

**IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL DIVISION)
ORIGINAL SIDE**

**RESERVED ON: 06.01.2026
DELIVERED ON: 08.01.2026**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-COM- 545 OF 2025

**SAI SURFACTANTS PRIVATE LIMITED
VERSUS
AMRIT CEMENT LIMITED**

**Mr. Chayan Gupta, Adv.
Mr. Uttam Sharma, Adv.
Mr. Ankit Prakash, Adv.**

..... for the petitioner

**Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Sankarsan Sarkar, Adv.
Ms. Bhawna Parasramka, Adv.
Mr. Udipt Daga, Adv.**

..... for the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The Petitioner has preferred the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection, inter alia, by directing the Respondent to furnish security to the tune of Rs. 63,45,690/- so as to secure the monetary claim proposed to be pursued by the Petitioner against the Respondent in the arbitral proceedings.
- 2.** The facts leading to the present case are as follows:
- 3.** The Petitioner is a registered MSME enterprise engaged in the manufacture and supply of polypropylene (PP) woven bags. The Respondent is engaged in the manufacture of cement.
- 4.** Between May 2024 and June 2024, the Respondent placed purchase orders upon the Petitioner for laminated polypropylene bags, PP woven bags and Block Bottom Bags (PPC trade). Pursuant thereto, supplies

aggregating to 10,08,000 cement bags were effected, having an aggregate invoice value of Rs.1,45,54,214.40/-. The contractual terms provided for payment within 30 days from the date of the respective invoices.

5. Payments to the extent of Rs.88,78,288/- were made by the Respondent against the said supplies. The balance amount of Rs.56,06,854/- remains disputed. The record also reflects to a virtual meeting held on 18.09.2024 in connection with the issue of outstanding payments.
6. The Respondent issued a debit note dated 21.09.2024 for an amount of Rs.55,65,287/-. Subsequent correspondence exchanged between the parties, including emails dated 25.09.2024 and 12.10.2024, indicates that objections were raised by the Respondent with regard to the quality of the supplied bags.
7. Demand notices dated 19.12.2024 and 21.12.2024 were issued by the Petitioner. The Respondent replied thereto on 02.01.2025, reiterating its objections concerning the quality of the goods supplied.
8. On the basis of the materials placed on record, the Petitioner asserts that as on 20.03.2025 a sum of Rs.63,45,690/-, inclusive of contractual interest at the rate of 18% per annum, remains outstanding. Invoking the arbitration clause providing for adjudication at Kolkata, the present application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim measures pending commencement and conclusion of arbitral proceedings.

Submission on behalf of the Petitioner

9. Mr. Chayan Gupta, learned counsel for the Petitioner submits that the supplies were effected strictly in terms of the purchase orders and were

duly delivered and utilised by the Respondent. Part payments aggregating to Rs.88,78,288/- were made, evidencing acceptance of the supplies. The balance amount remained unpaid beyond the stipulated credit period, notwithstanding discussions held on 18.09.2024 in relation to the outstanding dues.

- 10.** It is submitted that the Respondent was governed by a Standard Operating Procedure (SOP) prescribing the mechanism for sampling, inspection, acceptance and rejection of laminated polypropylene bags. The SOP prescribes detailed protocols including Bag Inspection (page Nos. 35–36), Breaking Strength and Weld Strength (page No. 38), Acceptance Criteria (page No. 39), Assessment Procedures (page Nos. 39–40), Elongation Test (page No. 40), Ash Content (page Nos. 40–41), and rejection norms on the packing floor (page No. 45). It is the Petitioner's contention that the Respondent failed to adhere to any of these mandatory procedures.
- 11.** It is submitted that only a solitary joint inspection was undertaken on 11.07.2024. As per the inspection report, out of 6,31,695 bags examined, only 3,336 were found damaged, amounting to 0.53%, which is well within the permissible tolerance. No subsequent joint inspection was conducted, nor was the Petitioner ever notified of any further defects. The Respondent utilised the supplies, made part payment and acknowledged liability on 18.09.2024. However, on 21.09.2024, the respondent issued a debit note for Rs. 55,65,287/-, seeking to nullify its obligation. It is contended that the Respondent neither rejected the goods nor adhered to the SOP mandated rejection procedure and, having appropriated the supplies, is not entitled to withhold payment on belated quality objections.

- 12.** It is submitted that as on 20.03.2025, a sum of Rs.63,45,690/-, inclusive of contractual interest at the rate of 18% per annum, remains outstanding. Invoking the arbitration clause providing for adjudication at Kolkata, the present application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection. Reliance is placed on ***Essar House Pvt. Ltd. v. Arcelor Mittal Nippon Steel India Ltd.***, reported as ***(2022) 20 SCC 178***.

Submission on behalf of the Respondent

- 13.** Per contra, Mr. Jishnu Chowdhury, learned Senior counsel appearing on behalf of the Respondent submits that the present application under Section 9 of the Arbitration and Conciliation Act, 1996 is misconceived and not maintainable. It is contended that Section 9 does not mandate furnishing of security in every case involving a monetary claim, particularly where the alleged outstanding amount is seriously disputed.
- 14.** Learned Senior Counsel appearing on behalf of the Respondent submits that under a single purchase order, supplies were made in five consignments dated 31.05.2024, 19.06.2024, 21.06.2024, 26.06.2024 and 29.06.2024. Attention is drawn to page 49 of the SOP, which sets out the technical specifications of laminated polypropylene bags, including the requirement that none of the sacks shall fail the drop impact strength test. Learned Senior Counsel further refers to page 77, being the test report in respect of the consignment supplied on 19.06.2024, to demonstrate that the said lot failed the drop impact strength test and was, therefore, rejected in its entirety. It is submitted that the rejected lot constituted approximately 20% of the total quantity supplied.

