

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**RESERVED ON: 11.11.2025
DELIVERED ON: 26.11.2025**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

A.P. 117 OF 2022

**RAKESH KUMAR JINDAL AND ANR.
VERSUS
ANOOP KUMAR JINDAL AND ORS.**

Appearance:-

Mr. Shreyaan Bhattacharyya, Adv.

.....for the Petitioners

Mr. Sudip Deb, Sr. Adv.

Ms. Laxmi Dalmiya, Adv.

Ms. Ipsita Ghosh, Adv.

.....for the Respondent Nos. 1&2

JUDGMENT

Gaurang Kanth, J.:-

1. The Petitioners have filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking a post-award interim order directing Respondent Nos. 1 to 3 to pay a sum of Rs. 5,50,108/- each to the Petitioners towards reimbursement of Kolkata Municipal Corporation (KMC) tax paid by them on behalf of the partnership firm, *M/s. Chander Niwas*.
2. The relevant facts leading to the present petition are as follows:
3. The parties to the present petition are partners of a partnership firm namely *M/s. Chander Niwas*, which owns and manages a multistoried building situated at Premises No. 10B, Shakespeare Sarani, Kolkata –

700071. The sole source of income of the firm is derived from the exploitation of the said property, which is partly occupied by tenants and partly by the partners themselves. The said premises are presently under the custody of a Receiver appointed by this Hon'ble Court.

4. Subsequently, disputes and differences arose between the partners concerning the affairs of the firm and the management of the said immovable property. The disputes were referred to arbitration, and the Arbitral Tribunal published its Award on 23.12.2019. Petitions under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the said Award, were filed by both parties and are presently pending consideration before this Court.
5. The said premises had a substantial outstanding Kolkata Municipal Corporation tax liability amounting to Rs. 1,89,63,358/-. The Kolkata Municipal Corporation announced a Waiver Scheme for a limited period, under which payment of the principal outstanding within a stipulated time would entitle the assessee to waiver of interest and penalty. Under this Scheme, the total payable amount was reduced to Rs. 44,42,123/-.
6. The Petitioners requested the Receiver as well as the other partners to contribute their respective shares toward the said payment so that the firm could avail of the benefit of the Waiver Scheme. However, neither the Receiver nor the other partners took any steps in this regard. Consequently, the Petitioners filed A.P. No. 80 of 2021 seeking directions upon the Receiver to make the payment from the funds lying with him.
7. Since the Waiver Scheme was expiring on 28.02.2021, and in order to safeguard the firm's interest, the Petitioners paid the entire amount of Rs. 44,42,123/- from their own resources to the Kolkata Municipal

Corporation. Additionally, the Petitioners paid a further sum of Rs. 3,08,720/- to the Corporation, following which a No Due Certificate up to 31.03.2021 was issued by the KMC.

- 8.** By an order dated 05.03.2021, this Court disposed of A.P. No. 80 of 2021, directing the Receiver to disburse Rs. 20,00,000/- from the funds lying in his custody to the Petitioners as part satisfaction of their claim towards the Corporation tax liability. The Respondents were also directed to pay their respective balance shares of the said liability.
- 9.** Aggrieved by the said order, Respondent No. 1 preferred an appeal being A.P.O.T. No. 71 of 2021. The Hon'ble Division Bench, by order dated 16.04.2021, upheld the direction upon the Receiver to pay Rs. 20,00,000/- to the Petitioners as ad hoc payment towards the Corporation tax liability. The Division Bench further directed the Receiver to scrutinize the bills and receipts relating to the tax payments and to apportion the liability of each partner according to their respective shares. The Receiver was also directed to prepare a report and a statement of accounts reflecting the apportionment of liability and taking into account the reimbursement of Rs. 20,00,000/- already made to the Petitioners. The Division Bench, however, stayed the portion of the Single Judge's order directing the Respondents to pay their balance shares of the tax liability.
- 10.** Pursuant to the aforesaid order, the Receiver paid Rs. 20,00,000/- to the Petitioners and filed a report dated 20.12.2021 indicating the shares of each partner. This Court thereafter directed him to submit a more comprehensive report. Accordingly, the Receiver filed a comprehensive report dated 06.01.2022, indicating that each partner was required to pay Rs. 4,88,424/- to make up the shortfall.

