

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

**RESERVED ON: 27.01.2026
DELIVERED ON: 03.02.2026**

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

AP-COM 891OF 2025

M/S UGRO CAPITAL LIMITED

VERSUS

BHARAT ELECTRICAL ACCESSORIES (P) LTD. AND ORS.

**Mr. Swatarup Banerjee, Adv.
Mr. K. K. Pandey, Adv.
Ms. Sonia Nandy, Adv.
Ms. Mallika Bothra, Adv.**

...for the petitioner

**Mr. Ishaan Saha, Adv.
Ms. Bhawna Tekriwal, Adv.**

...for the respondent nos.1 to 3

**Mr. Shounak Mukhopadhyay, Adv.
Mr. Shivam Bhimsaria, Adv.
Ms. Akansha Singhania, Adv.**

...for the respondent nos.4 to 6

JUDGMENT

Gaurang Kanth, J.:-

1. The present petition has been preferred by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 seeking a direction upon the Respondent to furnish adequate security towards the alleged outstanding dues payable to the Petitioner. In the alternative, it is prayed that, in the event of the Respondents failure to furnish such security, the Respondents be restrained from operating their bank accounts as specified in Annexure -H, so as to secure the outstanding amount of Rs. 2,93,07,298/-.
2. The facts leading to the present case are as follows:

3. The Petitioner is a registered non-banking financial company engaged in the business of providing customized loan solutions to business entities requiring working capital. The Respondents are engaged in the business of retail trade and deal with various suppliers.
4. In or about July 2023, Respondent No. 1 approached the Petitioner seeking a short-term working capital facility. The Petitioner extended a loan facility of Rs. 2,00,00,000/- to Respondent No. 1 pursuant to a Facility Agreement and Sanction Letter, both dated 25.07.2023, in relation to Loan Account No. UGDADEL000000481. Respondent No. 1 was the principal borrower, while Respondent Nos. 2 to 6 were co-applicants. The Respondents also executed a demand promissory note and a letter of continuity in connection with the said facility.
5. At the outset, it was submitted on behalf of the Petitioner that Respondent Nos. 4 to 6 have disputed the validity of their signatures on the loan documents, alleging that the same were obtained by fraud. In this regard, a Special Leave Petition being SLP No. 35407 of 2025 is stated to be pending before the Hon'ble Supreme Court. In view of the pendency of the said proceedings, no relief is presently claimed by the Petitioner against Respondent Nos. 4 to 6.
6. Respondent No. 1 was engaged in retail trade with various suppliers, including Vedanta Limited. As per the Sanction Letter and the Facility Agreement dated 25.07.2023, the credit facility was structured against invoices raised by Vedanta Limited, and each disbursement made by the Petitioner was treated as payment towards the supply of goods and/or services rendered by Vedanta Limited to Respondent No. 1. Each tranche of the facility was to be released against a corresponding invoice. The

facility was sanctioned as a short term working capital loan for a tenure of one year, with each disbursement tranche carrying a repayment cycle of 90 days. Repayment was due on the 91st day, and failure to repay constituted an event of default, entitling the Petitioner to recall the facility.

7. In accordance with the said terms, upon invoices being raised by Vedanta Limited on Respondent No. 1, corresponding loan amounts were disbursed by the Petitioner.
8. A default is stated to have occurred in respect of repayment against the invoice dated 30.10.2023. Consequently, by a letter dated 18.11.2023, the Petitioner recalled the facility and demanded repayment of outstanding dues quantified at Rs. 2,08,19,870/-.
9. Thereafter, the Petitioner instituted AP (Com.) 39 of 2023 before this Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking security for the said amount. During the pendency of the said proceedings, discussions took place between the parties regarding settlement and restructuring of the repayment schedule. By an order dated 12.11.2024, this Court declined to grant interim relief, recording that the Respondents had repaid Rs.2,00,00,000/- against the invoice dated 31.07.2023 and had discharged the dues under Loan Account No. UGDADEL000000481. The order further recorded that, pursuant to the restructuring, fresh invoices were raised, and against such invoices the Petitioner disbursed an aggregate sum of Rs.1,99,44,000/-. It is stated that the said disbursements remain unpaid and that the outstanding amount continues to stand at Rs.2,08,19,871/-.
10. The Petitioner asserts that the Facility Agreement dated 25.07.2023 continues to subsist and that the disbursements made on 23.03.2024,

