



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE GAJENDRA SINGH**

ON THE 2nd OF MAY, 2025

ARBITRATION APPEAL No. 57 of 2025

UNION OF INDIA THROUGH GENERAL MANAGER AND OTHERS

Versus

***NATASKEE INCORPORATION THROUGH ITS AGENT DEEPAK
SHARMA***

Appearance:

Shri Aviral Vikas Khare - advocate for the appellant.

*Shri Brijesh Garg with Shri Vishal Lashkari - Advocate for the
respondent.*

Reserved on : 23.04.2025

Pronounced on : 02.05.2025

ORDER

Per: Justice Vivek Rusia

This Arbitration Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been preferred against the order dated 25.02.2025 passed by the learned District Judge, Commercial Court, Indore in MJC AV No. 12 of 2025 whereby the learned Court while exercising powers under Section 9 of the Arbitration and Conciliation Act, 1996 granted interim relief in favour of the Respondent.



THE FACTS OF THE CASE, IN SHORT, ARE AS UNDER:-

2. Appellant No.2 i.e. Divisional Manager, Western Railway, Ratlam had issued a Notice Inviting Tender (NIT) bearing No. EL-2024-2025-09 dated 27.07.2024 of installation of Solar Grid systems at various locations within the Ratlam Railway Division. The Respondent participated in the tendering process and was declared the lowest bidder (L1).
3. Consequently, a Letter of Acceptance (LOA) was issued in favour of the Respondent on 29.11.2024. As per the terms of the LOA and the Indian Railways General Conditions of Contract (GCC), 2022, the Respondent was mandatorily required to submit a Performance Guarantee (PG) within 21 days, i.e., on or before 20.12.2024 with a provision for extension up to 60 days i.e. till 27.01.2025 on payment of penal interest.
4. The Respondent however failed to submit the requisite Performance Guarantee within 21 days and did not seek any extension from the competent authority before the expiry of the stipulated period. The Respondent unilaterally sought to submit the Performance Guarantee beyond the permitted period without the payment of penal interest and thereby breached the mandatory terms of the LOA. As a consequence of the said breach and in accordance with the stipulations of the LOA and the GCC the Appellants rescinded the LOA on 29.01.2025.
5. Being aggrieved, the Respondent approached the Commercial Court, Indore under Section 9 of the Arbitration Act, 1996 seeking interim protection against the rescission of the LOA and to restrain the



appellants from awarding the work to any other party. The Respondent claimed the existence of an arbitration clause within the standard contract documents to contend that the dispute is arbitrable. Whereas, the appellants contested the maintainability of the application on the ground that no concluded contract had come into existence and thus recourse to Section 9 of the Arbitration and Conciliation Act was wholly misconceived.

6. Despite the objections raised by the appellants, the learned commercial court vide order dated 25.02.2025 allowed the application of the respondent to stay the operation of the tender and also restrained the Appellants from awarding the work to any other bidder. Learned Court held that the Letter of Acceptance when read together with GCC, 2022 indicated the existence of an arbitration agreement sufficient to invoke Section 9 despite the formal contract not being executed. The court further observed that the delay in submission of the Performance Guarantee was marginal and denying interim protection would result in irreparable harm to the respondent who had already undertaken substantial preparation and investment. Consequently, balancing equities and public interest, it restrained the appellants from continuing with the fresh tender process.

7. Aggrieved by this order the appellants have now approached this court seeking that the impugned order dated 25.02.2025 passed by the Commercial Court, Indore be set aside and the order dated 29.01.2025 rescinding the LOA be upheld also that the appellants be permitted to proceed with the execution of the tender work.



SUBMISSION OF APPELLANTS

8. The learned counsel for the appellants submitted that the learned Commercial Court erred in exercising jurisdiction under section 9 of the Arbitration & Conciliation Act in the absence of a concluded arbitration agreement between the parties. Learned counsel submitted that the issuance of a letter of acceptance without execution of a formal contract does not satisfy the mandatory requirement under Section 7 of the Arbitration and Conciliation Act, 1996 for the existence of an arbitration agreement.