- 11.** The Petitioners then filed G.A. No. 3 of 2021 in A.P.O.T. No. 71 of 2021, seeking directions upon the Respondents to reimburse them for the amounts paid toward the municipal tax. They also filed G.A. No. 5 of 2022, taking exception to the Receiver's report.
- 12.** During the hearing, it was brought to the notice of the Court that the appeals arising out of the arbitral award dated 23.12.2019 were pending before this Court, and the subject matter of those appeals included issues relating to the municipal tax liability of the partnership firm and the apportionment thereof among the partners.
- 13.** The Hon'ble Division Bench, therefore, observed that the issues raised in G.A. No. 3 of 2021 and G.A. No. 5 of 2022 could be more appropriately adjudicated in the proceedings where the award itself was under challenge. Accordingly, the Division Bench disposed of both applications, granting liberty to the Petitioners to urge the same grounds before the Court dealing with the Section 34 proceedings.
- 14.** Pursuant to the said liberty, the Petitioners have filed the present post-award petition under Section 9 of the Arbitration and Conciliation Act, 1996, seeking directions upon Respondent Nos. 1 to 3 to pay Rs. 5,50,108/- each towards reimbursement of the KMC tax paid by the Petitioners on behalf of the partnership firm.
- 15.** It is pertinent to note that by order dated 02.07.2024, the predecessor bench of this Court dismissed the present petition, holding that the relief sought could not be granted at that stage, while granting liberty to the parties to pursue their respective claims in accordance with the final outcome of the pending Section 34 proceedings, without being prejudiced by any prior observations.

16. The Petitioners preferred an appeal being A.P.O.T. No. 268 of 2024, and by order dated 05.11.2024, the Hon'ble Division Bench set aside the order dated 02.07.2024 and restored the present petition for consideration on merits.

Submissions on behalf of the Petitioner

17. Learned Counsel appearing for the Petitioners submits that the Petitioners had paid the entire Kolkata Municipal Corporation tax from their own funds in order to protect the interest of the partnership firm. It is contended that by virtue of such payment, the partnership firm as a whole has reaped substantial benefit. The Respondents, who are equal partners of the firm, are now seeking to deny reimbursement to the Petitioners for amounts paid on their behalf. It is submitted that the partners cannot evade or avoid the statutory liabilities of the firm merely because the Petitioners, in good faith, discharged the same to prevent coercive action and to secure the benefit of the waiver scheme.
18. Learned Counsel further submits that the total outstanding tax liability of the firm was Rs. 1,89,63,358/-. Under the Kolkata Municipal Corporation Waiver Scheme, the Corporation waived the interest and penalty component, reducing the total payable amount to Rs. 44,42,123/-. The Petitioners made the said payment solely for the benefit of the partnership firm, and all partners, including the Respondents, derived equal benefit from the said action of the Petitioners.
19. It is submitted that the Petitioners have, in total, paid Rs. 47,50,843/- (comprising Rs. 44,42,123/- under the Waiver Scheme and Rs. 3,08,720/- thereafter) to the Kolkata Municipal Corporation, pursuant to which a No Due Certificate was issued as on 31.03.2021.

- 20.** All partners hold equal shares of 20% each in the said partnership firm. Consequently, each partner is liable to bear an equal portion of the tax liability. Pursuant to the direction of this Court, the Receiver has already disbursed Rs. 20,00,000/- to the Petitioners towards part reimbursement. The remaining Rs. 27,50,843/- is to be shared equally among the five partners, which works out to Rs. 5,50,108/- per partner.
- 21.** Since the Petitioners have already borne and paid the said amount to the Kolkata Municipal Corporation on behalf of all partners, it is contended that each of the Respondents is liable to reimburse Rs. 5,50,108/- to the Petitioners towards their respective shares of the firm's tax liability.

Submissions on behalf of the Respondents

- 22.** Learned Counsel appearing for the Respondents opposes the present petition and submits that the claim for reimbursement of the Corporation Tax sought to be enforced through this post-award Section 9 petition is not maintainable in law. It is contended that the said Corporation Tax liability arose subsequent to the publication of the arbitral award dated 23.12.2019, and hence forms a post-award event which does not fall within the scope or contemplation of the award itself.
- 23.** Learned Counsel further submits that the liability to pay Corporation Tax for the subsequent period cannot be treated as part of the subject matter of arbitration, nor can it be read into the award by implication. The Petitioners cannot, under the guise of a Section 9 application, seek to recover amounts which were never adjudicated upon or awarded by the learned Arbitral Tribunal. Such a claim, it is argued, amounts to enforcement of a fresh or independent liability, which is beyond the jurisdiction of this Court in a Section 9 proceeding.

- 24.** It is also contended that apportionment of liability among partners involves a factual determination of the accounts and mutual rights between the partners of the firm, which can be properly examined only in appropriate proceedings arising out of or pursuant to the arbitral award. The jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act, 1996, being limited to grant of interim measures, does not extend to adjudicating or apportioning liabilities or directing payment of specific amounts between partners.
- 25.** Learned Counsel therefore submits that the relief sought by the Petitioners, if granted, would amount to deciding substantive rights of the parties pending consideration of the arbitral award under Section 34, which is impermissible. The Respondents accordingly pray that the present petition be dismissed, as no interim measure under Section 9 can be granted to enforce a post-award or independent claim not forming part of the arbitral award.

