

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.21 OF 2025

Jeil International Corporation Ltd.

...Petitioner

Versus

Chemtrade Overseas Pvt. Ltd.

...Respondent

Mr. Shyam Kapadia *a/w. Mr. Harsh Pratap, Ms. Archita Seth & Mr. Shantanu Joshi, Advocates for Petitioner.*

Mr. Vijju M. Vaghela, *Advocate for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 16, 2025

PC :

1. This Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (“the Act”) seeking reliefs ahead of invoking arbitration.

2. Heard Learned Counsel for the Parties to appreciate the *prima facie* case emerging from the material on the record.

3. The Petitioner seeks certain ad-interim reliefs as more particularly set out in Paragraph 66 of the Petition.

4. At the heart of the dispute lie claims made by the Petitioner against the Respondent in respect of chartering of a vessel, the terms of

which, he would submit, are covered by the documents annexed at Exhibit 'A' (Page 62 of the Petition). On a *prima facie* reading of the documents, he would submit, the amounts due towards the freight were required to be paid before discharge of the cargo, and the Respondent had assured them that they ought to begin work of discharge, and that eventually the money would be paid before discharge was completed.

5. It is the case of Mr. Kapadia, Learned Counsel for the Petitioner that amounts were indeed paid in INR terms to enable the discharge of the cargo, and it was stated that they would later pay the same as contracted, in US dollars, and the INR amount was to be returned back.

6. On the face of it, it is seen that there is an arbitration agreement governing the Charter Documents, and is found at Page 67 of the Petition.

7. The contract is to be governed by English Law, and the arbitration is to take place in Singapore in accordance with the London Maritime Arbitrators Association Terms. On the face of it, there is being an arbitration agreement, this Petition was heard on ad-interim reliefs, and to assess how much time would be needed for a final disposal of the Petition.

8. Learned Counsel for the Respondent seriously contests the claims made by Learned Counsel for the Petitioner. According to him,

the correspondence relied upon is correspondence between the broker of the Petitioner and the Respondent and that the Respondent has not sanctioned or approved of the terms. Consequently, he would submit that no dispute would be arbitrable. He also submits that there is a “*Singapore Mafia*”, at work and they coerce consigners and consignees into parting with funds in this manner. He submits that a fraud has been played on his client and that his client is totally unaware of the terms relied upon by Learned Counsel for the Petitioner. Learned Counsel for the Respondent also submits that the Petitioner may already been paid by the importer of the goods and these proceedings constitute a “*double dip*” by also recovering the monies from the Respondent. According to him, the Petitioner should be put to terms to demonstrate that he has not received any money in respect of the same freight from any other source.

9. All these are matters of merits, which are for the arbitral tribunal to delve into. At this stage, in exercise of jurisdiction under Section 9 of the Act, the limited scope of my enquiry would be to primarily examine if there is a *prima facie* case and if the dispute is amenable to arbitration. On the face of it, on September 16, 2024, there is indeed an e-mail from the Respondent to multiple parties including the Petitioner, giving assurance that Canara Bank. He has sanctioned the foreign remittance verbally during a personal visit by the Respondent

to Canara Bank. He has given an assurance that the money would be paid. This is in conflict with the stance that he is unaware of the Petitioner and the terms of contract.

10. Taking a holistic view of the material on the record purely from a *prima facie* perspective, without intending to pronounce upon the merits of the case, it is evident that a case has been made out for protective reliefs pending arbitration.

11. Learned Counsel for the Petitioner submits that the arbitration would be invoked within a period of two weeks from today. In these circumstances, he prays that there ought to be a deposit or an unconditional bank guarantee from a bank within the jurisdiction of this Court, for a sum of USD 409,702.92, which according to him, is the total amount payable on a principal claim of USD 322,670.33 along with interest at the rate of 5% per month.

12. Learned Counsel for the Respondent submits that the Respondent is a highly solvent entity and towards this end, he brings on record the income tax return and the balance-sheet of the Respondent to show that he has a significant net-worth and he is not a flight risk in terms of recovery of any dues that may be ordered by the arbitral tribunal.

13. Having heard the parties at considerable length, although this was to be a *prima facie* review to fix dates and timing for arguments, the following order would meet the ends of justice, and adjust equities:-

(a) A fixed deposit in Indian Rupees in a sum equivalent to US\$250,000 at today's exchange rate shall be created and earmarked by the Respondent, and a lien would be marked in favour of the Prothonotary & Senior Master of this Court.

(b) The Respondent shall make a disclosure of his assets, including of any cargoes as prayed for in Prayer 66(b) of the Petition, which reads thus:-

"The Respondent be directed to disclose on oath all its assets, both movable and immovable and including any cargoes, together with complete particulars, including location and valuation."

14. Place the matter for further consideration on **February 5, 2025**. On that date, Learned Counsel for the Petitioner shall apprise the Court as to the status of the arbitration having been invoked and the steps taken towards constitution of the arbitral tribunal.

15. The protective directions issued hereby shall be complied with on or before the next date.

16. Meanwhile, Learned Counsel for the Respondent submits that he shall file a detailed affidavit in reply, stating on oath, all his contentions

in response to the arguments in the Petition, which shall be done no later than January 30, 2025. Rejoinder, if any, may be filed on or before the next date.

17. Place for final consideration on ***February 5, 2025***.

18. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]