

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1295 OF 2018**

Epimoney Private Limited	..Petitioner
Vs.	
M/s.Ganesh Distributors & Anr.	..Respondents

**WITH
ARBITRATION PETITION NO.1152 OF 2018**

Epimoney Private Limited	..Petitioner
Vs.	
M/s.Ganesh Distributors & Anr.	..Respondents

Ms.Juhi Bhogale with Mr.Ranjan Solanki i/b. M/s.GNP Legal for
Petitioner.

Ms.Rajani Kanojia for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 2nd MAY, 2019.

P.C.:

1. Heard learned Counsel for the petitioner and learned Counsel for the respondents.

2. These are the petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the petitioner has prayed for interim reliefs pending the arbitral proceedings. These petitions were filed in the month of October 2018 and have remained pending since then. The respondents have appeared. On 26 April 2019 this Court had passed the following order on Arbitration Petition No.1295 of 2018:-

“ List this petition on the supplementary board on 30 April 2019 along with Arbitration Petition No.1152 of 2018.

2. In the meantime, learned Counsel for the parties shall

take instructions from their respective clients to try and amicably resolve the disputes.”

3. On 30 April 2019 these petitions were djourned for petitioner to take instructions whether the disputes between the parties can be referred for arbitration.

4. Learned Counsel for the petitioner today is not agreeable that the disputes be referred for arbitration. She insists the Court to consider these petitions and grant reliefs to the petitioner in as much as there is default on the part of the respondents to make payment of the amounts as payable under the loan agreement in question.

5. On the other hand, learned Counsel for the respondents has drawn my attention to the letter dated 6 September 2018 addressed by the Advocate for the respondents to the Advocates for the petitioner whereby the respondents in paragraph 2 of the said letter expressed willingness on the part of the respondents to refer the disputes for arbitration. The contents of paragraph 2 of the said letter dated 6 September 2018 are required to be noted which read thus:-

“02. Admittedly the loan granted subject to repayment of the same within the tenure of 18 months on the equated monthly installments. As such my client is still also at the liberty to regularize the loan amount by making payment of the installments due. When such being the situation, your conduct of recalling the entire loan amount and putting any client under pressure and threat is most uncalled for and

unwarranted. However because of the illegal method of making recovery by your client, in order to have the peace of mind, my client has intended to pay of the entire loan amount if he is granted a reasonable period of six months from the date of this notice. Further as admitted in your notice by your client that there is arbitration clause appears to have incorporated in the loan agreement. In case of your client not intending the grant extension of time and remission of future interest, your client is at the liberty to appoint arbitrator with the consent of my client with prior notice by arranging the arbitration meeting at Bangalore since all the transactions between your client and my client and related documentation took place at Bangalore and further due to health reason my client is not in a position travel anywhere which may cause risque to his life and limb."

(emphasis supplied)

6. Admittedly, though this letter was received by the Advocates for the petitioner in September 2018, there is nothing on record to indicate that the petitioner has taken any steps to agree and appoint an arbitral tribunal to adjudicate the disputes between the parties. In fact, it is surprising that instead of the disputes being referred for adjudication by an arbitral tribunal, the present petitions came to be filed after one month of the said letter dated 6 September 2018 addressed on behalf of the respondents calling upon the petitioner to agree in appointing an arbitral tribunal. In any event these petitions have remained pending. No ad-interim reliefs were granted. Even otherwise considering the reliefs, these are not the reliefs which cannot be granted by an arbitral tribunal. In the situation of this kind, surely the Court cannot overlook the provisions of Section 9 sub-section (2) of the ACA and there would

be an obligation on the party to take steps for appointment of an arbitral tribunal and commence the arbitration proceedings, although in the present case no ad-interim order was passed but the fact remains that the petitioner had not responded to the notice of the respondents seeking to appoint an arbitral tribunal.

7. Even after these petitions were adjourned on the earlier two occasions, there is no intention on the part of the petitioner for the disputes being referred for arbitration. As the petitioner is not ready and willing for the disputes being referred for arbitration as categorically informed to the Court, it may not be appropriate to exercise the discretionary jurisdiction under section 9 of the Act, which is to protect the substance of the arbitration. In the present case as informed to the Court the petitioners do not want arbitration. Consequently, there would be no need for any interference in the section 9 petition. Section 9 jurisdiction ought not to be exercised for such parties.

8. Be that as it may it is certainly possible for the petitioner to seek reliefs as prayed in the present petitions before the arbitral tribunal of which the petitioners never considered the reliefs to be urgent or of a nature where any circumstances exists which may not render the remedy provided under section 17 efficacious. Accordingly, keeping

open all contentions of the parties to be adjudicated in the arbitral proceedings, these petitions are accordingly disposed of. No costs.

[G.S. KULKARNI, J.]