Legal Analysis

- 26.** This Court has carefully considered the rival submissions advanced on behalf of the Petitioners and the Respondents and perused the materials on record.
- 27.** It is an admitted position that the present application has been filed post-award under Section 9 of the Arbitration and Conciliation Act, 1996, wherein the Petitioners seek directions upon the Respondents to reimburse a sum of Rs. 5,50,108/- each, being their alleged share of the Kolkata Municipal Corporation Tax paid by the Petitioners on behalf of the partnership firm, *M/s. Chander Niwas*. The arbitral award dated 23.12.2019, which adjudicated disputes concerning the assets, income,

and liabilities of the said firm, is presently under challenge before this Court in petitions under Section 34 of the said Act, which remain pending adjudication.

- 28.** The primary issue that arises for consideration is whether, in the facts of the present case, such a post-award claim for reimbursement can be entertained within the ambit of Section 9 of the Arbitration and Conciliation Act, 1996.
- 29.** The scope of the Court's power under Section 9 is well-defined and limited. The provision enables the Court to grant interim measures of protection before, during, or after the arbitral proceedings, but before enforcement of the award under Section 36. Such power is ancillary in nature, intended to preserve the subject matter of arbitration or to secure the fruits of the award. The jurisdiction under Section 9 does not extend to the adjudication of fresh disputes, alteration of substantive rights, or granting of final reliefs that effectively amount to execution of the award.
- 30.** In the present case, the Petitioners' claim for reimbursement of Corporation Tax pertains to a liability that arose after the arbitral award was rendered. The Petitioners contend that they were compelled to pay the said tax to avail of the benefit of the KMC Waiver Scheme and to protect the firm's property. The Respondents, on the other hand, dispute their liability, asserting that such payment constitutes a post-award liability and cannot form the subject matter of a Section 9 petition. According to the Respondents, the claim neither arises out of nor forms part of the arbitral award dated 23.12.2019 and, therefore, cannot be treated as a measure in aid of enforcement of the award. The relief sought is, in essence, a new monetary claim requiring adjudication of factual and

accounting issues between the partners, which clearly falls outside the limited scope of Section 9 proceedings.

- 31.** In this context, reference may be made to the order dated 28.01.2022 passed in A.P.O. No. 79 of 2021, arising out of the same partnership dispute. In that proceeding, the Hon'ble Division Bench observed that any issue concerning the liability or reimbursement among partners would have to be examined in the context of the arbitral award and its challenge under Section 34, since those proceedings encompass the overall accounts and obligations of the partnership firm. The Division Bench made it clear that the Court, while exercising jurisdiction under Section 9 or in appeal, ought not to undertake independent apportionment or adjudication of such liabilities pending final determination of the award.
- 32.** The above observation of the Hon'ble Division Bench reaffirms the well-settled principle that the jurisdiction conferred upon this Court under Section 9 is of a limited and ancillary nature. The object of Section 9 is to preserve the subject matter of the arbitration, secure the fruits of the award, and prevent frustration of the arbitral process. It is not intended to empower the Court to determine fresh substantive rights or liabilities, or to execute or enforce the award itself. Though the Court may exercise Section 9 powers even after the making of the award, such relief must be strictly in aid of the award and not independent or substantive in nature.
- 33.** Applying the above principles to the present case, this Court finds that the liability sought to be enforced is not an interim measure "in aid of" the award but a fresh claim requiring factual determination of the partners' respective rights and obligations. The power to apportion such liability does not fall within the ambit of Section 9 proceedings. Furthermore, in

view of the clear pronouncement of the Hon'ble Division Bench in A.P.O. No. 79 of 2021, such issues must be raised and decided in the Section 34 proceedings pending before this Court. Entertaining this claim under Section 9 would amount to circumventing the pending adjudication and pre-judging the merits of matters already covered by the arbitral award and its challenge.

- 34.** Accordingly, this Court is of the considered view that the relief sought by the Petitioners cannot be granted within the limited scope of Section 9 of the Arbitration and Conciliation Act, 1996. The Petitioners' grievance, if any, may be urged before the Court dealing with the Section 34 petitions, in terms of the liberty already granted by the Hon'ble Division Bench.
- 35.** In view of the foregoing discussion, and having regard to the clear pronouncement of the Hon'ble Division Bench in A.P.O. No. 79 of 2021, this Court finds no ground to entertain the present petition. The prayer for reimbursement of Corporation Tax, being a post-award liability, falls outside the ambit of Section 9, which is confined to interim and protective measures and does not extend to the adjudication of substantive monetary claims.
- 36.** Accordingly, the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 stands dismissed, with liberty to the parties to raise their respective claims, contentions, and defences in the pending Section 34 proceedings or in such other proceedings as may be legally maintainable.

(GAURANG KANTH, J.)