IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION (L) NO.34540 OF 2025

Sunfield Global Pte Limited .. Petitioner

Versus

Liberty Investments Private Limited .. Respondent

...

Mr.Zal Andhyarujina, Senior Advocate with Serena Jethmalani, Priya Singh, Jyoti Sinha and Arnav Mohanty i/b Khaitan & Co. for the Petitioner.

Mr.Ashish Kamat, Senior advocate with Harsh Moorjani, Jay Zaveri, Kshamaya Daniel, Ujjwal Bafna and Suraj Agarwal i/b Crawford Bayley & Co. for the Respondent.

CORAM: BHARATI DANGRE
RESERVED ON : 27th NOVEMBER, 2025
PRONOUNCED ON : 08th JANUARY, 2026

...

JUDGMENT:-

1. The Petitioner -Sunfield Global Pte. Limited, a company incorporated under the laws of Singapore, inter alia, is engaged in the business of providing supply chains connecting producers with partners across the Asia Pacific region, with its focus on the food manufacturing, biofuels, and oleochemical industries. The Respondent, a company with its registered office at Mumbai, is engaged in the business of purchase, trading and sale of vegetable and seed oils.

2. The two companies entered into various contracts, wherein the Petitioner agreed to supply certain quantities of

crude Sunflower Seed Oil of Edible Grade to the Respondent, against which the Respondent agreed to make payments at a pre-determined price per metric ton, within a period of 180 days from the receipt of original documents from the Petitioner's bank.

It is the claim in the Petition that the Petitioner duly performed its obligations under the distinct contracts and supplied Sunflower Seed Oil to the Respondent, who, however faulted in making the payment due, despite numerous extensions and repeated reminders.

This has constrained the Petitioner to file the Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, **"Act of 1996"**) in the wake of the non performance of the contract by the Respondent, which contain an arbitration clause seated in London. For immediate protection, the Section 9 Petition, filed by the Petitioner seek the following reliefs:-

> *(a) That pending the constitution of the arbitral tribunal and the commencement of the arbitration proceedings and until the final award is passed in the arbitration proceedings, the Hon'ble Court be pleased to pass order directing the Respondent to deposit a Bank Guarantee in favour of the Prothonotary, Bombay High Court for the Petitioner's Claim of USD 6,692,500 (or its INR equivalent) along with interest and costs;*
>
> *(b) That in the alternative, pending the constitution of the arbitral tribunal and the commencement of the arbitration proceedings and until the final award is passed in the arbitration proceedings, the Hon'ble Court be pleased to pass an order of injunction restraining the Respondent from alienating or creating third party rights with respect to parcel of land bearing CTS Nos. 186, 187, 187/1 , 187/2, 187/3, 187/4, 187/5, 187/6, 187/7, 187/8, 188/1, 188/2, 188/3, 188/4, 188/5, 188/6, 188/7, 188/8, 188/9 and 188/10 situated at Survey No. 10 (Part), Hissa No. 1 and 2 at Village Karol, Lal Bahadur Shastri Marg, District - Mumbai (admeasuring 7409.08 sq. mtrs) along with constructed buildings thereon;"*

3. Mr.Zal Andhyarujina, learned Senior Counsel appearing for the Petitioner, would submit that the Petitioner apprehends that in order to frustrate the recovery of huge amount of USD 6,692,500 due to it, the Respondent will attempt to dispose of/divert its assets and, therefore, the Court may pass necessary orders under Section 9(1)(ii) of the Arbitration Act, 1996 either directing the Respondent to deposit the said sum (or its INR equivalent) or to restrain it from alienating or creating third party rights in respect of its property. According to him, the payment under the contracts became due and payable on account of supply of Sunflower Seed Oil and in fact, the Respondent has also admitted the amount to be due and payable and this is reflected through WhatsApp and Email communications, where the outstanding liability towards the Petitioner was admitted.

Mr.Andhyarujina has invited my attention to the various communications, which are annexed alongwith the Petition and he also refer to the meetings held between the officials of the Petitioner and the Respondent, to discuss the outstanding amount, which resulted in copy of acknowledgment of debt signed by the Petitioner and the Respondent, in furtherance of which some payment was received by the Petitioner, leaving an amount of USD 6,692,500 due and payable.

