

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMM ARBITRATION PETITION (L) NO.15734 OF 2026

Norvic Shipping Asia PTE Limited ... Petitioner
V/s.
Zigma International ... Respondent

Mr. Kunal Vaishnav with Mr. Vinay V. Vishwanathan
i/by Renata Partners LLP for the petitioner.

Mr. Ashwin Shanker with Mr. Santosh Koli, and Ms.
Diksha Brahma for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 19, 2026

PRONOUNCED ON : JULY 2, 2026

JUDGMENT:

1. The present petition is filed under Section 9 of the Arbitration Act. It is filed to seek interim protection in support of arbitration proceedings which are going on before the LMAA at London. The dispute between the parties has arisen from the Repayment Schedule Agreement dated 9 January 2025.

2. According to the petitioner, there is no dispute about the liability. It is pointed out that under Clause 2 of the Repayment Schedule Agreement, the respondent accepted that an amount of USD 215,310.01 was payable towards demurrage. The respondent accepted that the said amount was due and required to be paid. It

was agreed that payment would be made according to the schedule fixed by both parties. It was further agreed that if any one installment was not paid, then the entire balance amount would become payable.

3. The petitioner has stated that the first installment became due on 15 January 2025. However, according to the petitioner, the respondent did not make the payment though several reminders and emails were sent. It is further stated that till today no amount has been paid under the agreement. The petitioner has also relied upon emails to contend that the respondent had admitted liability.

4. The petitioner has submitted that after arbitration was invoked by email dated 27 March 2026, the respondent for the first time raised a case that the dispute had been settled. Thereafter, the respondent also claimed that there was a pledge through brokers namely Bulk Commodities (Bulkcom). According to the petitioner, these stands were denied by its English solicitors, who also called upon the respondent to produce documents in support of such claims.

5. The petitioner has further relied upon a notice dated 28 April 2026 issued by Bulkcom. According to the petitioner, the said notice shows that the stand taken by the respondent is not correct. The petitioner contends that the notice indicates that the respondent may try to make payment to a person claiming to be a creditor of the petitioner, only to avoid payment of the petitioner's claim. The petitioner has stated that the contents of the said notice have been denied.

6. The petitioner thereafter filed its statement of claim before the Sole Arbitrator. Subsequently, Bulkcom issued a notice asking the respondent not to release any amount to the petitioner and instead to pay USD 235,728.26 to Bulkcom on the basis of its alleged claim against the petitioner.

7. On the basis of these facts, the petitioner has claimed the principal outstanding amount of USD 215,310.01 together with contractual interest calculated at the agreed rate and rests. The petitioner has also claimed the costs already incurred and likely to be incurred in the present proceedings as well as in the arbitration before the LMAA.

8. On these facts, the petitioner seeks an interim protection under Section 9 of the Arbitration Act. The petitioner submits that the amount claimed is admitted and, therefore, requires protection till the arbitration is decided. It is also argued that though the principles of Order XXXVIII Rule 5 of the Code of Civil Procedure may guide the Court, the powers under Section 9 are wider and can be exercised so that the arbitral award does not become ineffective. The petitioner has submitted that it has made out a strong prima facie case. According to it, there is a acknowledgment of debt, there is a contractual clause making the balance payable on default, there are repeated assurances given by the respondent for making payment and there is an admission of liability. It is also argued that the balance of convenience is in favour of granting protection. The petitioner submits that there has been default in making payment, the conduct of the respondent has not been fair and there is an attempt to defeat the petitioner's claim. Therefore,

according to the petitioner, it is necessary to secure the respondent's assets so that the award which may be passed by the London Arbitral Tribunal does not become a paper decree.

9. The petitioner has also submitted that the requirement of Section 9(3) is satisfied. According to the petitioner, even if the LMAA Tribunal has power to grant interim relief, such an order cannot be enforced against the respondent's assets situated in India. It is therefore contended that this Court can pass interim order in respect of the respondent's assets in India.

