IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPEAL (L) NO. 1634 OF 2026

IN

COMMERCIAL ARBITRATION PETITION (L) NO. 34540 OF 2026

Sunfield Global Pte Limited]
A company incorporated under the Laws]
of Singapore having its registered address]
at 190 Middle Road, Fortune Centre #09-04,]
Singapore – 188979.] … Appellant

V/s.

Liberty Investments Private Limited]
A company registered under the Companies]
Act, 1956 and having its Registered office]
at 83, Jail Road (South), Mumbai,]
Maharashtra- 400 009.] ... Respondent

Mr. Virag Tulzapurkar, Senior Advocate a/w. Mr. Mutahhar Khan, Mr. Atul S. Mathur, Ms. Jyoti Sinha, Ms. Priya Singh and Mr. Apoorv Karekar, i/by Khaitan and Co. for the Appellant.

Mr. Ashish Kamat, Senior Advocate a/w. Mr. Harsh Moorjani, Mr. Jay Zaveri, Ms. Kshamaya Daniel, Mr. Ujwal Batra, Mr. Suraj Agarwal, i/by Crawford Bayley for the Respondent.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 13th August 2026
PRONOUNCED ON : 22nd September, 2026.

<u>Judgment (Per : Kamal Khata, J)</u> :-

1) By this Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("Act"), the Appellant impugns the Judgment and Order dated 8th January, 2026 (Impugned Judgment) passed by the Single Judge of this Court in its Commercial Division, whereby the Commercial Arbitration Petition No.34540 of 2025, filed under Section 9 of the Act, was dismissed.

2) By the said Section 9 Petition, the Appellant sought interim protection in respect of USD 66,92,500 being debt admittedly owed by the Respondent. The Petition sought, either a deposit of the said amount or, in the alternative, a restraint order from creating third party rights in respect of a parcel of land together with buildings constructed thereon, owned by the Respondents.

3) The Appellant is a company incorporated under the laws of Singapore, having its registered address in Singapore, engaged in the business of providing the supply-chain services connecting producers with partners across the Asia-Pacific region, with a focus on food manufacturing, biofuels and oleochemical industries. Its core business operations encompass procurement, trading, logistics, market analysis and advisory.

4) The Respondent is an Indian company registered under the Companies Act, 1956, having its registered office at Mumbai engaged in

business of purchase, trading and sale of vegetable and seed oils.

5) The Respondent executed six contracts during 1st October 2024 to 19th February 2025 for the supply of 11,500 MT of oil, at prices per metric ton ranging from USD 1,120 to USD 1,262.50. The Appellant's case is that having procured the material, the Respondent owes it a balance amount of USD 66,92,500 as on 3rd October 2025 or its INR equivalent, along with interest and costs. Despite this admission, the Respondent failed to make the payment. The Appellant, therefore, immediately preferred a Petition under Section 9 of the Arbitration Act, seeking a direction against a Respondent No.1 for the deposit of a bank guarantee in the sum of USD 66,92,500 along with interest and costs or in the alternative, pending the constitution of the arbitral tribunal and commencement of the arbitration proceedings, an injunction from alienating parcel of land bearing CTS Nos.186, 187, 187/1, 187/2, 187/3, 187/4, 187/5, 187/6, 187/7, 187/8, 188/1, 188/2, 188/3, 188/4, 188/5, 188/6, 188/7, 188/8, 188/9 and 188/10 at Survey No. 10 (part), Hissa No. 1 and 2 at Village Karol, Lal Bahadur Shastri Marg, District Mumbai (admeasuring 7409.08 sq. mtrs) along with constructed buildings thereon (the subject property).

6) Pending the hearing of the Section 9 Petition a three Member Arbitral Tribunal was constituted on 17th November 2025 under the FOSFA rules to adjudicate the disputes between the Appellant and the Respondent.

7) Upon hearing the parties in the Section 9 Petition, the Court

passed the impugned Judgment rejecting the relief sought. Hence the present appeal.

