speaking through Lord Scott of Foscote stated:*

*"An interlocutory injunction, like any other interim order, is intended to be of temporary duration, dependent on the institution and progress of some proceedings for substantive relief."*

*and concluded:*

*"Whenever an interlocutory injunction is applied for, the judge, if otherwise minded to make the order, should, as a matter of good practice, pay careful attention to the substantive relief that is, or will be, sought. The interlocutory injunction in aid of the substantive relief should not place a greater burden on the respondent than is necessary. The yardstick in section 37(1) of the 1981 Act, "just and*

*convenient", must be applied having regard to the interests not only of the claimant but also of the defendant."*

20. *No special condition is contained in Section 9 of the Act. No special procedure is indicated. In American Jurisprudence, 2nd Edition it is stated:*

*"In judicial proceedings under arbitration statutes ordinary rules of practice and procedure govern where none are specified; and even those prescribed by statute are frequently analogous to others in common use and are subject to similar interpretation by the courts."*

19. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction.

20. To the same effect is the judgment of the Hon'ble Supreme Court in **Civil Appeal No/2022 arising out of SLP(C) No.3187 of 2021, titled as Essar House Private Limited vs. Arcellor Mittal Nippon Steel India Limited**, wherein it was held as under:-

*43. 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 the CPC.*

44. In *Ajay Singh & Ors. v. Kal Airways Private Limited and Ors.* the Delhi High Court correctly held :

“...Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines - therefore, the analogy of Orders 38 and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles...”

45. In *Jagdish Ahuja & Anr. v. Cupino Limited*<sup>6</sup>, the Bombay High Court correctly summarised the law in Paragraph 6 extracted hereinbelow :-

“6. As far as Section 9 of the Act is concerned, it cannot be said that this court, while considering a relief thereunder, is strictly bound by the provisions of Order 38 Rule 5. As held by our Courts, the scope of Section 9 of the Act is very broad; the court has a discretion to grant thereunder a wide range of interim measures of protection “as may appear to the court to be just and convenient”, though such discretion has to be exercised judiciously and not arbitrarily. The court is, no doubt, guided by the principles which civil courts ordinarily employ for considering interim relief, particularly, Order 39 Rules 1 and 2 and Order 38 Rule 5; the court, however, is not unduly bound by their texts. As this court held in *Nimbus Communications Limited v. Board of Control for Cricket in India* (Per D.Y. Chandrachud J, as the learned Judge then was), the court, whilst exercising power under Section 9, “must have due regard to the underlying purpose of the conferment of the power under the court which is to promote the efficacy of arbitration as a form of dispute resolution.” The learned Judge further observed as follows:

*“Just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code of Civil Procedure 1908, the rigors of every procedural provision in the Code of Civil Procedure 1908 cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case.”*

46. *In Valentine Maritime Ltd. v. Kreuz Subsea Pte. Ltd. & Anr.*, the High Court held :-

*“88. ...It is now a well settled legal position, that at least with respect to Chartered High Courts, the power to grant temporary injunctions are not confined to the statutory provisions alone. The Chartered High Courts had an inherent power under the general equity jurisdiction to grant temporary injunctions independently of the provisions of the Code of Civil Procedure, 1908...”*

*xxx xxx xxx*

93. *Insofar as judgment of Supreme Court in case of Raman Tech. & Process Engg. Co.(supra) relied upon by Mr. Narichania, learned senior counsel for the VML is concerned, it is held by the Hon'ble Supreme Court that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. The Hon'ble Supreme Court has further held that the purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. The said judgment of the Hon'ble Supreme Court was not in respect of the powers of*

court under section 9 of the Arbitration and Conciliation Act, 1996 but was in respect of power under Order 38 Rule 5 of the Code of Civil Procedure, 1908 in a suit. Even otherwise, the said judgment is distinguishable in the facts of this case.

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95. Insofar as judgment of this Court delivered by the Division Bench of this court in case of *Nimbus Communications Limited v. Board of Control for Cricket in India (supra)* relied upon by the learned senior counsel for the VML is concerned, this Court adverted to the judgment of Hon'ble Supreme Court in case of *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.*, (2007) 7 SCC 125 and held that in view of the decision of the Supreme Court in case of *Adhunik Steels Ltd.*, (supra) the view of the Division Bench in case of *National Shipping Company of Saudi Arabia (supra)* that the exercise of power under section 9(ii)(b) is not controlled by the provisions of the Code of Civil Procedure, 1908 cannot stand. This court in the said judgment of *Nimbus Communications Limited (supra)* held that the exercise of the power under section 9 of the Arbitration Act cannot be totally independent of the basic principles governing grant of interim injunction by the civil Court, at the same time, the Court when it decides the petition under section 9, must have due regard to the underlying purpose of the conferment of the power upon the Court which is to promote the efficacy of arbitration as a form of dispute resolution.

