IN THE HIGH COURT AT CALCUTTA

(Ordinary Original Civil Jurisdiction)

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

AP 756 of 2023

Synergy Ispat Private Limited

Versus

Orissa Manganese & Minerals Limited

Mr. S.N. Mookherjee, Sr. Adv.
Mr. Paritosh Sinha
Mr. Saunak Mitra
Mr. Sabyasachi Choudhury
Mr. Amitava Mitra
Mr. Naman Choudhury
Ms. Antara Choudhury

.....For the Petitioner

Mr. Gopal Jain, Sr. Adv.
Mr. Anuj Singh
Mr. D. Kumar Srivastava
Mr. Aman Agarwal
Ms. T. De
Ms. Niharika Singh

.....For the Respondent

Hearing Concluded On : 15.01.2024

Judgment on : 31.01.2024

Krishna Rao, J.:

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 filed by the award holder.

2. On 27th February, 2005, the petitioner and respondent entered into an agreement wherein the respondent agreed to sell the entire iron ore to the petitioner. The entire iron ore that would be excavated from the Mines as per the terms and conditions mentioned in the agreement. Pursuant to the agreement, the petitioner time to time had made payment of Rs. 1,69,99,600/- to the respondent. The respondent informed the petitioner that mining operation had not commenced and as soon as the same would commence, the petitioner would be informed. In the month of December, 2009, the petitioner came to know that mining operations of the Mines had been commenced by the respondent behind the back of the petitioner and in breach of the terms and conditions of the agreement.

3. On 24th December, 2009, the petitioner has sent a letter to the respondent expressed its apprehension that the respondent was in breach of the agreement and on 11th January, 2010, the respondent had sent a reply alleging that the agreement was void *ab initio* by reason of violation of Rule 37 of the Mineral Concession Rules, 1960. In the letter dated 11th January, 2010, a reference was made to two alleged letters dated 22nd June, 2007 and 1st August, 2008 to contend that the agreement was not capable of performance on account of legal impossibility and impediment and that as per books of the respondent, an amount of Rs. 1,67,50,000/- was outstanding as advance, which was purported to be returned by a cheque dated 1st August, 2008.

4. Inspite of several correspondences between the parties, the matter was not settled and on 22nd August, 2011, the petitioner referred the disputes to arbitration and appointed a sole Arbitrator by requesting the respondent to give consent to such appointment but the respondent refused to comply with its obligations in terms of the arbitration agreement.

5. Neither the respondent come forward for appointment of Arbitrator nor has allowed the petitioner to carry out the mining operation, the petitioner has filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 praying for interim relief being AP No. 922 of 2011. In the affidavit-in-opposition along with supplementary affidavit, the respondent has submitted that the respondent was not carrying any Mines in view of the restrictive orders of the concern authority and on the said statement of the respondent, this Court disposed of the application by recording the submissions of the respondent and directing the respondent to issue notice upon the petitioner, at least seven days in advance, before the respondent commences its mining operation.

6. In the meantime, the petitioner has filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 being AP No. 1025 of 2011 and during the pendency of the said application, the respondent has issued a letter on 21st March, 2012 informing that the respondent would be commencing mining operations on and from 28th March, 2012. On receipt of the said communication, the petitioner has again filed an application under Section 9 of the Act of 1996, being AP No. 245 of 2012. By an order dated 29th March, 2012, the respondent was restrained from selling any part of the extract from its relevant Mines in Jharkhand in any manner without first offering the entire extract to the petitioner in terms of the agreement. Being aggrieved with the order, the respondent has preferred an appeal being APOT No. 184 of 2012 and by a judgment dated 9th May, 2012, the Hon'ble Appellate Court modified the order of this Court and clarified that the order of this Court as well as the order of the Appellate Court shall be tentative and it would not be binding at the time of hearing of the arbitration proceeding or at the time of final hearing of the interlocutory application. The petitioner being aggrieved with the order of the Appellate Court had preferred a Special Leave Petition and the Hon'ble Supreme Court by an order dated 27th July, 2012 by upholding the observation of the Hon'ble Division Bench and directed this Court to decide Section 9 application as expeditiously as possible preferably within a period of eight weeks uninfluenced by the order passed by the Division Bench. In the meantime, at the stage of hearing of the APOT No. 184 of 2012, with the consent of both the parties, the Hon'ble Court has appointed an Arbitrator and have also agreed not to proceed with the application filed under Section 11 of the Arbitration and Conciliation Act, 1996.

