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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010518612026**

\+ FAO(OS) (COMM) 295/2026 & CM APPL. 74582/2026, CM APPL. 74583/2026, CM APPL. 74584/2026

FACOR ALLOYS LIMITED THROUGH ITS AUTHORISED REPRESENTATIVE SACHIN GUPTA .....Appellant

Through: Mr. Anirudh Wadhwa, Mr. Keshav Madhav Gulati, Mr. Vibhu Pahuja, Mr. Prakhar Bajpai, Advs.

versus

RAJADHIRAJ TIRUPANI VINAYAK NATRAJ PRIVATE LIMITED .....Respondent

Through: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms Sanjana Srivastava, Ms Ishita Sharma, Mr. Mayank Biyani, Ms Muskan Sengar, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT (ORAL)

% 29.10.2026

C. HARI SHANKAR, J.

1. This appeal, under Section 37(1)(b) of the Arbitration and Conciliation Act 1996[1], is directed against order dated 14 October 2026 passed by a learned Single Judge of this Court, in OMP (I) (Comm) 387/2026, preferred by the respondent under Section

[1] "the 1996 Act" hereinafter

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9(1)(ii)(c) and (e)[2] of the 1996 Act.

2. Arbitral proceedings between the appellant and respondent concluded in an arbitral award dated 31 July 2025, the operative portion of which read thus:

> "AWARD
>
> a. A declaration that Rajadhiraj is entitled to return of its raw materials, finished products and other goods lying at the said plant of Facor.
>
> b. An order restraining the Respondent from obstructing removal of the raw materials, finished products and other goods of Rajadhiraj lying at the said plant of Facor.
>
> c. An award of ₹ 2,16,83,931/- in favour of Rajadhiraj and against Facor towards reimbursement of the cost, incurred by Rajadhiraj for purchase of a Transformer at the second furnace of Facor.
>
> d. An award of ₹ 18,86,70,779/- in favour of Facor and against Rajadhiraj towards conversion charges incurred prior to 12.10.2022.
>
> e. An award of ₹ 37,77,133/- in favour of Facor and against Rajadhiraj towards post termination invoices raised by Facor towards conversion charges.

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[2] **9. Interim measures, etc. by Court**. –
(1) 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 –
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(ii) for an interim measure of protection in respect of any of the following matters, namely:—
*****
(c) the detention, preservation or inspection of any property or thing which is the subject-matter or the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising 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;
*****
(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.

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f. Interest on outstanding electricity bills @ 9% p.a. as per reducing balance from the due date(s) of the electricity bills.

g. Interest @ 9% p.a. as per reducing balance on amounts outstanding against invoices towards conversion charges from the 22nd day from the date of the Invoices.

h. Parties shall bear their own cost.

i. It will be open to the Claimant to adjust ₹ 2,16,83,931/- against its dues to Facor. Needless to mention that the interest on the said amount may also be proportionally adjusted against the interest due from Rajadhiraj to Facor."

3. Post award, the respondent filed OMP (I) (Comm) 387/2026, alleging that, after the award had been rendered, he had addressed two e-mails to the appellant on 14 July 2026 and 13 August 2026, seeking inspection of the goods which had been attached and were present in the premises of the appellant, but that no favorable response had been received thereto. The respondent prayed, therefore, that local commissioners be appointed to inventorize the goods which were under seizure and lying in the premises of the appellant.

4. By the impugned order dated 14 October 2026, a learned Single Judge of this Court has acceded to the prayer of the respondent and has appointed two Local Commissioners to visit the premises of the appellant in the following terms:

"18. The Local Commissioners shall also have the following powers:

a. prepare an inventory recording their description, quantity/approximate weight, location, identifying particulars and apparent physical condition, including whether the subject goods are separately identifiable or

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commingled;

b. undertake photography and videography of the goods and areas inspected;

c. verify the inventory, where necessary, with reference to available weighment records, stock registers and inward/outward movement records;

d. permit atleast one authorised representative and counsel of each party to remain present and require reasonable cooperation from the parties;

e. where necessary, draw and seal representative samples for preservation, subject to further orders of appropriate Court

f. record any shortage, obstruction, commingling or inability to identify the subject goods;

g. seek police assistance, if required, for effective execution of the commission.

19. The Respondent shall extend all necessary cooperation for execution of the commission.

20. The Local Commissioners shall file a report before this Court along with the inventory, photograph and videography within four weeks from execution of the commission.".

5. The appellant has challenged the aforesaid order before this Court by means of the present appeal.

6. We have heard Mr. Anirudh Wadhwa, learned Counsel for the appellant and Mr. Sandeep Bajaj, learned Counsel for the respondent at some length.

7. Mr. Wadhwa submits that the proceedings for execution of the award are already pending before the learned Commercial Court at

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Vishakhapatnam[3], though Mr. Bajaj points out that the execution proceedings were instituted after OMP (I) (Comm) 387/2026 had been filed by him before this Court.

8. Mr. Wadhwa submits that a Bailiff has already been appointed by the Vishakhapatnam Court, who has inventorized the goods in question and that, therefore, the learned Single Judge was not justified in passing the impugned order.

9. To a specific query from the Court as to whether the impugned order is passed without jurisdiction, Mr. Wadhwa has drawn our attention to Section 47(1)[4] of the Code of Civil Procedure, 1908.