96. This court held that just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic

*principles of procedural law contained in the Code of Civil Procedure, 1908, the rigors of every procedural provision in the Code of Civil Procedure, 1908 cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case. The principles laid down in the Code of Civil Procedure, 1908 for the grant of interlocutory remedies must furnish a guide to the Court when it determines an application under Section 9 of the Arbitration and Conciliation Act, 1996. The underlying basis of Order 38 Rule 5 therefore has to be borne in mind while deciding an application under Section 9 (ii) (b) of the Arbitration Act.*

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104. The Division Bench of this court in case of *Deccan Chronicle Holdings Limited v. L & T Finance Ltd.*, 2013 SCC OnLine Bom 1005 after adverting to the judgment of Supreme Court in case of *Adhunik Steel Ltd.* (supra), judgment of the Division Bench of this court in case of *Nimbus Communications Ltd.* (supra) held that the rigors of every procedural provision of the Code of Civil Procedure cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of the justice. The object of preserving the efficacy of arbitration as an effective form of dispute resolution must be duly fulfilled. This would necessarily mean that in deciding an application under Section 9, the Court would while bearing in mind the fundamental principles underlying the provisions of the Code of Civil Procedure, at the same time, have the discretion to mould the relief in

*appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process. The Division Bench of this Court in the said judgment did not interfere with the order passed by the learned Single Judge directing the parties to furnish security so as to secure the claim of the original petitioner in arbitration by applying principles of Order 38 Rule 5 of the Code of Civil Procedure. ...”*

47. In *Srei Infrastructure Finance Limited v. M/s. Ravi Udyog Pvt. Ltd & Anr.*<sup>8</sup>, the Calcutta High Court, speaking through one of us (Indira Banerjee, J.), as Judge of that Court, said :-

*“An application under section 9 of the Arbitration & Conciliation Act, 1996 for interim relief is not to be judged as per the standards of a plaint in a suit. If the relevant facts pleaded, read with the documents annexed to the petition, warrant the grant of interim relief, interim relief ought not to be refused by recourse to technicalities...”*

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

*49. 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 5 of the CPC.”*

21. The proposition, as laid down by the Hon'ble Supreme Court with respect to grant of interim relief under Section 9 of the Act, defines that in order to avail remedy, the party must have a strong prima facie case in his/her favour.

22. In the present case, admittedly, the parties entered into agreement for the first time on 1.2.2001. Currency of the said agreement was upto 31.3.2004 and vide letter of intent, the respondents appointed the petitioner provisionally as MASC for their vehicles at Bilaspur. It was stipulated therein that based on the performance and inspection of the premises, appointment may be confirmed by execution of the agreement. Lastly, the agreement was entered between the parties on 1.4.2021, which ended on 31.3.2024, copy whereof is Annexure P-11. The averments as made in the petition in conjunction with the documents, which have been placed on record, demonstrates that the petitioner has invested and spent a considerable amount for the set up of the Service Station on the basis of the agreements, which were entered between the

parties from time to time. Details of the expenditures, which have been made by the petitioner has been given in detail in the present petition and veracity of the same shall be adjudicated by the competent authority.

23. For the purpose of the grant of interim protection under Section 9 of the Act, the petitioner has made out a case as the dealer management system, which was installed in the computers, has been blocked after the completion of the agreement, on 31.3.2024. In order to show bona fides, the petitioner served the respondents for invoking arbitration. In the rejoinder to the reply filed by the respondents, the petitioner has averred that he has filed an application for appointment of the Arbitrator being Arbitration Case No. 16/2025, which is pending adjudication before this Court.

24. It is contended by the learned senior counsel for the petitioner that huge investment and expenditure has been made by the petitioner in the Service Station established by him and on account of blocking of the log in I.D. for repairing vehicles, everything has come to halt. It is the case of the petitioner that apart from the huge expenditure he has incurred on the demand of the respondents for the service station, employees which he had hired at the service station, are sitting idle. Though an attempt was made by the petitioner to redress

his grievances by issuing communications including e-mails to the respondents, but till date no steps have been taken by the respondents.

25. Learned counsel for the respondent has submitted that since the agreement came to an end on 21.3.2024, no relief can be granted to the petitioner in the attending facts and circumstances of the case.

26. The Hon'ble Supreme Court in its various decisions has come to the conclusion that Section 9 must be given liberal and purposive construction so that arbitration is not rendered bootless. It is mandate of the law that Section 9 allows the parties to seek interim relief from the Court (i) before, or (ii) during arbitral proceeding, or (iii) at any time after the making of the arbitral award, but before it is enforced in accordance with Section 36 of the Act. Under Section 9 of the Act, the court can grant interim measures of protection in a situation where there is danger of deterioration, damages, destruction of goods and it is incumbent upon the court to issue necessary measures for protection of the goods.

27. It is the case of the petitioner that entire set up which he has installed in the service station has become useless and he has suffered losses, which are in crores. Said aspect of the matter has to be taken into consideration in the

instant proceedings, however it is argued by the learned counsel for the petitioner that by means of the interim measures, the respondents be directed to restore the Dealer Management System so that the petitioner can be allowed to do his work in the service station.

28. The petitioner has been able to demonstrate on record that huge investment including purchases of various tools, various investments, expenditure has been made in the service station at the askance of the respondents. The agreements, which were entered between the parties from time to time, are clear and specific, therefore, the petitioner has been able to make out a *prima facie* case for the grant interim relief in his favour. Balance of convenience also lies in his favour. In case the interim protection is not granted to the petitioner by invoking Section 9 of the Act, he shall certainly suffer loss, which cannot be compensated. Even otherwise, the petitioner has approached this Court for the appointment of the Arbitrator and in order to show his intent to resolve the issue by invoking provisions of Act, the petitioner is entitled for interim relief.

29. Having said so, I find merit in the instant petition and the same is accordingly allowed. Consequently, the respondents are directed to restore dealer management system to the workshop of the petitioner till the time the Arbitrator is

appointed in the matter and application filed by the party, if any, under Section 17 of the Act is decided.

**04.05.2026**  
*(pankaj)*

**(Romesh Verma)**  
**Judge**

High Court of H.P.