Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.487 OF 2025

IIFL Finance Limited … Petitioner
V/s.
Grandway Incorporated & Ors. … Respondents

Ms. Pooja Singh, for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : JUNE 10, 2026

P.C.:

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 asking for certain interim protection from this Court till arbitral proceedings are started. By this petition, the petitioner has prayed for different protective directions against the respondents. The petitioner seeks freezing and attachment of the bank accounts of the respondents, disclosure of movable and immovable properties standing in their names, appointment of Court Receiver over properties which are free from encumbrances, disclosure of receivables and other financial assets, deposit of the claimed amount and also furnishing of security by way of bank guarantee. The petitioner seeks protection for an amount of Rs.24,34,779.05/-. According to the petitioner, if immediate protection is not granted, there is possibility that the respondents may deal with their assets, transfer funds or otherwise make their properties unavailable. In such situation, even if an award is passed in favour of the petitioner in future arbitration proceedings, the same may become difficult to execute and the petitioner may not be able to recover the amount. Therefore, according to the petitioner, intervention of the Court at this stage has become necessary for preserving the subject matter of dispute till constitution of the Arbitral Tribunal and commencement of arbitral proceedings.

2. It is the case of the petitioner that respondent No.1 had obtained a loan facility of Rs.30,00,000/- from the petitioner. The said loan amount came to be sanctioned and disbursed after execution of necessary loan documents between the parties. As per the terms and conditions contained in the Loan Agreement, the respondents had agreed to repay the said loan through 36 monthly instalments of Rs.1,07,706/- each. The petitioner submits that the existence of contractual relationship between the parties is reflected from the documents produced on record and there is no dispute regarding execution of the Loan Agreement. The petitioner has particularly relied upon Clause 20 of the Loan Agreement. The said clause contains an arbitration agreement between the parties and provides that disputes arising out of the loan transaction shall be referred to arbitration before a sole arbitrator. The clause also provides regarding applicable law, place of arbitration, jurisdiction and responsibility for costs arising out of arbitration proceedings.

3. At this stage, existence of an arbitration agreement assumes importance because powers under Section 9 can be exercised only where there is a valid arbitration agreement between the parties. At present, this Court is not required to undertake detailed examination of every contractual dispute or determine the final rights of the parties. The Court is only required to see whether there exists an arbitration clause and whether disputes have arisen which can be referred to arbitration. The documents produced by the petitioner prima facie indicate that such requirements are satisfied. Therefore, at least at this stage, the petitioner appears to have shown sufficient basis for invoking the jurisdiction of this Court under Section 9 of the said Act.

4. It is further the case of the petitioner that after obtaining the loan facility, the respondents failed to make repayments in accordance with the schedule agreed between the parties. According to the petitioner, defaults occurred on several occasions and consequently the outstanding dues continued to increase. The petitioner has relied upon the demand notice dated 22 April 2025 whereby the respondents were called upon to clear the outstanding liability. The petitioner has also placed on record the foreclosure statement dated 14 April 2025. The said statement shows that an amount of Rs.24,34,779.05/- was allegedly due and payable by the respondents as on that date together with further interest as per the contract.

5. At the present stage, this Court is not required to finally decide whether the exact amount claimed by the petitioner is correct in all respects or whether every component of the demand is legally recoverable. Such issues would be required to be examined in appropriate arbitral proceedings. However, the foreclosure statement, demand notice and other loan documents produced before the Court do constitute material which prima facie supports the case of the petitioner that substantial dues remain unpaid. At present, there is no material available before the Court showing repayment of the claimed amount or indicating that the liability reflected in the foreclosure statement no longer survives. Consequently, the documents presently on record prima facie support the petitioner's assertion regarding existence of outstanding dues against the respondents.

6. In view of the alleged defaults and the amount claimed to be outstanding, the petitioner has invoked Section 9 of the Arbitration and Conciliation Act, 1996 and has sought interim measures of protection. The purpose behind filing such a petition is not to obtain final adjudication of disputes at this stage. Similarly, the purpose is not to secure recovery of money before the disputes are decided. The object of Section 9 is essentially to protect the arbitral process and to ensure that the final award, if ultimately passed in favour of a party, does not become incapable of execution on account of subsequent events.

7. While considering a petition under Section 9, the Court is generally guided by principles applicable to grant of interim relief. The Court is required to examine whether a prima facie case has been made out, whether balance of convenience lies in favour of granting protection and whether refusal of such protection may result in irreparable prejudice. These principles cannot be applied in a rigid or mechanical manner. They are required to be considered having regard to the facts and circumstances of each case and the nature of the dispute brought before the Court.

8. The petitioner has also placed on record an Affidavit of Service showing compliance with the earlier directions issued by this Court. The affidavit indicates that notices were sent to Respondent Nos.1 and 2 at two separate addresses. One of the notices was returned with the postal endorsement stating "Left Without Instructions". However, the notice sent to the alternate address was successfully served upon the respondents. The petitioner has also annexed postal tracking reports generated online which indicate completion of service.

