



Arbitration Application No.762 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Application No.762 of 2025

M/s.Tiong Woon Project & Contracting (India)
Private Limited,
represented by its Director,
Mr.Silambarasan Devadass
Having its registered office at:
No.194, 2nd Floor, O-Block,
Ganapathy Colony, Anna Nagar East,
Chennai – 600 102.

.... Applicant

Vs.

Everrenew Energy Private Limited
represented by its Authorised Signatory,
Mr.V.T.Mohan Prakash
Having its administrative office at:
Aneja Towers,
2nd Floor, B Block,
Developed Plot Estate,
Perungudi, OMR<
Chennai – 600 096.

And Registered Office at:
NTC Tower,
No.97, Old No.47,
Linghi Chetty Street,
Chennai – 600 001.

.... Respondent

PRAYER



Arbitration Application No.762 of 2025

Arbitration Application filed under Order XIV Rule 8 of Madras High Court Original Side Rules r/w Section 9(1)(ii)(b) of the Arbitration and Conciliation Act, 1996 and Order XXXVIII Rule 5 & Section 151 of Code of Civil Procedure, 1908, praying to pass an order directing the respondent to furnish security to the tune of Rs.2,05,53,473.39 (Rupees Two Crores Five Lakhs Fifty Three Thousand Four Hundred and Seventy Three and Thirty Nine Paise only) within any time frame to be fixed by this Court, failing which to pass an order of attachment of the Bank Account of the Respondent.

For Applicant : Mr.B.Arvind Srevatsa

For Respondent : Mr.P.J.Rishikesh

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity 'the Act') for a direction to the respondent to furnish security to the tune of Rs.2,05,53,473.39 within the time frame fixed by this Court, failing which to pass an order of attachment of the bank account of the respondent.

2. The case of the applicant is that on 20.04.2023, the respondent had sent an e-mail to the applicant expressing their interest and inviting offers for supply of Crane for Windmill Erection Works on a



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rental basis. The application had sent their offer to the request made by the respondent. After a series of discussions, it was mutually agreed between the parties that the applicant will provide the respondent with the Crane as per the specification for a contract period of 2 years and the monthly rental was also agreed upon to the tune of Rs.57,50,000/- including ancillary charges. Pursuant to the same, the parties entered into a Crane Agreement dated 10.08.2023. This agreement was entered into for a period of 26 months from the date of issuance of the purchase order or the date of the commissioning of the Crane at the site, whichever is later. The said agreement provides for various terms and conditions.

3. The specific case of the applicant is that the applicant had complied with their part of the obligations under the agreement and had already mobilised and made available the Crane with the specification agreed upon. Only on 28.11.2023, the respondent issued the purchase order for the rental of the Crane for a period of six months from October'2023 to March'2024. Even subsequently, purchase orders were issued and this was going on till November 2024.

4. The grievance of the applicant is that the respondent failed to



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make payments as per the payment terms under the agreement. Hence, the applicant sent an e-mail dated 02.07.2024 to the respondent requesting for release of payments. The respondent gave a reply dated 31.07.2024 promising to release the outstanding payments by the end of August'2024. Yet another e-mail dated 06.08.2024 was received by the applicant from the respondent stating that the payment of Rs.67,85,000/- will be paid before 24.08.2024. The applicant believing the undertaking given by the respondent was awaiting for the payment, however, payment was not forthcoming and the respondent did not honour the commitments.

5. The applicant is claiming total outstanding dues to the tune of Rs.3,31,88,285.82 as of December'2024. After adjusting various payments made by the respondent, the applicant is claiming for the balance sum of Rs.2,05,53,473.39. The applicant has come up with the case to the effect that there is no dispute with regard to these payments to be made by the respondent. However, no substantial assets are available with the respondent. Hence, even if the arbitral proceedings are initiated and an award is passed in favour of the applicant, the applicant may not be able to enforce the award since the respondent does not possess with sufficient/substantial assets. It is under these circumstances, the present



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application came to be filed before this Court for a direction to the respondent to furnish security to the tune of Rs.2,05,53,473.39 and on failing to do so, to attach the bank account of the respondent.

6. Considering the nature of dispute between the parties, an attempt was made to resolve the dispute amicably. However, the mediation talks failed. Hence, the respondent filed a counter on 23.09.2025 and this Court directed the matter to be posted for hearing on merits today.

7. This Court carefully considered the submissions made on either side and the materials available on record.

8. Apart from the merits of the case, it is brought to the notice of this Court that during the pendency of this application, the applicant has already issued the trigger notice dated 17.06.2025 under Section 21 of the Act by invoking the arbitration clause 21 and also suggested the name of the Arbitrator. Thereafter, a corrigendum notice dated 19.06.2025 was issued to the respondent. On receipt of the same, a reply dated 09.07.2025 has been given by the respondent.



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9. The short issue that arises for consideration in the present application is as to whether the averments made in the affidavit filed in support of the application will be sufficient to direct the respondent to furnish security and on failure to do the same, to order attachment of the bank account.

10. The affidavit filed in support of the application goes on the premise that the respondent does not possess substantial assets to satisfy the claim made by the applicant to the tune of Rs.2,05,53,473.39. Apart from that, learned counsel for applicant submitted that the communication between the parties shows that the respondent has admitted the liability and therefore, the probability of the applicant succeeding in the proceedings before the Arbitrator, justifies issuance of a direction to the respondent to furnish security in this case.