26.03.2024, 27.03.2024, 28.03.2024 and 10.04.2024 were advanced pursuant to a restructuring of the original contractual arrangement.

11. In the meantime, the Respondents instituted CS (Com.) 55 of 2025, alleging, inter alia, that the Petitioner had fraudulently procured their digital signatures on the loan documentation. The Petitioner invoked Sections 5 and 8 of the Arbitration and Conciliation Act, 1996. By order dated 11.09.2025, the suit was disposed of and the parties were referred to arbitration.
12. As per the statement of account placed on record, the outstanding liability is stated to have increased to Rs. 2,93,07,298/- as on 10.11.2025.
13. Clause 15.1 of the Facility Agreement dated 25.07.2023 contains an arbitration agreement. It is further recorded that the transaction was executed within the territorial jurisdiction of this Court.
14. In view of the said position, the Petitioner preferred the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking a direction upon the Respondent to furnish adequate security towards the alleged outstanding dues payable to the Petitioner

Submission on behalf of the Petitioner

15. Mr. Swatarup Banerjee, learned Counsel for the Petitioner submits that the present outstanding liability unequivocally arises out of, and is traceable to, the original Facility Agreement dated 25.07.2023, which continues to govern the contractual relationship between the parties. Drawing the attention of the Court to various clauses of the said Facility Agreement, it is contended that the structure of the transaction contemplated multiple tranches under a single overarching facility. Under the said agreement, Respondent No. 1, being the principal borrower, had

agreed to identify buyers from its network for whom payments were to be made by the Petitioner. In the initial phase, Vedanta Limited was identified as the buyer, pursuant to which the Petitioner disbursed funds in accordance with invoices raised at the request of the Respondent. Each tranche carried a defined repayment period of 90 days.

- 16.** Learned Counsel for the Petitioner further submitted that upon default in repayment of the said tranches, the Petitioner was constrained to institute AP (Com.) 39 of 2023. During the pendency of the said proceedings, the Respondent repaid the outstanding tranches pertaining to Vedanta Limited and sought restructuring of the facility. Pursuant to such restructuring and at the request of the Respondent, the Petitioner disbursed further amounts towards invoices raised by other buyers identified by the Respondent. These subsequent disbursements, it is submitted, were not independent transactions but were made strictly within the framework of, and pursuant to, the same Facility Agreement.
- 17.** Learned Counsel for the Petitioner further submits that no dispute has been raised by the Respondent with regard to the payments advanced by the Petitioner.
- 18.** Mr. Swatarup Banerjee, learned counsel for the petitioner further submits that since all disbursements, both prior to and subsequent to the restructuring, were advanced under the subsisting Facility Agreement, the Petitioner's claim for the present outstanding amounts is contractually founded and enforceable. It is therefore contended that the Petitioner is entitled to the reliefs as prayed for in the present proceedings.

