IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 15345 OF 2026

Oil and Natural Gas Corporation Limited **.....PETITIONER**

: VERSUS :

Larsen & Toubro Limited **....RESPONDENT**

Mr. Zubin Behramkamdin, Senior Advocate with Ms. Shreya Gupta, Ms. Prachi Gupta and Ms. Shradhha Kedia i/b M/s. Shardul Amarchand Mangaldas & Co. for the Petitioner.

Mr. Vikram Nankani, Senior Advocate with Mr. Rohaan Cama, Mr. Kyrus Modi, Mr. Mehul Talera, Mr. Indranil Deshmukh, Ms. Gathi Prakash Karrah, Ms. Nidhi Asher, Ms. Arushi Poddar & Mr. Prakhar Agarwal i/b M/s. Cyril Amarchand Mangaldas & Co. for the Respondent.

CORAM : SANDEEP V. MARNE, J.

RESD. ON: 30 APRIL 2026.

PRON. ON: 06 MAY 2026

JUDGMENT:

PREFACE

1) This is a post Award Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** seeking a direction to the Respondent to extend and to keep alive the Bank Guarantee provided by Respondent to the Petitioner towards liquidated

damages as per clauses 6.3.2 and 6.3.4 of the General Conditions of Contract. The Arbitral Tribunal has awarded in favour of Respondent an aggregate sum of approximately INR 271,12,57,704.81 whereas the sum awarded in favour of Petitioner is approximately INR 42,95,65,545.28. Petitioner is aggrieved by the Award, which is challenged by it under Section 34 of the Arbitration Act. In that sense, the Respondent is a 'successful party' in the arbitration whereas Petitioner is a 'unsuccessful party'. Though Petitioner is an unsuccessful party in the arbitral proceedings, it has filed the present Petition under Section 9 of the Arbitration Act seeking a direction for renewal of the bank guarantee on the ground that it is entitled to recover from the Petitioner the entire or at least the awarded amount of liquidated damages.

2) Though the issue of impermissibility for a losing party to maintain application under Section 9 of the Arbitration Act was fairly well settled by judgment of Division Bench of this Court in ***Dirk India Pvt. Ltd. vs. Maharashtra State Electricity Generation Company Limited***[1], the law has undergone a change on account of Hon'ble Supreme Court's recent judgment dated 24 April 2026 in ***Home Care Retail Marts Pvt. Ltd vs. Haresh N. Sanghavi***[2], in which it is held that the judgment of this Court in ***Dirk India Pvt. Ltd.*** (supra) does not lay down a good law and that even an unsuccessful party to arbitration can maintain application under Section 9 of the Arbitration Act.

1 2013 SCC OnLine Bom 481

2 2026 SCC OnLine SC 670

3) The Petitioner has in fact applied for very same interim relief under Section 36(3) of the Arbitration Act while challenging the arbitral award under Section 34. However, after filing of Section 34 petition, since the legal position has undergone a change on account of judgment in ***Home Care Retail Marts Pvt. Ltd.*** (supra) on 24 April 2026, the Petitioner has chosen to file the present Petition under Section 9 of the Arbitration Act rather than pressing for interim relief under Section 36(3). The Respondent questions (i) maintainability of the present Petition, (ii) the propriety in filing of the present Petition despite seeking similar relief in Section 36(3) Application and (iii) Petitioner's entitlement for interim measures on merits.

THE ISSUE INVOLVED

4) In the light of the above position, the issue that arises for consideration is whether the Petitioner, who has been awarded claim in the sum of Rs.42.95 crores as against award of claim of Rs.271.12 crores in favour of the Respondent, can maintain a Petition under Section 9 of the Arbitration Act for seeking interim measures for securing the awarded and unawarded sum of liquidated damages by extension/renewal of the bank guarantee by the Respondent. Also involved is the issue whether Petitioner can maintain the present Petition under Section 9 of the Arbitration Act after having exercised the remedy under Section 36(3) of the Act by seeking interim stay in Section 34 petition.

FACTS

5) Since the issue involved in the petition is narrow and since this Court is not dealing with the merits of the Award while execrcising Section 9 jurisdiction, it is not necessary to narrate the factual background in greater details. Petitioner ONGC is a *Maharatna* public sector undertaking incorporated under the Companies Act, 1956 and is engaged in the business *inter alia* of exploration and production of oil and gas within the territory of India. Among others, it has large scale petroleum operations in the Bombay High Oil and Natural Gas Field offshore the Mumbai coast. Respondent is Larsen & Toubro Ltd. **(L&T)** engaged in the business *inter alia* of engineering, procurement and construction in various sectors including hydrocarbon sector.