10. On the above facts, the petitioner has prayed for following interim reliefs from this Court.

“a) This Hon'ble Court be pleased to pass an order of injunction restraining the Respondent, its servants and / or agents and / or assigns from dealing, transferring, utilizing, operating, removing, encumbering the funds lying in its bank accounts to the extent of USD 262,837.98 plus GBP 9,400 (United States Dollars Two Hundred and Sixty Two Thousand Eight Hundred and Thirty Seven and Ninety Eight Cents Only plus Great Britain Pounds Nine Thousand Four Hundred Only), along with interest at the rate of 7.5% p.a. on a compound basis, with three-monthly rests, on USD 215,310.01 from the date of the filing of the present Petition till deposit or realisation;

b) This Hon'ble Court be pleased to pass an order of injunction restraining the Respondent, its servants and / or agents and / or assigns from dealing, selling, disposing, alienating, encumbering, or creating any third-party interests in relation to the moveable and immovable property owned by the Respondent;

c) This Hon'ble Court be pleased to direct and order the Respondent to disclose on affidavit to the present Petition, within one week of or such time as this Hon'ble Court deems fit a detailed list of the Respondent's assets, including (i) all its Bank Accounts; (ii) all the Assets of the Respondent; (iii) Assets sold by the Respondent in the last two years and the documents / deeds of sale; (iv) Detailed list of all creditors and debtors of the Respondent as on the date of hearing or such other date as this Hon'ble Court deems fit; (v) Detailed list of all legal proceedings including winding-up/ insolvency/ bankruptcy proceedings pending against the Respondent; (vi) Identity of all assets that are encumbered with full details of encumbrance including list of the mortgage / charge lenders;

d) This Hon'ble Court be pleased to pass an order appointing a Receiver to take possession of and attach the assets and properties owned by the Respondent, with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;

e) This Hon'ble Court be pleased to pass an order directing the Respondent to deposit in this Hon'ble Court a sum of USD 262,837.98 plus GBP 9,400 (United States Dollars Two Hundred and Sixty Two Thousand Eight Hundred and Thirty Seven and Ninety Eight Cents Only plus Great Britain Pounds Nine Thousand Four Hundred Only), along with interest at the rate of 7.5% p.a. on a compound basis, with three-monthly rests, on USD 215,310.01 from the date of the filing of the present Petition till deposit or realisation or furnish a bank guarantee for the said sums to the satisfaction of the Prothonotary & Senior Master, High Court, Bombay;

f) Alternatively, this Hon'ble Court be pleased to pass an order of attachment of the funds lying in the Respondent's bank accounts and/or the moveable and/or the immovable property of the Respondent;”

11. On the other hand, learned counsel appearing for the respondent opposed the petition. By inviting my attention to the judgment of the Supreme Court in *Essar House (P) Ltd. v. Arcelor Mittal Nippon Steel (India) Ltd.*, (2022) 20 SCC 178, he submitted that the present petition does not contain any allegation that the respondent is trying to remove or dissipate its assets. According to him, unless such material is placed before the Court, no order directing deposit of money or attachment of bank accounts or other properties can be passed. Learned counsel further invited my attention to the list of creditors of the respondent. He submitted that the respondent has several creditors whose dues are required to be paid. Therefore, according to him, the petitioner cannot claim any preferential right over the assets of the respondent in preference to the other creditors. It is also submitted that the respondent has raised a case of oral set off in respect of part of the amount claimed by the petitioner. According to the respondent, the liability is therefore not as simple as sought to be projected by the petitioner. Learned counsel further submitted that the respondent is passing through financial difficulties and is not in a position to make payment of the amount claimed. According to him, the respondent's financial condition is not sound, and the default has occurred because of its poor economic position. On these submissions, it was prayed that the present petition deserves to be dismissed.

12. I have carefully considered the rival submissions advanced on behalf of both sides. I have also gone through the pleadings, the documents placed on record, the correspondence exchanged between the parties, the Repayment Schedule Agreement, the provisions of the Arbitration and Conciliation Act, 1996 and the authorities relied upon by both parties. The question before this Court is whether the petitioner has made out a case for grant of interim protection under Section 9 of the Arbitration Act.

