
IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.19 OF 2026

Skylark Feeds Private Limited
Versus
National Commodities Management
Services Limited

....Petitioner

....Respondent

Mr. Karl Shroff a/w. *Nishit tanna, Smit Shah, Shahshipratap Singh & Heena Lambate, for Petitioner.*

Mr. Sumit Rai a/w. *Mihir Mody & Akshay Gupte i/b. M/s K. Ashar & Co., for Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 29, 2026

ORAL JUDGEMENT:

Context and Factual Background:

1. This is a Petition under Section 37 of the Arbitration and Conciliation Act, 1996 (***“the Act”***) challenging an Order dated August 13, 2025, by which an interim arrangement has been put in place by a Learned Arbitral Tribunal under Section 17 of the Act.
2. The Petitioner, Skylark Feeds Private Limited (***“Skylark”***) is a customer of warehousing and commodity management services provided by the Respondent, National Commodities Management Services Limited (***“National”***). The disputes and differences between

the parties relate to the payment of fees for the services provided by National to Skylark in connection with storage and management of Skylark's commodities in the godowns of National.

3. The Learned Arbitral Tribunal has permitted Skylark to remove 753.419 metric tonnes of maize lying in the godowns in Bihar, subject to Skylark furnishing an unconditional bank guarantee in favour of National in the sum of Rs.2.63 crores being the principal amount due and payable under the invoices raised by National on Skylark. Such unconditional bank guarantee has been directed to be kept alive for the entire duration of the arbitration proceedings and a further period of four weeks thereafter. Subject to such guarantee being furnished, the goods stored in National's godown have been permitted to be released.

Contentions of Parties:

4. I have heard Mr. Karl Shroff, Learned Advocate for the Skylark and Mr. Sumit Rai, Learned Advocate for National, and with their assistance, examined the material on record.

5. The prime attack on the Impugned Order by Mr. Shroff is that the Impugned Order fails to identify any immediate risk that the outcome in the arbitration proceedings would be rendered a futile paper decree, to justify direction of such security to be provided. He would submit that there has to be some risk of dissipation in the

financial strength or ferreting out of value from its balance sheet for National to perceive a risk of being saddled with a paper decree, before the Arbitral Tribunal could make any interlocutory arrangements of the nature it has done. He would point to the judgments of the Learned Division Bench of the Delhi High Court rendered in *Skypower Solar India Private Limited*¹ and a judgement of a Single Judge of the Delhi High Court in *Gail (India) Limited*².

6. Mr. Shroff would submit that despite these judgments having been shown to the Learned Arbitral Tribunal, as indeed the decision of the Supreme Court in *Sanghi*³, the Learned Arbitral Tribunal has barely dealt with it and has simply taken a view that these judgments are distinguishable without explaining as to why Learned Arbitral Tribunal has made a departure from the requirement of having to demonstrate a risk to the outcome in the arbitration.

7. Mr. Shroff would also rely upon the financial strength of Skylark by pointing to the tax returns, including the returns for the assessment years 2025-26 which would indicate a total income of Rs.37.31 Crores. It is also contended by Mr. Shroff that there is not even any pleading about the risk posed by any action on the part of Skylark which would

¹ *Skypower Solar India Private Limited v. Sterling And Wilson International FZE – (2023) 6 HCC (Del) 702*

² *Gail (India) Limited v. Focus Energy Ltd. & Ors. – 2025 SCC Online Del 5*

³ *Sanghi Industries Limited v. Ravin Cables Ltd. & Anr. – Civil Appeal No.6908 of 2022*

dissipate the enjoyment of any potential fruits of arbitration that may emerge.

8. Mr. Rai, Learned Advocate for National, would indicate that the views canvassed by Mr. Shroff is the Delhi High Court's view, which is distinct from the view taken by this Court in numerous decisions. He would submit that according to National, the proposition is not that the principles of Order XXXVIII Rule 5 of the CPC are totally inapplicable, but that they would merely be a guiding factor and are not a limitation on the consideration of interlocutory relief by an Arbitral Tribunal. He would submit that the scope of interim protective measures under Section 9 would not be hide-bound by the CPC principles, as has been pointed out by Learned Single Judge of this Court in ***J.P. Parekh & Anr.***⁴ and by the Supreme Court in ***Essar House***⁵ He would also rely upon a judgment by this Bench in ***Manmohan Kapani***⁶ to contend that in the absence of any plausible defense to the claim made in the arbitration proceedings, the Arbitral Tribunal would be fully entitled to preserve the subject matter of the arbitration agreement in the manner it deems reasonable.