9. Learned counsel submitted that in the absence of an executed contract, there is no subsisting arbitration agreement between the parties. Thus, the invocation of Section 9 jurisdiction was wholly misconceived and not maintainable.

10. Reliance is placed upon the judgments of the Hon'ble Apex Court in *Bharat Broadband Network Ltd. vs. United Telecoms Ltd.* reported in (2019) 5 SCC 755 and *Essar House Private Limited vs. Arcelor Mittal Nippon Steel India Limited* reported in 2022 SCC Online SC 1219 to contend that the existence of a valid arbitration agreement is a *sine qua non* for the exercise of power under Section 9.

11. Learned counsel for the appellants further submitted that the failure of the respondent to submit the Performance Guarantee within the stipulated period amounted to a breach of fundamental terms of the LOA and the GCC. In terms of Clause 16(4) of GCC, in the event of failure to furnish PG within 60 days, the LOA automatically stands rescinded without the necessity of any further notice. The respondent having failed to submit the PG within 21 days or within the extended 60



days with sanctioned approval could not assert any contractual or equitable rights under the LOA. Counsel further relied on clause 19 and clause 20 of the GCC.

12. Learned counsel further submitted that the respondent suppressed material facts regarding the non-submission of PG in time and misled the Court to secure interim protection. Learned counsel further submitted that granting interim protection in such circumstances not only affects the lawful rights of the appellants but also delays important public infrastructure projects, causing grave prejudice to the public interest and escalating financial burdens.

13. Reliance is also placed on the judgment of the Hon'ble Apex Court in *M/s India Meters Ltd. vs. Punjab State Electricity Board* reported in *1993 (1) SCC 230*, on the decision of the division bench of this court in *M/S Khushi Agro Pvt. Ltd. vs. State of M.P in W.P 14395/2023* and the decision of the Bombay high court in *Spice Digital Ltd. vs. Vistaas Digital Media* reported in *2012 SCC Online Bom1536*.

SUBMISSIONS OF RESPONDENT

14. Learned counsel for the respondent argued that the cancellation of the LOA dated 29.11.2024 by the appellants was an arbitrary act and without due consideration of the substantial compliance made by the respondent. Learned counsel submitted that the respondent after being declared the successful bidder furnished the required Performance Guarantee through an FDR amounting to Rs. 19,31,671/- in favour of the Senior Divisional Finance Manager, Ratlam, which was forwarded via e-mail dated 28.01.2025 before the issuance of the cancellation order dated 29.01.2025.



15. Learned counsel further submitted that technical difficulty had been duly communicated to the appellants on 16.01.2025 and the performance guarantee was furnished by 27.01.2025. The subsequent rescission of the LOA and initiation of a fresh tender process on 04.02.2025 was therefore unjustified and prejudicial.

16. Learned counsel further submitted that the arbitration clause contained in the General Conditions of Contract (GCC) binds the parties and the absence of a formal signed contract does not negate the existence of an enforceable arbitration agreement. Learned counsel submitted that the balance of convenience, readiness and willingness to perform was correctly appreciated by the Commercial Court while granting interim relief and thus the impugned order warrants no interference.

17. Reliance is placed on the judgments of the Hon'ble Apex court in *Firm Ashok Traders v. Gurumukh Das Saluja* reported in (2004) 3 SCC 155; *Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd.* reported in (2007) 7 SCC 125 and *Skyline Education Institute vs. S.L. Vaswani* reported in AIR 2010 SC 3221.

18. Reliance is also placed on judgments of different High Courts in *National Thermal Power Corporation vs. Navayuga Engineering Company* reported in AIR 2019 Delhi 4; *Sree Venkatarya Builders vs. Kausalya Shelter Ltd.* reported in AIR 2022 Telangana 51 and *Janset Labs vs. Sudha Analytics* reported in AIR 2022 Telangana 146.

