

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arbitration Case No.363 of 2025

Date of Decision : 06.11.2025

M/s Thakur Construction

..... Petitioner

Versus

State of H.P. and others

.....Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the petitioner : Mr. Ankit Midha and Mr. Jeevan Kumar, Advocates.

For the respondents : Mr. Diwakar Dev Sharma, Additional Advocate General, for respondent No.1/State.

: Mr. Tejasvi Dogra, Advocate, for respondents No. 2 to 4.

Bipin Chander Negi, Judge(oral)

Notice. Mr. Diwakar Dev Sharma, learned Additional Advocate General and Mr. Tejasvi Dogra, Advocate, appear and waive service of notice on behalf of respondent No.1 & respondents No. 2 to 4, respectively.

2. With the consent of the parties, the application is taken up for consideration at the threshold.

3. Learned counsel appearing on behalf of respondents No.2 to 4 has placed on record judgment dated 31.10.2025 passed by Hon'ble

Principal Bench in Arbitration Case No.39 of 2025 titled as M/s Thakur Construction vs. State of H.P. and others, whereby a three member Arbitral Tribunal has been appointed to adjudicate dispute inter se the parties. In view thereof, it is contended that the petitioner is at liberty to move an appropriate application under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter for purpose of brevity referred to as the Act) for seeking interim measures from the Arbitral Tribunal. Attention is also invited to See 9(3) of the Act.

4. Per contra, learned counsel appearing on behalf of the petitioner has drawn the attention of the Court to paras 6 and 7 of the judgment dated 31.10.2025. The same reads as follows:-

“6. Resultantly, the present petition is allowed and the following Three-Member Arbitral Tribunal is appointed to adjudicate the dispute between the parties:-

- (i) Hon’ble Ms. Justice Sabina, former Acting Chief Justice, House No.1842, Sector 34-D, Chandigarh (Contact No.9780008138) (e-mail Id: justicesabina@gmail.com) as Presiding Arbitrator.
- (ii) Hon’ble Mr. Sudhir Kumar Katriar, former Judge, Flat No.101, 4th Floor, Tower No.12, Supreme Enclave, Mayur Vihar, Phase-I, Delhi-110091 (Contact No.08527937916 and 09471419196) (e-mail Id: sudhirkatriar@gmail.com), Member.
- (iii) Sh. D.P. Bajaj, Former Chief Engineer, Punjab (PWD B&R), House No.311, Sector-7, Panchkula-134109 (Contact No.9815187311) (e-mail Id: bajajdp@yahoo.com), Member.

7. Only after their disclosure in writing is obtained in terms of Section 11(8) of the Act and only after receipt thereof, their appointment, as Arbitrators, shall come into force.”

5. In the aforesaid backdrop, it is contended by learned counsel appearing on behalf of the petitioner that insofar as disclosure in writing in terms of Section 11(8) of the Act is concerned, as per instruction received by the counsel from the petitioner, no such disclosure till date has been given by the members of the Arbitral Tribunal and hence the same has not been constituted till date. Hence, it is contended that in terms of Section 9(3) of the Act circumstances exist for entertaining the present applicant.

6. Insofar as grant of interim measures by this Court under Section 9 is concerned, from a bare reading of the provision, it is evident that interim measures can be granted by this Court before or during arbitral proceedings. In this respect, learned counsel has drawn the attention of this Court to the judgment passed by the Apex Court in Civil Appeal No. 5700 of 2021 titled as ***Arcelor Mittal Nippon Steel India Limited vs. Essar bukl Terminal Limited***, decided on 14th September, 2021. Relevant Extract whereof reads as under:-

“96. Even after an Arbitral Tribunal is constituted, there may be myriads of reasons why the Arbitral Tribunal may not be an efficacious alternative to Section 9(1). This could even be by reason of temporary unavailability of any one of the Arbitrators of an Arbitral Tribunal by reason of illness, travel etc.

97. Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject matter of Arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the Arbitral Award does not become an award on paper, of no real value.

98. The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of

interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking interim relief.”

7. The contract in this case was terminated vide order dated 27.8.2025 on account of poor performance of work. Performance guarantee was also terminated on the said date. The same is evident from Annexure P-21.

8. In the aforesaid backdrop, since the Arbitral Tribunal has not yet been constituted in pursuance to judgment dated 31.10.2025 and is unavailable as on date on account of non compliance of Section 11(8) of the Act, the petitioner is unable to move an appropriate application under Section 17 before the Arbitral Tribunal.

9. In the aforesaid facts and attending circumstances, it would be appropriate to restrain the respondents from encashing the performance guarantee in the case at hand till the time, an application under Section 17 seeking relief in this respect is filed before the Arbitral Tribunal. On the same being filed, the Arbitral Tribunal shall consider grant of appropriate relief in terms of Section 17 of the Act.

10. In view thereof, the present petition is disposed of, so also the pending miscellaneous applications, if any.

06th November, 2025_(tarun)

(Bipin Chander Negi)
Judge