

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.983 OF 2025**

Ningbo Aux Imp & Exp Co. Ltd.

.... Petitioner

V/S

- 1 Amstrad Consumer India Pvt. Ltd.
(formerly known as OVOT Pvt. Ltd.)
- 2 Vijay Sales (India) Pvt. Ltd.

.... Respondents

Ms. Kshama Loya with Ms. Sankriti Sharma i/b M/s. Link Legal *for the Petitioner.*

Mr. Karl Tamboly with Mr. Reehan Ajmerwala, Ms. Eshika Chandan & Mr. Siddharth Punj i/b M/s. Lodha & Lodha Advocates *for Respondents.*

**CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 14 JANUARY 2026.
PRONOUNCED ON : 28 JANUARY 2026.**

J U D G M E N T:

1. This is a post-foreign award Petition filed under Section 9 read with Section 2(2) of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking interim measures for securing the awarded sum from Respondents during pendency of enforcement proceedings filed by the Petitioner under Sections 47 and 49 of the Arbitration Act. The Petition involves the issue of permissibility to make interim measures under Section 9 of the Act against a third party, who is deleted from enforcement proceedings filed by the award creditor

under Sections 48 and 49 of the Act and against whom the award is no longer enforceable.

FACTS

2. Petitioner- Ningbo Aux Imp & Exp Co. Ltd. (**Ningbo**) is a company incorporated under the laws of People's Republic of China and is engaged in the business of providing international trading services, particularly export of air-conditioners and related spare parts and products. The first Respondent Amstrad Consumer India Private Limited (**Amstrad**) was formerly known as OVOT Private Limited (**Ovot**), which is engaged in manufacture of electric motors, generators, transformers and sale of home appliances. Petitioner entered into an agreement with Amstrad/Ovot, under which Respondent No.1 agreed to purchase AC units from the Petitioner. The Purchase Order dated 23 October 2020 placed by Amstrad upon Petitioner contained an arbitration clause. Petitioner supplied AC units to Amstrad. Respondent No.2- Vijay Sales (India) Private Limited (**Vijay Sales**) apparently had links with Amstrad since promoters and directors of Vijay Sales held key managerial positions in Amstrad. According to Petitioner, Vijay Sales had executed guarantee certificate on 28 February 2020 guaranteeing that it would be responsible for all payments to be made by Amstrad/Ovot to Ningbo for orders upto USD 10 million and that if Amstrad/Ovot made any payment default, Vijay Sales would be responsible to pay to Ningbo. The guarantee certificate was valid from 1 March 2020 to 31 August 2021. It is Petitioner's contention that the sale transaction for AC units was entered into by Ningbo with Amstrad/Ovot on the strength of guarantee issued by Vijay Sales.

3. Disputes arose between Ningbo and Amstrad/Ovot in respect of payment of proforma invoices issued between 8 February 2021 to 12 February 2021. Ningbo therefore wrote to Vijay Sales on 24 April 2021 to fulfil its guarantee and make payment on behalf of Amstrad/Ovot. Vijay Sales responded stating that all dues payable to Amstrad/Ovot were fully paid.

4. Petitioner-Ningbo initiated arbitration proceedings on 26 September 2021 under the aegis of Shanghai International Arbitration Centre (**SHIAC**) against both Amstrad/Ovot and Vijay Sales. It is Petitioner's case that the Case Manager at SHIAC verbally instructed the Petitioner-Ningbo to refile the Arbitration Application by deleting name of Vijay Sales citing that Vijay Sales was not a party to the Proforma Invoices. Petitioner accordingly refiled the Arbitration Application only against Amstrad/Ovot. The SHIAC Arbitral Tribunal made Arbitral Award dated 30 November 2023 directing Amstrad/Ovot to pay to Ningbo USD 1,448,940.91 towards outstanding dues and RMB 180,533.38 towards refund of arbitration fees.

5. Since Respondents failed to pay the awarded amounts to the Petitioner, enforcement proceedings under Sections 47 and 49 of the Arbitration Act being Commercial Arbitration Petition (L) No.29646 of 2024 was filed by the Petitioner against both the Respondents in this Court. On 12 March 2025, this Court passed *ex parte* order directing Respondents to disclose their assets. The order was confirmed on 3 April 2025 rejecting Respondents' contentions. Vijay Sales filed application for deletion of its name from the enforcement petition and also prayed for vacation of disclosure order. By order dated 4 July

2025, this Court allowed both the applications of Vijay Sales and directed its deletion from enforcement proceedings. This Court also vacated disclosure order *qua* Vijay Sales. In the meantime, Amstrad filed disclosure affidavit dated 21 April 2025. Petitioner sought an order for deposit of awarded amount by Amstrad. The enforcement proceedings against Amstrad are still pending.

6. In light of above background, Petitioner has filed present Petition under Section 9 read with Section 2(2) of the Arbitration Act seeking following prayers:

- a. Pass an order directing the Respondents to jointly and severally deposit with this Hon'ble Court the full Awarded Amount of USD 1,448,940.91 and RMB 180,533.38;
- b. Pass an order directing Respondent No. 1 to disclose on Affidavit full particulars of all their assets-movable and immovable, tangible and intangible-including all bank accounts, deposits, receivables, inventories, and financial investments, along with complete financial statements, trial balances, cash flow statements, ledgers, auditor reports and tax filings for Financial Years 2023-24 and 2024-25, as well as all transactions undertaken from 30 September 2024 till the date of the order of this Hon'ble Court in this Petition;
- c. Pass an order of injunction against Respondent No. 1 restraining it from alienating, transferring or dealing with its assets in any manner, including injunction against operating or withdrawing any amount from its bank accounts, and to restrain any third-party transfers or encumbrances pending disposal of the Enforcement Petition before this Hon'ble Court;
- d. Pass an order directing Respondent No. 2 to disclose on Affidavit full particulars of all its assets-movable and immovable, tangible and intangible – including all bank accounts, deposits, financial documents, and transactions undertaken from 30 November 2023 till the date of the order of this Hon'ble Court in this Petition;
- e. Pass an order of injunction against Respondent No. 2 restraining it from alienating, transferring or dealing with its assets in any manner, including injunction against operating or withdrawing any amount from its bank accounts, and to restrain any third-party transfers or encumbrances pending disposal of the Enforcement Petition before this Hon 'ble Court;

f. Pass such further or other interim, ad-interim or consequential orders as this Hon'ble Court may deem fit in the interests of justice.

SUBMISSIONS

7. Ms. Kshama Loya, the learned counsel appearing for Petitioner-Ningbo submits that after a foreign award becomes enforceable, the award creditor can execute the same against third parties by lifting the corporate veil and by invoking the 'group of companies' doctrine. That in the present case, Amstrad and Vijay Sales are closely interlinked as they have common and overlapping key management personnel. That the certificate of guarantee itself makes it clear that Vijay Sales is a shareholder of Amstrad/Ovot. That Mr. Nanu Narotam Gupta and Mr. Nilesh Nanu Gupta (father and son) are directors of Respondent No.2-Vijay Sales, who simultaneously held key managerial positions with Amstrad/Ovot. That Mr. Nanu Narotam Gupta served as director and also held position of chairman of board of directors of Amstrad until his resignation on 28 May 2024. That Mr. Nilesh Gupta continued as the director of Amstrad until 28 September 2024. That as on the date of his resignation, Mr. Nilesh Gupta was the largest individual shareholder of Amstrad holding 23,75,000 equity shares of Amstrad. That Vijay Sales itself is a shareholder of Amstrad. She therefore submits that the corporate veil needs to be lifted and group of companies doctrine needs to be applied for making interim measures against Vijay Sales for enforcement of the foreign award.