6) By and under the contract dated 3 July 2010 **(Contract)**, Petitioner engaged the Respondent for *inter alia* survey, design, engineering, procurement, fabrication, load-out, transportation, installation, hook-up, testing, pre-commissioning and commissioning of four well-head platforms (N-14, N-17, N-18 and N-20) for Mumbai High North Redevelopment Plan. The Contract was a Lump Sum Turn Key **(LSTK)** basis for aggregate price of USD 97,104,900 plus EUR 5,293,700 plus INR 524,25,01,000 **(Contract Price)**. The scheduled date for completion of all four platforms was 15 May 2011. Under the Contract, Petitioner was entitled to recover liquidated damages (LD) from the Respondent at the rate of ½ % of the Contract Price for each week of delay subject to a maximum of 10% of the Contract Price. Under clause 6.3.4 of the GCC, it was permissible for L&T to furnish a bank guarantee

for obtaining release of the amounts withheld by the Petitioner towards LD.

7) According to the Petitioner, the project was delayed due to factors attributable to the Respondent and three extensions of time (**EOT**) were granted to L&T subject to levy of liquidated damages **(LD)**. The project was completed and handed over on 28 February 2012, resulting in delay of 289 days beyond the scheduled completion date. ONGC withheld and deducted amounts towards LD totally amounting to Rs.122.73 crores. L&T submitted bank guarantee in the sum of Rs.150.34 crores representing 10% of the contract price and secured release of withheld amount of LD of Rs.122.73 crores.

8) Disputes arose between ONGC and L&T out of performance of the Contract and accordingly, a three-member Arbitral Tribunal was constituted. The Arbitral Tribunal has made award dated 30 December 2024 and additional award dated 12 December 2025 granting EOT of 319 days to L&T out of alleged delay claimed of approximately 496 days. The Award has limited Petitioner's entitlement to liquidated damages to 35% of the total amount of Rs.122.73 crores and has directed the Petitioner to refund the balance 65% of the liquidated damages to L&T. The Award grants claim Nos.2 to 7 in favour of L&T and has rejected Petitioner's counterclaim No.2. The Award has also granted Post Award interest at the rate of 18% p.a. and 80% of costs of arbitration in favour of the Respondent. According to the Petitioner, the Tribunal erroneously made Additional Award on 12 December 2025 under Section 33 of the

Arbitration Act thereby materially altering the original Award and deleting condition for return of bank guarantee upon payment of 35% LD amount and substituting it with a direction for mutual adjustment / set-off of the amounts payable between the parties.

9) After making of the Additional Award directing mutual adjustment of amounts payable to parties, Respondent has refused to extend the bank guarantee beyond the present validity of 30 April 2026 vide letter dated 5 February 2026.

10) Petitioner has filed Commercial Arbitration Petition (L) No.9373 of 2026 on 12 March 2026 under Section 34 of the Arbitration Act challenging Awards dated 30 December 2024 and 12 December 2025. On 17 April 2026, Petitioner filed Interim Application under Section 36(3) of the Arbitration Act in Section 34 petition seeking unconditional stay of the Awards and for a direction to the Respondent to extend and keep alive the bank guarantee. By letters dated 13 April 2026 and 20 April 2026, Petitioner called upon Respondent to extend the bank guarantee in view of the pending Section 34 petition and Section 36 application.

11) Under apprehension that the Petitioner may invoke and encash the bank guarantee, Respondent filed Commercial Arbitration Petition (L) 14555 of 2026 under Section 9 of the Arbitration Act. When the petition came up for hearing on 23 April 2026, a statement was made on behalf of the Petitioner that since Petitioner was seeking interim

relief in Section 34 petition and in Section 36 application for renewal of the bank guarantee, it was not proposing to invoke/encash the bank guarantee. Accordingly, Commercial Arbitration Petition (L) No.14555 of 2026 was disposed of by order dated 23 April 2026.