Submission on behalf of the Respondent Nos. 1 to 3

19. Mr. Ishaan Saha, learned Counsel for the Respondent nos. 1 to 3 has vehemently opposed the present petition. It is submitted that this Court, by an order dated 12.11.2024 passed in AP (Com.) 39 of 2023, had already declined the Petitioner's prayer for interim protection under Section 9 of the Arbitration and Conciliation Act, 1996. The Respondents contend that all dues arising out of the original Facility Agreement dated 25.07.2023 stood fully discharged. In this regard, reliance is placed on the Petitioner's own statement of account dated 01.04.2024, wherein the relevant loan account was marked as "Closed Tranche." It is submitted that the Respondents made payments of Rs.25,00,000/- each on 23.03.2024, 26.03.2024 and 28.03.2024; Rs. 24,50,000/- on 27.03.2024; and a further sum of Rs. 1,00,50,000/- on 31.03.2024, aggregating to Rs.2,00,00,000/-, thereby extinguishing the liability under Loan Account No. UGDADEL000000481. According to the Respondents, this factual position also stands expressly recorded in the order dated 12.11.2024 passed in AP (Com.) 39 of 2023.
20. It is further submitted that the subsequent advances relied upon by the Petitioner were not made under the original Facility Agreement but pursuant to a fresh and independent lending arrangement, which continues to subsist and in respect whereof no default has occurred. It is contended that no event of termination has arisen under the subsequent arrangement and that the Petitioner is now seeking protective orders by mischaracterising the later advances as part of the closed loan account. The Respondents submit that such an approach is impermissible, particularly when the original loan account was admittedly closed.

Reliance is also placed on the guidelines issued by the Reserve Bank of India to contend that the Petitioner's conduct in treating the subsequent advances as part of the original facility is contrary to the regulatory framework governing non banking financial companies.

21. Learned Counsel submits that out of the five subsequent transactions, four disbursements were admittedly made at the request of the Respondents, but under the later arrangement and not under the Facility Agreement dated 25.07.2023. It is contended that since the said advances were not made pursuant to the Facility Agreement, they do not fall within the scope of the arbitration clause contained therein. Consequently, the disputes arising from the subsequent transactions are not arbitrable, and the Petitioner, if so advised, must pursue appropriate civil remedies for recovery. The Respondents assert that they are bona fide borrowers and have, on earlier occasions, duly repaid the amounts advanced. It is further submitted that there is no written agreement governing the subsequent transactions.

22. During the course of oral arguments, learned Counsel for the Respondents submitted that the advances were made pursuant to an oral understanding between the parties. On the basis of the aforesaid submissions, it is contended that the present dispute is not arbitrable and that the Petitioner is not entitled to any relief under Section 9 of the Act.

Legal Analysis

23. This Court has heard the arguments advanced by the learned counsel for the parties.

24. The principal issue that arises for consideration is whether the present claim and the consequential prayer for interim protection under Section 9

of the Arbitration and Conciliation Act, 1996 arise out of the Facility Agreement dated 25.07.2023 containing the arbitration clause, or whether the subsequent disbursements constitute a distinct and independent transaction falling outside the scope of the said agreement.

- 25.** The Petitioner contends that the Facility Agreement constituted a continuing and overarching contractual arrangement, under which multiple tranches were disbursed based on buyers identified by the principal borrower, and that even the subsequent advances were made pursuant to a restructuring of the original facility. According to the Petitioner, there was no novation or extinguishment of the contractual framework and, consequently, the arbitration clause continues to govern the disputes arising from the subsequent disbursements. The Respondents, on the other hand, rely on the order dated 12.11.2024 passed in AP (Com.) 39 of 2023 and the statement of account dated 01.04.2024 to contend that the liabilities under Loan Account No. UGDADEL000000481 stood fully discharged and that the account was closed, rendering the subsequent transactions independent and non arbitrable.
- 26.** At this stage, while exercising jurisdiction under Section 9, the Court is not required to adjudicate upon the merits of the rival contractual interpretations. The scope of enquiry is limited to examining, on a prima facie basis, whether a live arbitration agreement exists covering the subject matter of the dispute and whether interim protection is warranted.
- 27.** The material placed on record indicates that the Facility Agreement envisaged disbursement of funds in multiple tranches, linked to buyers identified by the Respondent, with defined repayment cycles. It is also

undisputed that the Respondents repaid amounts aggregating to Rs. 2,00,00,000/- during the pendency of AP (Com.) 39 of 2023, leading this Court, at that stage, to decline interim relief. However, whether such repayment resulted in a complete closure of the contractual relationship, or whether the subsequent disbursements were made pursuant to a restructuring under the same agreement, is a matter that turns on interpretation of the contractual terms and the surrounding circumstances.