8. Ms. Loya further submits that Section 9 read with Section 2(2) of the Arbitration Act and the closing statement of Section 9(1) of the Arbitration Act permits parties to seek post-award interim reliefs against third parties. That Section 9 jurisdiction can also be exercised

after an award is passed, but before it is enforced in accordance with Section 36 of the Arbitration Act. That in the context of a foreign award, the same becomes enforceable under Section 49 of the Arbitration Act after disposal of objections under Section 48. That therefore, the remedy under Section 9 of the Arbitration Act is available to the Petitioner irrespective of whether the Petition is filed before, during or after passing of the award. That power under Section 9 of the Arbitration Act can be exercised against third parties to preserve the 'amount in dispute', which is distinct from language of Section 47 of the Arbitration Act which relates to 'subject matter of the award'. That therefore Section 9 remedy can be exercised against parties who bear a nexus with the dispute and from whom the security can be obtained to secure the amount in the dispute. Therefore, the nexus of third party to 'amount in dispute' is the determinative factor.

9. Ms. Loya relies on judgment of the Delhi High Court in *Eveready Industries India Ltd. vs KKR India Financial Services Limited and Another*¹ in support of her contention that Section 9 of the Arbitration Act can be extended to third parties, who, in the case before Delhi High Court, were merely referred to as 'reference entities' forming part of single economic unit. She also relies on judgment of the Delhi High Court in *Gatx India Pvt Ltd. vs Arshiya Rail Infrastructure Limited & Anr.*² in support of her contention that Section 9 remedy can be extended to a third-party guarantor once it is found that there is group involvement. She also relies on judgment of Delhi High Court in *VLS Finance Limited vs. BMS IT Institute*

1 2022 SCC OnLine Del 395

2 2014 SCC OnLine Del 4181

***Private Limited and Anr.*³ and of this Court in *Valentine Maritime Limited and Ors. vs Kreuz Subsea Pte Limited and Ors.*⁴**

10. Ms. Loya would further submit that Amstrad/Ovot and Vijay Sales are inextricably interlinked and Vijay Sales bears a strong nexus to the amount in dispute. That Vijay Sales has given a blanket guarantee for all future orders and the transaction was entered into during validity of the guarantee. That the guarantee was signed by Mr. Nilesh Gupta who held common and overlapping key management positions in both Group Companies. That Vijay Sales had responded to the Petitioner in respect of liability of Ovot making it abundantly clear that there is direct nexus between Vijay Sales and the amount in dispute.

11. Ms. Loya would further submit that the guarantee certificate and proforma invoice is a composite transaction. That intention of connected parties is essentially to determine whether a transaction is intended to be composite. She relies on judgment of the Apex Court in ***Chloro Controls (I) Pvt. Limited vs. Severn Trent Water Purification Inc. & Ors.*⁵** in support of her contention that there is implied consent of guarantors to a transaction. She submits that conduct of Vijay Sales would bind it to agreement between Petitioner-Ningbo and Amstrad/Ovot. That the guarantee certificate is a commercial act to induce and secure Petitioner-Ningbo's entry into the transaction. That therefore conduct of Vijay Sales shows that it was an active participant in formation of the contract and secured its performance. That Vijay Sales has a direct stake in performance of proforma invoice due to its

3 2015 SCC OnLine Del 9292

4 2021 SCC Online Bom 2294

5 (2013) 1 SCC 641

shareholders status. She would further submit that by virtue of common directorship, Vijay Sales had full knowledge of the contractual structure.

12. Ms. Loya would further submit that Amstrad does not have financial condition or capacity to fulfill the Award and has been engaging in actions that would seriously obstruct the enforcement thereof. That there have been material changes in the structure of Amstrad as well as control and management since September 2024. That time and scale of the material changes and resignation are highly unusual and stare in the face of potential enforcement actions and liabilities arising against Amstrad from the Award.

13. Ms. Loya would further submit that liability of a guarantor is coextensive with that of principal debtor. That since guarantor is inexplicably linked to the award-debtor and the agreement, the financial position, asset base and intercompany dealings of Vijay Sales become relevant for securing the award. Ms. Loya would submit that Petitioner has a strong *prima facie* case and would suffer imminent and irreparable harm unless urgent interim measures are granted on account of precarious financial position of Amstrad and a serious apprehension of asset dissipation to obstruct and delay enforcement of the Award. That Respondents have engaged themselves in collusive actions since September 2024 aimed at obstructing the enforcement. That balance of convenience is overall mainly in Petitioner's favour. On the above broad submissions, Ms. Loya would pray for making the Petition absolute in terms of the prayers therein.

14. Mr. Tamboly, the learned counsel appearing for the Respondents submits that Vijay Sales was not a party to arbitration proceedings and

that therefore no foreign award has been passed against it. That Petitioner had sought to make Vijay Sales a party to arbitration proceedings but was not successful in doing so. That even though Vijay Sales is not a party to arbitration proceedings, the Petitioner still attempted to rope in Vijay Sales in Commercial Arbitration Petition (L) No.29646 of 2024 filed under Sections 48 and 49 of the Arbitration Act. That by order dated 4 July 2025, this Court has directed deletion of Vijay Sales from the said Arbitration Petition. Thus, the foreign award cannot be enforced against Vijay Sales, and since there is no possibility of enforcement of the award against Vijay Sales, no interim measures under Section 9 of the Arbitration Act can be directed against Vijay Sales.

15. Mr. Tamboly further submits that if the Award itself is not enforceable against Vijay Sales, no interim relief can be granted. Relying on judgment of this Court in **Aircon Belbars FZE vs Heligo Charters Pvt. Ltd.**⁶ he submits that if the foreign award does not result in an enforceable decree, then the protective order under Section 9 of the Arbitration Act cannot continue. Relying on proviso to Section 2(2) of the Arbitration Act, he submits that the Award needs to be enforceable and recognizable under provisions of Part II of the Arbitration Act and that therefore as a matter of propriety, the Award can only be enforced and recognized against Respondent No.1. That though Section 9 proceedings can be filed against third party, such measure needs to be adopted only in recognized circumstances where a third party claims through or under a party to arbitration agreement. He relies on judgment of Kerala High Court in **Shoney Sanil vs. Coastal Foundations (P) Ltd. & Ors.**⁷ as followed by Division Bench of

6 2017 SCC OnLine Bom 631

7 AIR 2006 Ker 206

this Court in *Girish Mulchand Mehta and another vs. Mahesh S. Mehta and another*⁸. He also relies on judgment of Delhi High Court in *M/s. Value Advisory Services vs. M/s. ZTE Corporation and Others*⁹ in support of his contention that the Court is not bound to grant interim protection when liability is denied by the third party and disputed questions of fact arise, which cannot be adjudicated without conducting trial.

16. Mr. Tamboly further submits that Vijay Sales does not fall within the scope of 'claiming through' or 'under' which is the requisite condition under Section 9 of the Arbitration Act. That the guarantee constituted separate and independent agreement between Petitioner and Vijay Sales. That Petitioner had called upon Vijay Sales to repay the amount under the guarantee which has been outrightly refused by Vijay Sales. That liability of guarantor is always co-extensive with principal borrower. That creditor may opt to sue the principal borrower without suing the guarantor or only the guarantor and not the principal borrower or both. That therefore Vijay Sales could have been sued concurrently alongwith Amstrad. However, Petitioner chose to bring action only against Amstrad. That having omitted to sue Vijay Sales in the arbitration proceedings, Petitioner cannot now seek to enforce award against Vijay Sales.

