

ORDER

OCD-21

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/129/2025
LAKHOTIA METALIZERS PRIVATE LIMITED
VS
MATASHREE SNACKS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 23rd April, 2025.

Appearance:

Mr. Debraj Sahu, Adv.

Mr. H. Singh, Adv.

Mr. Antara Biswas, Adv.

...for petitioner.

1. Despite service, none appears on behalf of the respondent. Affidavit of service is taken on record.
2. This is an application for interim measures under Section 9(1) of the Arbitration and Conciliation Act, 1996.
3. The petitioner is a registered MSME Enterprise and had approached MSME Facilitation Council with a dispute. Conciliation failed and stood terminated. Thereafter, arbitration commenced on May 10, 2024. The petitioner filed the statement of claim on May 22, 2024. The petitioner submits that the respondent has stayed away from the arbitration proceeding and as such, apprehends that the assets and monies lying in the accounts of the respondent, may be either removed or siphoned off. There will be little chance of recovery of the amount.

4. Under such circumstances, the petitioner prays for directions for attachment, appointment of receiver and security.
5. In my opinion, this application is pre-mature as the petitioner has not approached the arbitral tribunal for interim protection or measures.

Section 9(3) of the Arbitration and Conciliation Act, 1996 is quoted below:

“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.”

6. Section 18(3) of the MSME Act is quoted below:-

“18(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or center providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.”

7. Section 17 of the Arbitration and Conciliation Act, 1996 is quoted below:-

“17. Interim measures ordered by arbitral tribunal.—(1) A party may, during the arbitral proceedings, apply to the arbitral tribunal—

- (i) for the appointment of a guardian for a minor or 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 authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing 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 arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.”

8. I do not find that the petitioner has availed of the statutory rights conferred by Section 17 of the Arbitration and Conciliation Act, 1996, before approaching this Court. Section 18(3) has made the provisions of Section 17 of the 1996 also applicable. No exceptional situation has been established, which will persuade this Court to exercise discretion under Section 9(3). The petitioner has to establish that the remedy under Section 17 of the 1996 Act is not efficacious. Only then, interim protections can be granted.

9. At this juncture, learned counsel submits that the petitioner will take appropriate steps before the Arbitral Tribunal.
10. Accordingly, the application is dismissed as withdrawn.
11. However, this order shall not be construed as rejection of the prayer on merits. If a situation so arises in future, the petitioner can always approach this Court, subject to satisfying that an exceptional situation exists for grant of any interim measure and the reliefs available under Section 17 of the Arbitration and Conciliation Act, 1996 are inadequate and not efficacious.

(SHAMPA SARKAR, J.)