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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P.(I) (COMM.) 106/2025**

PROTIUM FINANCE LIMITED

.....Petitioner

Through: **Ms. Sandhya Chawla, Adv.**

versus

GLOBAL TRADING COMPANY & ORS.

.....Respondents

Through:

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

02.04.2026

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1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 [**“Act”**] seeking the following reliefs:

“a. pass ex-parte, ad-interim orders, thereby restraining the Respondents from selling, transferring, disposing, letting out, hypothecating, alienating or otherwise parting with the possession of or creating any third-party interest over the assets/movables and immovables owned by the respondents.

b. Appoint Ms. Sheetal Divakar Karambar i.e. the Authorized Officer of the Petitioner Company as the receiver to take possession of all the assets/movables and immovables owned by the respondents.

c. Direct the respondents to disclose their all assets/movables and immovables owned by them and assist the petitioner company in recovering its dues by disposing the said assets/movables and immovables of the respondents.

d. Pass an ex-parte and ad-interim order to secure the amount in dispute by directing the Respondents to furnish bank guarantee of equivalent amount in favour of the Petitioner.



- e. confirm the above orders after notice to the respondents.
- f. award the cost of these proceedings, in favour of the Petitioner and against the Respondents; &
- g. Pass such other and further order(s)/direction(s) which may be deem fit and proper in favour of the Claimant and against the Respondent.”

2. On a pointed query, learned counsel appearing for the Petitioner submits that no steps have been taken for the initiation of arbitration proceedings as between the parties despite the present Petition filed under Section 9 of the Act having remained pending for almost a year.

3. This Court is of the opinion that proceedings under Section 9 are for the purpose of securing emergent reliefs, and to ensure that the subject matter and/or amounts claimed of the arbitration proceedings are protected/secured. The same cannot be permitted to continue to remain on the boards of Courts for indefinite and infinite periods of time and serve as a means to prolong the commencement of the arbitration proceedings. On the contrary, the Hon’ble Supreme Court and this Court have held repeatedly, that the necessary concomitant of a litigant approaching the Courts under Section 9 of the Act is the contemplation or manifest desire, to initiate Arbitration as between the parties. Needless to state, in the past one year, nothing to this effect has been forthcoming. This Court is guided by the judgment of this Court in **Satish Jha v. Headstrong Consulting Worldwide Ltd¹**, wherein the learned Co-ordinate Bench has held as under:

“23. Again in the judgment of the Madras High court reported at 2005 (123) Company Cases 117, *Apple Finance Ltd. v. Gayatri Sugar Complex Ltd.*, the petitioner had filed an application under Section 9 of the Arbitration & Conciliation Act on 3rd April, 2003 and an advocate-commissioner was appointed on this

¹ 2007 SCC OnLine Del 1088



application on 22nd December, 2003. This petition was taken up for consideration on 16th March, 2004 but the applicant had not taken any step to invoke the arbitral proceedings. This period of less than one year was held by the court as evidencing that the applicant had no intention to commence the proceedings as no reasons were available for the inordinate delay on the applicant. It was held that consequently the link between arbitration and the order passed stood snapped and the application would stand dismissed.

24. It is thus well settled that a party invoking the jurisdiction of the Court under Section 9 of the Arbitration & Conciliation Act, 1996 might not have actually commenced the arbitration proceedings when such petition is filed, but it must satisfy the court that the arbitral proceedings were actually contemplated or manifestly intended to commence the same. In case the applicant fails to manifest such intention, he loses his right to seek the indulgence of the court and that on this ground alone, the injunction application is liable to be dismissed.

25. In the instant case, the order of injunction was passed in favour of the petitioner on 22nd August, 2003 and the respondents filed its reply to the petitioner as back as on 28th August, 2003. In the reply, the respondent had taken the objection in para 13 of the reply on merits that the petitioner had not taken recourse to any provision of the joint venture agreement; that the petitioner had waived the arbitration clause and cannot rely upon the provision hereof and that the joint venture agreement in any case came to an end upon corporation of the joint venture company. The respondents had also submitted that the petitioners had taken no steps to invoke the arbitration nor they could do so in law inasmuch as there was no joint venture agreement between the parties.

30. In *Firm Ashok Traders* (supra), the Apex Court has held that section 9 permits the filing of an application before the commencement of the arbitral proceedings. The word “before” means, *inter alia* “ahead of; in presence or sight of; under the consideration or cognizance of. The two events sought to be interconnected by use of the term “before” must have proximity of relationship by reference to occurrence; the later event proximately following the preceding event as a foreseeable or “within sight” certainly. The party invoking section 9 may not have actually commenced the arbitral or manifestly intended and were positively going to commence within a reasonable time.



What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself given an indication thereof. The distance of time must not be such as would destroy of relationship of the two events between which it exists and elapses.

The court, approached by a party with an application under section 9, is justified in asking the party and being told how and when that party proposes to commence the arbitral proceedings. Rather, the scheme in which section 9 is placed obligates the court to do so. The Apex Court held that the party having succeeded in securing the interim measures of protection, before arbitral proceedings cannot afford to sit and sleep over the relief, conveniently forgetting the “proximately contemplated” or “manifestly intended” arbitration proceeding itself. It was further authoritatively laid down that if arbitration proceedings were not commenced within reasonable time under Section 9 of the Act, the link between the arbitration proceedings and the order passed would stand snapped and the application would stand dismissed. Such order allowed to the party, shall cease to be an order made „before“ i.e. in contemplation of arbitral proceedings.

31. Thus delay on the part of the petitioner to commence the arbitration proceedings and its conduct by itself disentitles the petitioner to continuation of the injunction order or grant of equitable discretionary relief in the instant proceedings. Merely because the petition has remained pending for over four years and the petitioner has taken over almost three and half years to commence the arbitral proceedings would be a sufficient ground for denying the continuation of the injunction to it. In the instant case, the petitioner is disentitled to relief for the other grounds a well which have been noticed hereinabove.”

(emphasis supplied)

4. This court is further guided by the ruling of the Apex Court in ***Sundaram Finance v. NEPC India Pvt. Ltd***², wherein the Hon’ble Supreme Court has held as follows:

“19. When a party applies under Section 9 of the 1996 Act, it is implicit that it accepts that there is a final and binding arbitration agreement in existence. It is also implicit that a dispute must have arisen which is referable to the Arbitral Tribunal. Section 9 further contemplates arbitration proceedings taking place between

² (1999) 2 SCC 479



the parties. Mr Subramaniam is, therefore, right in submitting that when an application under Section 9 is filed before the commencement of the arbitral proceedings, there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings if, at the time when the application under Section 9 is filed, the proceedings have not commenced under Section 21 of the 1996 Act. In order to give full effect to the words “before or during arbitral proceedings” occurring in Section 9, it would not be necessary that a notice invoking the arbitration clause must be issued to the opposite party before an application under Section 9 can be filed. The issuance of a notice may, in a given case, be sufficient to establish the manifest intention to have the dispute referred to an Arbitral Tribunal. But a situation may so demand that a party may choose to apply under Section 9 for an interim measure even before issuing a notice contemplated by Section 21 of the said Act. If an application is so made, the court will first have to be satisfied that there exists a valid arbitration agreement and the applicant intends to take the dispute to arbitration. Once it is so satisfied, the court will have the jurisdiction to pass orders under Section 9 giving such interim protection as the facts and circumstances warrant. While passing such an order and in order to ensure that effective steps are taken to commence the arbitral proceedings, the court while exercising jurisdiction under Section 9 can pass a conditional order to put the applicant to such terms as it may deem fit with a view to see that effective steps are taken by the applicant for commencing the arbitral proceedings. What is apparent, however, is that the court is not debarred from dealing with an application under Section 9 merely because no notice has been issued under Section 21 of the 1996 Act.”

5. In view of the afore-discussion and following the law laid down in the precedents discussed hereinabove, the present Petition stands dismissed.

6. Accordingly, the present Petition is disposed of with liberty to the Petitioner to take such steps as are available to them under law.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 02, 2026/ v/va/jk