17. Mr. Tamboly further submits that the award in the present case is a money decree and no case is made out by the Petitioner to demonstrate as to how grant of any interim relief against Vijay Sales can ever reserve/protect subject matter of the dispute. That present Petition is nothing but a case of forum shopping where a party who is

8 2009 SCC OnLine Bom 1986

9 2009 SCC OnLine Del 1961

unable to procure relief from one Court has approached another Court for same relief. That the present Petition is filed after realizing that Award cannot be enforced against Vijay Sales on account of deletion of Vijay Sales from the enforcement proceedings.

18. Mr. Tamboly would further submit that Petitioner has already sought necessary reliefs, both substantive as well as interim, against Amstrad in enforcement proceedings and that therefore the same cannot be considered in the present Petition without prejudice to its claims. That Amstrad has positive net worth and asset base of approximately Rs.52 Crores. That Amstrad has successfully repaid working capital facility aggregating to Rs.120 Crores to its lender banks. That there is nothing on record to indicate that Respondent No.1 is attempting to fritter away its assets for defeating the claim of the Petitioner. That therefore no order can be passed even against Amstrad in the present Petition.

19. Lastly, Mr. Tamboly would submit that direction for deposit cannot be routinely granted merely because a monetary claim is awarded by the Arbitral Tribunal. In support, he relies upon the judgment of Delhi High Court in *National Highways Authority of India vs IRB Ahmedabad Vadodara Super Express Tollways Pvt Ltd.*¹⁰ Mr. Tamboly would pray for dismissal of the Petition.

REASONS AND ANALYSIS

20. The disputes between the parties emanate out of a Proforma Invoice issued by Petitioner-Ningbo to Amstrad/Ovot on 23 October 2020 for purchase of 22,213 AC units from the Petitioner for sum of

¹⁰ 2024 SCC OnLine Del 7285

USD 27,38,634. The Proforma Invoice contained arbitration agreement. Vijay Sales is not concerned with the Proforma Invoice but had issued a Guarantee Certificate on 28 February 2020 in favour of the Petitioner guaranteeing the payment on behalf of Amstrad/Ovot for future orders upto USD 10 million. There is no dispute to the position that the Certificate of Guarantee did not contain arbitration agreement.

21. The case involves a rather peculiar circumstance. Petitioner alleges non-payment of amounts payable under the Proforma Invoice by Amstrad/Ovot. It is claimed by Amstrad/Ovot that when it intended to make payment against the Proforma Invoice, it received an email from representative of Petitioner containing bank details for transmission of invoice amount. It is Amstrad's case that the entire invoice amount has been paid by it into the communicated bank account. It appears that said account has turned out to be a fraudulent one and Petitioner claims that it has not received any amount towards the Proforma Invoice. Thus the monies allegedly paid by Amstrad have gone into account of a fraudster. Since Petitioner has not received the amount, it invoked arbitration clause 8 of Proforma Invoice, which culminated into arbitration proceedings before SHIAC.

22. Initially, Petitioner initiated arbitration proceedings against both Amstrad/Ovot as well as Vijay Sales. Petitioner, however, claims that the Case Manager at SHIAC verbally directed it to delete Vijay Sales from arbitration proceedings on account of Vijay Sales not being party to Proforma Invoice. Petitioner accordingly proceeded to delete Vijay Sales from arbitration proceedings and filed a revised arbitration application only against Amstrad/Ovot. This is how arbitration

proceedings are conducted only between Petitioner and Amstrad/Ovot, and Vijay Sales is admittedly not a party to the arbitration proceedings and to the Award. The SHIAC arbitral award dated 30 November 2023 has awarded sum of USD 14,48,940.91 towards outstanding dues and RMB 1,80,533.38 towards arbitration fees in favour of the Petitioner.

23. Though Vijay Sales was not a party to arbitration proceedings or to the foreign Award, Petitioner has still proceeded to implead Vijay Sales as Respondent No.2 in Commercial Arbitration Petition (L) No. 29646 of 2024 filed under Sections 48 and 49 of the Arbitration Act for enforcement of SHIAC Award. Vijay Sales opposed its impleadment in the enforcement proceedings and applied for its deletion. By order dated 4 July 2025, this Court has directed deletion of Vijay Sales from the enforcement proceedings. It would be apposite to refer to the findings recorded by this Court in order dated 4 July 2025. This Court held in paragraphs 7 to 14, 17 and 18 as under:

7. Likewise, under Section 48(1)(b) of the Act, the enforcement of a foreign award may be refused at the request of a party against whom it is invoked only if that party furnishes to the Court proof that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case. In the instant case, Respondent No. 2 was not even a party to the arbitral proceedings, much less a party to the proceedings who was entitled to notice of the appointment of the arbitrator or was unable to present his case.

8. Therefore, on the last occasion, notice was issued on the Interim Applications. Thereafter, the original Petitioner has filed an affidavit, which essentially brings on record the fact that the Petitioner had initially tried to make Respondent No.2 a party to the proceedings and the case manager of the arbitral tribunal had refused to permit Respondent No.2 being made a party. Therefore, what is evident is that Respondent No.2 is not a person against whom the arbitral award is made. However, enforcement is sought to be made against Respondent No.2 as well. This position in fact ought to have been made clear up front by the Petitioner in its pleadings in the Petition and more so when the matter was first considered on an ex parte basis.

9. It is true that Respondent No. 2 has been sought to be roped in, in its capacity as a guarantor for the transactions between the Petitioner and Respondent No.1. Towards this end, reliance is placed by Learned Counsel for the Petitioner on the “guarantee certificate” executed by Respondent No.2 (Exhibit ‘C’ to the Petition at Page 103). The guarantee certificate states that Respondent No.2 is a shareholder of Respondent No.1 and that Respondent No.2 formally guarantees that Respondent No.2 would be responsible for all the payments to be made by Respondent No.1 to the Petitioner in respect of future orders up to a level of US \$ 10 million if Respondent No.1 were to make a payment default. The guarantee certificate does not have an arbitration clause. It also does not have any incorporation of an arbitration agreement by reference to the arbitration clause contained in the agreement between the Petitioner and Respondent No.1.

10. In these circumstances, the failed attempt to make Respondent No.2 a party to the arbitral proceedings, as is seen from the Petitioner’s affidavit, gains significance. Admittedly, an attempt had been made by the Petitioner to make Respondent No. 2 a party to the arbitration proceedings and that was rejected by the case manager of the arbitral tribunal. Learned Counsel for the Petitioner would strenuously urge that rejection by a case manager of the attempt to make Respondent No.2 a party should not be treated as a rejection by the arbitral tribunal. I am unable to agree. The case manager is an officer of the arbitral tribunal. If the case manager wrongly disallowed Respondent No.2 to be made a respondent in the arbitration proceedings, the Petitioner ought to have taken recourse to steps available in those proceedings to overrule the case manager. If that had not been done, or if, despite being done, had not been accepted, the consequence would be that the arbitral award sought to be enforced is not an award made between the Petitioner and Respondent No. 2.

11. It is evident that Respondent No.2 is not a party against whom the award sought to be enforced has been made. In these circumstances, the position of Respondent No.2 stands even higher than the position available under Section 48(1)(b) – not only is it a case where Respondent No.2 cannot be said to be a party who was unable to participate in the proceedings, Respondent No.2 is a person who was sought to be made a party and the very arbitral tribunal whose arbitral award is sought to be enforced, had not permitted making Respondent No.2 a party.