⁴*J.P. Parekh & Anr. v. Naseem Qureshi & Ors. – 2022 SCC OnLine Bom 6716*

⁵*Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited – (2022) 20 SCC 178*

⁶*Manmohan Kapani Through Special Power of Attorney Chandani Sood v. Kapani Resorts Pvt. Ltd. & Ors. – 2025 SCC Online Bom 599*

Analysis and Findings:

9. In the context of the aforesaid submissions, I have examined the record. It is seen that the Learned Arbitral Tribunal has returned a finding that National has a strong *prima facie* case and the invoices raised by National *prima facie* deserve to be paid. Skylark's objections have also been noticed by the Learned Arbitral Tribunal, which are primarily on the premise of National having overcharged Skylark and the fact that National ought not to refuse access to Skylark to the goods covered by the invoices in question on the premise that payments on other invoices remained pending.

10. The Learned Arbitral Tribunal has also come up with a reasonable *prima facie* case that under the provisions of Section 170 of the Indian Contract Act, 1872, National would enjoy a lien over the goods and has relied on the case of ***Buildwell Corporation***⁷ to return such finding. Therefore, the short question that gets crystallized is that despite a strong *prima facie* case on the invoices having to be paid, whether the Learned Arbitral Tribunal was unjustified in directing Skylark to provide a bank guarantee as a precondition for removal of the goods.

11. The provisions of Section 9 and Section 17 of the Act, which run concurrently, essentially enable a wide range of measures that the

⁷ *Buildwell Corporation v. Food Corporation of India* – (2014) 1 SCC 693

Learned Arbitral Tribunal may deem necessary for purposes of preserving and protecting the subject matter of the arbitration. If the Arbitral Tribunal has found a strong *prima facie* case, it would be within its remit to direct such interlocutory protective reliefs that would enable it to preserve the subject matter of the arbitration agreement. The he object of these provisions is to preserve the subject matter of the arbitration.

12. In this regard, the Bombay High Court's view which is originally rendered in *Jagdish Ahuja*⁸ and in *Valentine Martitime*⁹ came up for consideration before the Supreme Court in the case of *Essar House*. At the risk of adding to the length of this judgement, but to ensure complete coverage of reasoning of this judgement, the following extracts from *Essar House* are necessary:

42. Many High Courts have also proceeded on the principle that the powers of a court under Section 9 of the Arbitration Act are wider than the powers under the provisions of CPC.

43. In *Ajay Singh v. Kal Airways (P) Ltd.* [*Ajay Singh v. Kal Airways (P) Ltd.*, 2017 SCC OnLine Del 8934] the Delhi High Court correctly held : (SCC OnLine Del para 27)

"27. ... Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines — therefore, the analogy of Orders 38

⁸ *Jagdish Bhangwandas Ahuja Vs Cupino Limited* – 2020 SCC Online Bom. 841

⁹ *Valentine Martitime Ltd. Vs. Kreuz Subsea Pvt. Ltd & Anr.* – 2021 SCC Online Bom. 75

and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles.”

44. In Jagdish Ahuja v. Cupino Ltd., the Bombay High Court correctly summarised the law in para 6 extracted hereinbelow:

“6. As far as Section 9 of the Act is concerned, it cannot be said that this Court, while considering a relief thereunder, is strictly bound by the provisions of Order 38 Rule 5. As held by our Courts, the scope of Section 9 of the Act is very broad; the court has a discretion to grant thereunder a wide range of interim measures of protection “as may appear to the court to be just and convenient”, though such discretion has to be exercised judiciously and not arbitrarily. The court is, no doubt, guided by the principles which civil courts ordinarily employ for considering interim relief, particularly, Order 39 Rules 1 and 2 and Order 38 Rule 5; the court, however, is not unduly bound by their texts. As this Court held in Nimbus Communications Ltd. v. BCCI [Nimbus Communications Ltd. v. BCCI, 2012 SCC OnLine Bom 287] (per D.Y. Chandrachud, J.), as the learned Judge then was), the court, whilst exercising power under Section 9, ‘must have due regard to the underlying purpose of the conferment of the power under the court which is to promote the efficacy of arbitration as a form of dispute resolution’. The learned Judge further observed as follows : (SCC OnLine Bom para 24)

‘24. ... Just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code of Civil Procedure, 1908, the rigours of every procedural provision in the Code of Civil Procedure, 1908 cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case.’ ”

45. In Valentine Maritime Ltd. v. Kreuz Subsea Pte Ltd., the High Court held:

“88. ... It is now a well settled legal position, that at least with respect to Chartered High Courts, the power to grant temporary injunctions are not confined to the statutory provisions alone. The Chartered High Courts had an inherent power under the general equity jurisdiction to grant temporary injunctions independently of the provisions of the Code of Civil Procedure, 1908. ...

