



2025:DHC:4269-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 88/2025, CAV 176/2025, CM APPLs.**
27830/2025, 27831/2025, 27832/2025 & 29468/2025

RASHTRIYA ISPAT NIGAM LIMITEDAppellant

Through: Mr. Rajshekhar Rao, Sr. Adv.
with Mr. Shravan Yammanur, Mr. Mangesh
Krishna, Ms. Prachi Kaushik and Ms.
Aashna Chawla, Advs.

versus

RESCOM MINERAL TRADING FZERespondent

Through: Mr. Anirudh Bakhru, Mr.
Divyam Agarwal, Mr. Rohan Chandra and
Ms. Archita Mahlawat, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **20.05.2025**

C. HARI SHANKAR, J.

1. The appellant is aggrieved by an order dated 28 February 2025, whereby a learned Single Judge of this Court, adjudicating an application filed by the respondent under Section 9¹ of the Arbitration

9. Interim measures, etc., by Court.—

- (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—
- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
 - (ii) for an interim measure of protection in respect of any of the following matters, namely:—
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon



and Conciliation Act, 1996², has directed securing 50% of the amount claimed by the respondent against the appellant, amounting to ₹ 69.5 crores, by attaching TMT Steel Bars of an equivalent amount as per the book value in the accounts of the appellant.

2. We deem it appropriate to reproduce the impugned order in its entirety:

“1. By way of present petition, the petitioner seeks certain interim measures against the respondent No.1 for securing his claim.

2. The dispute arises out of an agreement dated 29.08.2023 for the delivery of Tuhup hard coking coal by the petitioner to respondent No.1 on a cost-on-freight basis. It is the common case of the parties that the coal was successfully delivered to respondent No.1 and subsequently consumed. However, respondent No.1 has disputed the amount which is liable to be paid to the petitioner by contending that the quality of the coal which was delivered did not meet the agreed upon standards and had a high ash content. As per the respondent No.1, they are entitled to a substantial rebate or diminution in the price of the coal.

3. Mr. Bakhru, learned counsel for the petitioner submits that the petitioner is in the process of invoking arbitration under the Singapore International Arbitration Centre ("SIAC") Rules within two weeks and prays that in the meantime, its outstanding dues be secured. It is further submitted that the respondent No.1 is liable to pay a total of Rs 156 Crores, out of which, Rs.17 Crores already stands paid and the respondent No.1 is further liable to pay Rs. 139 Crores.

any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) 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 not render the remedy provided under section 17 efficacious.

² “the 1996 Act”, hereinafter



4. Mr. Rajsekhar Rao, learned Senior Counsel for the respondent has opposed the petition and submits that though as per the testing done at the Loadport, the ash content of coal was 7.75%, the testing done at the Disport has revealed that the Ash content on air dried basis was 12.60%. It is submitted that this percentage is much higher than the 7-9% as mandated in the technical specifications mentioned in Annexure II of the agreement. He further submits, on instructions, that the respondent has sent the purchaser coal sample, as provided for in Para 1.1.3 of the General Conditions of Agreement (GCA), for testing and the report is expected to be received in a couple of weeks. He submits that the respondent No.1 would avail their remedies as available under law after the report is received.

5. Petitioner has also raised concerns about the financial health of the respondent and in this regard, has referred to various orders passed by this court wherein interest of similarly placed suppliers was protected. It is further stated that issues qua quality of coal supplied were raised belatedly. The respondent claims that quality shortcomings were pointed only on receipt of test reports and further submits that requisite intervention has been made at the highest Government level to ensure financial viability of the respondent.

6. Concededly, the respondent has consumed the entire supply of coal. The issues raised about quality would require leading of evidence in the arbitral proceedings. At this stage, considering the submissions, this Court deems it apposite that petitioner's interest be secured to the extent of 50% of balance outstanding claimed i.e., Rs. 69.50 Crores by attaching TMT Steel bars (finished product) of equivalent amount as determined by the book value in the accounts of respondent No.1.

7. The parties shall be at liberty to seek the confirmation, modification, vacation of the attachment order before the Arbitral tribunal.

8. The petition is disposed of in above terms alongwith pending applications.”

3. Mr. Rajshekhar Rao, learned Senior Counsel appearing for the appellant submits that the impugned order, which only adverts to the merits of the matter, does not confirm to the discipline of Section 9 of the 1996 Act.



4. He has placed reliance on the judgment of the Supreme Court in *Sanghi Industries Ltd v Ravin Cables Ltd*³, to contend that ordinarily, a Section 9 order, which secures the amount in dispute in the arbitration, should conform to the discipline of the principles contained in Order XXXVIII Rule 5⁴ of the CPC.

5. Even if, in an extraordinary case, those principles may not be strictly applicable, Mr. Rao submits that the impugned order does not make out any cogent case for directing seizure of the appellant's TMT bars for securing an amount as large as ₹ 69.5 Crores.

6. Mr. Anirudh Bakhru, learned Counsel for the respondent submits, *per contra*, that there is no cast iron rule that a Section 9 order of deposit can be passed only if the strict conditions of Order XXXVIII Rule 5 of the CPC are met.

7. We are not intending to enter into these aspects. We do find that, in the impugned order, the learned Single Judge has concentrated more on the merits of the claims between the parties.

³ 2022 SCC OnLine SC 1329

⁴ 5. **Where defendant may be called upon to furnish security for production of property.—**

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.



8. Insofar as the financial justification for securing the amount is concerned, the only observation to be found is in opening sentence of para 5 which reads:

“Petitioner has also raised concerns about the financial health of the respondent and in this regard, has referred to various orders passed by this court wherein interest of similarly placed suppliers was protected.”

9. Mr. Rao has sought to submit that documents were also on record before the learned Single Judge to indicate that large amounts were being infused into the appellant concern which would, therefore, be in a position to liquidate the dues of the respondent, should the outcome of the arbitration being in favour of the respondent.

10. We are in agreement with Mr. Rao that there is insufficient discussion regarding the financial justification for directing securing of the amount as large as ₹ 69.5 crores.

11. We, therefore, deem it appropriate to dispose of this appeal by setting aside the impugned order and remanding the matter to the learned Single Judge to be considered afresh.

12. We make it clear that the parties would be limited to the documents which are already on record before the learned Single Judge and would not be entitled to place any further evidence on record.

13. In order to expedite matters, we direct the learned Counsel for the parties to appear before the learned Single Judge on 26 May 2025.



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14. Needless to say, the learned Single Judge would proceed uninfluenced by the impugned order dated 28 February 2025. The appeal is allowed to the aforesaid extent with no order as to costs.

15. Both sides have agreed not to take any adjournment before the learned Single Judge on 26 May 2025.

16. We clarify that we have not expressed any opinion regarding the merits of the Section 9 application filed by the respondent.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 20, 2025/aky

Click here to check corrigendum, if any