7. The application filed by the petitioner being AP No. 245 of 2012 was disposed of by this Court on 5th September, 2012 by holing that the petitioner was not entitled to any interlocutory injunction in the aid of the claim of Specific Performance of Contract but this Court directed the respondent to deposit an amount of Rs. 1,67,50,000/- along with interest @ 10% from 1st August, 2008, till the deposit of the said amount within three weeks from the date of the order. Being aggrieved with the order dated 5th September, 2012, the petitioner had preferred an appeal being APOT No. 460 of 2012 and by an order dated 16th May, 2014, the Appellate Court had set aside the order dated 5th September, 2012 and restrained the respondent to sell the iron ores excavated from the said Mines to any third party without first offering to the petitioner and further directed to maintain accounts of the iron ores raised on the said Mines since the commencement of the mining operations subject to the result of the arbitration proceeding. The Appellate Court further directed the Registrar, Original Side of this Court that the amount deposited by the respondent in Rs. 1,67,50,000/- along with interest be invested in a fixed deposit. The respondent had preferred a Special Leave Petition from the order dated 16th May, 2014 before the Hon'ble Supreme Court. The SLP was disposed of by an order dated 12th September, 2014 by recording the undertaking of the respondent that during pendency of the Arbitration, the respondent would not sell any part of the iron ore excavated from the said Mine covered by the agreement and such ore would be captively consumed in the plant of the respondent and the respondent would maintain complete accounts.

8. During the arguments on behalf of the petitioner before the Learned Arbitrator, few sessions of the arbitration proceeding were stalled due to the moratorium which had become operational pursuant to an order dated 3rd August, 2017 passed by the National Company Law Tribunal, Kolkata Bench. The claim of the petitioner for specific performance of contract was pending adjudication in the arbitration proceeding, filed its claim with the Resolution Professional appointed in the Corporate Insolvency Resolution Process (CIRP) in respect of the respondent under the category of *"Creditors other than financial and operational"*. The Resolution Professional (RP) has kept the claim of the petitioner outside the purview of CIRP. The Resolution Plan was approved by the National Company Law Tribunal in the CIRP in relation to the respondent by an order dated 22nd June, 2018 and accordingly the arbitration proceeding was resumed.

9. On 30th June, 2023, the Learned Sole Arbitrator had published an award holding that the respondent deliberately violated the terms of the agreement and denied the fruits to the petitioner of the said agreement by not selling iron ore extracted from the said Mine to the petitioner. The Learned Arbitrator held that the petitioner is entitled to specific performance of agreement dated 27th February, 2005 and respondent is bound to sell exclusively to the claimant the entire iron ore excavated and the claimant shall have sole and exclusive right to purchase the entire iron ore excavated from the respondent. The Arbitrator also restrained the respondent from selling iron ore excavated to anyone except the claimant.

10. Mr. S.N. Mookherjee, Learned Senior Advocate representing the petitioner submitted that the order passed by the Hon'ble Appellate Court in APOT No. 460 of 2012 dated 16th May, 2014 is still subsisting. He submits that the order of injunction passed by the Appellate Court is merged with the award dated 30th June, 2023.

11. Mr. Mookherjee submitted that the petitioner apprehends inspite of the award and the order passed by the Hon'ble Appellate Court, the respondent is continuing to excavate the iron ore from the Mines without making over the same to the petitioner. He submits that the petitioner apprehends that the respondent is utilizing the iron ores excavated from the Mines by selling the same to the third parties.

