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

COMMERCIAL ARBITRATION PETITION NO. 228 OF 2022

Malaney Trading & Services LLP ...Petitioner

Versus

1. Uzer Makina VE Kalip Sanayi A.S.
2. CEAT Limited
3. MRF Limited
4. Uzer Ithalat Ihracat Sanayi Ve Tic. A.S. ...Respondent

Mr. Zal Andhyarujina, Senior Advocate a/w Adv. Maithili Parikh, Adv. Rugved More, for the Petitioner.

Mr. Zerick Dastur *a/w Ms. Archana Uppuluri, Ms. Esha Nangre i/b Zerick Dastur Advocates, for the Respondent No. 2.*

Mr. O. Joseph D'souza, *for the Respondent No.3-MRF.*

Mr. Ajay Panicker *a/w Mr. Dhairya Sampat i/b Ajay Law Associates, for the Respondent No. 4.*

CORAM: SOMASEKHAR SUNDARESAN, J.
RESERVED ON: June 25, 2026
PRONOUNCED ON: July 7, 2026

Order:

<u>Context and Factual Background :</u>

1. This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, ***("the Act")***, by Malaney Trading & Services LLP ***("Malaney")***, primarily against Uzer Makina VE Kalip Sanayi A.S. ***("Uzer Makina")***, in connection with disputes and differences between the parties relating to a Commercial Agency and Distribution Agreement dated February 8, 2017 ("***Agency Agreement***"). The Agreement essentially entails Malaney being the exclusive agent in the territory of India, for Uzer Makina's technology, which has application in the Indian tyre Industry. It is common ground that Malaney being the exclusive distributor in India was entitled to commission on any transactions of Uzer Makina in India.

2. Disputes and differences between the parties are currently the subject matter of arbitration proceedings before the Netherlands Arbitration Institute, and a Partial Award dated February 16, 2024 ("***Arbitral Award***") holding various amounts to be payable by Uzer Makina to Malaney has been passed.

3. Respondent No.2, CEAT Ltd. ***("CEAT")*** and Respondent No.3, MRF Ltd. ***("MRF")*** are Indian tyre manufacturers who have availed of Uzer Makina's technology. Respondent No.4, Uzer Ithalat Ihracat Sanayi Ve Tic. A.S. ***("Uzer Ithalat")*** is a near wholly-owned subsidiary of Uzer Makina, to which MRF has made certain remittances in the past. During the pendency of the proceedings, certain interlocutory arrangements were put in place by

earlier Learned Single Judges, having jurisdiction under Section 9 of the Act. Much water has flown in these proceedings and at this stage, the factual developments have crystallised in a manner that a decisive disposal would be appropriate.

4. By an order dated May 4, 2022 ***("May 2022 Order")***, a Learned Single Judge of this Court took note that CEAT had no amounts due and payable to Uzer Makina but MRF would have certain payments to make. It was directed that if MRF intended to make any payment to Uzer Makina, MRF must issue a ten-day prior written notice to Malaney to enable appropriate steps to seek interim reliefs in the course of the Section 9 proceedings.

5. On November 29, 2023, MRF specifically wrote to Uzer Makina, giving such ten-day notice of its intention to pay a total of EURO~170,000, but to Uzer Ithalat. Based on such notice, Malaney moved the captioned Section 9 Petition seeking urgent relief in the form of a restraint on making such remittance to secure the enforcement of a potential Arbitral Award since oral arguments had been completed in the arbitration on June 13, 2023, and the making of an Arbitral Award was said to be imminent, and deferred only because the parties were attempting to resolve the disputes. As it transpired, no resolution outside the arbitration took place and on October 31, 2023, the

parties communicated to the Arbitral Tribunal that a resolution had not been reached outside the proceedings.