11. In reply to the above submission, learned counsel for respondent submitted that even before the termination of the agreement through termination notice dated 24.12.2024, the respondent made substantial payments on 30.10.2024 - Rs.1 crore, 07.12.2024 - Rs.40



lakhs and 12.12.2024 - Rs.60 lakhs. Learned counsel further submitted

that the respondent will be entitled to make a counter claim against the applicant. Learned counsel further submitted that the principles under Order XXXVIII Rule 5 of Code of Civil Procedure, 1908, will equally apply even while considering an application under Section 9 of the Act and the affidavit filed in support of the application does not fulfill the requirement. To substantiate this submission, learned counsel relied upon the judgment of the Apex Court in ***Sanghi Industries Limited v. Ravin Cables Ltd. and another [(2022) SCC OnLine SC 1329]***. Learned counsel also relied upon the judgment of this Court in ***Renox Commercials Limited v. Inventa Technologies [(2000) SCC OnLine Mad 94]*** and the judgment of the Delhi High Court in ***Dr.Vivek Jain v. Prepladder Private Limited [2023 SCC OnLine Del 6370]***.

12. Learned counsel for the applicant submitted that during the pendency of this application, proceedings have been initiated before the NCLT under the Insolvency and Bankruptcy Code and hence, it is clear that the respondent is facing financial distress and it also justifies the claim for a direction to the respondent to furnish security for the claim amount.



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13. While dealing with an application under Section 9 of the Act where the applicant is seeking for furnishing security and on failure to do so for attachment of bank account, the principles governing Order XXXVIII Rule 5 of Code of Civil Procedure, 1908, will have to be satisfied. The Court must be satisfied that the respondent is trying to sell their properties to defeat the award that may be passed in favour of the applicant or the applicant must be able to point out any other conduct on the part of the respondent which may tantamount to an attempt on the part of the respondent to defeat the award that may be passed in the arbitral proceedings. The Court cannot mechanically order for furnishing security, particularly, in a case of money claim. The Apex Court in the judgment in *Sanghi Industries Limited's* [supra] case made it very clear that the principles under Order XXXVIII Rule 5 of Code of Civil Procedure, 1908, will equally apply while dealing with an application under Section 9 of the Act. The relevant portion is extracted hereunder:

"4. Having heard learned counsel appearing on behalf of the respective parties and in the facts and circumstances of the case, more particularly, when the bank guarantees were already invoked and the amounts under the respective bank guarantees were already paid by the bank much prior to the Commercial Court passed the order under Section 9 of the Arbitration Act, 1996 and looking to the tenor of the order passed by the Commercial Court, it appears that the Commercial Court had passed the order under Section 9(ii)(e) of the Arbitration Act, 1996 to secure the amount in dispute, we are of the opinion that



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Arbitration Application No.762 of 2025

unless and until the pre-conditions under Order XXXVIII Rule 5 of the CPC are satisfied and unless there are specific allegations with cogent material and unless prima-facie the Court is satisfied that the appellant is likely to defeat the decree/award that may be passed by the arbitrator by disposing of the properties and/or in any other manner, the Commercial Court could not have passed such an order in exercise of powers under Section 9 of the Arbitration Act, 1996. At this stage, it is required to be noted that even otherwise there are very serious disputes on the amount claimed by the rival parties, which are to be adjudicated upon in the proceedings before the arbitral tribunal.

5. The order(s) which may be passed by the Commercial Court in an application under Section 9 of the Arbitration Act, 1996 is basically and mainly by way of interim measure. It may be true that in a given case if all the conditions of Order XXXVIII Rule 5 of the CPC are satisfied and the Commercial Court is satisfied on the conduct of opposite/opponent party that the opponent party is trying to sell its properties to defeat the award that may be passed and/or any other conduct on the part of the opposite/opponent party which may tantamount to any attempt on the part of the opponent/opposite party to defeat the award that may be passed in the arbitral proceedings, the Commercial Court may pass an appropriate order including the restrain order and/or any other appropriate order to secure the interest of the parties. However, unless and until the conditions mentioned in Order XXXVIII Rule 5 of the CPC are satisfied such an order could not have been passed by the Commercial Court which has been passed by the Commercial Court in the present case, which has been affirmed by the High Court."

14. In the case in hand, there are no specific allegations made in the affidavit filed in support of the application satisfying the requirements under Order XXXVIII Rule 5 of Code of Civil Procedure, 1908. Hence, this Court exercising its jurisdiction under Section 9 of the Act cannot pass an order directing the respondent to furnish security.



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15. Considering the nature of dispute between the parties and also considering the fact that the trigger notice has also been issued by the applicant on 17.06.2025, this Court enquired both sides as to whether they will consent for appointment of an Arbitrator by this Court. Learned counsel appearing on either side submitted that they will consent for referring the dispute to an Arbitrator appointed by this Court.

16. As per the arbitration clause 21.3, it contemplates a three member Arbitral Tribunal whereby each party has to appoint one Arbitrator and two Arbitrators so appointed will appoint the third Arbitrator. Considering the value of the claim made by the applicant, this Court was of the view that if a three member Arbitral Tribunal is appointed, it will only increase the cost of the proceedings for both sides. Therefore, this Court suggested that a sole Arbitrator can be appointed to resolve the dispute and both sides readily consented for the same. If the parties require any interim protection pending the arbitral proceedings, it will be left open to them to move an application under Section 17 of the Act before the sole Arbitrator and the same will be dealt with on its own merits and in accordance with law.



Arbitration Application No.762 of 2025

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17. In the light of the above discussion, this Court appoints Mr.Sharath Chandran, Advocate, No.6, Gopala Menon Street, Vepery, Chennai 600 007 [Mobile No.98844 45442] as the sole Arbitrator and the sole Arbitrator is requested to adjudicate the arbitral disputes that had arisen between the parties and render arbitral award by holding sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Accordingly, this application is disposed of.

07.10.2025

NCC:Yes
Index:Yes
Speaking Order
gm

N.ANAND VENKATESH, J.

gm



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Arbitration Application No.762 of 2025

Arbitration Application No.762 of 2025

07.10.2025