12. Mr. Mookherjee submitted that the interest of the petitioner is to be protected by way of an interim order restraining the respondent from selling iron ore from the Mines to anyone except the petitioner. He submits that it is also necessary that in order to ensure that the iron ore excavated from the Mines is not sold to any other third party or not to utilize in a manner to frustrate the award, a Special Officer/ Receiver is to be appointed.

13. Mr. Mookherjee submitted that unless and until an interim order is not passed by restraining the respondent from selling iron ores from the Mine to any third party and an order is not passed for appointment of the Special Officer/ Receiver till the award is enforced, the petitioner will suffer irreparable loss and injury.

14. Mr. Gopal Jain, Learned Senior Advocate representing the respondent submitted that the petitioner has filed the instant application under Section 9 of the Arbitration and Conciliation Act, 1996, after the delay of more than three months from the date of delivery of the award dated 30th June, 2023. He submits that the petitioner attempted to use the process of this Court to avoid approaching competent Court at Orissa for execution of the Award.

15. Mr. Jain submitted that the prayers made in the present application filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 is beyond the scope and ambit of Section 9 of the Act of 1996. He submits that by filing an application under Section 9 of the Act of 1996, the petitioner intent to enforce the award dated 30th June, 2023. He submits that the reliefs sought for by the petitioner in the instant application are mandatory and final in nature which cannot be granted at the interim stage.

16. Mr. Jain submitted that if the reliefs sought in the instant application are allowed, it would amounts to exercise its powers under Section 36 of the Act of 1996. He submits that this Court cannot grant any relief in the present application as the agreement dated 27th February, 2005, is not specifically enforceable under Section 14(b) of the Specific Relief Act, 1963.

17. Mr. Gopal Jain submitted that the award dated 30th June, 2023, is passed despite of the fact that the claim of the petitioner in the arbitration proceeding had extinguished owing to the final order passed by the National Company Law Tribunal, Kolkata Bench dated 22nd June, 2018.

18. Mr. Gopal Jain submitted that the mining lease of the respondent with respect to the agreement dated 27th February, 2005 expired and as such, the reliefs sought in the present application have become infructuous.

19. Before initiation of arbitration proceeding in the instant matter, the petitioner had invoked Section 9 of the Act of 1996 being AP No. 922 of 2011 and on the basis of the submission made by the respondent, this Court has passed the following order :

> *"This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 where the petitioner says that the petitioner is entitled to exclusively buy the extracts from the mining operations carried on by the respondent. The*

respondent says that the respondent is not operating the mines or undertaking any mining activity at the moment in view of the restrictive orders of the appropriate authority being in operation.

The respondent says that the petitioner's claim is barred by the laws of limitation. Such aspect of the matter can be gone into the arbitrator in the reference for which the claimant has initiated steps.

Without prejudice to the respondent's contention that the claim is barred, the respondent is directed to issue notice to the petitioner, at least seven days in advance addressed to Advocate-on-record representing the petitioner, before the respondent commences its mining operations. The respondent has also suggested that the agreement between the parties may be in derogation of the Mines and Minerals (Development and Regulation) Act, 1957. Such aspect has not been gone into at this stage.

AP No. 922 of 2011 is disposed of without any order as to costs."

20. The respondent by a letter dated 21st March, 2012 informed the petitioner that the respondent would be commencing mining operation on and from 28th March, 2012 and on receipt of the communication. The petitioner has again filed another application under Section 9 of the Act of 1996 being AP No. 245 of 2012 and this Court had passed the following ad-interim order :

"There will be an order of injunction restraining the respondent, whether by itself or its servants or agents or assigns or otherwise howsoever, from selling any part of the extract from its relevant mine in Jharkhand in any manner whatsoever without

first offering the entire extract to the petitioner in terms of the agreement. Such injunction will be operative as of this moment."