12. In these circumstances, no fruitful purpose would be served in keeping Respondent No.2 as a party. If the foundational jurisdictional fact of the arbitral award being an award made as between the Petitioner and Respondent No. 2 is absent, the order dated March 12, 2025 would be one that was passed without jurisdiction.

13. In this context, the pleadings in the Petition containing the description of facts in respect of Respondent No.2 are noteworthy. Paragraph 8 in the Petition inter alia describes Respondent No.2 as a shareholder of Respondent No.1. It is explicitly stated that Respondent No.2 has been made a party to the present Petition solely for the prayers sought under paragraph 36 of the Petition. There is no specific role played by Respondent No. 2 that was adjudicated in the arbitral proceedings.

14. The prayer sought in Paragraph 36 of the Petition not only seeks disclosures by Respondent No. 2 but also seeks the appointment of a Court Receiver to attach the assets and properties of both Respondents. Therefore, the disclosure sought in Paragraph 36(b) from both Respondents is in aid of the prayer in Paragraph 36(d), which seeks appointment of the Court Receiver to the extent of US \$ 1.45 million with all powers under Order 40 Rule 1 of Code of Civil Procedure, 1908 ("CPC") in respect of properties of both Respondents. If Respondent No.2 is not a party against whom the arbitral award has been made, it would follow that there would be no possibility to enforce the award against Respondent No.2. Consequently, forcing Respondent No.2 to make a disclosure without such disclosures being in aid of a maintainable prayer, would be inappropriate. Therefore, the request by Learned Counsel for the Petitioner to not vacate the direction to disclose at the least, does not appeal to me.

x x x

17. This Court is administering the provisions of Part II which sets out the jurisdiction of this Court. If the Court does not have jurisdiction by the reading of Section 46 and Section 48 (analysed above) to enforce the arbitral award against Respondent No. 2 since he is not a person against whom the award is made, it would follow that the power to recall ought to be exercised.

18. In these circumstances, in my opinion, it would be inappropriate to continue to keep Respondent No.2 as a party to these proceedings. I have no hesitation in allowing both the Interim Applications. The order directing disclosures by Respondent No.2 (who was rejected as a proposed party in the arbitral proceedings) stands vacated. The Petitioner shall carry out the deletion of Respondent No.2 within four weeks of the upload of this order on the website of this Court.

24. It appears that the Petitioner has not challenged the order dated 4 July 2025 directing deletion of Vijay Sales from enforcement proceedings and the order has attained finality. On account of deletion of Vijay Sales from enforcement proceedings, the foreign award cannot be enforced against Vijay Sales. In the light of this position, the issue that arises for consideration is whether this Court can make any interim measures against Vijay Sales during pendency of the enforcement proceeding.

25. The present Petition is filed by the Petitioner under Section 9 read with Section 2(2) of the Arbitration Act seeking interim measures

pending hearing and final disposal of Petitioner's enforcement proceedings. Since the Award itself cannot be enforced against Vijay Sales, it becomes questionable as to how this Court can make an order under Section 9 against Vijay Sales. It would be apposite to refer to the provisions of Section 9 of the Arbitration Act which provides thus:

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 subjectmatter 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 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.

26. So far as foreign award is concerned, Proviso to sub-section (2) of Section 2 makes provisions of Section 9 of the Arbitration Act applicable to international commercial arbitration even if place of arbitration is outside India and when arbitral award is enforceable in India. Section 2(2) of the Arbitration Act and proviso thereto read thus:

(2) This Part shall apply where the place of arbitration is in India:

Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.

27. Though Mr. Tamboly did seek to suggest during the course of his oral submissions that the present Petition under Section 9 of the Arbitration Act is not maintainable, the issue is no more *res integra* and is covered by Division Bench judgment of this Court in ***Heligo Charters Private Limited vs. Aircon Belbars FZE***¹¹ in which it is held that post-award Petition under Section 9 of the Arbitration Act is maintainable even in respect of international commercial arbitration. In ***Heligo Charters Private Limited*** it is held in paragraphs 15, 16, 17 as under:

15. Heard learned Counsel appearing for the respective parties. We agree with the submissions advanced by the Counsel appearing for the respondents. The amended provisions of Section 2(2) clearly stipulates that subject to an agreement to the contrary, the provisions of Section 9 shall apply to international commercial arbitration even if the place of arbitration is outside India. **The contention that unless the award is put to execution in accordance with provisions of Section 48, a party is not entitled to seek interim-relief is not sustainable. There is no such embargo**

11 2018 SCC OnLine Bom 1388

or restriction placed for seeking recourse to interim measures even if the award is foreign-seated one. The amendment was brought into effect after the Law Commission submitted its report consequent to judgment in the case of *BALCO* (cited supra). Paragraph 194 of the judgment reads as under:

“194. In view of the above discussion, we are of the considered opinion that the Arbitration Act, 1996 has accepted the territoriality principle which has been adopted in the UNCITRAL Model Law, Section 2(2) makes a declaration that Part I of the Arbitration Act, 1996 shall apply to all arbitrations which take place within India. We are of the considered opinion that Part I of the Arbitration Act, 1996 would have no application to international commercial arbitration held outside India. Therefore, such awards would only be subject to the jurisdiction of the Indian courts when the same are sought to be enforced in India in accordance with the provisions contained in Part II of the Arbitration Act, 1996. In our opinion, the provisions contained in the Arbitration Act, 1996 make it crystal clear that there can be no overlapping or intermingling of the provisions contained in Part I with the provisions contained in Part II of the Arbitration Act, 1996.”

16. We are, therefore, not inclined to accept the contentions of the appellant on that ground. **In view of the amended provisions and facts, we are of the view that operation of provisions of Section 9 cannot be excluded in absence of a specific agreement to the contrary.** The judgment in *BALCO* was pronounced on 6th September, 2012. The dispute between the parties was referred on 8th April, 2015. The Arbitration agreement was executed between the parties on 9th September, 2014. Whereas the Act was amended on 23rd October, 2015.

17. In respect of interpretation placed by the Counsel appearing for the appellant under the provisions of Section 2(2), 9 and 48, we are of the view that the interim protection in the facts cannot be denied to the respondent irrespective of as to whether the award was put to execution or not? Such a measure is made available in law under Section 9 of the Act so as to prevent dissipation and diversion of assets. This being the object and purpose behind the amended provisions which is based on the recommendations of the Law Commission. We do not find any error in the view adopted by the learned Single Judge on this count. The judgments cited supra by the Counsel appearing for the appellant do not support and sustain the interpretation placed by the Counsel.

(emphasis added)

28. In *Shanghai Electric Group Co. Ltd. Vs. Reliance Infrastructure Ltd.*¹², referring to the judgment in *Ashwini Minda vs. U-Shin*

¹² 2022 SCC OnLine Del 2112

Limited¹³, learned Single Judge of Delhi High Court has interpreted proviso to Section 2(2) of the Arbitration Act and has held that applicability of Section 9 of the Arbitration Act is not excluded in respect of foreign-seated institutional arbitration. In **Ashwini Minda**, it is held that applicability of Section 9 of the Arbitration Act to a foreign-seated arbitration is not excluded automatically and requires agreement to the contrary by the parties. Therefore, the objection of maintainability of the Petition need not detain the court any further.