93. Insofar as judgment of the Supreme Court in Raman Tech. & Process Engg. Co. [Raman Tech. & Process Engg. Co. v. Solanki Traders, (2008) 2 SCC 302 : (2008) 1 SCC (Civ) 539] relied upon by Mr Narichania, learned Senior Counsel for VML is concerned, it is held by the Hon'ble Supreme Court that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. The Hon'ble Supreme Court has further held that the purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. The said judgment of the Hon'ble Supreme Court was not in respect of the powers of court under Section 9 of the Arbitration and Conciliation Act, 1996 but was in respect of power under Order 38 Rule 5 of the Code of Civil Procedure, 1908 in a suit. Even otherwise, the said judgment is distinguishable in the facts of this case. ...

95. Insofar as judgment of this Court delivered by the Division Bench of this Court in Nimbus Communications Ltd. v. BCCI relied upon by the learned Senior Counsel for VML is concerned, this Court adverted to the judgment of Hon'ble Supreme Court in Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd. [Adhunik Steels

Ltd. v. Orissa Manganese & Minerals (P) Ltd., (2007) 7 SCC 125] and held that in view of the decision of the Supreme Court in Adhunik Steels [Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd., (2007) 7 SCC 125] the view of the Division Bench in National Shipping Co. of Saudi Arabia [National Shipping Co. of Saudi Arabia v. Sentrans Industries Ltd., 2004 SCC OnLine Bom 25] that the exercise of power under Section 9(ii)(b) is not controlled by the provisions of the Code of Civil Procedure, 1908 cannot stand. This court in the said judgment of Nimbus Communications held that the exercise of the power under Section 9 of the Arbitration Act cannot be totally independent of the basic principles governing grant of interim injunction by the civil court, at the same time, the Court when it decides the petition under Section 9, must have due regard to the underlying purpose of the conferment of the power upon the Court which is to promote the efficacy of arbitration as a form of dispute resolution.

96. This court held that just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code of Civil Procedure, 1908, the rigors of every procedural provision in the Code of Civil Procedure, 1908 cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case. The principles laid down in the Code of Civil Procedure, 1908 for the grant of interlocutory remedies must furnish a guide to the Court when it determines an application under Section 9 of the Arbitration and Conciliation Act, 1996. The underlying basis of Order 38 Rule 5 therefore has to be borne in mind while deciding an application under Section 9(ii)(b) of the Arbitration Act.

104. The Division Bench of this Court in Deccan Chronicle Holdings Ltd. v. L&T Finance Ltd. [Deccan Chronicle Holdings Ltd. v. L&T

Finance Ltd., 2013 SCC OnLine Bom 1005] after adverting to the judgment of the Supreme Court in Adhunik Steels Ltd. [Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd., (2007) 7 SCC 125] , judgment of the Division Bench of this Court in Nimbus Communications Ltd. [Nimbus Communications Ltd. v. BCCI, 2012 SCC OnLine Bom 287] held that the rigors of every procedural provision of the Code of Civil Procedure cannot be put into place to defeat the grant of relief which would subserve the paramount interests of the justice. The object of preserving the efficacy of arbitration as an effective form of dispute resolution must be duly fulfilled. This would necessarily mean that in deciding an application under Section 9, the Court would while bearing in mind the fundamental principles underlying the provisions of the Code of Civil Procedure, at the same time, have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process. The Division Bench of this Court in the said judgment did not interfere with the order passed by the learned Single Judge directing the parties to furnish security so as to secure the claim of the original petitioner in arbitration by applying principles of Order 38 Rule 5 of the Code of Civil Procedure.”

46. *In Srei Infrastructure Finance Ltd. v. Ravi Udyog (P) Ltd. [Srei Infrastructure Finance Ltd. v. Ravi Udyog (P) Ltd., 2008 SCC OnLine Cal 974] , the Calcutta High Court, speaking through one of us (Indira Banerjee, J.), as Judge of that Court, said : (SCC OnLine Cal para 4)*

“4. An application under Section 9 of the Arbitration & Conciliation Act, 1996 for interim relief is not to be judged as per the standards of a plaint in a suit. If the relevant facts pleaded, read with the documents annexed to the petition, warrant the grant of interim relief, interim relief ought not to be refused by recourse to technicalities.”

47. Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.

48. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 CPC.

49. Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending arbitral award is not imperative for grant of relief under Section 9 of the Arbitration Act. A strong possibility of diminution of assets would suffice. To assess the balance of convenience, the Court is required to examine and weigh the consequences of refusal of interim relief to the applicant for interim relief in case of success in the proceedings, against the consequence of grant of the interim relief to the opponent in case the proceedings should ultimately fail.

[Emphasis Supplied]

13. The ingredients of Section 9 of the Act and of Section 17 of the Act being the same except for the forum that is conferred with the jurisdiction in these provisions, the aforesaid analysis would also squarely apply to the operation of Section 17 of the Act.

14. While *Sanghi* expresses a different view, it does not appear to have noticed the view expressed earlier in *Essar House*. That apart, each of *Essar House* and *Sanghi* was rendered in its respective factual matrix. In the former, the weakness of the person against whom debt was being enforced was evident, while in the latter, a guarantee had been invoked and there was a dispute over whether its invocation was legitimate and the monies realised by invoking the guarantee should be retained. One must not forget that the need for and the scope of interim relief is a fact-specific perception that ought to be formed by the master of the proceedings – in every case, that is the Arbitral Tribunal, which is entitled to take an appropriate measure on its perception of the risk to the subject matter of the arbitration agreement.

15. Having examined the analysis of the Learned Arbitral Tribunal, it cannot be said that the view taken by the Learned Arbitral Tribunal is an impossible view or a view that so perverse that it warrants an interference by this Court. In the instant case, the Learned Arbitral Tribunal is entitled to have regard to past disputes between the parties and form its reasoned perception on the strength of the case and arrive at a view on the risk to the subject matter of the arbitration agreement. For example, a settlement of similar disputes in the past is not a necessary pointer to overcharging of invoices, and it can also be a

pointer to an adopted standard of disputing invoices as a means of negotiating a settlement to pay a lower amount. If this is discernible to the Learned Arbitral Tribunal, whether by express or implied reasoning, the Learned Arbitral Tribunal is entitled to formulate such measures as it considers appropriate to preserve the subject matter of the arbitration agreement.

Scope of Review:

16. While the scope of review under Section 37 of the Act is an appellate review, particularly with regard to impugned orders passed under Section 17, one cannot lose sight of the fact that in matters of interlocutory arrangements, the best judge of what is a reasonable measure is the Arbitral Tribunal, which is a master of the evidence and thereby best decision maker on the quantity and quality of evidence. The Learned Arbitral Tribunal should be given a free play in the joints to come up with a reasonable interlocutory arrangement.

17. While an appeal is a continuation of the original proceedings, unless there is a statutory requirement to the contrary, the powers of the appellate forum is indeed co-extensive with the powers of the forum whose adjudication is under appeal as held in ***Jute Corporation***¹⁰. When assessing whether an interlocutory order impugned deserves to be interfered with, the time-tested principles laid down in the ***Wander***

¹⁰ *Jute Corporation of India Ltd. Vs. CIT – 1991 Supp 2 SCC 744*

vs. Antox¹¹ are instructive, and have been followed in numerous cases involved in review of interlocutory arrangement in arbitration proceedings as well.

18. The appellate court may interfere only if something perverse or impossible is found in the exercise of discretion by the forum appealed against, and must not lightly interfere in the absence of capricious, perverse or arbitrary decision-making in the grant or denial of interlocutory relief. The following extract would be noteworthy:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

[Emphasis Supplied]

11 Wander Ltd. v. Antox India (P) Ltd. – 1990 (Supp) SCC 727

19. Applying the aforesaid principle, in my opinion, there is nothing capricious, arbitrary or unreasonable in the protective measure formulated by the Learned Arbitral Tribunal. The Learned Arbitral Tribunal has well explained the strength of the *prima facie* case and has formulated a measure that is responsive to the objective of preserving the subject matter of the arbitration agreement. Indeed, such formulation is not constrained by the strict application of CPC principles. The principles of CPC are a handmaiden for substantive justice and not meant to create substantive rights that cause hindrances to an assessment of just measures under Section 17 of the Act.

20. The formulation is also not disproportionate to the factual matrix at hand. Skylark, which claims to enjoy immense financial strength would not be injured at all by securing the small amount involved. Services have indeed been rendered and the invoices have indeed been raised. There is a past history of disputes being raised over invoices. The measure impugned would be more convenient to both parties as compared with permitting Skylark to remove all the maize stored with nothing to balance the interests of National. I see nothing in the approach or analysis of the Impugned Order that renders it arbitrary, perverse, capricious or even disproportionate (which is a facet of arbitrariness).

21. For the aforesaid reasons, in my opinion, the Petition does not make out a case for interference with the Impugned Order. The Petition is *dismissed* without any interference.

22. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]