6. The Section 9 Petition came up for consideration on December 7, 2023 and a Learned Single Judge of this Court, was pleased to order MRF ***("December 2023 Order")*** to stay its hands from transferring the amount that it intended to remit, so that the Section 9 Petition could be taken up for final hearing and disposal instead of granting interim measures in a jurisdiction that in itself is interim in nature. Therefore, a specific direction not to transfer the amount specified in MRF's email dated November 29, 2023, was issued.

7. MRF filed a rejoinder on December 27, 2023, in which it contended that the restraint was only on remittance to Uzer Makina which is Respondent No.1, while the remittance is to be made was to Uzer Ithalat, a legal entity different from Uzer Makina.

8. Meanwhile, the Arbitral Award came to be passed holding in favour of Malaney on a number of counts and rejecting Malaney's claims on a number of other counts. Thereafter, the Section 9 Petition was amended to bring Uzer Ithalat as a newly added Respondent No.4, which came to be allowed on September 20, 2024.

9. As it transpires, in the course of production of documents in the arbitral proceedings, Malaney discovered that Uzer Makina and Uzer Ithalat have exported a 36-inch hydraulic Tyre-curing press to India for utilisation by MRF, the value of which is approximately said to be EURO~1.54 million. It is common ground and an integral part of the record that multiple payments have been made by MRF even after the May 2022 Order, which, when read with the December 2023 Order, would constitute a breach of the directions issued by the Section 9 Court.

10. Against this backdrop, the question that now arises is what would be the most appropriate interlocutory measure in disposal of this Petition. I have heard Mr. Zal Andhyarujina, Learned Senior Advocate for Malaney, Mr. Zerick Dastur, Learned Advocate for the CEAT, Ms. O. Joseph D'souza, Learned Advocate for the MRF, and Mr. Ajay Panicker, Learned Advocate for Uzer Makina and Uzer Ithalat, at length. With their assistance, I have examined the material on record.

Analysis and Findings:

11. I note that on the face of it, there have been remittances made by MRF and accepted by Uzer Makina and Uzer Ithalat in the teeth of past orders of this Court. While Uzer Ithalat was made a party only on September 20, 2024, it is evident that the December 2023 Order had directed MRF to hold its

hands on the payment it proposed to make. MRF's own understanding of the May 2022 Order was that payment proposed to be made to Uzer Ithalat was covered by the direction to issue a ten-day notice, and that is why, in its email dated November 29, 2023, MRF actually named Uzer Ithalat as an intended recipient of its proposed remittance and indeed put Malaney to notice of the same in compliance with the May 2022 Order.

12. Therefore, it would follow that there was no misconception of what needed to be done pursuant to the May 2022 Order. Yet, I have to be mindful of the fact that the Arbitral Award has now been passed on merits and quantification of what has been awarded and disallowed is pending. That apart, the Arbitral Award being a foreign award, it would need to be recognised for enforcement in India. Meanwhile, the Section 9 jurisdiction is available to preserve and protect the subject matter of arbitration.

13. It is apparent that by an order dated December 19, 2024, a Learned Single Judge had taken note of the aforesaid developments and directed the following :-

> *"15. **From what is submitted by the Petitioner, it can be seen that the liability of Respondent No.1 to the Petitioner has been confirmed by an Interim Award** dated 16" February, 2024 passed by the Arbitral Tribunal. The documents on record clearly show that **Respondent No.4 is an alter ego of Respondent No.1 and an almost wholly owned subsidiary of Respondent no.1**.*

16. Even then, __despite Orders of this Court restraining Respondent No.3 from transferring the amounts, Respondent No.3 has transferred these amounts to Respondent No.4.__

17. I am of the view that, in these circumstances, __Respondent No.3 ought to be directed to deposit in this Court amounts payable to Respondent No.1 and Respondent No.4. Respondent No.3, in its Affidavit of disclosure dated 5th November, 2024, has clearly accepted that the oral amount payable by it to Respondent No.4 in Euros 803,905/-__

18. Hence, pending the final hearing and disposal of this Arbitration Petition, __Respondent No.3 is directed to deposit in this Court the said amount of Euros 803,905/-, in rupees, as per the exchange rate on the date of the deposit, within a period of four weeks from today__."