29. Moving further, the interim measures by a Court under Section 9 of the Arbitration Act can be made *inter alia* for securing 'amount in dispute' in the arbitration. The powers under Section 9 of the Arbitration Act are wide enough as if the Court is making order for the purpose of or in relation to any proceedings before it. By now, it is well established position that Court in exercise of powers under Section 9 of Arbitration Act can make necessary interim measures even against third parties to preserve the amount in dispute.

30. The issue here is whether interim measures under Section 9 of the Arbitration Act can be made against Vijay Sales, which is a third party to the foreign Award. To rope in Vijay Sales within the ambit of Court's power under Section 9 of the Arbitration Act, Ms. Loya has invoked the doctrines of 'lifting of corporate veil' and 'group of companies'. She has relied upon Division Bench judgment of Delhi High Court in **Eveready Industries India Ltd.** (supra). The Delhi High Court has decided appeal under Section 37 of the Arbitration Act against order of learned Single Judge refusing to vacate *ex-parte ad-interim* injunction order passed against the Appellants against

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whom Group of Companies doctrine was invoked. Since the Appellants were described as 'Reference Entities' to the agreements in question, the Appellants were restrained by the learned Single Judge under Section 9 of the Arbitration Act from selling their assets. The order of the learned Single Judge was challenged contending *inter alia* that Appellants did not have any privity of contract with the lenders and had no legally binding obligation or liability for repayment of credit facilities under the Facility Agreement. On the other hand, it was contended on behalf of the Respondent therein that the Appellants were inextricably and intrinsically connected to the Facility Agreement by which lenders had extended loan facility to the borrowers. It was contended that the credit facilities were granted after due verification of credit worthiness of group of companies as a whole, including the three Appellant companies. In the light of the above factual position, the Delhi High Court referred to the judgment of the Apex Court in ***Chloro Controls*** (supra) and held in paragraphs 8, 9, 13(e) and 15 as under:

8. Based on this English principle, the Supreme Court introduced and applied the doctrine in the Indian context in ***Chloro Controls India v. Sereven Trent Water Purification***, (2013) 1 SCC 641 In this case, the doctrine was applied with reference to enforcement of a foreign award under section 45 of the Act. The court held:

“103. Various legal basis may be applied to bind a non-signatory to an arbitration agreement.

103.1 The first theory is that of implied consent, third party beneficiaries, guarantors, assignment and other transfer mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on good faith principle. They apply to private as well as public legal entities.

103.2 The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called the “alter ego”), joint venture relations, succession and estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.”

9. The court recognized the nature of modern business transactions which are carried out through multiple agreements creating intrinsically related

transactions between the parties within a corporate group, and formulated the test for determining the applicability of the doctrine as follows:

“71. Though the scope of an arbitration agreement is limited to the parties who entered into it and those claiming under or through them, the Courts under the English Law have, in certain cases, also applied the “Group of Companies Doctrine”. This doctrine has developed in the international context, whereby an arbitration agreement entered into by a company, being one within a group of companies, can bind its non-signatory affiliates or sister or parent concerns, if the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories and the non-signatory affiliates. This theory has been applied in a number of arbitrations so as to justify a tribunal taking jurisdiction over a party who is not a signatory to the contract containing the arbitration agreement. [‘Russell on Arbitration’ (Twenty Third Edition)].

72. This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, ‘intention of the parties’ is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties.

73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The Court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the Court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the Court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.

76. The Court will have to examine such pleas with greater caution and by definite reference to the language of the contract and intention of the parties. In the case of composite transactions and multiple agreements, it may again be possible to invoke such principle in accepting the pleas of non-signatory parties for reference to arbitration. Where the agreements are consequential and in the nature of a follow-up to the principal or mother agreement, the latter containing the arbitration agreement and such agreements being so intrinsically inter-mingled or inter-dependent that it is their composite performance which shall discharge the parties of their respective mutual obligations and performances, this would be a

sufficient indicator of intent of the parties to refer signatory as well as non-signatory parties to arbitration. The principle of ‘composite performance’ would have to be gathered from the conjoint reading of the principal and supplementary agreements on the one hand and the explicit intention of the parties and the attendant circumstances on the other.”

13. Having discussed the relevant legal principle and the developments around it, we now proceed to examine the FA and the correspondence put forth:

x x x

e) The position on record is that in September, 2017 when the facility was extended by the respondents, Mr. Brij Mohan Khaitan was the Chairman of the appellant MRIL. Mr. Aditya Khaitan - a defined guarantor and son of Mr. Brij Mohan Khaitan, was the Vice Chairman and Managing Director and Mr. Amritanshu Khaitan - the other defined guarantor, who is also the nephew of Mr. Brij Mohan Khaitan, was the other Director of MRIL. The position in 2019-2020 was that Mr. Aditya Khaitan is the Chairman and Managing Director of MRIL and Mr. Amritanshu Khaitan is a Director. Section 2(54) of the Companies Act defines the expression “Managing Director”, and by virtue of being the Managing Director, the incumbent is “entrusted with substantial powers of the Management of the affairs of the Company”. The expression “Promoter” is defined in Section 2(69) of the Companies Act to mean a person, inter alia, “has control over the affairs of the Company, directly or indirectly whether as a Shareholder, Director or otherwise; or” “in accordance with whose advice, directions or instructions the Board of Directors of the Company is accustomed to act:” As pointed out by Mr. Kaul, the position is the same when it comes to the other 2 appellants, namely EIIL and MBECL. In EIIL, in the year 2017-2018 Mr. Brij Mohan Khaitan was the Chairman, Mr. Aditya Khaitan was the Vice Chairman, non-executive and Mr. Amritanshu Khaitan was a Director. In the year 2019-2020, Mr. Aditya Khaitan was the Chairman, and Mr. Amritanshu Khaitan was the Managing Director. In the third appellant namely, MBECL, in the year 2017-2018, Mr. Aditya Khaitan was the Chairman, and Mr. Amritanshu Khaitan was the Director. In January, 2021, Mr. Aditya Khaitan was the Chairman of MBECL. Thus, the submission of Mr. Kaul that the appellants were also a part of the Promoter Group as defined in Clause 1.1.1(ooo), appears to be correct, inasmuch, as, the appellants were and are controlled entities of the guarantor(s).

x x x

15. We, therefore, reject the submission of the Appellants that the factors for invoking the Group Companies Doctrine did not exist in the present case. The Supreme Court has invoked the doctrine in different conditions and in relation to different subject matters, which has been discussed above. The invocation of the doctrine depends on the mutual intention of the

parties to bind not only the parties to the agreement, but other entities as well, which form part of the group as a common economic entity.

31. Thus, in *Eveready Industries India Ltd.* the Division Bench of Delhi High Court upheld invocation of Group of Companies doctrine on account of inextricable and intrinsic connection of the Appellants therein with the Facility Agreement under which the credit facilities were disbursed to the borrowers. In the present case however, though the Petitioner has demonstrated linkage of Vijay Sales with the transaction of Proforma Invoice, there is a distinguishing factor where the Petitioner has failed to demonstrate before the enforcement court that the award can be enforced against Vijay Sales by invoking Group of Companies doctrine. The issue in the present case is however slightly different. The issue for consideration is whether a party, who fails to demonstrate before the enforcement court that the award can be enforced against third party by invoking Group of Companies doctrine, can have a second bite at the cherry before Section 9 Court.

