OCD-3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
ORIGINAL SIDE

APOT/197/2025
WITH
AP-COM/1049/2024
IA NO. GA-COM/1/2025

SREI EQUIPMENT FINANCE LIMITED
VERSUS
TRINITY ALTERNATIVE INVESTMENT MANAGERS LIMITED

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE OM NARAYAN RAI
Date : 26th September, 2025.

Appearance:
Mr. Debnath Ghosh, Sr. Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. Pubali Sinha Chowdhury, Adv.
Ms. Rajeshwari Prasad, Adv.
...for the appellant

Mr. K. Thaker, Sr. Adv.
Ms. Susrea Mitra, Adv.
Mr. Tanay Agarwal, Adv.
Mr. Deepak Kripalani, Adv.
...for the respondent

Dictated by Arijit Banerjee, J.

The Court: This appeal is directed against a judgment and order dated June 18, 2025, whereby a Learned Single Judge of our Court disposed of AP-COM/1049/2024 being an application under Section 9 of the Arbitration and Conciliation Act, 1996, filed by the appellant herein.

The short facts of the case relevant for the present purpose are that there appears to have been financial transaction between the appellant and the respondent. The appellant claims that a huge sum of money in the region of Rs. 53.61 crores is due and payable by the respondent to the appellant. To secure such claim, the appellant approached the Learned Single Judge with its application under Section 9 of the 1996 Act. Initially, an order dated December 19, 2024 was passed by the Learned Judge, the operative portion of which reads as follows:-

> "The law is well settled. Parallel proceedings filed under the SARFAESI Act and the Arbitration and Conciliation Act 1996 can continue. The factum of extension of loan facility to the respondent is not in dispute. The respondent admits that Rs.26 crores had been lent by the petitioner. The reason why the respondent does not accept the liability to pay back the loan is that a sister concern of the petitioner company had expressed a desire not to take any coercive measure against the respondent in respect of any loan that the respondent may have been extended. Such understanding in my prima facie view, is not available from the records. There is neither any record of any promise nor any kind of assurance in respect of the loan which had been extended by the petitioner. The investment is worth Rs.12.41 crores as per the petitioner's estimate. This appears from a communication dated November 16, 2024. The petitioner has made out a prima facie that at present, more than Rs.53 crores is due and payable on account of non-payment of the principal and the interest. The submission of Mr. Wadehra that once a notice under Section 13(2) of the SARFAESI Act had been issued, there is an automatic injunction on the respondent from dealing with the assets/investments which were hypothecated to the petitioner, is accepted.

However, the Panchnama and the inventory issued by the authorized officer and the communication of the authorized officer with regard to taking possession of the investments indicate that there was non-cooperation and non-disclosure. Such conduct of the respondent, prima facie, indicates that a protection is necessary to secure the dues of the petitioner. The injunction which is already operative in terms of the order passed under Section 13(4) of the SARFAESI remains. In addition, this Court is of the, prima facie, view that a further injunction should be issued restraining the respondent from operating the bank account which is maintained with the ICICI Bank, R.N. Mukherjee Road, Kolkata, 700001, without keeping a minimum balance of Rs.40 crores in the said account. The bank shall ensure compliance of this order on the basis of a server copy of the same.

Such interim injunction shall continue for a period of two months.

The respondent is directed to file an affidavit-in-opposition disclosing its other assets, investments and bank accounts, both past and current. Such affidavit-in-opposition be filed within 29th January, 2025. Let the matter appear in the monthly list of February, 2025. In the meantime, the petitioner shall act and proceed in accordance with the Arbitration and Conciliation Act, 1996.

As the learned Advocate for the respondent is not in a position to disclose any other movable or immovable assets over which an injunction can be issued by this Court, this Court has no other option but to injunct the respondent from operating the afore-mentioned bank account without maintaining a minimum balance of Rs.40 crores in it.

The respondent is at liberty to pray for vacation, variation and modification of the order."

The respondent filed an application for vacating the interim order referred to above. The appellant's application and the respondent's application were heard together and were disposed of by the judgment and order sought to be assailed in this appeal.