Appellant's Submissions:

8) The learned Senior Counsel Mr. Virag Tulzapurkar appearing on behalf of the Appellant submitted that, the Single Judge had misread vital aspects of the Appellant's Petition and consequently drew an erroneous conclusion.

8.1) He argued that, it is trite law that the situs of the property or asset against which the amount in dispute in the arbitration proceeding is sought to be secured is a determinative factor for entertaining a Section 9 Petition.

8.2) Mr. Tulzapurkar relied upon a decision in the case of *Trammo DMCC Vs. Nagarjuna Fertilizers and Chemicals reported in 2026 SCC OnLine Bom 1773,* to submit that a Section 9 Petition can be filed at the location where the Respondent's assets are sought to be secured. He submitted that, since the alternative relief of injunction under Section 9 of the Act was sought against the property situated in Mumbai, this Court had jurisdiction to entertain the Petition. He argued that the learned Single Judge had failed to consider the prayer seeking of a bank guarantee of the admitted amount and had failed to assign any reason for rejecting that prayer. The learned Judge erroneously considered only the alternative prayer without affording any consideration to the main prayer seeking a bank guarantee.

8.3) He argued that, the impugned Judgment proceeded on the erroneous assumption that Section 38 of the English Arbitration Act (EAA) only empowers tribunals to pass such orders. He submitted that a perusal of the provision reveals that it empowers Tribunals to pass orders with regard to detention, preservation or inspection of any property or thing which is a subject matter of the dispute in arbitration. He argued that, the relief sought by the Appellant was separate and distinct from the relief contemplated under Section 38 of the EAA and the two could not be equated with each other in any manner.

8.4) Mr. Tulzapurkar further argued that, the learned Judge failed to appreciate that the Respondent had unequivocally admitted the amount due and payable to the Appellant in its communication dated 3rd October 2025. A perusal of the Reply revealed that the relief was opposed only on the ground that the Arbitral Tribunal had been constituted and there was no plea of dissipation of assets nor any plea that the admission in the note had been made and signed under duress. He submitted that, despite the Appellant having demonstrated and established a *prima facie* case warranting grant of interim measures, the learned Single Judge had refused to grant any interim protection. He further contended that the Respondent's conduct evinced lack of their commercial morality and bad faith in refusing to pay the outstanding liability. If the Appellant were not secured by directing the Respondent to furnish security, the arbitral award would be rendered a mere paper decree leaving the Appellant remediless.

8.5) Mr. Tulzapurkar also submitted that, the learned Single Judge has failed to consider the ratio in *Ultra Deep SubSea Pte. Ltd. Vs. Hindustan Oil Exploration Company Ltd. reported in 2021 SCC OnLine Bom 5481,* which holds that where there is a clear and unequivocal admission of liability, an order for deposit to secure the claim ought to be made under section 9 of the Act to protect the interest of the Claimant. According to him, the impugned judgment misread a catena of judgments in which the Indian courts, at all stages of arbitration proceedings, have secured the parties to international commercial arbitrations by ensuring interim protection until the final award is passed, so that the award is not rendered infructuous and the successful party is not denied the fruits of the award. He submits that the Appellant could not have been denied relief merely because the arbitral tribunal came to be constituted subsequent to the filing of the Section 9 Arbitration Petition.

8.6) Relying on Section 9 (3) of the Act, he submitted that a Section 9 Petition can be entertained if the alternative remedy is not efficacious. He argued that the impugned judgment was entirely silent regarding the efficacy of the remedy under FOSFA. He contended that, the test whether relief can be granted under a Section 9 Petition in an international commercial arbitration is the test of “efficacious remedy” and that the impugned Judgment failed to provide any cogent reasoning for its conclusion. He contended that, the Single Judge had failed to consider that the FOSFA rules do not provide any mechanism for interim measures or protection to parties to a pending dispute and that the mere mention of the term “interlocutory application” does not amount to a provision for obtaining interim measures such as deposit of admitted amount or any injunction relief whatsoever. He argued that the only remedy available to the Appellant was to approach this court under Section 9 of the Act.