32. Ms. Loya has also relied upon judgment of learned Single Judge of Delhi High Court in *Gatx India Pvt Ltd.* (supra) in which the guarantor had sought to distance himself from the Lease Agreement. The learned Single Judge of Delhi High Court held in paragraphs 60, 64, 72 and 75 as under:

60. I now proceed to consider the submission of the respondents that respondent No. 2 is not a party to the Lease Agreement and, therefore, not a party to the Arbitration Agreement. The submission of the respondents is that respondent No. 2 has consciously not signed the lease agreement and is a party only to the guarantee. According to the respondents, this shows the intention of the parties not to embroil respondent No. 2 in an arbitration with the petitioner in respect of the disputes arising under the lease agreement and to relegate the petitioner and respondent No. 2 to the ordinary Civil Courts in respect of disputes arising under the guarantee. The submission is that the guarantee cannot be enforced and, no interim relief in respect thereof can be sought, in arbitration

proceedings which may be initiated by the petitioner only against respondent No. 1 - i.e. the second party to the lease agreement.

64. Even if it were to be accepted that respondent No. 2 is not bound by the Arbitration Agreement contained in the Lease Agreement, an analysis of the law, as interpreted and applied in several decisions leads to the conclusion that in the facts of this case there is sufficient justification to issue interim directions in respect of respondent no. 2. I may examine the legal position as regards the power of court under section 9 of the Act to issue interim orders against third parties to arbitration.

72. Even assuming that respondent no. 2 is not a party to arbitration agreement, it is not a total stranger to the covenants of the Lease Agreement. Apparently, respondent no. 2 has been in the picture throughout : at the stage of execution of the Lease Agreement between the lessor and the lessee, and also during the subsistence of the Lease - when respondent no. 1 allegedly defaulted in performance of its obligations thereunder.

75. Respondent no. 1 is a wholly owned subsidiary of respondent no. 2. It is not uncommon that in cases where group companies substantially constitute one economic entity, the courts - instead of going by the separate legal entities of the companies, have lifted the corporate veil, and looked at the common economic entity of the group to which they belong. In view of the facts of the case, and the conduct of the parties as reflected from the material on record, it does, prima facie, appear that the respondents conducted their affairs as constituents of the Arshiya Group. Also, in as much, as, respondent no. 2 has undertaken to honour respondent no. 1's obligations towards the petitioner as its own primary obligations, and the petitioner has a right to claim from respondent no. 2 the amounts allegedly due and payable by respondent no. 1 under the lease, there is a commonality of interest between respondent No. 1 and respondent no. 2. Moreover, looking at the dismal financial condition of respondent no. 1 - as discussed hereinafter, a direction only to respondent no. 1 to furnish the required security might not afford adequate protection to the petitioner. Therefore, I am of the opinion that the facts of the instant case are such that orders under section 9 ought to be passed against respondent no. 2.

33. In my view, reliance by Ms. Loya on judgment of Division Bench and learned Single Judge of Delhi High Court in ***Eveready Industries India Ltd.*** (supra) and ***Gatx India Pvt Ltd.*** (supra) does not assist the case of the Petitioner in light of the peculiar facts of the present case. Those judgments may have been relevant for the Petitioner to support its claim for enforcement of the award against Vijay Sales in Commercial Arbitration Petition (L) No.29646 of 2024.

What Ms. Loya is attempting to do is to seek a contradictory direction to the one issued by this Court in order dated 4 July 2025 passed in Enforcement Petition. While this Court has already held that the foreign award is not enforceable against Vijay Sales, the Petitioner is attempting to convince me that 'Group of Companies' doctrine and doctrine of 'lifting of corporate veil' needs to be applied for recognizing liability of Vijay Sales to pay awarded sum in the foreign award against Amstrad/Ovot. I am afraid this cannot be done. In a collateral proceedings filed for seeking interim measures under Section 9 of the Arbitration Act, Petitioner cannot seek recording of a finding contrary to the one recorded in substantive proceedings filed for enforcement of award. It cannot be countenanced that this Court would record a finding of existence of liability of Vijay Sales to pay sum awarded in foreign award passed against Amstrad/Ovot even though in enforcement proceedings, name of Vijay Sales is directed to be deleted holding that award cannot be enforced against it. Therefore, in the peculiar facts and circumstances of the present case, neither doctrine of 'Group of Companies' can be invoked nor can this Court conduct an inquiry into liability of Vijay Sales arising out of guarantee to satisfy the award amount directed against Amstard/Ovot.

34. Reliance by Petitioner on judgment of the Delhi High Court in ***VLS Finance Limited*** also does not assist its case. In that judgment, though the Delhi High Court has reiterated the principle of interim measures against third parties in post-award Section 9 Petition, the Court has cautioned that the interim measures cannot be for execution of the award. The Court has held as under:

46. A cumulative reading of the judgments referred above, it is clear that while considering a petition under Section 9 of the Act, the Court is within its right to pass order against the third party. It is also clear that when the jurisdiction of the

Court is invoked post award by way of petition under Section 9, interim protection can be granted. The argument of the counsel for the respondents that some of them not being parties before the Arbitral Tribunal, the petition under Section 9 would not be maintainable, need to be rejected. The judgment of the Supreme Court in the case of Indowind Energy Limited (supra), as relied upon by Mr. Singla, would not be applicable in the facts of this case wherein this Court is concerned with a petition under Section 9 of the Act and not under Section 11 of the Act. **The Court should restrain itself from passing an order which has the effect of implementing the award. Such order, if made, would frustrate the challenge to the award under Section 34. The order should be such which would secure the interest of the party having the award in its favour so as to seek effective implementation, in the eventuality, the challenge to the award is rejected.**

(emphasis added)

35. In *Valentine Maritime Ltd.* (supra) relied upon by the Petitioner, Division Bench of this Court has reiterated the principles of wide ambit of power under Section 9 of the Arbitration Act to make interim measures. It is held thus:

65. A perusal of Section 9(1)(ii)(c) clearly indicates that the Court may authorize any person to enter upon any land or building in the possession of the any party, authorizing 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 for the purpose of detention, preservation or inspection of any property which is subject matter of the dispute in Arbitration. For granting such relief under Section 9(1)(ii)(c), third parties who are not parties to the Arbitration Agreement may be affected. Such third parties who want to seek any interim measures under Section 9 would not be entitled to invoke the said provision for seeking interim measures against a party to the Arbitration Agreement. However, there is no bar against the Court from granting interim measures under Section 9 of the Arbitration Act against a party who is not a party to the Arbitration Agreement, if those reliefs fall under any of the reliefs provided in Section 9(1)(i), (ii)(a) to (e) of the Arbitration Act.

In the peculiar facts of the case, the Division Bench upheld the order of the learned Single Judge directing interim measures against third parties before commencement of arbitral proceedings. The judgment has no application to the peculiar facts of the present case.

36. The remedy for interim measures under Section 9 of the Arbitration Act is not a standalone remedy and it is in aid of some substantive proceedings viz. arbitral proceedings or enforcement proceedings. Once it is held in enforcement proceedings that there is

no underlying liability against a third-party, Section 9 route cannot be adopted to fasten the very same liability against that party in an indirect manner. In the present case, it is held by the enforcement court that Vijay Sales has no liability to pay to the Petitioner under the award and enforcement proceedings are dismissed against it. Therefore, there is no question of making any interim measures against Vijay Sales, against whom the award is not enforceable.