__[Emphasis Supplied]__

14. This makes it clear that the Section 9 Court had already taken a view in this regard and had asked for such deposit to be made. It is common ground that such deposit has in fact been made. Thereafter, by order dated November 7, 2025, another Learned Single Judge of this Court stood the matter over, on the premise that the presence of Uzer Ithalat was vital. It was noted in this order that an amount of EUR ~5.16 million had already been remitted by MRF even though EUR ~805,805 has been deposited in Court, of course in its rupee equivalent. The matter was stood over once again and eventually came up before this Bench.

15. Mr. Panicker's contentions resisting any relief under this Petition can be summarised under two heads – the *first*, jurisdictional; and the *second*, on quantum:

A] A reading of Section 2(2) of the Act would keep the jurisdiction of this Court out inasmuch as the arbitration is not under Part-I of the Act, and the parties have an agreement contrary to availing of Part I in relation to interlocutory measures pending arbitration. Mr. Panicker would submit that it is settled law that when parties have agreed to conduct arbitration before an institution and such institution provides for emergency interlocutory measures in its Rules of Arbitration, the parties are deemed to have agreed to seek relief in such forum, thereby representing a contract to the contrary under Section 2(2) of the Act. Therefore, in such cases Section 9 would not be available to preserve matters for foreign arbitration too unless there is a contrary contract among the parties.

B] Mr. Panicker would also submit that significant amounts have already been deposited with the Court and any direction to deposit cannot exceed the relief sought. He would point to the prayers in the Section 9 Petition which seek adequate security for a sum of EUR 1.2 million and therefore, Mr. Andhyarujina's oral request for being secured

by way of amounts being claimed as a percentage of the India turnover is untenable.

16. I am not satisfied that the existence of a framework for interlocutory arrangements in the rules of arbitration of a forum where arbitration is to take place, would automatically and necessarily oust the Section 9 jurisdiction. Section 2(2) of the Act reads thus:

> ***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 (b) 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.*
>
> *[Emphasis Supplied]*

17. A plain reading of the foregoing would indicate that Section 9 would apply to foreign-seated arbitration subject to an agreement to the contrary. There has to be a discernible agreement that Section 9 must not apply, to oust the jurisdiction of the Section 9 Court. Although this contention is being raised at a very belated stage on behalf of Uzer Makina, considering it is a jurisdictional issue, it must be considered. In my opinion, for an implied ouster of Section from the foreign arbitration, the arbitration agreement must contain an ouster of Section 9. Ouster of jurisdiction must be express. Even if

one were to take it to a standard of ouster by necessary implication, it would not suffice to state that the rules of arbitration of the international arbitration institution contains a framework for interlocutory relief. Unless such rules provide for an ouster of any other means of interim relief, it would not be logical, or even commercially commonsensical to conclude that there is an ouster by necessary implication, merely by having agreed to arbitrate in an institute that also provides for emergency and interlocutory measures.

18. Mr. Panicker's reliance upon the judgement of a Learned Single Judge of the Delhi High Court in ***Ashwani Minda***[1] can be distinguished and is not of any assistance to his absolute contention. A clear reading of ***Ashwani Minda*** would indicate that the declarations contained therein are responsive to the facts of that case, namely that a party that failed to get relief in the emergency arbitration proceedings under the applicable institutional rules took a second bite at the cherry under Section 9 of the Act. It is in this context that the Learned Single Judge of the Delhi High Court took the view that there was an implied waiver of the Section 9 jurisdiction. In any case, on appeal, a Learned Division Bench of the Delhi High Court has kept this question of law completely open.