8.7) He submitted that neither Section 38 (4) of the EAA nor FOFSA Rules confer the power to direct the Respondent to deposit the admitted amount before the Tribunal or pass orders over any property which is not the subject matter of the dispute. He submitted that even if a party obtains interim protection in its favour, the relief granted would be chimerical rather than substantial and could not be considered as an efficacious remedy for securing the Appellant. He laid emphasis on the fact that the Appellant would have to file a suit and obtain a decree in the Foreign Court and thereafter approach the Indian Courts for its execution and interim protection.

8.8) Mr. Tulzapurkar submitted that, considering the conduct of the Respondent there was high likelihood that the protection, even if granted, would be rendered infructuous and ineffective, since the entire process would involve three distinct rounds of litigation which were not only cumbersome but also wholly inefficacious as compared to approaching this court under Section 9 of the Act.

8.9) He submitted that the Single Judge had misread the ratio laid down in *Ashwani Minda and Jay Ushin Limited Vs U-shin Limited and Minebea Mitsumi Inc. reported in 2020 SCC OnLine Del 721* in concluding that a Section 9 Petition is not maintainable after constitution of an Arbitral Tribunal. In that case, the Petitioner had invoked arbitration and applied for interim measures of protection before the emergency Arbitrator. When the emergency arbitrator refused to grant interim measures, the Petitioner approached the Delhi High Court under Section 9 Petition praying for the same relief. In that background the Delhi High Court rejected the relief sought by the Petitioner holding that it amounted to an attempt to take a second bite at the cherry after failing to secure interim protection before the Arbitral Tribunal. In contrast the Appellant had approached this Court for interim protection immediately upon the Respondent failure to pay the admitted amount and prior to the constitution of an Arbitral Tribunal this being the only efficacious remedy for securing the admitted amount. The present case therefore in stark contrast to the ones relied upon by the Respondent and did not apply to the facts of the present case. The learned Single Judge had also failed to appreciate that, the Appellant had approached the court in the first instance, prior to the constitution of the

Arbitral Tribunal and could not have been refused relief merely because the Arbitral Tribunal was subsequently constituted.

8.10) Mr. Tulzapurkar further submitted that, even the judgment in *Arcelor Mittal Nippon Steel India Limited Vs. Essar Bulk Terminal Limited reported in (2022) 1 SCC 712,* was wrongly interpreted in favour of the Respondent. He submitted that, the said judgment holds that where an application under Section 9 of the Act has been filed prior to the constitution of the Arbitral Tribunal, the same can be entertained. According to him, the learned Single Judge, considering the ratio in *Arcelor Mittal (supra)* ought to have granted interim protection to the Appellant instead of relegating it to the Arbitral Tribunal, which was ex facie a non-efficacious course.

Respondent's Submissions:

9) Mr. Ashish Kamat, learned Senior Counsel appearing on behalf of the Respondent, opposed the Appeal on the ground that, since the Arbitral Tribunal had been constituted under FOSFA, the learned Single Judge had rightly declined to entertain the Petition under Section 9, in view of the bar under Section 9(3) of the Act.

9.1) In support of his contention, he relied upon the decision in *Arcelor Mittal (supra)*. He relied upon the object of section 9 (3) to submit that its object is to reduce the role of the court in the grant of interim measures once the Arbitral Tribunal has been constituted. This, he submitted, was also consistent with the UNCITRAL Model Law, which discourages court proceedings in relation to disputes arising out of an agreement containing an arbitration clause. According to him such a bar would apply equally to foreign-seated arbitrations; the absence of an express extension to foreign-seated arbitrations could not be read as confining the bar to Indian-seated arbitrations alone, particularly where the foreign seated arbitral tribunal stands constituted and is empowered to grant efficacious interim relief. He submitted that the interpretation canvassed by the Appellant would yield to an incongruous result, whereby Section 9 would be available in foreign-seated arbitrations even where the tribunal is constituted, but barred in Indian-seated arbitrations.