Referring to the valid and subsisting arbitration agreement between the parties, it is urged by the learned senior counsel that the Petitioner has good case on merits, taking into consideration the admission on part of the Respondent towards its liability to make payments on the outstanding invoices vide various Emails and WhatsApp chats

exchanged between the parties and further in light of unequivocal admission and crystallization of the liability of the Respondent recorded in the Acknowledgment of Debt dated 03/10/2025.

4. Mr.Ashish Kamat, learned Senior Advocate, raised a preliminary objection about the maintainability of the Petition under Section 9, by relying upon sub-section (3) of Section 9 of the Arbitration and Conciliation Act, 1996 and he would submit that all the contracts entered between the Petitioner and the Respondent contain an arbitration clause and Rules in contract form of Federation of Oils, Seeds and Fats Association (FOSFA), and according to him, the Petitioner in relation to its claim invoked Arbitration Clause 29 before FOSFA. He would submit that the Petitioner submitted three notices of claims and FOSFA has acknowledged the receipt of the claims on 11/11/2025 and notified the Respondent on the same date.

Pursuant to the same, the Respondent, in accordance with FOSFA Rules 2024, nominated an Arbitrator of its choice vide Emails dated 13/11/2025 and dated 14/11/2025 and on 17/11/2025, FOSFA has appointed and nominated the third Arbitrator, thereby completing the constitution of a valid and competent Arbitral Tribunal comprising of three members.

Invoking the bar under Section 9(3) of the Act of 1996, Mr.Kamat would submit that once the Arbitral Tribunal is constituted, the Court shall decline to entertain an application under Section 9(1), unless it is demonstrated that circumstances exist which may render the remedy available under Section 17 inefficacious, which is not the case of the

Petitioner. According to him, the Arbitral Tribunal constituted under FOSFA is sufficiently equipped to decide and pronounce upon the interlocutory relief prayed by the Petitioner in the present Section 9 Petition.

5. In light of the remedy available before the Arbitral Tribunal constituted under FOSFA, and by placing reliance upon Rule 4 of the FOSFA Rules, according to Mr.Kamat, it cover interlocutory applications, clearly indicating that such application can be entertained by the Tribunal for any interim and ancillary relief and such relief, which is sought, may be granted in ordinary course of arbitration.

It is also urged by Mr.Kamat that as per FOSFA preamble, the juridical seat of FOSFA arbitration is England, which imply that the procedural law governing FOSFA arbitration would be the law in England i.e. (English) Arbitration Act, 1996 and English Court would be the competent court to exercise supervisory jurisdiction. He would also place reliance upon Section 38 of the English Arbitration Act, which delineates the powers exercisable by the Arbitral Tribunal during the course of the proceedings, and according to him, this include, the power to issue directions concerning any property that forms the subject matter of the reference, or in relation to which any question arises, and which is owned or possessed by a party. Similarly, such directions may be made to secure preservation of that property, and according to Mr.Kamat, as per Russell on Arbitration, 24th Edition, the said provision expands Article 17 of the Model law from which it is derived, similar to the Indian Arbitration Act.

In short, the contention of Mr.Kamat is, on a combined reading of FOSFA Rule 4 read with FOSFA's preamble and Section 38 of the (English) Arbitration Act, the Petitioner has an efficacious remedy before the Arbitral Tribunal constituted under FOSFA and the Petitioner has failed to demonstrate that the remedy is inefficacious and the Arbitral Tribunal is not competent to grant the reliefs sought by the Petitioner.

Apart from this, it is also the contention of Mr.Kamat that a point of foreign law is a matter of fact and a plea based on some aspect of foreign law must satisfy the requirement of pleading material facts, which is conspicuously absent in the present case. According to him, once the Arbitral Tribunal is constituted by the parties, as per FOSFA Rules, the appropriate mode available to the Petitioner is to seek its remedy before the agreed forum and it is the contention of the learned senior counsel that if the Court is satisfied that the Petition is not maintainable in the wake of the bar under Section 9(3) of the Arbitration and Conciliation Act, 1996, the same is liable to be dismissed.