21. In an appeal preferred by the respondent against the ad-interim order being APOT No. 184 of 2012, the Appellate Court by a judgment dated 9th May, 2012 has modified the ad-interim order in the following manner :

> *"Under these circumstances we think that following interim measure will protect interest of both the parties. The appellant shall sell mining extract to the respondent in the event it opts for purchase of any quantity at the price that will be prevailing in the market at the time of purchase, and in that case the amount that is lying with the appellant, shall be adjusted against such price, and the balance price if required, must be paid by the respondent. This arrangement would be without prejudice to its rights and contention of the parties. In the event the respondent is not willing to purchase the extract of mines, amount lying with the appellant shall be returned to the respondent who will take back the same without prejudice to its rights and contentions which might be raised before the learned Arbitral Tribunal. Above factum of payment of difference of price if so advised, may be placed before the learned Arbitrator as part of the dispute. This sale and purchase if materializes, will abide by the result of the arbitration proceedings.*
>
> *The aforesaid measure in our view will subserve the interest of both the parties as in the event it is found that the respondent succeeds in the award and gets relief for specific performance later on then obviously with the delivery of this extract of mines shall be in terms of the agreement on one hand, and on the other hand if the respondent fails, sale so to be effected by the appellant before us, shall not be treated in terms of the agreement but as a buyer in open market.*
>
> *We, therefore, substantially modify the order passed by the learned Trial Judge as above,*

> *and this will continue till the decision of the learned Arbitrator or until further order which might be passed by learned Trial Judge at the final hearing of the interlocutory application whichever is earlier. The findings and observation of the learned Trial Judge so also ours shall be regarded as being tentative, and it will not be binding effect either at the time of hearing of the arbitration agreement or at the time of final hearing of the interlocutory application pending before learned Trial Judge."*

22. On completion of pleading in AP No. 245 of 2012, this Court has disposed of the same by an order dated 30th August, 2012 by holding that the petitioner is not entitled to any interlocutory injunction in aid the claim of specific performance of selling agreement that it has carried to the arbitral reference.

23. The petitioner had preferred an appeal against the order dated 30th August, 2012 being APOT No. 460 of 2012 and the Hon'ble Appellate Court by a judgment dated 16th May, 2014 allowed the application filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 in part in the following manner :

> *"The respondent is restrained by an order of injunction to sell the iron ores excavated from the disputed mines to any third party without first offering to the appellant and is, further, directed to maintain accounts of the iron ores raised from the said mines since the commencement of the mining operation subject, however, to the result of the arbitral proceeding.*
>
> *We make it clear that the findings arrived at by the Hon'ble Single Judge and, also, by us are limited for the purpose of disposal of the application under Section 9 of the Arbitration and*

Conciliation Act and are without prejudice to the rights and contentions of the parties before the learned arbitrator."

"A sum of Rs. 1,67,50,000/- (One crore sixty seven lakh fifty thousand) only, with interest accrued thereon, is lying with the learned Registrar, Original Side of this Court and it is invested in short-term interest bearing fixed deposit with a nationalised bank. The deposit shall, however, abide by the result of the arbitral proceeding. The learned Registrar, Original Side, is requested to keep the fixed deposit renewed from time to time.

The appeal is, thus, allowed."

24. The respondent had referred an appeal being Civil Appeal No. 8645 of 2014 and the Hon'ble Supreme Court had disposed of the said SLP on 12th September, 2014 by passing the following order :

"20. In view of the categorical assertion made by the appellant and the undertaking that the appellant would consume the entire iron ore excavated captively, we do not see any reason to give any direction to the appellant to sell the iron ore to the respondent during the pendency of the arbitration. Such a direction, in our opinion, would virtually amount to the enforcement of the agreement in issue without adjudication of the right of the respondent to seek specific performance of the agreement. No doubt, if the appellant company were to be selling the iron ore excavated by it to any third party, there was some justification by the respondent to seek an interim direction to the appellant to sell the ore to the respondent, subject ofcourse to the determination of the cause finally in the arbitration proceedings. But it is not the case.