9.2) Mr. Kamat drew our attention to the decision in *Ashwani Minda and Jay Ushin (supra)* to submit that the SLP against the said judgment was dismissed and the decision thereby stood upheld. He further drew our attention to the FOSFA Rules, read with the English Arbitration Act, to submit that the Appellant had failed to produce any material on record to demonstrate the inefficacy of FOSFA constituted Arbitral Tribunal.

9.3) He submitted that it is obligatory on the party who has taken steps for constitution of the Arbitral Tribunal to specifically plead that the remedy for the Arbitral Tribunal is inefficacious and if the Petition under Section 9 is not entertained, the award would be rendered futile. According to him, the interim measures of protection are available both before FOSFA

Tribunal and the English courts. He submitted that the Appellant has not filed any objection or a rejoinder to the specific objection raised in reply to the said petition.

9.4) He relied upon the decision in the case of *Hari Shanker Jain Vs. Sonia Gandhi reported in (2001) 8 SCC 233,* particularly paragraph 27, to submit that it is settled law that a foreign law is a matter of fact and is required to be pleaded. A party asserting that a foreign seated Arbitral Tribunal lacks power to grant efficacious interim relief therefore bears the burden of pleading and establishing the same, a burden the Appellant had not discharged in the present Petition.

9.5) Mr. Kamat further submits that, the Appellant's case does not fall within the exception of Section 9(3). According to him, it would only be appropriate for the Appellant to seek its remedy before the agreed forum. He further relied upon paragraph 12 of the impugned judgment and submitted that the Appellant cannot be permitted to raise new grounds or contentions regarding the inefficacy of FOSFA Tribunal for the first time in the appeal, as the same were neither pleaded in the captioned Petition nor urged before the learned Single Judge.

9.6) He submitted that, the appellate Court, under Section 37, exercises a limited supervisory jurisdiction and ought not to permit a party to make out a new case in appeal. He submitted that the parties had completed the pleadings and filed evidence in the arbitration proceedings and the FOSFA Tribunal was presently in the process of deciding interim application filed by the Respondent for cross-examination and an oral hearing in the matter. He therefore submitted that the proceedings were at an advanced stage, with the FOSFA-constituted Arbitral Tribunal seized of the matter.

9.7) In view of the above, Mr. Kamat submitted that, the Appellant had failed to make out any case to suggest that the observations of the learned Single Judge were arbitrary and perverse so as to warrant an interference within the limited jurisdiction of this Court under Section 37 of the Act. He accordingly sought dismissal of the present Appeal with costs.

10) We have heard learned Senior Counsel Mr. Tulzapurkar for the Appellant as well as Mr. Kamat for the Respondent and have also perused the record.

Analysis and Conclusion:

11) Considering the rival submissions, we were, at the outset nearly persuaded by the arguments of Mr. Kamat, whose defences appeared plausible. But beneath these defences lay a fundamental question: who is the Respondent? A debtor who, having procured the goods, admittedly owes the Appellant USD 66,92,500 and has been avoiding its payment despite repeated assurances, including through its communication dated 3rd October 2025. The Appellant is a foreign entity based in Singapore. How, then, does it secure payment from a Respondent based in India who has

undisputedly reneged its contract. The Appellant therefore has no alternative but to seek adjudication of its claim before an Arbitral Tribunal as per the terms of the contract, a process that is undisputedly, time consuming.

12) The Arbitration and Conciliation Act, 1996 provides for remedy of such situations. Section 9 is reproduced for ready reference:

> **9. Interim measures, etc., by Court.—**
> 1[(*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 subject-matter 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[(*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**.]

(Emphasis Supplied)

13) Considering the above provision, in our view, the Appellant was certainly entitled to file a Section 9 Petition before this Court, which it did. The Appellant therefore could not be faulted for this Court having failed to hear the matter upon its filing. It was the Court's failure not that of the Appellant. Can the Appellant be denied relief because subsequently the Arbitral Tribunal was constituted? The present appeal deserves consideration from this perspective.