Reliance is placed by Mr.Kamat on paragraph 86 of the decision in the case of ***Arcelor Mittal Nippon Steel India Limited Vs. Essar Bulk Terminal Limited***[1] to the following effect :-

> *"86. On a combined reading of Section 9 with Section 17 of the Arbitration Act, once an Arbitral Tribunal is constituted, the Court would not entertain and/or in other words take up for consideration and apply its mind to an application for interim measure, unless the remedy under Section 17 is inefficacious, even though the application may have been filed before the constitution of the Arbitral Tribunal. The bar of Section 9(3) would not operate, once an application has been entertained any taken up for consideration, as in the instant case, where hearing has been concluded and judgment has been reserved. Mr.Khambata may be right, that the*

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process of consideration continues till the pronouncement of judgment. However, that would make no difference. The question is whether the process of consideration has commenced, and/or whether the Court has applied its mind to some extent before the constitution of the Arbitral Tribunal. If so, the application can be said to have been entertained before constitution of the Arbitral Tribunal."

6. Dealing with the said preliminary submissions canvassed, Mr.Andhyarujina would respond by submitting that the objection raised is purely technical in nature, as the reply filed by the Respondent does not contain any defence whatsoever in respect of the admitted dues payable to the Petitioner nor does it provide any explanation in respect of the Respondent's offer relating to its immovable property/land, which it has subsequently reneged upon.

In rejoinder, Mr.Andhyarujina would submit that Section 9(3) of the Arbitration and Conciliation Act, 1996 does not apply to foreign seated arbitrations and since the present matter concerns a foreign seated institutional arbitration governed by the contract form FOSFA 54, FOSFA Rules and the (English) Arbitration Act, 1996 since the juridical seat is London, Section 9(3) of the Indian Act is not attracted, as it refers to Section 17 and the bar under sub-section (3) of Section 9 would get attracted where a remedy under Section 17 is available and not otherwise. Since the remedy under Section 17 is not available to a foreign seated arbitration, in the wake of the proviso to Section 2(2) of the Act of 1996, which make it clear that Section 9 of the Act is available to an international commercial arbitration, even if the seat is outside India, unless parties agree to the contrary, according to him, if the legislature ever intended that Section 9(3) of the

Act of 1996 shall apply to foreign seated arbitration, then it would have clearly indicated so, while introducing the proviso to Section 2(2), but in absentia, there cannot be a presumption to the contrary, as by reading that Section 9(3) also apply to the foreign seated arbitration would be adding of words in Section 9, which were consciously omitted. According to Mr.Andhyarujina, Section 2(2) and Section 9 when read harmoniously, make it clear that Section 9 would apply only to foreign seated arbitrations.

In any case, the learned senior counsel would submit that by applying the efficacy test, contemplated under Section 9(3) to the effect that *"unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious"*, the provision does not automatically oust the jurisdiction of the Court upon the constitution of the Arbitral Tribunal and the discretion vested in the Court to entertain the proceedings, if the remedy available is not efficacious.

Even if for the sake of argument, according to Mr.Andhyarujina, if Section 9(3) is applicable to foreign seated arbitration, the Arbitral Tribunal constituted is not sufficiently empowered to grant effective interim measures of protection and, therefore, this remedy is not efficacious, and the remedy under Section 38 of the English Act is not akin to Section 9 under the Act of 1996, as the former contain a provision for *"securing the amount in dispute in the arbitration"*, whereas Section 38 of the English Act contain no such provision.

By giving its full play to Section 9(1), Mr.Andhyarujina would submit that clause (e) of the Act of 1996 empowers the

Court to pass *"such other interim measures of protection as may appear to the Court to be just and convenient"*, whereas this power being juxtaposed against Section 38 of the English Act, according to him, it does not cover any matter beyond *"any property which is the subject matter of the proceedings"*. Apart from this, Mr.Andhyarujina would submit that the Petitioner has not made any application before FOSFA Tribunal, seeking any interlocutory reliefs and in absence of any efficacious remedy available in form of application to the Tribunal, the Court shall grant the relief under Section 9 in the facts of this case, when the liability is not denied by the Respondent.

7. Having heard the learned senior counsel appearing for the respective parties, I proceed to appreciate the contention advanced and in specific, the preliminary objection raised by Mr.Kamat and a reference to the arbitration clause in the contracts entered between the parties is necessary.