21. The learned senior counsel for the respondent further submitted that in case an interim order is not granted, even if the respondent *eventually succeeds in the arbitration proceedings and obtains an award for the specific performance of the agreement in question, the success would remain only on papers as huge amount of mineral excavated by the appellant would already have been sold by that time and there is no way of the respondent obtaining the said mineral.*

22. No doubt, if the respondent eventually succeeds in the arbitration, it would be entitled to specific performance of the agreement in question. The respondent can always seek monetary compensation for the loss sustained by it by virtue of the non supply of the minerals by the appellant during the pendency of the arbitration proceedings.

23. For the abovementioned reasons, we dispose of this appeal recording an undertaking of the appellant that during the pendency of the arbitration proceedings the appellant will not sell any part of the iron ore excavated from the mines covered by the agreement in question and such ore would be consumed captively by the appellant in its plant and the appellant would maintain a complete account of the minerals excavated and consumed captively by the appellant."

25. On 30th June, 2023, the Learned Sole Arbitrator has published Award which are as follows :

*"87. I am of the view, that the respondent deliberately violated the terms of the agreement and denied the claimant the fruit of the said agreement between the parties by not selling iron ore extracted to the claimant. The conduct of the respondent does not inspire much confidence in the respondent. The respondent has referred to the decision reported in **(2023) 1 SSC 355** which has considered the effect of the amendment of the Specific Relief Act in 2018. The Hon'ble Supreme Court has held that the amendment is substantive in nature and it is to be applied prospectively and not retrospectively. Therefore the discretion to grant specific performance pre-amended is left untouched.*

> *88. In the premises aforesaid I hold issue no. 1 in the affirmative, issue Nos. 2(a) and 2(b) in the negative. Issue no. 3 in the affirmative, issue no. 4 in the negative, issue nos. 5(a), (b) and (c) in the negative, issue no. 6 in the negative and issue no. 7 in the affirmative.*
>
> *89. I hold that the claimant is entitled to specific performance of the agreement dated 27th February, 2005 and respondent is bound to sell exclusively to the claimant the entire iron ore excavated and the claimant shall have sole and exclusive right to purchase the entire iron ore excavated from the respondent.*
>
> *90. The respondent is restrained by an order of injunction from selling iron ore excavated to anyone except the claimant."*

26. Mr. Mookherjee relied upon the judgment reported in ***2021 SCC OnLine Cal 3060 (Medima LLC -vs- Balasore Alloys Ltd.)*** and submitted that the petitioner has an award in its favour which has not been set aside nor suspended till date. The respondent has preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award but has not prayed for any stay of the operation of the award. The application under Section 9 is for interim protection so that the award is not rendered in futility. There is no doubt that a party may apply to the Court for interim measures of protection after the making of the award, prior to its enforcement under Section 36 of the Act. It is also well settled that the Powers of a Court under Section 9 of the Act are very wide and are not controlled by the provisions of the Civil Procedure Code, 1908.

27. Mr. Mookherjee relied upon the judgment reported in ***2022 SCC OnLine SC 1243 (Sepco Electric Power Construction Corporation -vs- Power Mech Projects Ltd.)*** and submitted that the jurisdiction of this Court under Section 9 is wide. A party may apply to a Court for interim measures before the Commencement of Arbitral proceedings, during Arbitral proceedings or at any time after the making of the Arbitral Award, but before it is enforced in accordance with Section 36 of the Arbitration Act. Section 9 expressly empowers the Court to pass orders securing the amount in dispute in the arbitration or any interim measure or protection as may appear to the Court to be just and convenient. The Court is required to see is, whether the applicant for the interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the Court with reasonable expedition.