37. Apart from the unique circumstance of deletion of Vijay Sales from enforcement proceedings, it is also contended on behalf of Respondents that no interim measures otherwise deserve to be granted against Vijay Sales since Vijay Sales is not claiming through or under Amstrad/Ovot. There can be no dispute to the position that in exercise of power under Section 9 of the Arbitration Act, the Court can extend its arm even to reach out a third-party for preserving subject matter of arbitration or for securing the amount in dispute in arbitration. However, while roping in third parties in exercise of powers under Section 9, the Courts needs to be mindful of the fact that interim measures can be made only when it is found that the third party is claiming through or under the part to arbitration and in case of post-award Petition, through or under the award debtor. Ordinarily, interim measures cannot be made against a third party who claims independent right in respect of subject matter of arbitration. Reliance by Mr. Tamboly in this regard on judgment of learned Single Judge of Kerala High Court in *Shoney Sanil* (supra) is apposite, in which it is held as under:

...A reading of the said provision would show that the orders under Section 9(ii) (c) can be passed only in relation to the subject-matter of the dispute in arbitration which may be in the possession of any party since it is not the intention of the Act or any arbitration proceedings as conceived by the law of

arbitration, to interfere with or interpolate third party rights. The reason for this is obvious, that, an arbitral tribunal rests its authority on the agreement between the parties to the arbitration agreement and it is not a Court, to interfere with third party rights, as may the Courts authorised in that regard, by the law of the land. The issuance of interim injunction or appointment of receiver provided for under clause (d) and the residuary provision to issue such interim measure of protection as may appear to be just and convenient in terms of clause (e) of Section 9(i) and (ii) have to be read in the backdrop of the extent of jurisdiction which can be exercised and, this is limited to the parties who are governed by the arbitral agreement and not in excess thereof. On a plain reading of Section 9 of the Act and going by the scheme of the said Act, there is no room to hold that by an interim measure under Section 9, the rights of third party, holding possession on the basis of a Court sale could be interfered with, injuncted or subjected to proceedings under Section 9 of the Act. **Section 9 of the Act contemplates issuance of interim measures by the Court only at the instance of a party to an arbitration agreement with regard to the subject-matter of the arbitration agreement. This can be only as against the party to an arbitration agreement, or, at best, against any person claiming under him.** The writ petitioner is a third party auction purchaser in whose favour is a sale certificate, followed by delivery of possession. He cannot therefore be subjected to proceedings under Section 9 of the Act, initiated on the basis of an alleged arbitral agreement between the respondents. ...

(emphasis and underlining added)

38. The judgment of ***Shoney Sanil*** (supra) is followed by Division Bench of this Court in ***Girish Mulchand Mehta*** (supra) in which the issue before this Court was whether interim measures can be made against member of cooperative society when disputes arise in connection with Development Agreement executed between a society and the developer. Relying on judgment in ***Shoney Sanil*** (supra), the Division Bench held in paragraphs 12 and 13 of the judgment in ***Girish Mulchand Mehta*** (supra) as under:

12. **The next question is whether order of formulating the interim measures can be passed by the Court in exercise of powers under section 9 of the Act only against a party to an Arbitration Agreement or Arbitration Proceedings.** As is noticed earlier, the jurisdiction under section 9 can be invoked only by a party to the Arbitration Agreement. Section 9, however, does not limit the jurisdiction of the Court to pass order of interim measures only against party to an Arbitration Agreement or Arbitration Proceedings; whereas the Court is free to exercise same power for making appropriate order against the party to the Petition under section 9 of the

Act as any proceedings before it. The fact that the order would affect the person who is not party to the Arbitration Agreement or Arbitration Proceedings does not affect the jurisdiction of the Court under section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject-matter of the Arbitration Agreement.

13. The appellants, however, place reliance on the decision of the Kerala High Court in the case of Shoney Sanil v. Coastal Foundations (P) Ltd., reported in AIR 2006 Kerala 206. In that case the question considered was whether the writ-petitioner, admittedly, a third party to an alleged Arbitral Agreement between the respondents inter se, and who had in his favour a confirmed Court sale and certificate of such sale and delivery of possession, following and arising under an independent decree, could be dispossessed, enjoined or subjected to other Court proceedings under section 9 of the Act? The Kerala High Court held that orders under section 9(ii)(c) can be passed only in relation to subject-matter of dispute in arbitration which may be in possession of any party since it is not the intention of the Act or any arbitration proceedings as conceived by the law of Arbitration to interfere with or interpolate third party rights. It concluded that on a plain reading of section 9 of the Act and going by the Scheme of the said Act, there is no room to hold that by an interim measure under section 9, the rights of third party holding possession on the basis of Court sale could be interfered with, enjoined or subjected to proceedings under section 9 of the Act. Instead, it held that section 9 of the Act contemplates issuance of interim measures by the Court only at the instance of party to Arbitration Agreement with regard to the subject-matter of the Arbitration Agreement. The Court has, however, noted that such order can be only against the party to an Arbitration Agreement or at best against any person claiming under him. **The Principle expounded in this decision is that if a third party has independent right in the subject-matter of the Arbitration Agreement, section 9 cannot be invoked to affect his rights.** At the same time, the Kerala High Court has plainly opined that it is possible to pass orders under section 9 against a third party if such person is claiming under the party to the Arbitration Agreement. **Thus understood, section 9 can be invoked even against a third party who is not party to an arbitration agreement or arbitration proceedings, if he were to be person claiming under the party to the arbitration agreement and likely to be affected by the interim measures.** The appellants herein will have to substantiate that they were claiming independent right in respect of any portion of the subject-matter of the Arbitration Agreement on their own and not claiming under the respondent No. 2 Society who is party to the Arbitration Agreement. In absence thereof, the Court would certainly have jurisdiction to pass appropriate order by way of interim measures even against the appellants herein, irrespective of the fact that they are not party to the Arbitration Agreement or the Arbitration Proceedings.

(emphasis and underlining added)

39. In *M/s. Value Advisory Services* (supra) learned Single Judge of Delhi High Court has held that when an attachment *qua*

properties/monies in the hands of third parties is sought, there is always a possibility of such third party contesting the same and setting up title in such property in himself. It is further held that when third party denies the liability and when such denial raises disputes to questions of fact, which cannot be adjudicated without conduct of trial, powers under Section 9 of Arbitration Act cannot be exercised. It is held in paragraphs 17 and 18 of the judgment as under:

17. However whenever attachment qua properties/monies in hands of third parties is made, the possibility of such third party contesting the same cannot be ruled out; while the party seeking attachment may aver the property to be of person against whom he is seeking a decree, the third party may set up title in such property in himself or in yet another party or resist attachment on other grounds. Order 38 Rule 8 CPC provides for adjudication of such claims by the court. The question which arises is, whether and how such disputes to attachment, if raised pursuant to attachment under Section 9 are also to be adjudicated. The necessary corollary to what I have held above is that the court, even in a proceeding under Section 9 will have to adjudicate such disputes. Order 38 Rules 7, 8 and 11A apply the provisions of attachment in relation to execution in Order 21 Rules 46, 46A to F, to attachment before judgment also. Rule 46C of Order 21 provides for trial of disputed questions where such third party disputes liability, as a suit.

18. However, considering the nature of proceeding under Section 9, I find that the court is not bound to, where the third party, with respect to property/money in whose hands attachment is issued, denies liability and such denial raises disputed questions of fact which cannot be adjudicated without trial, to conduct trial. The court, in such cases in its discretion can on a prima facie view of the matter, either refuse to exercise powers under Section 9 or pass other appropriate order to protect the interest of all parties concerned.

40. In the present case, Vijay Sales is not claiming under or through Amstrad in respect of subject matter of arbitration. The case involves attempt on the part of the Petitioner to enforce the guarantee against Vijay Sales. This claim of guarantee was required to be adjudicated in arbitral proceedings. Petitioner however chose to delete Vijay Sales from arbitral proceedings and pressed claim only against Amstrad. To

make things further worse for Petitioner, Vijay Sales is deleted even from enforcement proceedings.