13. There is no dispute that the parties executed the Repayment Schedule Agreement dated 9 January 2025. A plain reading of the agreement shows that the respondent acknowledged that a sum of USD 215,310.01 was payable towards demurrage. Clause 2 records such acknowledgment. Clause 1 prescribes the schedule of repayment. Clause 3 further provides that upon default in payment of any instalment, the entire outstanding amount would become due and payable. At this stage, there is nothing on record to indicate that the execution of the agreement is disputed.

14. The material placed on record shows that the first instalment became payable on 15 January 2025. It is not disputed that the said instalment was not paid. The correspondence exchanged also assumes importance. In the emails relied upon by the petitioner, the respondent requested further time, referred to its financial difficulties and delay in inward remittances. Significantly, in none of these communications did the respondent dispute the existence of the liability under the Repayment Schedule Agreement. On the contrary, the respondent assured that payment would shortly be made. Prima facie, these communications support the petitioner's

contention that the liability under the agreement was acknowledged.

15. It is true that after arbitration was invoked, the respondent raised a defence that there had been a settlement through Bulkcom and thereafter raised a case of pledge or adjustment. At this stage no document evidencing such settlement or pledge has been produced. The petitioner's solicitors called upon the respondent to substantiate these assertions. The record placed before the Court does not disclose any document from which such defence can prima facie be accepted. Whether any such arrangement existed is a matter which would fall for consideration before the Arbitral Tribunal. At this stage, the said defence remains a disputed plea.

16. Learned counsel for the respondent submitted that the respondent has raised an oral set-off in respect of part of the amount. This contention also cannot be examined in these proceedings. Whether such oral arrangement existed and what effect it has upon the liability are matters requiring evidence before the Tribunal. At this interlocutory stage, the Court is not expected to record findings upon such disputed questions.

17. The respondent has further contended that the petitioner has not pleaded or proved attempt on the part of the respondent to dissipate its assets and therefore no order securing the amount can be passed. Reliance has been placed upon the principles underlying Order XXXVIII Rule 5 of the Code of Civil Procedure. This submission deserves consideration because an order securing

the amount in dispute cannot be granted mechanically.

18. In *Essar House (P) Ltd. v. Arcelor Mittal Nippon Steel (India) Ltd.*, (2022) 20 SCC 178, the Supreme Court has explained the scope of Section 9 of the Arbitration Act. The Court has observed that while considering an application under Section 9, it is not necessary to strictly apply all the requirements which are applicable while passing an order of attachment before judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure. The powers under Section 9 are wider. The object behind conferring such power is to ensure that the arbitral award does not remain on paper because assets are no longer available.

19. While exercising jurisdiction under Section 9, the Court is concerned with preserving the effectiveness of the arbitral proceedings. Therefore, while examining such an application, the Court is required to consider the surrounding circumstances placed before it. It is not expected to reject the application because technical requirement of Order XXXVIII Rule 5 has not been pleaded. If the facts justify grant of interim protection, relief should not be denied because the pleadings are not drafted in the same manner as an application for attachment before judgment.

20. The expression "a strong possibility of diminution of assets would suffice" does not mean that the applicant must prove that the respondent has dishonestly transferred or concealed its assets. At the same time, every apprehension expressed by the claimant cannot be accepted. What is required is that the surrounding facts should indicate that the respondent's assets are likely to become

less in value or may not remain available by the time the arbitral award is to be enforced. If such circumstances are shown, the Court may exercise powers under Section 9 even before the assets are transferred.

21. In commercial matters, assets may become unavailable for different reasons. A business may suffer losses. Valuable properties may become charged in favour of financial institutions. Amounts receivable from customers may be transferred to somebody. Fresh liabilities may be created over existing assets. Although these circumstances may not by itself establish any dishonest conduct, they may still reduce the assets which would otherwise remain available for satisfaction of the arbitral award.

22. The expression "diminution of assets" includes reduction in the value of assets, creation encumbrances, increase in secured liabilities, transfer of valuable receivables or any other circumstance because of which the assets available for execution of the arbitral award may substantially become less.