28. Mr. Mookherjee relied upon the judgment reported in ***(2020) 17 SCC 324 (Hindustan Construction Company Limited and Another –vs- Union of India and Ors.)*** and submitted that the language of Section 9 of the Arbitration and Conciliation Act, 1996, which specifically enables a party to apply to a Court for reliefs "*after the making of the arbitration award but before it is enforced in accordance with Section 36"*. The Hon'ble Supreme Court relied upon the judgment of the Bombay High Court in the case of ***Dirk (India) (P) Ltd. -vs- Maharashtra State Power Generation Co. Ltd.*** wherein the Hon'ble Division Bench of the

Bombay High Court interpreting Section 9 of the Arbitration Act, 1996 held that:

> *"13. The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement."*

29. Mr. Mookherjee relied upon the judgment reported in ***(2018) 15 SCC 210 (Ultratech Cement Limited –vs- Rajasthan Rajya Vidyut Utpadan Nigam Limited)*** and submitted that as per Section 9 of the Act of 1996, the enforcement of the award can be effected only under Section 36 of the Act. The stage presently is of the interregnum, between the passing of the award, and the enforcement of the award under Section 9 of the Arbitration and Conciliation Act, 1996.

30. Mr. Gopal Jain relied upon the judgment reported in ***2023 SCC OnLine Del 395 (GMR Pochanpalli Expressways Limited –vs- National Highways Authority of India)*** and submitted that the relief which may be granted under Section 9 of the Act can only to provide relief to the party claiming so to ensure that the subject-matter of the arbitration is protected during and till the conclusion of the proceedings and after the award is made but not enforced. Such a measure can certainly not be granted beyond the scope and mandate of Section 9 and in the nature of a final order or relief.

31. Mr. Gopal Jain relied upon the judgment reported in ***MANU/WB/0513/2022 (Satyen Construction –vs- State of West Bengal and Others)*** and submitted that the scope of Section 9 of the Act cannot be extended to enforcement of the award or granting fruits of the award to the award holder as an interim measure. The order sought for in the instant application transgresses beyond the pale of protection in aid of enforcement into the exclusive domain of enforcement of an award.

32. The respondent has also filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 30th June, 2023 but the respondent has not prayed for stay of the operation of the Award.

33. Section 9 of the Arbitration and Conciliation Act, 1996 reads as follows:

> ***"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—*

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of 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;

(d) interim injunction or the appointment of a receiver;

(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.

[(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not

> *render the remedy provided under section 17 efficacious.]*

34. A bare reading of the provision reveals that the Court has the power to make orders granting interim measure of protection under the Act. The key word used in the provision is “interim”, the literal meaning of which is “in the intervening time” or “provisional”. The contents of Section 9 of the Arbitration Act are comprehensive enough to understand the intent of incorporating the same by the application of Literal Rule of Interpretation. An interim relief may be granted by the appropriate Court at any point of time but before the Arbitral award becomes enforceable under Section 36 of the Arbitration Act. The intention is to grant relief to the party in the intervening period till the Award attains finality and is enforced as per the provisions of the Act.

35. The provision delineates that interim measures can be granted in the nature of and for the purposes of preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; securing the amount in dispute in the arbitration; detention, preservation or inspection of anything which is the subject matter of 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; and interim injunction or the appointment of a receiver.

36. The words *"such other interim measure of protection"* have been inserted in Section 9(1)(ii)(e) of the Arbitration and Conciliation Act, 1996 to define and narrow down the scope of the nature of interim relief that may be granted by the Court adjudicating upon petition under Section 9 of the Arbitration and Conciliation Act, 1996. The words used thereto are *"as may appear to the Court to be just and convenient"* which is a testament to the power vested with the Court to pass an order that it deems fit, just and convenient, in accordance with the provisions of the Arbitration and Conciliation Act, 1996, specifically Section 9.

37. In the present case before initiation of the arbitration proceedings, the petitioner has invoked the provision of Section 9 of the Act and the matter went up to the Hon'ble Supreme Court and the Hon'ble Court has passed interim order as mentioned in paragraph *24 (Supra)*. In the Award also the sole Arbitrator has passed an order restraining the respondent from selling iron ore excavated to anyone except the petitioner. The Award is published on 30th June, 2023. The respondent has filed an application under Section 34 of the Act by challenging the Award dated 30th June, 2023. The respondent has not prayed for any order of stay in the said application. Admittedly, the petitioner has not initiated any proceedings under Section 36 of the Act for enforcement of the Award.