19. In the matter in hand, it is an admitted position that there has been no conduct of interlocutory proceedings before the Netherlands Arbitration

1 *Ashwani Minda and Another v. U-Shin Ltd.and Another,* **2020 SCC OnLine Del 1648**

Institute, which is conducting the arbitration. Indeed, the said Institute has provisions for emergency and interim hearings, but the parties had been before the Section 9 Court as early as May 2022 and interlocutory arrangements had been put in place under Section 9 of the Act.

20. That apart, ordinarily I would have been disinclined to continue considering any relief under Section 9 of the Act, particularly when an Arbitral Tribunal has already been formed and has within its ambit of powers, the ability to grant interlocutory relief. However, in the facts of this case, not only was interlocutory relief granted by the Section 9 Court, but there is already even a judicial finding that such relief was flouted, with MFR making payments and Uzer Makina through Uzer Ithalat receiving such payments despite full knowledge and awareness of the May 2022 Order and the December 2023 Order.

21. Therefore, the conduct of the parties indeed indicates a threat perception to the fruits of arbitration. Unlike a domestic arbitration where an arbitral award is by law, a decree of an Indian Court upon the expiry of the period for challenge under Section 34 of the Act, for foreign awards covered by Part-II of the Act, a further step of recognition and enforcement of the Award is necessary. Moreover, under Indian arbitration, interim measures are enforceable under threat of contempt while under foreign arbitration, even the

final award needs to be recognised as a decree of an Indian Court before enforcement can take place.

22. If the demonstrated attitude of MRF and Uzer Makina towards orders of the Section 9 Court is anything to go by, it would follow that by the time the Arbitral Award is recognized and enforced, the fruits of the arbitration could indeed be jeopardised, thereby making it equitable and necessary to consider grant of relief, pending the filing of the Section 48 Petition, under Part-II of the Act.

23. Against this backdrop, considering that an award on merits has been made and quantification is pending, I asked Learned Advocates to present a computation of what in their assessment is the value to be ascribed to the Arbitral Award that has already been rendered on the merits of the matter. On this, there is a significant divergence, with Malaney assessing the value of the Arbitral Award at EURO~2.35 million and Uzer Makina valuing the Arbitral Award at ERUO~1.53 million. These assessments have already been presented by the parties before the Learned Arbitral Tribunal.

24. Therefore I have taken into account, the admitted computation effected by Uzer Makina and juxtaposed that with the prayer clause in the Section 9 Petition. Indeed, Malaney, which even amended the Section 9 Petition to bring

Uzer Ithalat on record did not amend the Section 9 Petition after the Arbitral Award was made to expand the scope of coverage of the relief sought.

25. Therefore, considering the reliefs that are sought, and taking into account the fact that only approximately EURO~800,000 stands deposited with this Court, the difference between the Indian Rupee amounts currently lying in Court (the deposit with accruals thereon) at today's INR-EUR exchange rate, and the Indian Rupee value of EUR~1.2 million at today's INR-EUR exchange rate (the admitted valuation of the Arbitral Award by Uzer Makina), must be deposited by way of security.

26. Accordingly, I direct that the difference between these two amounts, calculated in Indian Rupee terms at today's INR-EUR value, shall be deposited by Uzer Makina with the Registry of this Court within a period of four weeks from the upload of this Order on this Court's website. Should MRF or CEAT have any obligations to make any payments to Uzer Makina or Uzer Ithalat or to any other similarly placed affiliate of Uzer Makina for that matter, such amounts shall be deposited by them in this Court until the amount deposited in Court amounts to the Indian Rupee equivalent of EUR~1.2 million as today's INR-EUR exchange rate. It is only thereafter that any remittances may be made out of India by CEAT or MRF.

27. With the aforesaid directions, the Section 9 Petition is ***finally disposed of***. The deposits already made and to be made pursuant to this order shall abide by the final outcome in the arbitration proceedings.

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

[SOMASEKHAR SUNDARESAN, J.]