19. Also reliance is placed on the decision of the division bench of this court in **Devendras Kumar Patel vs. State of M.P in W.P 4318/2022.**



APPRECIATION & CONCLUSION

20. The interim relief granted by the learned Commercial Court is reproduced below:-

“16. फलतः आवेदक की ओर से प्रस्तुत आवेदन पत्र अंतर्गत धारा 9 माध्यम में एवं सुलह अधिनियम 1996 स्वीकार करते हुए आदेशित किया जाता है कि-

1. अनावेदकगण, टेंडर क्रमांक EL-2024-25-09 से संबंधित कार्यों के संबंध में कोई नवीन टेंडर जारी नहीं करेंगे और यदि ऐसा कोई टेंडर जारी किया गया हो तो किसी अन्यज के पक्ष में टेंडर मंजूर नहीं करेंगे और न ही लेटर ऑफ एक्सेप्टेंस जारी करेंगे।
2. यह कि अनावेदकगण, आवेदक के द्वारा जमा की गई अर्नेस्टल मनी को जप्त नहीं करेंगे।”

21. As of today, the respondent has not initiated any arbitration proceedings against the appellants. If these proceedings are initiated in the near future the same will not be concluded in the next couple of years. In compliance with this interim order, the appellants will not be in a position to issue any tender in respect of the installation of solar panels. This can't be a scope of Section 9 of the Arbitration and Conciliation Act. Even if this respondent has a good *prima facie* case in the arbitration proceedings, at the most the compensation, loss of profit, damage etc. could be claimed for the wrong action of the appellant. The temporary injunction to the effect that no new tender be issued for the work in question and if the tender has been issued, then the Railways shall not accept the tender and issue a “Letter of Acceptance” from any other tender cannot be issued.

22. The Apex Court in the case of *Essar House Private Limited (supra)* has discussed the scope of Section 9 and held that “*the scope of Section 9 of the Act is very broad, the Court has a discretion to grant thereunder a wide range of interim measure of the protection “as may*



appear to the Court to be just and convenient” though such discretion has to be exercised judiciously and not arbitrarily”. For ready reference Para 38, 39, 40 and 41 are reproduced below:-

38. In this case, however, the High Court has taken note of the pleadings for invoking the principles of Order 38 Rule 5 CPC and observed:-

"31. In our view, the paragraphs of the aforesaid pleadings of the respondent in the arbitration petition filed under section 9 filed by the respondent were sufficient to secure the claim of the respondent under section 9 of the Arbitration Act and to invoke the principles of Order 38 Rule 5 of the Code of Civil Procedure even if it is strictly made applicable to the facts of this case."

39. In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of the CPC. At the same time, the power Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In the exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC.

40. While it is true that the power under Section 9 of the Arbitration Act should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in the CPC, the technicalities of CPC cannot prevent the Court from securing the ends of justice. It is well settled that procedural safeguards, meant to advance the cause of justice cannot be interpreted in such a manner, as would defeat justice.

41. Section 9 of the Arbitration Act provides that a party may apply to a Court for an interim measure or protection inter alia to (i) secure the amount in dispute in the arbitration; or (ii) 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.

23. The Apex Court in the case of ***M/s N.G. Projects Ltd. vs. Vinod Kumar Jain*** in ***Civil Appeal No.1846/2022*** has held that the position of law with regard to the interpretation of terms of the contract is that the question as to whether a term of the contract is essential or not is to be viewed from the perspective of the employer and by the employer”. Since the construction of a road is an infrastructure project and keeping in view the intent of the legislature infrastructure projects should not be stayed. Such provision should be kept in view even by the Writ Court



while exercising its jurisdiction under Article 226 of the Constitution of India. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead, relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. For ready reference, para 23 is reproduced below:-

“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present-day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

24. In view of the above, the order dated 25.02.2025 passed by the learned Commercial Court is hereby set aside.

25. Accordingly, the present Arbitration Appeal succeeds and is hereby **allowed**.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE