

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

ARBITRATION PETITION NO.557 OF 2025

Sany Heavy Industry India Pvt. Ltd.Petitioner
V/S

Sri Buddha Engineering and Construction
Private Limited & Ors.Respondents

**WITH
COURT RECEIVER'S REPORT NO.24 OF 2026
IN
ARBITRATION PETITION NO.557 OF 2025**

Sany Heavy Industry India Pvt. Ltd.Petitioner
V/S

Sri Buddha Engineering and Construction
Private Limited & Ors.Respondents

**WITH
INTERIM APPLICATION (L) NO.3567 OF 2026
IN
ARBITRATION PETITION NO.557 OF 2025**

Sany Heavy Industry India Pvt. Ltd.Applicant
V/S

Sri Buddha Engineering and Construction
Private Limited & Ors.Respondents

**WITH
COMMERCIAL ARBITRATION APPLICATION
(L) NO.3661 OF 2026**

Sany Heavy Industry India Pvt. Ltd.Application
V/S

Sri Buddha Engineering and Construction
Private Limited & Ors.Respondents

Ms. Bijal Gogri i/b M/s. GNP Legal *for the Petitioner/Applicant.*

Ms. M.M. Satam, Section Officer, Office of the Court Receiver present in Court.

CORAM : SANDEEP V. MARNE, J.

DATE : 03 FEBRUARY 2026.

P.C.:

1. These are proceedings filed under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) for seeking interim measures before commencement of arbitral proceedings and for constitution of the Arbitral Tribunal.

2. I have heard Ms. Gogri, the learned counsel appearing for the Petitioner. By order dated 20 November 2025 passed in Arbitration Petition No.557 of 2025, notice was issued to the Respondents. Despite being served with Court notice none has appeared on behalf of Respondents.

3. The disputes and differences between the parties have arisen out of Conditional Sale Agreement dated 7 April 2025 under which Petitioner/Applicant sold to the Respondents, certain equipment. According to the Petitioner/Applicant, Respondents have failed to pay for the sold equipment and accordingly under the Conditional Sale Agreement, the ownership in respect of the equipment would revert in favour of the Applicant/Petitioner. Petition under Section 9 of the Arbitration Act (Arbitration Petition No.557 of 2025) was filed under an apprehension that the Respondents were likely to deal with the sold equipment. On 18 December 2025 this Court has passed the following order:

“1. The present Petition is filed by the Petitioner, seeking interim measures under Section 9 of the Arbitration and Conciliation Act in form of appointment of Court Receiver under Order XL Rule 1 of the Code of Civil Procedure for taking

possession of the equipments set out in Exhibit H, by restraining the Respondents from creating any hurdles in the process. The aforesaid relief is sought alongwith ancillary relief in form of prayer clause (b) to permit the Court Receiver to break open the seals and/or locks if any at the premises where the equipments are located, being Gouri-Pauni, OC Mine, Western Coalfields Limited. Chandrapur, Maharashtra.

2. The aforesaid relief is sought in the background that the Petitioner sanctioned a credit facility for an amount of Rs.10,34,24,000/- through a sanction letter and a Conditional Sale Agreement (CSA) was also executed on 07/04/2025, which contemplated various stipulations as regards the facility being extended, including the mode of payment, insurance as well as transfer of equipment at the end of the term. The said agreement also set out the duties and obligations of the parties alongwith the event and consequences of default, with a clause for termination. Clause 16.4 in the agreement in form of an arbitration clause, contemplated reference of the dispute to the sole Arbitrator, to be appointed by mutual consent of the parties under Arbitration and Conciliation Act, with seat and venue of the arbitration proceedings to be in Mumbai.

3. Upon the facility being granted, the equipments were placed in possession of the Respondents, who have continued its use, however, there is a failure to adhere to the stipulations in the agreement and this resulted in the Petitioner forwarding a demand notice for the outstanding dues with reference to the price of the equipments and the demand notice, raised a demand of Rs.1,76,26,340/- due as on 31/08/2025 in respect of the said facility. By granting time to fulfill the demand, it was clearly indicted in the notice that failure to do so will constrain the Petitioner to proceed against the noticee for recovery of amount as per CSA and also to initiate the arbitration proceedings.

4. The Respondents, however, failed to comply and, therefore, the Petitioner is constrained to approach this Court, seeking interim reliefs pending the hearing and final disposal of the arbitration proceedings or at any time, after making of the Arbitral Award, but before its enforcement as per the Arbitration and Conciliation Act,

5. The Petitioner served the Respondents by private mode of service and affidavit of service was filed, but at the relevant time the acknowledgments were not received, but during the course of hearing the matter today, the learned counsel has handed over the AD Reports received on service of notice through EMS speed post.

She is permitted to place the same in the Registry and the Registry is directed to take the same on record.

6. By order dated 20/11/2025, a court notice was also issued and the office note indicates that the notice is delivered on 05/12/2025 upon the Respondents with Speed Post Track Report with remark, 'item delivered'. Despite service of notice, the Respondents have failed to mark appearance.

7. From the pleadings in the Petition as well as the perusal of the conditions in CSA and copies of the tax invoices placed on record, it is not in dispute that the facility was extended to the Respondents and accordingly the tax invoices were raised and charge was created on the equipments in favour of the Petitioner by making marking on the invoices. Though the equipments were delivered and the commissioning report is obtained, the payment for the same in terms of the CSA is not received. In the wake of the CSA and the terms and conditions included therein, an unconditional and absolute obligation is cast upon the Respondents to pay the facility. Though the facility was sanctioned to the tune of Rs.10,34,24,000/-, to be repaid in 24 installments of Rs.52,12,481/- against the equipments as per the terms of the CSA, the Respondents have failed to discharge their obligations. The monthly installments have not been regularly paid and this is construed as an event of default as per CSA, as the terms of payment are not adhered to. Despite the demand notice being addressed to the Respondents, there is no compliance.

The Petitioner, therefore, has expressed its apprehension that the assets in form of equipments may be recituated and, since, the Respondents are already enjoying the benefits of the equipments and probably encashing the said facility by earning the revenue thereupon or putting it in the course of business, by way of ad-interim order, I deem it appropriate to grant relief in terms of prayer clauses (a) and (b), which read thus :-

“(a) That, pending the hearing and final disposal of the arbitration proceedings or at any time after making of the Arbitral Award but before it is enforced in accordance with Section 36 of the Arbitration and Conciliation Act 1996, Court Receiver, High Court, Bombay be appointed as a Receiver under Order XL Rule 1 of C.P.C., for carrying out repossession of equipments more particularly described in Exhibit ‘H’, the Petitioner is also seeking directions for Police protection from the concerned Police Station, in case the Respondents are creating hurdles at the time of repossession of the said equipment(s).

(b) That pending the hearing and final disposal the Petitioner is also seeking directions to permit the Court receiver to break lock open the seals and/or locks if any at the premises wherein the said equipments are located at "Gouri-Pauni, OC Mine, Western Coalfields Limited. Chandrapur, Maharashtra - 442402" more particularly stated in Exhibit "H" of the present petition and accordingly take the possession of the said equipment(s).”

8. The aforesaid order is directed to be communicated to the Respondent No.1 as well as to the Court Receiver, who shall take immediate steps upon it.

9. Re-notify to 19th January, 2026.”

4. Accordingly, the Court Receiver has taken possession of five equipment from the premises indicated in prayer clause (b) of the Petition. Petitioner has now filed Interim Application (L) No.3567 of 2026 seeking following prayers:

“(a) That pending the hearing and final disposal of the present Section 9 Petition, this Hon’ble Court be pleased to direct the Hon’ble Court Receiver to hand over physical possession of the five (5) repossessed equipment(s) to the Applicant Company, thereby enabling the Applicant Company to undertake valuation of the said equipment(s) and to take necessary steps for sale thereof, including issuance of pre-sale notice(s) to the Respondent(s);

(b) That this Hon’ble Court be pleased to permit the Applicant Company to sell the said five (5) repossessed equipment(s) by way of private treaty at the

fair market price, and further direct that post-sale notice(s) be issued to the Respondent(s) immediately upon receipt of the sale proceeds.

(c) That this Hon'ble Court be pleased to discharge the Hon'ble Court Receiver upon handing over possession of the said five (5) repossessed equipment(s) to the Applicant Company.

(d) Any other and further reliefs that may be granted as this Hon'ble Court deems fit."

5. Petitioner/Applicant has also filed an Application for appointment of Arbitrator (Commercial Arbitration Application (L) No.3661 of 2026).

6. Perusal of the Conditional Sale Agreement would indicate presence of arbitration clause 16.4 which reads thus:

"16.4. Governing Law and Dispute Resolution

This Agreement shall be governed and construed in accordance with the laws of India.

If any dispute or difference of any nature whatsoever shall arise between the parties in connection with or arising out of this Agreement (whether before or after the termination or breach of this agreement) the concerned representatives of the parties shall promptly and in good faith negotiate with a view to an amicable resolution and settlement of the dispute.

a) In the event, if no amicable resolution or settlement is reached within a period of thirty (30) days, such dispute shall be refer to the sole arbitrator appointed with the mutual consent of the parties under the provisions of the Indian Arbitration and Conciliation Act, 1996, or any statutory modification thereof. All legal proceedings shall be conducted in the English language. The seat and venue of arbitration proceeding shall be in Mumbai. The Cost of the arbitration shall be borne by the parties equally. The existence of any dispute or difference or the initiation or continuance of the arbitration proceedings shall not postpone or delay the performance by the parties of their respective obligations pursuant to this Agreement.

b) The Courts at Pune shall have exclusive jurisdiction to adjudicate any and all disputes arising out of or in connection with this Agreement.

b. **Governing Law:** This Agreement shall be governed by and construed in accordance with the Laws of India.

c. **Jurisdiction:** For all disputes in connection or arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts or tribunals at Pune only to the exclusion of all other court or courts.

d. **Stamp duty:** Any stamp duty payable under the fiscal law or any prevalent law shall be payable by the purchaser exclusively.”

7. Thus there appears to be clear agreement between the parties for resolution of disputes through arbitration. In that view of the matter, the Arbitral Tribunal can be constituted for the resolution of disputes and differences.

8. So far as further interim measures under Section 9 Petition are concerned, Ms. Gogri submits that the Petitioner is required to spend for the yard premises where the equipment are kept and is required to unnecessarily incur expenditure. She submits that even if the equipments are sold, the Petitioner would not be able to recover the entire amount due from the Respondents which has now gone to the tune of over Rs.12 crores. She also submits that the value of the equipment is also likely to diminish with passage of each day. In that view of the matter, the Petitioner can be permitted to cause sale of the equipment by undertaking the valuation. Accordingly, the Court Receiver can be discharged in respect of the seized equipment and the same can be handed over to the Petitioner for cause of sale.

9. I accordingly proceed to pass the following order:

A) Setlen Arbitration and Dispute Resolution Forum (**Institution**) is appointed as an Institute for conduct of arbitral proceedings between the parties. The Institution shall proceed to nominate the Arbitrator for resolution of disputes and differences between the parties. The contact details of the institution are as follows:

Office Address:- 1st Floor, National Insurance Building,
Opp. New Excelsior Mukta Cinema,
D.N. Road, Fort, Mumbai – 400 001.
Email ID:- support@setlen.co.in

B) Applicant shall communicate copy of this order to Institution within a period of one week from the date of upload of the order. The Applicant shall also provide contact and communication particulars of the parties to Institution alongwith copy of this order.

C) It is clarified that Setlen Arbitration and Dispute Resolution Forum being an arbitration and dispute resolution institution, all proceedings will be conducted, unless otherwise agreed between the appointed Arbitrator and the parties, with appropriate notification to Institution.

D) Institution is requested to appoint an independent arbitrator in compliance with the Arbitration Act and its own rules consistent with the Arbitration Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this order.

E) The parties shall provide a valid and functional email address alongwith mobile numbers of the respective Advocates of the parties to Institution and any other particulars as reasonably requested by the Institution. Communications to such email address shall constitute valid service of correspondence in connection with the arbitration.

F) All arbitral costs and fees of the arbitration shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs; and

G) The seat of the arbitration shall be deemed to be the same as the seat discernible from the Agreement while the arbitration shall primarily be conducted online.

10. Pending disposal of the arbitral proceedings, the Court Receiver shall handover the seized equipment to the Petitioner and the Petitioner shall be entitled to sell the same after conducting valuation and after preserving all the records pertaining to the sale. The Petitioner shall produce the valuation report and all documents pertaining to the sale of equipment before the Arbitral Tribunal by filing an Affidavit.

11. All rights and contentions of the parties on merits are expressly kept open to be agitated before the Arbitral Tribunal.

12. The Court Receiver is discharged without passing accounts.

13. With the above directions. the Arbitration Petition, Commercial Arbitration Application, Interim Application and Court Receiver's Report are **disposed of**.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
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