12) Section 34 petition and Section 36 application filed by the Petitioner came up before this Court on 28 April 2026. Since the Hon'ble Supreme Court pronounced the judgment in ***Home Care Retail Marts Pvt. Ltd.*** (supra) on 24 April 2026, Petitioner decided not to press the prayer in Section 36 application for renewal of bank guarantee and sought liberty to move petition under Section 9 of the Arbitration Act. Accordingly, the present Petition is filed by the Petitioner seeking post award interim measures in terms of the following prayers:

> (a) Direct the Respondent to extend (and keep extending from time to time, as necessary) and keep alive the Bank Guarantee No. 00040100008747 dated 21 August 2015 issued by Axis Bank Limited, for the amount of USD 9,710,490 plus EUR 529,370 plus INR 52,42,50,100 (i.e., 10% of the Contract Price), provided to the Petitioner towards liquidated damages as per Clauses 6.3.2 and 6.3.4 of the Contract dated 3 July 2010 between the Petitioner and the Respondent, until the hearing and final disposal of Commercial Arbitration Petition (L) No. 9373 of 2026 filed by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996;
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> (b) Alternatively, in the event the Respondent fails and/or neglects to extend the said Bank Guarantee in terms of prayer clause (a) above and/or the said Bank Guarantee lapses, direct the Respondent to forthwith furnish a fresh and equivalent Bank Guarantee in favour of the Petitioner for an amount of USD 9,710,490 plus EUR 529,370 plus INR 52,42,50,100 (i.e., 10% of the Contract Price),
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> (c) Grant *ad-interim* reliefs in terms of prayer clauses (a) and/or (b);
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> (d) Award costs of the present Petition; and

13) The Bank Guarantee has two dates viz. 30 April 2026 (expiry date) and 30 April 2027 (claim expiry date). Since a confusion prevailed about validity of the bank guarantee beyond 30 April 2026, a statement is made on behalf of the Respondent-L&T for renewal of the bank guarantee in the event of Petitioner succeeding in the present petition, which is recorded in the Order dated 30 April 2026 as under:

> During the course of his submissions, Mr. Nankani, the learned Senior Advocate appearing for Respondent has placed on record, copy of the renewed Bank Guarantee (BG) dated 29 January 2026, which has two dates. The BG expiry date is 30 April 2026. However, the claim expiry date is up to 30 April 2027. This means that even though the BG may expire on 30 April 2026, Petitioner can still make claim up to 30 April 2027. **However, with a view to avoid any confusion about validity and enforceability of the BG, Mr. Nankani has fairly made statement that in the event of the Petitioner succeeding in the present Petition, the Respondent shall either renew the BG or submit a fresh one.**
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> *(emphasis added)*

SUBMISSIONS

14) Mr. Behramkamdin, the learned Senior Advocate appearing for the Petitioner has submitted that in view of the judgment of the Apex Court in ***Home Care Retail Marts Pvt. Ltd.***, the Petitioner is entitled to seek interim measures under Section 9 of the Arbitration Act notwithstanding the fact that a higher amount is awarded in favour of the Respondent. He submits that mere award of claim in the sum of Rs. 271.12 crores in favour of the Respondent cannot be a reason for not making interim measures in favour of the Petitioner to secure its claim for the entire liquidated damages of Rs.122.73 crores. That the bank

guarantee is submitted by the Respondent only for the purpose of release of the deducted/withheld amounts towards liquidated damages. That the Arbitral Tribunal has erroneously restricted the liquidated damages to 35%. That the methodology of apportionment of liquidated damages applied by the Arbitral Tribunal is contrary to Clause 6.3.2 of the generla Conditions of Contract. That Tribunal's findings on delays caused in the Project are patently illegal and perverse. That the findings of the Tribunal that Respondent is entitled to approximately 319 days of extension is incorrect and patently illegal as the extension granted by the Tribunal exceeds the entire period by which completion of project was delayed (289 days). That Tribunal granted extensions without critical path analysis as required under the Contract and its findings on delays are contrary to the contractual terms. That Additional Award made by the Tribunal exceeds the limited jurisdiction under Section 33 of the Arbitration Act. That initially the Tribunal had directed Petitioner to return the bank guarantee only upon payment of 35% of LD, quantified at USD 2,825,336 + EUR 149,169 + INR 14,52,12,198 within 30 days. However, in the Additional Award, the Tribunal erroneously directed "mutual adjustment" of party's monetary liabilities with only net amount remaining payable.

15) Mr. Behramkamdin further submits that the specific awards under Claim No.4 are independently vitiated by patent illegality. That Tribunal's award of post-award interest/service tax are unsustainable and vitiated by patent illegality. That Tribunal reversed the burden of

proof and impermissibly invoked Section 70 of the Indian Contract Act, 1872 in granting Change Order/Extra Work Claims.