41. In the present case, there is no possibility of Award being enforced against Vijay Sales on account of its deletion from enforcement proceedings. When the foreign Award is not likely to result in an enforceable decree under Section 49 of the Arbitration Act, interim measure under Section 9 of the Arbitration Act cannot be made against Vijay Sales. In this regard, following observations made by learned Single Judge of this Court in *Aircon Belbars FZE* (supra) in paragraph 10 of the judgment is apposite:

“If the foreign award does not result in an order of enforceability, then of course a protective order under Section 9 cannot continue.”

42. To digress a bit, the judgment of the learned Single Judge in *Aircon Belbars FZE* is also relevant for the issue of maintainability of Petition under Section 9 of the Arbitration Act in relation to a foreign Award, which has already been dealt with hereinabove and the judgment has been upheld by the Division Bench in *Heligo Charters Private Limited* (supra), to which the reference has been made in preceeding paragraphs of the judgment. Coming back to the main issue at hand, in my view therefore, no interim measure under Section 9 of Arbitration Act can be made against Vijay Sales for securing the amount in dispute in the arbitration.

43. Petitioner’s submission about inextricable linkage between Amstrad and Vijay Sales does not cut any ice in the light of deletion of Vijay Sales from enforcement proceedings. If Amstrad and Vijay Sales are indeed inextricably linked and such linkage makes Vijay Sales

satisfy Amstrad's liability under the foreign Award, this Court would not have directed deletion of Vijay Sales from enforcement proceedings. As observed above, order dated 4 July 2025 passed in enforcement petition has attained finality as Ms. Loya has confirmed that Petitioner has not challenged the said order. In that view of the matter, the attempts to demonstrate inextricable linkage between Amstrad and Vijay Sales or composite nature of transaction between Guarantee Certificate and Proforma Invoice are misplaced. Similarly, financial condition of Respondent No.1-Amstrad/Ovot or material changes effected in the structural control and management of Amstrad after the arbitral Award cannot be a ground for roping in Vijay Sales by making interim measure of directing deposit of awarded sum or provision of security in respect of the awarded sum. In my view therefore, no relief can be granted in favour of the Petitioner against Vijay Sales.

44. So far as Petitioner's prayer for interim measures against Respondent No.1-Amstrad/Ovot is concerned, it is seen that it has already sought interim reliefs in Enforcement Petition (Commercial Arbitration Petition (L) No.29646 of 2024) against Amstrad/Ovot and the said Enforcement Petition is pending. Ms. Loya is quick enough to respond stating that Petitioner has not sought direction for deposit in the said Petition. In my view, mere failure on the part of the Petitioner to seek direction for deposit in Enforcement Petition cannot be a ground for maintaining separate Section 9 Petition. Petitioner cannot divide interim prayers into Section 48 proceedings and Section 9 proceedings. It is also settled position of law that interim reliefs can also be sought in enforcement proceedings filed under Sections 48 and 49 of the Arbitration Act.

45. Petitioner has already sought interim relief in enforcement Petition against Amstrad/Ovot. Having done so, it cannot maintain a separate Petition under Section 9 of the Arbitration Act once again seeking interim measures of different nature against Amstrad/Ovot. In fact, I find considerable force in the submission of Respondents that the present Petition is filed only after realizing that no relief is granted against Vijay Sales in Enforcement Petition. This is clear from the timing of filing of the present Petition. The order directing deletion of Vijay Sales from Enforcement Petition was passed on 4 July 2025. Immediately thereafter, the present Petition is filed on 16 July 2025. The cause for filing present Petition is described by the Petitioner in paragraph 25 to 28 of the Petition as under:

25. By an order dated 4 July 2025 (hereinafter referred to as the "4 July Order"), this Hon'ble Court vacated the Disclosure Order insofar as it pertained to Respondent No. 2 and deleted Respondent No. 2 as a party to the Enforcement Petition. A copy of the said 4 July Order is annexed hereto and marked as "Exhibit L".

26. At the hearing held on 4 July 2025, the Petitioner, inter alia, sought a direction for deposit of the Awarded Amount by Respondent No. 1.

27. This request was made in light of the dated, evasive, and non-transparent disclosures made in its Disclosure Affidavit, and the discovery of several questionable acts of the Respondents discovered by the Petitioner after the filing of the Enforcement Petition. A perusal of the Disclosure Affidavit, read in conjunction with the financial & company documents of Respondent No. 1 available on the official records of the Ministry of Corporate Affairs (hereinafter referred to as "MCA"), raises grave and well-founded apprehensions regarding the bona fides of Respondent No. 1, as well as its intention and capacity to honour the Award.

28. This Hon'ble Court was pleased to post the matter for further hearing on 18 July 2025, for consideration of the Petitioner's prayer for securing the Awarded Amount. In view of the foregoing and to safeguard the fruits of the Award, the Petitioner is constrained to file the present Petition.

46. Thus, there is a specific admission in the Petition that after deletion of Vijay Sales from enforcement petition on 4 July 2025, Petitioner sought direction for deposit of awarded amount by Amstrad/Ovot, which prayer was to be considered during the course of further hearing on 18 July 2025. Despite this position, Petitioner has filed the present Petition on 16 July 2025, which makes it abundantly clear that present Petition is filed to get over the order dated 4 July 2025 passed in enforcement petition and to indirectly rope in Vijay Sales in enforcement of award when direct relief against Vijay Sales is rejected in enforcement proceedings.

47. Even otherwise, the Petitioner has secured a monetary Award against Respondent No.1-Amstrad/Ovot. It has secured order for disclosure against Respondent No.1-Amstrad/Ovot. It is claimed by Respondent No.1-Amstrad/Ovot that it has a positive net worth. Respondent No.1 has denied that it has weak or precarious financial position. Petitioner can accordingly seek enforcement of the Award against Respondent No.1-Amstrad/Ovot. It is well-settled position that direction for deposit of awarded amount under Section 9 of the Arbitration Act cannot be resorted to as a shortcut method to execution. Reliance placed by Respondents on judgment of Delhi High Court in *National Highways Authority of India* (supra) in this regard is relevant, in which it is held in paragraphs 27.3 and 27.4 as under:

27.3 Section 9 cannot, quite obviously, be regarded as a shortcut to avoid Section 36. In fact, it is not often that one encounters a postaward Section 9 petition. Orders of deposit of the awarded amount are generally passed by the executing court, which is activated by the award holder under Section 36, or by the Court in which the unsuccessful award debtor challenges the award under Section 34.

27.4 Quite obviously, therefore, a direction for deposit of the awarded amount, under Section 9, is not routinely to be passed. It is plain that the

mere fact that an amount stands awarded, irrespective of the magnitude of the amount, cannot constitute the basis for the award holder to seek, from the Court, a direction to the award debtor to deposit the awarded amount. Such orders, if passed, have to be reserved for rare and exceptional cases, in which deposit of the awarded amount is absolutely imperative to protect the interests of the award holder.

48. In my view, no extraordinary case is made out by the Petitioner for directing deposit of awarded amount in the Petition filed under Section 9 of Arbitration Act especially when the enforcement petition is pending and Petitioner has sought interim reliefs against Respondent No.1-Amstrad/Ovot in the said Petition.

CONCLUSION

49. Considering the overall conspectus of the case, I am of the view that no relief can be granted in favour of the Petitioner in the present Petition. The Commercial Arbitration Petition is accordingly **dismissed**. Considering the facts and circumstances of the case, there shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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