14) In this background let us analyze the contentions of the Respondent that the Appellant has an efficacious remedy before the FOSFA-constituted Arbitral Tribunal. For analysis the FOSFA Rules and the Section

38 of the English Arbitration Act is reproduced for ready reference:

> *"FOSFA Rule 4 —*
>
> *"All submissions, **interlocutory applications** and related correspondence referred to under this Rule shall be dispatched within any of the specified time limits.. one copy to each of the appointed arbitrators; one copy to the other party; one copy to the Federation."*

For the sake of convenience, FOSFA's Preamble is reproduced below :-

> ***"Any dispute arising out of a contract** or contracts subject to these Rules, **including any questions of law arising in connection therewith, shall be exclusively referred to arbitration in London** (or without prejudice to the juridical seat elsewhere if so agreed) in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment therefore the time being in force. **The juridical seat of the arbitration shall be and is hereby designated pursuant to Section 3 of the Arbitration Act 1996 as, England**. **FOSFA is the only body which has the authority to administer an arbitration arising from or out of these Rules. Each party engaging in an arbitration** or an appeal pursuant to these Rules, whether or not a Member of the Federation, **is deemed to abide by these Rules** and to agree with the Federation to be liable to the Federation (jointly and severally with the other parties to the arbitration or appeal) for all fees and expenses incurred in connection with the arbitration or appeal, which said fees and expenses shall, upon notification by the*

Federation under the provisions of Rules 2(d), 6(a), 6(b) and 9, be and become a debt due to the Federation".

English Arbitration Act:

Section 38. General powers exercisable by the Tribunal.

(1) The parties are free to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.

(2) Unless otherwise agreed by the parties the Tribunal has the following powers.

(3) **The tribunal may order a claimant to provide security for the costs of arbitration.**

This power shall not be exercised on the ground that the claimant is-

(a) an individual ordinarily resident outside the United Kingdom, or

(b) a corporation aur association incorporated or formed under the law of a country outside the United Kingdom, or whose central management and control is exercised outside the United Kingdom.

(4) **The Tribunal may give directions** in relation to any property **which is a subject matter of the proceedings** or as to which any question arises in the proceedings **and which is owned by or is in the possession of a party to the proceedings**.

(a) For the inspection, photographing, preservation, custody or detention of the property by the Tribunal, an expert or a party, or.

(b) Ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property.

(5) The tribunal may direct that a party or witness shall be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation.

(6) The tribunal may give directions to a party for the preservation for the purposes of the proceedings of any evidence in his custody or control.

(Emphasis Supplied)

15) Mr. Kamat contended that, a combined reading of FOSFA Rule 4 read with FOSFA's Preamble and Section 38 of the English Arbitration Act, demonstrates that the Appellant has an efficacious remedy before the Arbitral Tribunal constituted under FOSFA. Section 38 of the EAA delineates the powers exercisable by the Arbitral Tribunal during the proceedings, including, inter alia, the power to issue directions concerning any property that forms the subject-matter of the reference, or in relation to which any question arises, and which is owned or possessed by a party. Such directions may be made, among other purposes, to secure the preservation of that property.

16) In our view, the defence is clearly moonshine. A plain reading of Section 38 of the EAA only empowers Tribunals to pass orders with regard to detention, preservation or inspection of any property or thing

which is the subject matter of the dispute in arbitration. The relief sought by the appellant and the relief contemplated under Section 38 of the EAA are completely separate and distinct and cannot be equated with each other in any shape or form. Pertinently, paragraph 6.3 of the Reply vindicates the Appellant's argument, where it is claimed that interim relief sought is extraordinary, inasmuch as it seeks to restrain the Respondent from creating third-party interest in property which is not the subject matter of the dispute, when the Appellant's claim is monetary in nature. Moreover, it is claimed that this is malafide and an attempt to convert an unsecured claim into a secured claim. This is precisely the reason for the petition under Section 9.

