

ORDER

OCD-10

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/413/2025
MITTAL TECHNOPACK PRIVATE LIMITED
VS
IDEAL REAL ESTATE PRIVATE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 21th MAY, 2025.

Appearance:

Mr. Aniruddha Mitra, Adv.
Mr. Debraj Sahu, Adv.
Mr. Bhaskar Dwivedi, Adv.
Ms. Jyoti Rauth, Adv.
Mr. Hareram Singh, Adv.
... for petitioner.

Mr. Rishad Medora, Adv.
Mr. Romendu Agarwal, Adv.
... for respondent no.1.

Mr. Samriddha Sen, Adv.
Ms. Rishika Goyal, Adv.
Ms. Sonia Das, Adv.
... for respondent No.2

1. This is an application under Section 9(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'). The petitioner prays that the interim award to the extent of Rs.5,85,00,000/- (principal) to be paid by the respondent no.1, be secured. Prayers have been made for an order upon the respondent No. 1 to furnish security of like amount, either by cash or irrevocable bank guarantee. Further prayers are for an order restraining the respondent no.1 from operating the bank account without keeping aside a sum of Rs.5,85,00,000/-, injunction restraining the respondent no.1 from disposing of, alienating or creating any third party interest in respect of the assets and properties

mentioned in paragraph 24 of the application, order for disclosure of all moveable and immoveable assets of the respondents etc.

2. Mr. Aniruddha Mitra, learned senior advocate, submits that upon amendment of Section 17 of the said Act and deletion of the expression “or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36” denudes the learned arbitrator from any power to grant the interim protections as prayed for. The arbitrator is *functus officio* as regards the interim award. The petitioner does not have an efficacious remedy before the learned arbitrator and is compelled to approach this Court under Section 9(1) of the said Act, for the security and injunction.
3. Referring to the definition of “award”, Mr. Mitra submits that an award would include an interim award. Thus, by amendment of Section 17, the learned arbitrator has lost the legal authority to pass an order of injunction for securing the amount which was awarded under Section 31(6) of the said Act.
4. It is submitted that the conduct of the respondents will indicate the reasons as to why remitting the petitioner to the learned arbitrator, would be an exercise in futility. It is submitted that at the pre-arbitral stage, an application under Section 9 had been filed by the petitioner. A Learned Single Judge directed that the respondent No.1 would not operate the three bank accounts disclosed in the said application before the Court, without keeping aside a sum of Rs.5.85 Crore. Aggrieved by the aforementioned order, the respondents preferred an appeal. The Hon’ble

Division Bench recorded the offer made by the respondents to secure two immovable property, namely, two flats and extension of a personal guarantee by one of the directors, Nakul Himatsingka as sufficient security, which should cover Rs.5 Crores. The Hon'ble Division Bench also recorded that the learned Registrar, Original Side shall satisfy himself whether the security was unencumbered. In default, the order of the learned Single Judge would revive.

5. Mr. Medora, learned advocate for the respondent no.1, submits that the application should not be entertained in view of the bar under Section 9(3) of the said Act. He submits that the arbitral proceeding is continuing and as such, all prayers made before this Court can be made before the learned arbitrator. The next contention of Mr. Medora is that the flats which were sought to be secured, had been released from the bank upon payment of money and the purchasers indicated in the bank's letter were group companies of the respondent no.1. The offer to secure those two flats was valid, legal and an honest attempt to follow the order of the Court. He emphasized that the flats were unencumbered.
6. The petitioner went back to the Hon'ble Division Bench, alleging that the order dated November 18, 2024 had not been complied with by the respondents. The Hon'ble Division Bench disposed of the matter upon holding that the default clause would come into operation and the order of the Learned Single Judge would revive i.e. the respondents could not operate their bank accounts which were mentioned in the order of the Learned Single Judge, without keeping aside a sum of Rs.5.85 Crore.

7. Considered the rival submissions. A post award application for injunction is filed under Section 9(1), which permits a party to approach the Court at any time after the making of the arbitral award, but before it is enforced in accordance with Section 36, to apply to a Court for interim measures/protection. Section 9(3) provides that 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 render the remedy provided under Section 17, inefficacious. Thus, all the powers of the Court under Section 9(1) of the said Act will be enjoyed by the learned arbitral tribunal, once it is constituted. The arbitral tribunal can also entertain an application after the making of the interim award, before it is enforced in accordance with law. This position is clear if Section 17 of the Act is considered. The power of the learned arbitrator to pass an interim relief/protection, is available upon interpretation thereof. However, such power is available till the arbitral proceeding continues. Upon termination of the proceedings, the arbitrator becomes *functus officio*. This position of law came into effect from August 30, 2019. Thus, the power of the Court under Section 9(1) continues even after the award is passed and till its execution is prayed for, but the power of the learned arbitrator to pass interim orders under Section 17, ceases with the termination of the arbitral proceedings. The power continues “during” the arbitral proceedings, as has been stated in Section 17. Section 32 provides that an arbitration proceeding shall be terminated by the final award or by an order of the arbitral tribunal under sub-section (2). Sub-

section(2) provides the other circumstances under which an order of termination of the proceeding can be recorded by the learned tribunal. Thus, the contention of Mr. Mitra that, after the interim award was passed with regard to a part of the dispute, the learned Arbitrator becomes functus officio, is not correct. Section 17 provides that interim measures can be applied for before the learned arbitral tribunal, during the continuation of the arbitral proceeding. Section 32 has qualified the stage up to which the arbitration proceeding continues, i.e., when does an arbitral proceeding terminate.

8. Under such circumstances, when there are no ambiguities in Sections 9(1), 9(3), 17 and 32 and the legislative intent is clear, this Court is of the view that the prayers made before this Court can be made before the learned arbitrator. With regard to the conduct of the respondents which has been emphasized by Mr. Mitra, this Court is of the view that the same reasons can be put forward before the learned arbitrator, to justify prayers for the interim measure. Directions for furnishing cash security, disclosure of assets, order of injunction etc. are all within the domain of the learned arbitrator.
9. Under the circumstances, the application (AP-COM/413/2025) is disposed of, granting liberty to the petitioner to approach the learned arbitrator in accordance with law.
10. The merits and the factual aspects are not gone into. This Court is of the opinion that the learned arbitrator is competent to decide the issues on their own merits, upon hearing the submissions of the parties.

11. As no claims have been made against the respondent no.2, who is represented by Mr. Samriddha Sen, learned advocate, no observations are made on the submissions attempted to be put forward by Mr. Sen.

(SHAMPA SARKAR, J.)

S.Kumar