9. From the material placed on record, it appears that reasonable steps were taken to bring the proceedings to the notice of the respondents. Service of notice assumes significance because ordinarily no order should be passed without giving opportunity of hearing to the affected parties. The material produced by the petitioner prima facie indicates that such opportunity was made available. Despite service, the respondents have not chosen to appear before the Court and have not filed any affidavit disputing the averments made in the petition. In such circumstances, the Court is required to proceed on the basis of the material presently available while also noting that the respondents have elected not to contest the matter at this stage.

10. Despite due service of notice, none has appeared on behalf of Respondent Nos.1 and 2. The averments contained in the petition and the documents placed on record remain unrebutted for the present. The Loan Agreement, arbitration clause, demand notice and foreclosure statement collectively indicate, at least prima facie, that disputes have arisen out of a loan transaction and that substantial amounts are claimed to be outstanding.

11. In the opinion of this Court, the petitioner has been able to establish a prima facie case. The loan transaction is supported by documentary material. The arbitration agreement forms part of the contract itself. The foreclosure statement reflects continuing dues. In absence of any response from the respondents, there is sufficient material at this stage to indicate existence of a genuine dispute requiring adjudication through arbitration.

12. The balance of convenience also appears to favour grant of limited protective relief. If no protection is granted and if, during the intervening period, the respondents deal with their assets or withdraw available funds, the petitioner may face considerable difficulty in enforcing any award which may ultimately be passed in its favour. On the other hand, a limited protective order intended only to preserve the available assets does not finally determine the rights and liabilities of the parties. All contentions would continue to remain open before the Arbitral Tribunal. Therefore, the inconvenience likely to be caused by refusal of protection appears greater than the inconvenience likely to result from grant of such limited protection.

13. So far as irreparable prejudice is concerned, this Court finds that the concern under Section 9 is not merely recovery of money. If assets are transferred, dissipated or rendered unavailable before completion of arbitration proceedings, the award may become difficult to execute. Such prejudice may not be capable of being adequately remedied at a later stage. Therefore, some degree of interim protection appears necessary in the facts of the present case.

14. At the same time, this Court is conscious that directions such as attachment of bank accounts, appointment of receiver or furnishing of security are measures and may have substantial consequences upon the parties affected. Such powers must therefore be exercised with caution and only to the extent necessary for protecting the claim pending arbitration.

15. In view of the aforesaid discussion, and having found that the petitioner has been able to establish a prima facie case, that the balance of convenience presently lies in favour of grant of limited protection and that refusal of such protection may result in prejudice affecting the efficacy of arbitral proceedings, this Arbitration Petition deserves to be disposed of by granting limited interim relief.

16. In view of the foregoing discussion, and upon overall assessment of the material submissions, evidence on record, and the findings arrived at hereinabove, the following order is passed:

(i) The Arbitration Petition is partly allowed.

(ii) Pending commencement and conclusion of arbitral proceedings, Respondent Nos.1 and 2 are restrained from withdrawing, transferring, alienating, creating third party rights or otherwise dealing with the funds lying in Bank Account No. 96605000234 maintained in ICICI Bank Ltd., Aggarwal Agro Equipment, Jalandhar Bye Pass Chowk, Ludhiana, to the extent of Rs.24,34,779.05/-.

(iii) HDFC Bank Ltd. is directed to earmark and maintain a hold over the amount available in the aforesaid account to the extent of Rs.24,34,779.05/- or such lesser amount as may be available therein on the date of receipt of this order, until further orders of the Arbitral Tribunal or any competent Court.

(iv) Respondent Nos.1 and 2 shall, within a period of three weeks from the date of service of this order, disclose on affidavit their unencumbered movable and immovable assets, including details of bank accounts, receivables and properties standing in their names or in which they claim any beneficial interest.

(v) In the event the amount available in the aforesaid bank account is insufficient to secure the petitioner's claim, Respondent Nos.1 and 2 shall disclose particulars of other assets and properties sufficient to cover the shortfall.

(vi) Prayer clauses (c), (d) and (e) are kept open to be considered by the learned Arbitral Tribunal upon its constitution, if circumstances so require.

(vii) The petitioner shall take effective steps for commencement of arbitral proceedings and shall invoke the arbitration agreement within a period of ninety (90) days from the date of uploading of this order, if not already invoked.

(viii) It is clarified that the observations made in this order are prima facie in nature and confined only to consideration of interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The learned Arbitral Tribunal shall decide all issues independently and on their own merits without being influenced by any observations contained herein.

(ix) In case arbitral proceedings are not commenced within the period stipulated in clause (vii) above, the respondents shall be at liberty to apply for modification, variation or vacation of the interim protection granted under this order.

(x) The Arbitration Petition stands disposed of in the above terms.

(xi) There shall be no order as to costs.

(AMIT BORKAR, J.)