After hearing the parties, the Learned Single Judge reduced the quantum or extent of security that had been ordered in favour of the appellant herein. The relevant portion of the Learned Judge's order reads as follows:-

> "32. The injunction under the SARFAESI Act over all the secured assets as per the schedule is sufficient protection. The balance of convenience and inconvenience is in favour of vacating the order of injunction on the bank account in view of the above discussions. If the order of injunction is not vacated, it would amount to interference with the day to day business of the respondent. Thus, the interim order passed is modified to the extent that there shall be an injunction on all the investments, which have been disclosed by the respondent in the two supplementary affidavits and also on those which may be made in future. The respondent shall be restrained from disposing of, transferring or parting with or redeeming the shares or units held in the investments and funds. This injunction will apply to all future investments to be made. This order will continue until further orders are passed by the learned Arbitrator. In addition to the above, the last audited accounts of the respondent shall be handed over to the petitioner within two weeks. The respondent shall be obliged to provide such information to the petitioner as may be required from time to time with regard to the past, present and future investments. Financial statements for the last 6 months shall be supplied to the petitioner within two weeks from date. The order of injunction on the bank account is vacated, in view of the above discussion and on finding that NARCL which manages both the petitioner and the SIFL, has sufficient control in the respondent company.

> 33. The petitioner does not require any further protection. The petitioner at this stage is entitled to the security as mentioned in the schedule of the deeds of hypothecation agreement. The respondent is continuing its business activity, and is fully functional. The pleadings do not indicate that the respondent had tried to remove its assets or alienate its properties which would give rise to an apprehension that even if an award is passed in favour of the petitioner, the same will be a paper decree. The arbitration has commenced and it is informed that the same has been fixed before the learned arbitrator in the end of June. The petitioner is always at liberty to pray for interim orders before the learned arbitrator. The observations made herein are tentative."

Being aggrieved, the petitioner before the Learned Single Judge is before us by way of this appeal.

We are told that the arbitration reference has not only started but is at an advanced stage. Examination of witnesses is complete. Therefore, we are not inclined to delve into the merits of this appeal. However, we find that certain observations are made in Paragraphs 27 and 29 of the impugned order which read as follows:-

> "27. The respondent decided to issue fresh equity shares on rights issue basis, in the interest of the company and to improve its financial health. SIFL resisted such Rights Issue. SEFL and SIFL were under a common Administrator and at the behest of the Administrator, the CIRP of both companies SEFL and SIFL were consolidated. Payaash preferred a petition under Sections 241, 242 and 244 of the Companies Act before the NCLT, seeking to raise issues of oppression and mismanagement in the respondent company. The said application is pending. The respondent is a fully functional entity.

SIFL has 51% shareholding in Trinity. It is a fact that NARCL manages, controls and administers both SIFL and SEFL. SIFL is a majority shareholder in the respondent company. The resolution plan of NARCL was approved by NCLT. The petitioner's claim, as that of a financial creditor, ought to have been included in the plan. The petitioner was included in the Committee of Creditors, but being a related party to SIFL, was not allowed to represent, participate or vote in the meeting of the committee of creditors. The alleged debt which the respondent owed to the petitioner should have been factored in and included in the claims of the financial creditors that had been admitted. However, parties have not produced the plan which would have dealt with such aspect in more detail. After the resolution plan was approved by NCLT on August 11, 2023, the dues payable to the petitioner by the respondent, as per the books of account was Rs.26,00,00,000, which was communicated by a letter dated August 23, 2024. The possibility that only Rs.26,00,00,000 was admitted in the resolution plan towards dues of SEFL cannot be ruled out.

…

29. Whether the petitioner's claim was included in the amount of Rs.32,749.26 in the claims of financial creditors, is an issue which will be decided by the learned Arbitrator. If the claim of the petitioner or part thereof was not included and admitted in the resolution plan, the same stood extinguished. Whether the intention of SIFL was to take over the control from Payaash by using such coercive measures through SEFL, is also a question which has to be decided by the learned arbitrator. Proceedings are pending before the NCLT."

The obvious error in the aforesaid paragraphs is that the resolution plan in question was of the appellant herein. The same could not have included the dues owed to the appellant by third parties. Therefore, the question of the appellant's claim against third parties being washed out by reason of the resolution plan being approved, does not arise. We clarify this. The observations to that effect in the aforesaid paragraphs are set aside.

The parties will be at liberty to pray for further orders before the Learned Arbitral Tribunal.

We clarify that we have not addressed the merits of the case. Learned Tribunal is requested to decide the disputes between the parties without being influenced by any observation in this order.

The appeal and the connected application stand disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)

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