17) In light of the above, we find merit in the contentions of Mr. Tulzapurkar. The Appellant had filed a Section 9 application before the constitution of the arbitral tribunal to secure its admitted claim, the conduct of the party is evident. The Respondent has admittedly not paid the amounts due, despite having admitted it in its communication dated 3rd October 2025. The Appellant is a company incorporated in Singapore and the Respondent is a company incorporated in India. The only asset of the Respondent in India of which the Appellant is aware is the property in respect of which an order of injunction has been sought. Undisputedly, the Respondent has reneged the contract and the Appellant therefore has no alternative but to seek adjudication of its claim before the Arbitral Tribunal,

as per the terms of the contract which is a process that is undisputedly, time-consuming.

18) There is substance in the contention of Mr. Tulzapurkar that by not entertaining an application prior to the constitution of the Arbitral Tribunal would render the entire section 9 of the Act otiose. The object of the provision is to secure the interest of a party such as the Appellant. Had that not been the legislative intent, Section 9 would not have been incorporated in the Act at all.

19) The Supreme Court in *Arcelor Mittal (supra),* held that Applications for interim relief are, by their very nature, required to be disposed of urgently. Such interim relief is granted in aid of final relief, the object being to protect the property forming the subject matter of the arbitration and to ensure that the arbitration proceedings do not become infructuous, leaving the arbitral award a mere award on paper, of no real value. It further held that the bar under Section 9(3) operates only where the application under Section 9 (1) had not been entertained until the constitution of the Arbitral Tribunal and that even where such an application has been entertained before the tribunal's constitution, the Court always has the discretion to direct the parties to approach the Arbitral Tribunal, if necessary, by passing a limited order of interim protection, particularly where the hearing has only just commenced and is likely to consume considerable time.

20) A single bench of this Court, in *Norvic Shipping Asia PTE Ltd. vs Zigma International* (2026:BHC-OS:14583), considered a Petition under section 9 of the Act, in similar circumstances, where arbitration proceedings were in progress before the LMAA at London. Being satisfied with a strong prima facie case demonstrated by the Petitioner, the Court granted interim relief, directing the Respondent to furnish an unconditional and irrevocable Bank guarantee.

21) A summary of the judgement in Norvic is as under:

Scope of Section 9 vis-a-vis diminution of assets:

a) Relying on *Essar House v. ArcelorMittal Nippon Steel*, the Court held that Section 9 relief is not bound by the strict requirements of Order XXXVIII Rule 5 CPC (attachment before judgment) — its powers are wider, aimed at ensuring an arbitral award doesn't become unenforceable for want of assets.

b) The applicant need not prove dishonest transfer/concealment. A "strong possibility" of diminution suffices something more than bare suspicion, but short of absolute proof, based on objective material on record.

c) Assets can become unavailable through ordinary commercial causes (losses, charges to lenders, receivables assigned, fresh encumbrances) even without dishonesty; these still count as "diminution."

d) "Diminution of assets" covers reduced value, new encumbrances, increased secured liabilities, transferred receivables, or any other factor substantially shrinking the execution-available asset pool.

e) Section 9 is preventive — the Court must act before the position becomes irreversible, since dishonest intent is hard to prove directly and must be inferred from surrounding circumstances.

f) Section 9 cannot be invoked merely because arbitration is pending; if the respondent is financially sound with no evidence of asset erosion, relief should be refused. Mere denial of liability or routine minor asset sales won't justify attachment-type relief.

g) The analysis considers that where the claimant's hardship (an unenforceable award) outweighs the respondent's inconvenience, interim protection is justified tilting the balance of convenience in favour of the Claimant. Consequently, the respondent's objection that dissipation of assets wasn't specifically pleaded is rejected, because substance would govern over form.

Analysis of Section 9 and Section 17

h) Sections 9 and 17 offer parallel kinds of interim relief (preservation of property, securing amounts, receivers, injunctions), differing mainly in timing: Section 9 spans pre-arbitration through post-award enforcement; Section 17 operates only during the arbitral proceedings.

i) Section 17(2) deems Tribunal orders enforceable as Court orders under the CPC — intended to make the Tribunal route effective.

j) Section 9(3) bars the Court from entertaining a Section 9 application once the Tribunal is constituted, but this bar is not absolute, it lifts if the Section 17 remedy would not be "efficacious."

k) Since efficacy, not mere existence, of the alternate remedy is the test, the objection to maintainability fails, and the Section 9 petition is held maintainable despite the Tribunal's constitution.