16) Mr. Behramkamdin further submits that grant of interim measures in the present Petition is necessary in view of strong *prima facie* case and rare and compelling case made out by the Petitioner. That Petitioner would suffer irreparable harm if the bank guarantee is allowed to lapse as Petitioner would have no security against the Respondent's liability to LD. If Petitioner succeeds in Section 34 petition, absence of bank guarantee would prejudice the Petitioner irreversibly. That balance of convenience lies decisively in favour of the Petitioner. That grant of interim measures does not materially prejudice the Respondent nor comes in the way of enforceability of the Award. That Petitioner is a *Maharatna* public sector undertaking and would remain compliant with any directions of this Court. That all that is sought is to renew and keep alive the bank guarantee, which the Petitioner is not going to invoke or encash.

17) The Petition is opposed by Mr. Nankani, the learned Senior Advocate appearing for the Respondent, who questions maintainability of the Petition. He submits that since Respondent has higher monetary claims against the Petitioner in the sum of Rs.271.12 crores, there is no question of Petitioner filing Section 9 petition for securing its minuscule claim of Rs.42.95 crores. That Petitioner has already filed Section 36 application and therefore is estopped from seeking interim measures under Section 9 Petition. That Section 9 Petition is filed with a view to

avoid pressing stay in Section 36 application which would require deposit of awarded sum by the Petitioner. That a specific representation was made before this Court on 23 April 2026 while opposing Respondent's Section 9 petition that relief of renewal of bank guarantee would be sought in Section 36 application. However, when Section 36 application was heard on 28 April 2026, Petitioner took a *volte face* and avoided seeking stay to the Award stating that it would file Section 9 Petition for renewal of bank guarantee.

18) Mr. Nankani further submits that there is gross delay in filing the present Petition as Petitioner was put to notice on 5 February 2026 of not extending the bank guarantee. That present Petition is however filed on 29 April 2026 i.e., a day before expiry of the bank guarantee. That Petitioner has suppressed the position that the claim expiry period is available upto 30 April 2027 and has made out a false case of urgency before this Court. He submits that relief sought by the Petitioner would amount to passing of an order contrary to the enforcement of the Award which is impermissible even under the judgment of the Apex Court in ***Home Care Retail Marts Pvt. Ltd.*** (supra). That the Additional Award directs unconditional return of bank guarantee and if an order is passed by this Court for extension/renewal of bank guarantee, the same would come in the way of enforcement of the Award. That under the garb of seeking interim measures under Section 9, Petitioner is actually seeking modification of the Award which only Section 34 Court can do. He relies on judgment of Delhi High Court in ***M/s. Mukti Credits Pvt. Ltd. vs. Indraprastha Power Generation Co.***

Ltd.[3] holding that Section 9 Court cannot enter into controversy of correctness or otherwise of the Award as the same would encroach upon jurisdiction of Section 34 / Section 36 Court.

19) Mr. Nankani further submits that similar requests for extension of bank guarantee have been repeatedly rejected by this Court in the case of the Petitioner/ONGC. He relies on order passed by this Court in ***ONGC vs. Punj Lloyd Ltd.***[4] and ***ONGC vs. Consortium of Sime Darby Engineering Sdn. Bhd. and Swiber Offshore Construction Pte. Ltd.***[5]. He submits that in those decisions, this Court has taken a view that when a net higher amount is owed to the award-holder and where only relief available to ONGC is a Section 34 petition for setting aside the Award, it would be improper and impermissible to direct extension of the bank guarantee.

20) Lastly, Mr. Nankani submits that no rare or compelling case is made out as contemplated by the judgment in ***Home Care Retail Mart Pvt. Ltd.*** (supra) as there is no apprehension of dissipation of assets or impossibility to recover 35% LD under the Award or remaining 65% of LD not awarded to the Petitioner. That judgment in ***Home Care Retail Mart Pvt. Ltd.*** does not provide two mutually exclusive remedies to the unsuccessful party viz. one under Section 9 and the other under Section 36(3) of the Arbitration Act. That remedy under Section 9 post award subsists only until enforcement/execution of the Award. On the contrary,

3 OMP (I) (COMM) 113/2019 decided on 28 January 2020.
4 IA No. 2003 of 2019 in CARBP No. 36 of 2022 decided on 21 December 2022
5 2018 SCC OnLine Bom 6034

Section 36(3) provides a mechanism to unsuccessful party to intercede execution by obtaining a stay. That the provisions are complementary and not competing. That therefore, interim measures in post Award Section 9 petition cannot be understood to mean conferment of protective powers until decision of Section 34 petition as such interpretation would render provisions of Section 36(3) otiose. That judgment in ***Home Care Retail Marts*** (supra) cannot be read in support of proposition that Section 9 Petition furnishes a parallel and co-extensive remedy subsisting until the final adjudication of Section 34 petition. Mr. Nankani would pray for dismissal of the Petition.