23. Section 9 is preventive in its object. The Court is expected to intervene before the situation becomes irreversible. If the Court waits until the respondent has disposed of all its assets, then the purpose behind granting interim protection may fail. Since dishonest intention is difficult to establish by direct evidence, the Court is entitled to examine the surrounding circumstances and arrive at a conclusion whether there exists a real likelihood that the respondent's assets may diminish before the arbitral award becomes capable of enforcement.

24. The expression "strong possibility" something more than a mere suspicion or an unsupported apprehension. At the same time, it does not require absolute proof. The Court must be satisfied from the objective material placed before it that there exists a reasonable possibility that the respondent's asset base may materially reduce before the arbitral award can be enforced. Such satisfaction must arise from the material available on record and cannot rest merely upon assumption.

25. At the same time, Section 9 cannot be invoked because arbitration proceedings are pending. If the respondent is financially sound, possesses sufficient assets and there is no material showing any reduction of asset, interim protection should not be granted. A mere denial of liability by the respondent or an sale of a small asset during the course of business cannot justify an order securing the claim.

26. The principle relating to diminution of assets is connected with the test of balance of convenience. The Court is required to consider whether refusal of interim protection may result in the claimant obtaining an arbitral award which cannot be enforced because assets are no longer available. At the same time, the Court is also required to consider the prejudice likely to be caused to the respondent if interim protection is granted and the claim fails. If the hardship likely to be suffered by the claimant is greater than the inconvenience likely to be caused to the respondent, the balance of convenience would justify grant of interim protection. Thus, Section 9 has been enacted to preserve the effectiveness of the arbitral process.

27. Therefore, the respondent's submission that there is no pleading regarding dissipation of assets cannot be accepted. The Court is required to examine the factual background and determine whether the material placed before it indicates that the respondent's asset may materially deteriorate before the arbitral proceedings conclude.

28. In the present case, the respondent has represented that it is facing severe financial difficulties. It has stated that its cash flow has been affected, that it is awaiting banking sanctions, that payments from customers have been delayed and that it is presently unable to honour commitments. Even before this Court, learned counsel submitted that the respondent is unable to make payment because its financial condition is not sound. These statements are explanations repeatedly furnished by the respondent.

29. The respondent has also relied upon the existence of several other creditors and submitted that the petitioner cannot claim priority over them. As a proposition of law, there can be no dispute that merely because a claimant approaches the Court under Section 9, it does not obtain priority over existing creditors. However, the existence of several creditors claiming payment from a respondent is one of the circumstances relevant for examining whether there exists a possibility that the respondent's assets may become insufficient by the time the arbitral award is enforced. Therefore, this submission cannot assist the respondent.

30. The respondent has further submitted that its inability to pay arises because of poor financial condition and not because of dishonest intention. Financial distress by itself does not establish any attempt to defeat an arbitral award. Parties may face temporary financial hardship. Courts must therefore avoid granting drastic interim orders merely because a respondent is experiencing financial difficulty.

31. At the same time, diminution of assets may occur because of continuous losses and encumbrances over assets may create a likelihood that assets may not remain available for enforcement of the award. Thus, absence of fraud does not exclude the jurisdiction of the Court under Section 9.

32. In the facts of the present case, the respondent has failed to honour even the first instalment under the Repayment Schedule Agreement. No payment has thereafter been made. Despite assurances over several months, the liability continues to remain unpaid. Simultaneously, the respondent has projected financial difficulties as the reason for such non-payment. The respondent has taken inconsistent defences after commencement of arbitration by referring to settlement, pledge and adjustment through Bulkcom, none of which appears to be supported by documentary material. These circumstances cannot be ignored while assessing the likelihood of preservation of assets.

33. The petitioner has also relied upon the notice issued by Bulkcom. Whether the contents of that notice are correct or incorrect will be decided in appropriate proceedings. However, the

existence of rival claims over the amount payable hows that competing claims are being asserted against the same liability. This circumstance therefore becomes relevant for grant of relief in the present petition.

34. The next point is the objection regarding maintainability of the present petition after constitution of the Arbitral Tribunal. I have also gone through the provisions of Sections 9 and 17 of the Arbitration and Conciliation Act. In my view, this objection is required to be examined by considering whether the remedy available before the Tribunal is capable of giving effective protection to the petitioner.