22) We are in respectful agreement with these findings and reaffirm the law enunciated in *Norvic Shipping Asia PTE Ltd.* (supra).

23) Section 13 of the Code of Civil Procedure contemplates that a foreign judgement is conclusive and executable in Indian Court after it attains finality. There is no provision for executing an interim order. In this

situation, we find substance in Mr. Tulzapukar's contention that, in order to ensure the effectiveness of interim protection granted by an Arbitral Tribunal in an international commercial arbitration, the Appellant would have to file a suit before the foreign court to obtain a decree, and thereafter approach the Indian courts to secure the effectiveness of the interim protection so afforded to it in the first place. There is a high likelihood of such interim measures or protection being rendered otiose by the time this process is completed, rendering it ineffective altogether. This would involve three distinct rounds of litigation, which would be a cumbersome and wholly inefficacious as compared to approaching this Court in a Section 9 Petition.

24) In our view, the learned Single Judge ought to have also considered whether the relief sought would have been granted had the Section 9 Petition been heard on merits soon after filing and before the constitution of the Arbitral Tribunal. In our view, considering the Section 9 Petition and the Reply thereto the answer to whether the Court would have granted relief, would be in the affirmative. The Court could not, therefore, have granted to the Respondent the benefit of its own delay in deciding the matter. That would, to say the least, be a travesty of justice. The Appellant could not have been ousted, for no fault of its own, on account of the delay of this Court in hearing the Petition, whatever the cause.

25) In the present case as well, the Respondent has not been able

to show that an interim order passed by the FOSFA Arbitral Tribunal would be enforceable against the Respondent's assets situated in India under an interim order. In absence of such material, it is evident that the remedy is inefficacious.

26) We find merit in the contention of Mr. Tulzapurkar distinguishing the present case from the Delhi High Court decision in *Ashwani Minda* (supra), where the Claimant having failed before the Arbitral Tribunal, approached the court for interim relief, and the court rejected the same, holding that it amounted to no more than a second bite at the cherry. The present case is entirely different. The Appellant has immediately initiated a proceeding on account of the failure of the Respondent to pay its admitted dues. The Respondent on the other hand has not shown or pleaded any effective defence to the Appellant's claim nor any genuine dispute regarding the claim, nor has any material been placed before this Court to deny the relief to the Appellant. The criteria, namely, a strong prima facie case, balance of convenience and irreparable loss are squarely in favour of the Appellant.

27) In our view, in Arbitration matters, the object of reducing the role of the Court does not mean that the Court should turn a blind eye to the 'conduct' of a party employing every tactic to frustrate the claim or delay payment of dues to a Claimant. The Court must nip it in the bud at the earliest opportunity. Where even a *prima facie* case of dishonest denial

of the claim is made out, the Court must step in and protect the interests of the Claimant in the best manner possible. There is no straitjacket formula for granting or denying interim relief. The Court must not be pedantic in its approach and disallow interim relief merely on technical pleas, illustratively, the absence of a specific pleading, if it comes to the conclusion that a wrongdoer would gain an advantage from a defect that could otherwise be cured by the insertion of such a plea. The present case is one which encompasses all the above-mentioned criteria and therefore deserves the interim relief sought.

28) In our view the Appeal deserves to be allowed and the impugned judgment deserves to be set aside.

a) Accordingly, the Appeal is allowed in terms of prayer clause (a).

b) The Respondent is directed to either furnish a bank guarantee issued by a Nationalized Bank or a Scheduled Commercial Bank for the Appellant's claim of USD 66,92,500 along with interest and costs or its INR equivalent to the satisfaction of the Prothonotary and Senior Master of this Court, within a period of 2 weeks from the date of this order;

c) Until the compliance of clause (a) above, or if unable to comply with the above directions the Respondent is restrained from the alienating or creating third party rights, title or interest with respect to the subject property mentioned in prayer clause (d) till completion of the arbitration proceedings.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**