

Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.557 OF 2025

Sany Heavy Industry India Pvt. Ltd. .. Petitioner
Through Authorized Representative
Mr.Pramod Purohit

Versus

Sri Buddha Engineering And .. Respondents
Construction Private Limited
through its Director Mrs.Koditham
Vara Lakshmi & Anr.

...

Ms.Bijal Gogri i/b GNP Legal for the Petitioner.

CORAM: BHARATI DANGRE, J.

DATE : 18th DECEMBER, 2025

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P.C:-

1. The present Petition is filed by the Petitioner, seeking interim measures under Section 9 of the Arbitration and Conciliation Act in form of appointment of Court Receiver under Order XL Rule 1 of the Code of Civil Procedure for taking possession of the equipments set out in Exhibit H, by restraining the Respondents from creating any hurdles in the process. The aforesaid relief is sought alongwith ancillary relief in form of prayer clause (b) to permit the Court Receiver to break open the seals and/or locks if any at the premises where the equipments are located, being Gouri-Pauni, OC Mine, Western Coalfields Limited. Chandrapur, Maharashtra.

2. The aforesaid relief is sought in the background that the Petitioner sanctioned a credit facility for an amount of Rs. 10,34,24,000/- through a sanction letter and a Conditional Sale Agreement (CSA) was also executed on 07/04/2025, which contemplated various stipulations as regards the facility being extended, including the mode of payment, insurance as well as transfer of equipment at the end of the term. The said agreement also set out the duties and obligations of the parties alongwith the event and consequences of default, with a clause for termination. Clause 16.4 in the agreement in form of an arbitration clause, contemplated reference of the dispute to the sole Arbitrator, to be appointed by mutual consent of the parties under Arbitration and Conciliation Act, with seat and venue of the arbitration proceedings to be in Mumbai.

3. Upon the facility being granted, the equipments were placed in possession of the Respondents, who have continued its use, however, there is a failure to adhere to the stipulations in the agreement and this resulted in the Petitioner forwarding a demand notice for the outstanding dues with reference to the price of the equipments and the demand notice, raised a demand of Rs.1,76,26,340/- due as on 31/08/2025 in respect of the said facility. By granting time to fulfill the demand, it was clearly indicted in the notice that failure to do so will constrain the Petitioner to proceed against the noticee for recovery of amount as per CSA and also to initiate the arbitration proceedings.

4. The Respondents, however, failed to comply and, therefore, the Petitioner is constrained to approach this Court,

seeking interim reliefs pending the hearing and final disposal of the arbitration proceedings or at any time, after making of the Arbitral Award, but before its enforcement as per the Arbitration and Conciliation Act,

5. The Petitioner served the Respondents by private mode of service and affidavit of service was filed, but at the relevant time the acknowledgments were not received, but during the course of hearing the matter today, the learned counsel has handed over the AD Reports received on service of notice through EMS speed post.

She is permitted to place the same in the Registry and the Registry is directed to take the same on record.

6. By order dated 20/11/2025, a court notice was also issued and the office note indicates that the notice is delivered on 05/12/2025 upon the Respondents with Speed Post Track Report with remark, 'item delivered'. Despite service of notice, the Respondents have failed to mark appearance.

7. From the pleadings in the Petition as well as the perusal of the conditions in CSA and copies of the tax invoices placed on record, it is not in dispute that the facility was extended to the Respondents and accordingly the tax invoices were raised and charge was created on the equipments in favour of the Petitioner by making marking on the invoices. Though the equipments were delivered and the commissioning report is obtained, the payment for the same in terms of the CSA is not received. In the wake of the CSA and the terms and conditions

included therein, an unconditional and absolute obligation is cast upon the Respondents to pay the facility. Though the facility was sanctioned to the tune of Rs.10,34,24,000/-, to be repaid in 24 installments of Rs.52,12,481/- against the equipments as per the terms of the CSA, the Respondents have failed to discharge their obligations. The monthly installments have not been regularly paid and this is construed as an event of default as per CSA, as the terms of payment are not adhered to. Despite the demand notice being addressed to the Respondents, there is no compliance.

The Petitioner, therefore, has expressed its apprehension that the assets in form of equipments may be recituated and, since, the Respondents are already enjoying the benefits of the equipments and probably encashing the said facility by earning the revenue thereupon or putting it in the course of business, by way of ad-interim order, I deem it appropriate to grant relief in terms of prayer clauses (a) and (b), which read thus :-

“(a) That, pending the hearing and final disposal of the arbitration proceedings or at any time after making of the Arbitral Award but before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act 1996, Court Receiver, High Court, Bombay be appointed as a Receiver under Order XL Rule 1 of C.P.C., for carrying out repossession of equipments more particularly described in Exhibit ‘H’, the Petitioner is also seeking directions for Police protection from the concerned Police Station, in case the Respondents are creating hurdles at the time of repossession of the said equipment(s).

(b) That pending the hearing and final disposal the Petitioner is also seeking directions to permit the Court receiver to break lock open the seals and/or locks if any at the premises wherein the said equipments are located at "Gouri-Pauni, OC Mine, Western Coalfields Limited. Chandrapur, Maharashtra - 442402" more particularly stated in Exhibit "H" of the present petition and accordingly take the possession of the said equipment(s).”

8. The aforesaid order is directed to be communicated to the Respondent No.1 as well as to the Court Receiver, who shall take immediate steps upon it.

9. Re-notify to **19th January, 2026.**

(BHARATI DANGRE, J.)