38. On perusal of the provisions of Section 9 of the Act, it reveals that interim measure can be allowed in favour of the petitioner who moves an application under Section 9 of the Act, either before the commencement of the arbitration proceeding, or during pendency of the arbitral proceeding, and even after making of the arbitral award …. *"but before it is enforced in accordance with Section 36…"*. It is, therefore, clear that an interim arrangement can be made under Section 9 of the Act, not only before and during the pendency of the arbitral proceedings, but also after the arbitral award has been published.

39. The petitioner is enjoying the interim order since before the arbitral proceeding and by an order dated 12th September, 2014, the Hon'ble Supreme Court in paragraph 23 recorded that:

> *"23. For the abovementioned reasons, we dispose of this appeal recording an undertaking of the appellant that during the pendency of the arbitration proceedings the appellant will not sell any part of the iron ore excavated from the mines covered by the agreement in question and such ore would be consumed captively by the appellant in its plant and the appellant would maintain a complete account of the minerals excavated and consumed captively by the appellant."*

By an order dated 1st December, 2023, this Court in the present proceeding, specifically directed the respondent to deal with the paragraph 23 of the order passed by the Hon'ble Supreme Court dated 12th September, 2014 but the respondent has not stated anywhere in the Affidavit-in-Opposition of the instant application whether the respondent has maintained a complete account of the minerals excavated and consumed captively by the respondent.

40. As regard the contention of the respondent that the Mining Lease of the respondent with respect to which the selling agreement dated 27th February, 2005, was executed stands expired as on date and the direction passed in the Award dated 30th June, 2023 for Specific Performance of the agreement and the relief sought in the instant agreement have become infructuous, the said issue was not raised before the Arbitral Tribunal. On 9th January, 2015, the Government of Jharkhand in exercise of Power under Section 8(3) of the 1957 Act, as it stood prior to the Amendment Act, 2015, approved further renewal of the mining lease of the respondent till 7th February, 2026. The Amendment Act of 2015 to the 1957 Act came into force on January 12, 2015. By virtue of Section 8A(6) of the 1957 Act, as inserted by the Amendment Act of 2015, the period of lease granted before the commencement of the Amendment Act of 2015 stood extended to the later date of (i) March 31, 2020; (ii) the completion of the renewal period i.e. on February 7, 2026 (pursuant to renewal granted on January 9, 2015); or (iii) on expiry of 50 years from the alleged date of grant of lease i.e. on August 9, 2006 (assuming the lease was granted on August 9, 1956). It is clear that the mining lease even as per allegations of respondent could only expire earliest on February 7, 2026 and not on March 31, 2020. On February 13, 2015 by an order of the Government of Jharkhand, the renewal of the period of lease till February 7, 2026 granted by the approval dated January 9, 2015 was modified to March 31, 2020 in paragraph 2 of the said order with all other conditions of the approval dated January 9, 2015 remaining the same. On September 2, 2015, a further order was passed deleting paragraph 2 of the order dated February 13, 2015, as the same was not in conformation with the approval given by the Cabinet. Hence, the renewed period of the mining lease remained up to February 7, 2026 as earlier granted by the order dated January 9, 2015.

41. This Court finds that the petitioner has made out a good prima facie case and balance of convenience in its favour. Since before initiation of the arbitral proceeding, the petitioner is enjoying the interim protection and if at this stage, interim protection is not granted to the petitioner, there will be every chance that the petitioner will suffer irreparable loss and injury.

42. In view of the above to preserve the Iron Ore already excavated in the said Mines, Shri Raja Ghosh, Bar Association Room No. 2, Mobile No. 9830867279, is appointed as Special Officer to make an inventory of the iron ore already excavated in the said Mines and to take symbolic possession, to supervise the excavation of iron ore that is being excavated from the said Mines and to ensure that no part of excavated iron ore is dealt with any third party except with the petitioner. Remuneration of the Special Officer is fixed Rs. 3,00,000/- (Rupees Three Lakhs Only) and the same shall be paid by the petitioner.

43. AP No. 756 of 2023 is thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)