- 15.** Learned Senior Counsel further submits that the joint inspection conducted on 11.07.2024 pertained only to three consignments and that even during such inspection the drop impact strength test was found to be unsatisfactory. It is contended that the Petitioner, in its own handwriting, acknowledged the deficiencies, assured improvement in quality, and requested the Respondent to utilise the bags. Reliance is placed on Clause 'M' of the SOP, which provides that where a rejected lot is nevertheless utilised due to operational exigencies, the bags are to be accepted at 50% of the contract price. In the present case, it is submitted that the Respondent has already paid approximately 61% of the total value of the supplies, which, according to the Respondent, is in excess of the amount payable even on a discounted basis.
- 16.** Learned counsel submits that the Respondent is a solvent and going concern, fully capable of satisfying any award that may be passed in arbitration. There is no material on record to suggest dissipation of assets or any attempt to defeat enforcement of a prospective award. Mere assertion of apprehension is insufficient to invoke the jurisdiction under Section 9. It is contended that the principles underlying Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 must be satisfied before directing furnishing of security or attachment, which have not been met in the present case.
- 17.** It is accordingly submitted that the Petitioner has failed to establish a prima facie case, balance of convenience, or irreparable prejudice warranting grant of interim protection. The reliefs sought would, in effect, amount to granting final relief at an interlocutory stage. The application is therefore liable to be dismissed.

Legal Analysis

- 18.** This Court has heard learned counsel for the parties at length and has perused the pleadings, documents and materials placed on record.
- 19.** From the record, it emerges that supplies were made by the Petitioner pursuant to the purchase orders and that substantial part payments have been effected by the Respondent. The surviving dispute relates to a sum of Rs.56,06,854/-. According to the Respondent, the admitted liability stands discharged and the balance claimed pertains to materials allegedly rejected on account of quality issues, rendering the said amount disputed.
- 20.** The SOP placed on record prescribes detailed technical specifications and quality benchmarks, including the stipulation that none of the sacks shall fail the drop impact strength test. It also provides a structured mechanism for inspection, rejection and conditional acceptance at a discounted value. The Respondent has relied upon the test report relating to the consignment supplied on 19.06.2024 to contend that the said lot failed the drop impact strength test and was rejected in its entirety, constituting approximately 20% of the total supply. The Petitioner, on the other hand, relies upon the joint inspection dated 11.07.2024, which records a defect rate of 0.53%, and contends that no further inspection in accordance with the SOP was undertaken thereafter.
- 21.** The materials on record indicate that the joint inspection dated 11.07.2024 pertained only to certain consignments and that disputes exist as to whether the allegedly rejected consignments were nevertheless utilised and, if so, on what terms. The alleged handwritten assurance by the Petitioner regarding improvement of quality, as well as the applicability of Clause 'M' of the SOP providing for acceptance at a discounted rate, raise

issues requiring examination of contemporaneous records and evidence. These matters cannot be conclusively determined at the present interlocutory stage.

- 22.** It is also evident that only one joint inspection was conducted. Prima facie, the rejection of subsequent consignments without recourse to the inspection mechanism contemplated under the SOP raises a triable issue. At the same time, it is not in dispute that the Respondent has utilised at least part of the goods supplied, which lends prima facie support to the Petitioner's contention that the claim is not illusory. Conversely, the Respondent's reliance on technical test failures and alleged non-conformity with specifications cannot be brushed aside as frivolous. The dispute thus involves mixed questions of fact and contractual interpretation, falling within the domain of arbitral adjudication.
- 23.** In proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, this Court is not required to conduct a mini trial or return definitive findings on the merits. The Court is required to assess whether interim protection is necessary to preserve the efficacy of the arbitral process. Where the claim is monetary, the Court must be satisfied that the circumstances justify securing the claim without converting the interim measure into final relief.
- 24.** The balance of convenience, at this stage, leans in favour of the Petitioner. The Petitioner, an MSME entity, asserts that more than Rs.63 lakh remains outstanding despite supply and utilisation of the goods. Delay in securing the claim may cause disproportionate hardship to the Petitioner, whereas a calibrated protective direction is unlikely to prejudice the Respondent, who asserts financial robustness. The apprehension that

enforcement of any eventual award may be rendered ineffective cannot be discounted altogether.

- 25.** The Respondent's contention that relief under Section 9 must strictly satisfy the preconditions of Order XXXVIII Rule 5 CPC cannot be accepted in absolute terms. As clarified by the Supreme Court in ***Essar House Pvt. Ltd (supra)***., while the principles underlying Order XXXVIII Rule 5 may guide the exercise of discretion, they do not constitute rigid jurisdictional limitations on the Court's powers under Section 9.
- 26.** Balancing the rival equities and without expressing any opinion on the merits of the dispute, this Court is of the view that limited interim protection would subserve the ends of justice and safeguard the arbitral proceedings from being rendered nugatory.
- 27.** Accordingly, in order to secure the subject matter of the arbitration and without expressing any opinion on the merits of the disputes between the parties, the Respondent is directed to create an interest bearing fixed deposit in the name of Registrar General, Original Side of this Court for a sum of Rs.63,45,690/- with a nationalised bank within a period of two weeks from date, for an initial period of six months. The said fixed deposit shall be kept renewed and shall be placed before the Arbitral Tribunal upon its constitution for appropriate custody and further directions. Liberty is granted to the parties to seek modification or variation of this order before the Arbitral Tribunal, in accordance with law.
- 28.** With this direction, the present petition is allowed and disposed of.

(GAURANG KANTH, J.)