All the contracts entered contain the following clause :-

> ***"Governing Contract***
> ...
> *This contract is made upon the terms, conditions and rules, including the arbitration clause and rules in contract form FOSFA 54 in force at the date of this contract of which parties admit that they have knowledge and notice, and the details given above shall be taken as having been written into such contract form in the appropriate place. Any special terms and conditions contained herein and/or attached hereto shall be treated as if written on such contract form and shall prevail in so far as they may be inconsistent with the printed clause of such contract form.*
> *This contract is governed by English law...."*

Similarly, the specific clause providing for arbitration read thus:-

> ***"29. ARBITRATION :*** *(a) Any dispute arising out of this contract, including any question of law arising in connection therewith, shall*

be referred to arbitration in London (or elsewhere if so agreed) in accordance with the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Associations Limited, in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant."

The parties have thus agreed for resolving their dispute by arbitration in London, but in accordance with the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Association (FOSFA).

8. Admittedly, the arbitration is London seated arbitration, to be conducted in accordance with the FOSFA Rules of arbitration. The preamble of FOSFA reads thus :-

"Any dispute arising out of a contract or contracts subject to these Rules, including any questions of law arising in connection therewith, shall be referred to arbitration in London (or without prejudice to the juridical seat elsewhere if so agreed) in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force. The juridical seat of the arbitration shall be and is hereby designated pursuant to Section 3 of the Arbitration Act 1996 as, England. Each party engaging in an arbitration or an appeal pursuant to these Rules, whether or not a Member of the Federation, is deemed to abide by these Rules and to agree with the Federation to be liable to the Federation (jointly and severally with the other parties to the arbitration or appeal) for all fees and expenses incurred in connection with the arbitration or appeal, which said fees and expenses shall, upon notification by the Federation under the provisions of Rules 2(d), 6(a), 6(b) and 9, be and become a debt due to the Federation.

The Rules prescribe the procedure for determining the claim in arbitration and the manner in which the arbitration shall be invoked. It also contemplate the procedure for appointment of Arbitrator, as it permit each party to appoint an Arbitrator, however, it is left open for the parties to appoint a sole Arbitrator, who shall have accepted the appointment.

Rule 4 of the Rules of Arbitration and Appeal of FOSFA Rules reads thus :-

"4. Procedure for Arbitrations

All submissions, interlocutory applications and related correspondence referred to under this Rule shall be dispatched within any of the specified time limits- one copy to each of the appointed arbitrators; one copy to the other party; one copy to the Federation.

(a) .. .."

The jurisdiction of the Arbitrator is clearly set out as below :-

"5. Jurisdiction

(a) The arbitrator/s may rule on their own jurisdiction as to whether there is a valid arbitration agreement.

(b) If the arbitrator/s agree that they have jurisdiction, they shall proceed with the arbitration without delay.

(c) If the arbitrator/s agree that they have no jurisdiction they shall draw up an award in accordance with Rules 6(a) and 6(b).

(d) ... ..."

9. There is no denial of the fact that the parties have agreed to resolve their dispute through arbitration to be conducted as per FOSFA Rules and have agreed for a foreign seated institutional arbitration to be governed by FOSFA Rules and (English) Arbitration Act, 1996, since the juridical seat is in London. There can also be no difficulty in accepting the proposition that Section 9 of the Arbitration and Conciliation Act, 1996 is available to international commercial arbitration even if the seat is outside India, unless parties agree to the contrary and Section 2(2) clearly imply that the provisions of Sections 9 and 27 shall apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is

enforceable and recognised under the provisions of Part II of the Act.

10. Mr.Andhyarujina, has urged that embargo created under sub-section (3) of Section 9 shall not apply to international arbitration, as it provide that once the Arbitral Tribunal has been constituted; the Court shall not entertain an application under sub-section (1) i.e. application for an interim measure of protection in respect of any of the matters set out therein, which shall include, securing the amount in dispute in the arbitration and the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute or such other interim measure of protection as may appear to the Court to be just and convenient.

The insistence of Mr.Andhyarujina is upon the existence of a remedy before the Arbitral Tribunal in form of Section 17, which is the power to grant interim measure by the Arbitral Tribunal and this include an interim measure of protection in respect of various matters, including securing the amount in dispute in the proceedings, the preservation, interim custody or sale of any goods, which are the subject-matter of the arbitration agreement and such other interim measure of protection as may appear to Arbitral Tribunal to be just and convenient. It is, therefore, assertively urged by Mr.Andhyarujina that in absence of any such power being conferred specifically upon the Arbitral Tribunal under the FOSFA Rules read with Arbitration Act, 1996 (English law), this Court will not refrain itself from exercising the power under Section 9, as there is no provision akin to Section 17 under the English Act.