10. Clearly, Section 47(1) is no impediment to the passing of the impugned order by the learned Single Judge. What Section 47(1) states is that questions arising between the parties to a suit in which a decree is passed, relating to execution, discharge or satisfaction of the decree, are to be *determined* by the executing court.

11. "Determination" connotes an expression of opinion which lends finality to the issue determined. In ***Ashok Leyland Ltd v. State of T.N.***[5], the Supreme Court held, apropos "determination", thus:

> "94. The word "determination" must also be given its full effect, which presupposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion of finding.

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[3] "Vishakhapatnam Court" hereinafter

[4] **47. Questions to be determined by the Court executing decree.**
(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[5] **(2004) 3 SCC 1**

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95. In Aiyar, P. Ramanatha: Law Lexicon, 2nd Edn., it is stated:

> "*Determination or order*. – The expression 'determination' signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression 'order' must have also a similar meaning, except that it need not operate to end the dispute. Determination or order must be judicial or quasi-judicial. ***Jaswant Sugar Mills Ltd. v. Lakshmi Chand***[6] (Constitution of India, Article 136)."

96. In Black's Law Dictionary, 6th Edn., it is stated:

> "A 'determination' is a 'final judgment' for purposes of appeal when the trial court has completed its adjudication of the rights of the parties in the action. ***Thomas Van Dyken Joint Venture v. Van Dyken***[7]."

12. By appointing Local Commissioners to inventorize the goods present in the appellant's premises, to which the arbitral award entitles the respondent, it is clear that the learned Single Judge has "determined" nothing at all, let alone any question relating to execution, discharge or satisfaction of the award under challenge. All that has been directed by the learned Single Judge, by the order under challenge, is an inventorisation of the goods in question, by the Local Commissioners appointed by him.

13. The jurisdiction of the learned Single Judge to pass such an order, even at a post award stage, cannot be disputed. Section 9, in express terms, applies till the stage of execution of the decree or the award in question. As the execution proceedings are still pending, the jurisdiction of the Court to pass orders under Section 9 cannot be

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[6] **AIR 1963 SC 677**
[7] **90 Wis 236, 279 NW 2d 459, 463**

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gainsaid. The provision expressly entitles a party to apply for interim measures "before or during arbitral proceedings or *at any time after the making of the arbitral award but before it is enforced".* The arbitral award under consideration in the present case has not been enforced, even if proceedings to have it enforced are pending. Ergo, the learned Single Judge was well within his jurisdiction to exercise powers under Section 9(1).

14. In ***National Projects Construction Corpn. Ltd. v. Ishvakoo (India) (P) Ltd***[8], the Supreme Court has held that even the *unsuccessful party in the arbitration* can seek interim measures post-award, under Section 9, to preserve the corpus which was subject matter of arbitration.

15. The impugned order is clearly one, the passing of which Section 9(1)(ii)(c) statutorily envisages. Section 9(1)(ii)(c) empowers the Court to pass orders for "detention, preservation *or inspection or thing which is the subject matter of the dispute in arbitration …*" *Inter alia*, the provision envisages the authorization of any person (which would include a local commissioner) to enter into any premises to "obtain full information" regarding such goods. The word "information" is compendious, and has to be treated as having been deliberately employed by the legislature so as to widen the ambit of Section 9(1)(ii)(c).[9] P. Ramanatha Aiyar, in the 6th Edition of his Advanced Law Lexicon, defines "information" as "facts, data or instructions in any medium or form". The particulars of the goods in question, in the

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[8] **2026 SCC OnLine SC 1535**

[9] Refer **Eureka Forbes Ltd v. Allahabad Bank, (2010) 6 SCC 193 (para 52), Raman Lal Bhailal Patel v. State of Gujarat, (2008) 5 SCC 449**

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present case, which the Local Commissioners appointed by the impugned order have been directed to ascertain, would, at any rate, certainly constitute "information" regarding the goods.

16. There is no provision curtailing the power of the Court, to issue directions under Section 9(1)(ii)(c), pending execution proceedings. Where the legislature has not chosen to engraft any such restraint, no such restraint can be introduced by judicial fiat.

17. As such, the fact that a bailiff may have been appointed by the Vishakhapatnam Court cannot be treated as a legal bar to the learned Single Judge having passed the impugned order in exercise of the jurisdiction vested in him by Section 9.

18. Moreover, the learned Single Judge has not passed the order mechanically or without reasons. In para 16 of the order under challenge, the learned Single Judge observes that, *as the respondent was denied inspection of the goods in question*, despite the arbitral award recognizing its entitlement thereto, inventorization of the goods was necessary.

19. No possible legal cavil can be taken to this reasoning.

20. Mr. Wadhwa has expressed an apprehension that, if inventorisation of the goods is permitted both by the learned Local Commissioners appointed by the impugned order as well as by the bailiff appointed by the Vishakhapatnam Court, contradictory findings may emerge. The submission is surprising. The bailiff appointed by

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the Vishakapatnam Court, and the Local Commissioners appointed by the learned Single Judge, represent the Court, and all its authority. In case the appellant does not intend to tamper with the goods, which are lying in its premises albeit under attachment, we do not see how or why such an apprehension should exist. We say no more on this score.

21. As the impugned order is clearly within the jurisdiction vested in the learned Single Judge as a post award Section 9 Court, and is substantiated with reasons which sustain legal scrutiny, we are of the opinion that no case for interference by us under Section 37 of the 1996 Act is made out.

22. The appeal is accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 29, 2026/*dsn*

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