35. Before considering the rival submissions, it would be useful to notice the scheme of Sections 9 and 17 of the Arbitration and Conciliation Act. Both the provisions provide for the same kinds of interim protection. Under both Sections, interim measures may be granted for preservation of property, securing the amount in dispute, appointment of a receiver, grant of injunction and such other protection as may be found just and convenient. Thus, the nature of relief which can be granted under Section 17 by the Arbitral Tribunal is similar to the relief which can be granted by the Court under Section 9.

36. There is, however, one difference between the two provisions. Section 9 confers jurisdiction upon the Court to grant interim protection before commencement of the arbitration proceedings, during the pendency of the arbitration and after the arbitral award is made until the award is enforced. Section 17

empowers the Arbitral Tribunal to grant interim protection during the pendency of the arbitral proceedings.

37. Section 17(2) provides that every interim order passed by an Arbitral Tribunal under Section 17 shall be deemed to be an order of the Court and shall be enforceable in the same manner as an order of the Court under the Code of Civil Procedure. The object behind this provision is to make the remedy before the Arbitral Tribunal capable of enforcement.

38. At the same time, Section 9(3) places a restriction upon the exercise of jurisdiction by the Court after the Arbitral Tribunal has been constituted. Once the Tribunal comes into existence, ordinarily the Court should not entertain an application under Section 9. However, this restriction is not absolute. The Court may still exercise jurisdiction if it finds that the remedy available under Section 17 may not be efficacious.

39. Therefore, while considering the maintainability of a petition under Section 9 after constitution of the Arbitral Tribunal, the Court is required to examine whether the order, if passed by the Tribunal, would provide an effective remedy to the applicant. If such remedy is found to be ineffective or incapable of enforcement, the bar contained in Section 9(3) would not operate. Thus, the scheme of the Act indicates that Sections 9 and 17 are intended to supplement each other.

40. It is true that after the amendment of the Arbitration Act, Section 17 has been given wider scope. The Arbitral Tribunal now enjoys the same powers as the Court for granting interim

protection. Section 17(2) provides that an order passed by the Tribunal is to be treated as an order of the Court and is enforceable under the Code of Civil Procedure. Therefore, once the Tribunal is constituted, parties should ordinarily approach the Tribunal for interim protection.

41. Section 9(3) itself creates an exception. The legislature has not taken away the jurisdiction of the Court after constitution of the Tribunal. The Court may entertain the petition if it is satisfied that the remedy under Section 17 may not be efficacious. Therefore, the question is whether the relief granted by the Tribunal would be effective and capable of protecting the rights of the applicant.

42. In the present matter, the arbitration is not seated in India. It is an international arbitration seated in London under the LMAA Terms. Though an arbitral tribunal may have power to pass interim orders under the law governing the arbitration, the petitioner has contended that any such interim order cannot be executed against the respondent's assets situated in India. The petitioner has also relied upon the judgment of the Delhi High Court in *Shanghai Electric Group Co. Ltd.* wherein, after considering Section 9(3), it has been held that where the assets are situated in India and the interim order of the foreign tribunal is not enforceable in India, the remedy under Section 17 cannot be treated as efficacious. The Division Bench observed that though the foreign tribunal may possess jurisdiction to grant interim protection, such protection may remain ineffective if it cannot be enforced against the assets located within India.

43. The respondent has not been able to show that an interim order passed by the London seated Tribunal would have the enforceability against the respondent's assets situated in India as an order passed by this Court under Section 9. In absence of such material, it becomes difficult to hold that the petitioner has an effective remedy before the Arbitral Tribunal.

44. The submission of the respondent that the petitioner should be relegated to the Tribunal because the Tribunal has been constituted cannot be accepted. Such an interpretation would ignore the exception incorporated by the legislature in Section 9(3). The Court is required to examine the efficacy and not merely the existence of the remedy. I therefore hold that the preliminary objection regarding maintainability of the present petition cannot be accepted.

45. The next question is whether the petitioner has established a prima facie case. Having regard to the acknowledgment of liability contained in the Repayment Schedule Agreement, the default in payment of the first installment, the assurances contained in the respondent's own emails and the absence of any material supporting the defence of settlement or pledge, I am of the prima facie opinion that the petitioner has established a strong prima facie case for protection under Section 9.