11. In order to appreciate this argument, I must turn my attention to the Arbitration Act 1996 extending to England, Wales and Northern Ireland, being a statute restating and improving the law relating to arbitration pursuant to arbitration agreement.

The arbitral proceedings under the said statute shall be governed by the procedure prescribed and to be followed by the Arbitral Tribunal, which is at liberty to decide all procedural and evidential matters subject to the rights of the parties to agree on any of the above.

Section 38 provides for the general powers exercisable by the Tribunal and provision reads thus :-

> *"38. General powers exercisable by the tribunal.*
>
> *(1) The parties are free to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.*
>
> *(2) Unless otherwise agreed by the parties the tribunal has the following powers.*
>
> *(3) The tribunal may order a claimant to provide security for the costs of the arbitration.*
>
> *This power shall not be exercised on the ground that the claimant is-*
>
> *(a) an individual ordinarily resident outside the United Kingdom, or*
>
> *(b) a corporation or association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.*
>
> *(4) The tribunal may give directions in relation to any property which is the subject of the proceedings or as to which any question arises in the proceedings, and which is owned by or is in the possession of a party to the proceedings-*
>
> *(a) for the inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or*
>
> *(b) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.*
>
> *(5) The tribunal may direct that a party or witness shall be*

examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.

(6) The tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control."

12. In the wake of the arrangement between the parties to refer the dispute to arbitration in London, to be conducted in accordance with the FOSFA Rules, the Arbitral Tribunal consisting of three members is already constituted. The question is, whether the Tribunal is competent to grant any interim measures.

As per the FOSFA Rules of Arbitration and Appeal, which has come into effect from 01/04/2024, refers to interlocutory applications, which necessarily would cover an application for grant of any interim measures. In any case, the juridical seat of FOSFA arbitration is England and, therefore, the procedural law that governs FOSFA arbitration would be (English) Arbitration Act, 1996.

When Section 38 of the English Act is compared, I note one striking feature being the parties being given the liberty to agree on the powers exercisable by the Arbitral Tribunal for the purposes of and in relation to the proceedings. Apart from this, sub-section (4) of Section 38 allow the Tribunal to give directions in relation to 'any property' which is the subject of the proceedings or as to which any question arises in the proceedings,and which is owned by or is in possession of a party to the proceedings and the power extend to preservation, custody or detention of the property by the Tribunal.

A comparison of the said power with that under Section 9 would reveal that the interim measures of protection under Section 9 of the Act also cover the detention, preservation or inspection of any property or thing which is a subject-matter of the dispute in arbitration.

The relief sought in form of a restraint being imposed upon the rights of the Respondent to deal with its property, therefore, in my view, can also be sought under sub-section (4) of Section 38 read with FOSFA Rules, as for preservation of the subject-matter of the proceedings, the Tribunal is very much authorised to secure the custody or order detention of the property and this is precisely what is sought before this Court through Section 9 Petition.

I am unable to concur with Mr.Andhyarujina, that it is only by recourse to Section 9, interim measures can be granted, as I find that even the Tribunal, constituted under the FOSFA Rules, can entertain the interlocutory applications, and since, the procedure is governed by the (English) Arbitration Act, 1996 with a specific authority being conferred on the parties to agree on the power exercisable by the Arbitral Tribunal for the purposes and in relation to the proceedings, the Tribunal can be moved for the necessary reliefs, which may include the relief of securing the amount, which according to the Petitioner is undisputed liability or of imposing of restraint on the Respondent, from dealing with its property, so as to protect the interest of the Petitioner.

Without taking recourse to the remedy available to move the Arbitral Tribunal, the Petitioner has approached this Court by invoking Section 9 and in any case, in absence of the

Petitioner establishing that the remedy before the Arbitral Tribunal is not an efficacious remedy, in my view this Court should be slow in entertaining the Petition under Section 9, in the wake of the embargo created under sub-section (3) as the Tribunal is already constituted and the better course available to a party is to approach the Tribunal and in this case, I do not find that the Tribunal is lacking power to consider such a request.