- 28.** It is further significant that there is no pleading on behalf of the Respondents asserting that the subsequent advances were made pursuant to any oral agreement. Notwithstanding the absence of such a pleading, learned counsel for the Respondents sought to contend, during the course of arguments, that the Petitioner advanced the amounts on the basis of an oral arrangement. Be that as it may, the Respondents' contention that the subsequent disbursements were governed by an oral agreement, in the absence of any independent written agreement between the parties, raises disputed issues that necessarily require evidentiary adjudication.
- 29.** The existence, scope and continuity of the arbitration agreement, as well as the characterisation of the subsequent transactions, cannot be conclusively determined at this interlocutory stage and fall within the domain of the arbitral tribunal. The objection founded on alleged violation of RBI guidelines similarly involves mixed questions of fact and law.
- 30.** In these circumstances, the Court is required to balance the limited scope of Section 9 with the necessity of preserving the subject matter of arbitration, without prejudging the merits of the dispute. The enquiry, therefore, centres on whether the Petitioner has established a prima facie

arbitrable dispute and whether denial of interim protection would render the arbitral proceedings nugatory.

31. Upon consideration of the rival submissions, this Court is of the view that the dispute raises serious and triable issues concerning the nature and continuity of the contractual relationship between the parties. The Petitioner has, at least prima facie, demonstrated that the Facility Agreement dated 25.07.2023 contemplated multiple tranches and that the subsequent advances were made pursuant to a restructuring of the original facility. The existence of an arbitration clause in the said agreement is not in dispute. Whether the subsequent disbursements constitute a continuation of the original arrangement or arise from an independent transaction is a matter requiring detailed adjudication by the arbitral tribunal. While the Respondents' reliance on the closure of the loan account and repayment of earlier tranches cannot be ignored, such closure, by itself, does not conclusively establish novation or extinction of the underlying contractual framework, particularly when subsequent disbursements are admitted and no independent written agreement governing such disbursements is shown to exist.

32. This Court is satisfied that the threshold requirement of a prima facie arbitrable dispute is met. The balance of convenience lies in favour of the Petitioner, having regard to the substantial amounts admittedly disbursed. In the absence of interim protection, the Petitioner is likely to suffer irreparable loss and injury, which may not be adequately compensated by damages and may render the arbitral proceedings infructuous. No corresponding prejudice is shown to be caused to the Respondents by securing the claim amount.

- 33.** Accordingly, this Court holds that the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 is maintainable and that the Petitioner is entitled to interim protection. All observations made herein are prima facie and shall not influence the merits of the disputes before the arbitral tribunal.
- 34.** In view of the aforesaid, the present petition is allowed. Respondent Nos. 1 to 3 are restrained from operating or dealing with the bank accounts referred to in Annexure-H to the present petition, namely Punjab National Bank, Account Nos. 4077008700001080 and 4077002100028106, IFSC Code PUNB04077700, Saheednagar Branch, Bhubaneswar-751007, so as to ensure that a joint minimum balance of Rs. 2,93,07,298/- is maintained therein at all times.
- 35.** The petitioner is directed to communicate this judgment to the concerned Branch Manager of Punjab National Bank, Saheednagar Branch 699, Saheednagar, Bhubaneswar-751007.
- 36.** The Petitioner is directed to take immediate steps for the constitution of the Arbitral Tribunal.
- 37.** The parties are at liberty to seek modification or variation of this judgment before the Arbitral Tribunal.
- 38.** With the aforesaid directions, the present petition stands allowed.

(GAURANG KANTH, J.)