46. The balance of convenience also deserves consideration. If interim protection is refused and the petitioner succeeds in arbitration, there exists a possibility that enforcement of the award may become difficult having regard to the respondent's statements

regarding its financial condition and inability to make payment. On the other hand, grant of a protective order does not determine the rights of either party. It preserves the subject matter so that the arbitral proceedings remain meaningful. The prejudice likely to be caused to the petitioner by refusal of relief appears greater than the inconvenience likely to be caused to the respondent by grant of protective order.

47. The requirement of irreparable prejudice is also satisfied. Once assets become unavailable or diminish during pendency of arbitration, the successful party may be left with an award incapable of enforcement. Such prejudice cannot be compensated after conclusion of arbitration.

48. At the same time, every relief claimed by the petitioner cannot be granted merely because a prima facie case exists. Relief under Section 9 must remain proportionate to the facts of the case. Appointment of a Receiver over assets of the respondent or a attachment of all movable and immovable properties may interfere with the respondent's commercial activities. Such drastic orders require stronger circumstances than those placed before the Court. Similarly, a direction requiring disclosure of assets may be justified only to the extent necessary for securing the claim.

49. Upon an overall assessment of the record, the principles laid down by the Supreme Court in *Essar House* and the Delhi High Court in *Shanghai Electric*, I am satisfied that the petitioner has succeeded in demonstrating a strong prima facie case, the balance of convenience lies in its favour and irreparable loss. Record

discloses objective material indicating a possibility of diminution in the respondent's available assets so as to justify exercise of jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996.

50. In view of the foregoing discussion, and upon overall assessment of the material submissions, evidence on record, and the findings arrived at hereinabove, the following order is passed:

- (i) The Arbitration Petition is partly allowed;
- (ii) Pending the conclusion of the arbitral proceedings and till enforcement of the arbitral award in accordance with law, the respondent is directed to secure the petitioner's claim by either:
 - (a) depositing before this Court a sum of USD 262,837.98 together with GBP 9,400; or
 - (b) furnishing an unconditional and irrevocable Bank Guarantee issued by a Nationalised Bank or a Scheduled Commercial Bank for the said amount, to the satisfaction of the Prothonotary and Senior Master of this Court;

The above exercise shall be completed within a period of four weeks from today;

- (iii) Till compliance with clause (ii) above, the respondent, its servants, agents or any person claiming through or under it, are restrained from transferring, alienating, creating third party rights, mortgaging, encumbering or otherwise dealing

with its movable or immovable assets to the extent of the petitioner's claim of USD 262,837.98 together with GBP 9,400;

(iv) The respondent shall, within three weeks from today, file an affidavit disclosing:

(a) all bank accounts maintained by it together with the present balances;

(b) complete particulars of its movable and immovable assets;

(c) particulars of all mortgages, charges and other encumbrances created over such assets;

(d) particulars of all assets transferred, sold or otherwise disposed of during the preceding two years together with supporting documents; and

(e) particulars of all pending insolvency, bankruptcy, winding up or similar proceedings, if any;

(v) If the respondent fails to comply with clause (ii) above within the stipulated period, the petitioner shall be at liberty to apply for attachment of the respondent's disclosed bank accounts and such movable and immovable assets as may be necessary for securing the petitioner's claim;

(vi) The respondent shall be entitled to carry on its business activities and make payments in the ordinary course of business. However, it shall not create fresh encumbrances over its substantial assets or dispose of assets outside the

ordinary course of business so as to prejudice enforcement of the arbitral award, without prior leave of this Court;

(vii) The prayer seeking appointment of a Receiver is rejected at this stage. Liberty is reserved to the petitioner to seek appointment of a Receiver if subsequent events disclose violation of this order or further diminution of the respondent's assets;

(viii) All observations contained in this order are prima facie and confined only to the adjudication of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall decide the disputes between the parties independently and without being influenced by any observation made herein.

(ix) There shall be no order as to costs.

(AMIT BORKAR, J.)