13. Benefit can be drawn from the observations of the Delhi High Court in ***Ashwani Minda and Jay Ushin Limited Vs U-Shin Limited and Minebea Mitsumi Inc.***[2], which in similar circumstances, record to the following effect:-

> *"34. Although Section 9(3) of the Act is, on its terms, expressly relatable to India-seated arbitrations, as evidenced by the reference to Section 17 of the Act, we are of the view that the principle thereof is equally applicable when interim measures are sought in the Indian courts in connection with a foreign-seated arbitration. Resolution of disputes by a tribunal of the parties' choice, and reduced interference by courts, are amongst the central features of arbitration. Section 9(3) of the Act reflects that understanding, and manifests a legislative preference that the grant of interim measures ought to be considered by the arbitral tribunal, once constituted, rather than by the courts. It is only when the remedy before the tribunal lacks efficacy, that a party can seek interim measures from the court under Section 9. In the LC Report also, the following justification is provided for the insertion of Section 9(3) into the Act :*
>
> *"[NOTE : <u>This amendment seeks to reduce the role of the Court in relation to grant of interim measures once the Arbitral Tribunal has been constituted. After all, once the Tribunal is seized of the matter it is most appropriate for the Tribunal to hear all interim applications.</u> This also appears to be the spirit of the UNCITRAL Model Law as amended in 2006.*
>
> *Accordingly, section 17 has been amended to provide the Arbitral Tribunal the same powers as a Court would have under section 9.]*
>
> *(Emphasis supplied.)*
>
> *35. ... ...*

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36. We are unable to accept Mr.Singh's contention. The primary purpose of Part I of the Act (which inter alia includes Section 2, 9 and 17) is to govern India-seated arbitrations. The reference in Section 9(3) to Section 17 alone, cannot therefore be dispositive of the question as to whether the same principle applies where the arbitration is seated outside India. In our view, the absence of a specific reference to foreign-seated arbitrations in Section 9(3) ought not to be construed as a widening of the Section 9 power, to cover cases where the arbitral tribunal has been constituted, and is capable of granting efficacious relief. Such an interpretation would not just extend the scope of Section 9, but would amount to the provision being available in the Indian courts in connection with foreign-seated arbitrations, but not in connection with India-seated arbitrations. We therefore hold that, although an application under Section 9 is maintainable in connection with a foreign-seated arbitration, an application thereunder would not lie after the constitution of the arbitral tribunal, unless the applicant demonstrates that it does not have an efficacious remedy before the tribunal. (We are not required in the facts of the present case to decide whether the availability of a remedy before an emergency arbitrator, or the seat court, would also dissuade the Indian court from granting relief under Section 9.)

37. In considering the aforesaid question, the Court would certainly have regard to the question as to whether the remedy before the arbitral tribunal would be efficacious or not. This caveat is incorporated in Section 9(3) also, and would turn upon the facts and circumstances of each case, including the amplitude of the power conferred upon the arbitral tribunal. In making this assessment, the manner in which the applicant has framed the relief sought cannot be determinative; the more appropriate test is whether the tribunal is sufficiently empowered to grant effective interim measures of protection. It may well be that, in the circumstances mentioned in paragraph 41 of the LC Report, the Court would come to the conclusion that the application ought to be entertained. However, this does not obviate the necessity for a determination of the question."

14. In light of the aforesaid, since the Arbitral Tribunal is now constituted, I find substance in the objection raised by learned counsel Mr.Kamat that the relief which are sought in the Petition before me can very well be entertained by the Tribunal in the wake of the power conferred on it, and particularly, the process being governed by Section 38 of the (English) Arbitration Act, 1996. The Tribunal is constituted

on 11/11/2025 and it is open for the Petitioner to approach the Tribunal, seeking appropriate interim relief/measures, which is sought to be pressed through Section 9 Petition, which I refuse to entertain, in the wake of the bar under sub-section (3) of Section 9 of the Arbitration and Conciliation Act, 1996.

Accepting the preliminary objection raised by the Respondent, the Petition is dismissed, as it open for the Petitioner to approach the Arbitral Tribunal, which is already constituted.

(BHARATI DANGRE, J.)