REASONS AND ANALYSIS

21) The disputes and differences between Petitioner-ONGC and Respondent-L&T have been arbitrated by a Three-Member Arbitral Tribunal, which has made Award dated 30 December 2024 and Additional Award under Section 33 of the Arbitration Act on 12 December 2025. Under the Awards, the Tribunal has granted in favour of L&T, USD 2,62,09,133.42 plus EUR 4,893.28 plus INR 22,63,51,381.04 under Claim Nos. 2 to 7. As against this, in respect of Claim No.1 raised by L&T for EOT and consequential release of the bank guarantee, the Award directs ONGC to return the bank guarantee to L&T. The bank guarantee was submitted by L&T representing 10% of the contract price of approximately INR 150.34 crores for the purpose of release of deducted/withheld amount of LD. ONGC imposed total liquidated damages of approximately INR 122.73 crores. However, the Arbitral

Tribunal has held that ONGC was entitled to impose LD only to the extent of 35%, quantified at USD 28,25,336.00 plus EURO 1,49,168.00 and INR 14,52,12,198.00.

22) The tabular statement of the claims awarded in favour of L&T and ONGC is as under:

Heads of Claim	**Amounts Awarded**		
Claims made by L&T	**USD**	**EUR**	**INR**
Claim No.1: Claims For Extension of Time and Consequential Release of Bank Guarantee in lieu of Liquidated Damages	*(Award directs ONGC to return the bank guarantee to L&T)*		
Claim No.2: Claim for Compensation for De-Mobilisation, Re-Mobilisation of Marine Spread and Transportation, Storage and Re-Transportation of Structures During and Post Monsoon Season	USD 1,72,48,000.00		INR 6,20,76,76,473.44
Claim No. 3: Claims for Compensation on Account of Standby of L&T's Vessels/ Barges	USD 73,78,816.48		
Claim No. 4: Claims For Compensation on Account of Change in Scope of Work/ Design Criteria and/or ONGC's Instructions	USD 13,85,341.44		INR 76,57,869.00
Claim No. 5: Claim for reimbursement of service tax on weight adjustment			INR 5,28,71,450.00
Claim No. 6: Claims for	USD		INR

Amounts Wrongfully Withheld by ONGC	386.50		17,28,068.00
Claim No. 7: Miscellaneous Claims	USD 1,96,589.00	Euro 4,893.28	INR 2,59,83,360.00
Costs			INR 7,60,34,060.60
Total amounts awarded to L&T	**USD 2,62,09,133.42**	**Euro 4,893.28**	**INR 22,63,51,381.04**
Total amounts awarded to ONGC in its counterclaim towardss refund of amounts released by ONGC to L&T by accepting Bank Guarantee in lieu of liquidated damages	USD 28,25,336.00	Euro 1,49,168.00	INR 14,52,12,198.00

23) Upon conversion of USD and EURO into INR by applying conversion rate as on 29 April 2026, Respondent has presented following figures of total value of claims in INR awarded in favour of L&T and ONGC:

	USD	**EUR**	**INR**	**TOTAL IN INR**
Total amounts awarded to L&T	USD 2,62,09,133.42	Euro 4,893.28	INR 22,63,51,381.04	**INR 271,12,57,704.81**
Total amounts awarded to ONGC in its counterclaim	USD 28,25,336.00	Euro 1,49,168.00	INR 14,52,12,198	**INR 42,95,65,545.28**
NET AMOUNT				**INR 228,16,92,159.53**

* Conversion rate for 1 USD is taken as 94.79 INR as on 29th April 2026
Conversion rate for 1 EUR is taken as 110.88 INR as on 29th April 2026

24) Thus, the net result of the two Awards made by the Arbitral Tribunal is that ONGC is liable to pay to L&T a sum of Rs. 271.12 crores whereas L&T is liable to pay to ONGC a sum of Rs.42.95 crores. After making mutual adjustments, the net sum payable by ONGC to L&T is Rs.228.16 crores. Thus, Respondent-L&T is entitled to ultimately recover amount from ONGC and in that sense, one may treat L&T as the 'successful party' and ONGC as 'unsuccessful party'.

25) Division Bench of this Court in ***Dirk India Pvt. Ltd.*** (supra) had taken a view that a party unsuccessful in arbitral proceedings cannot maintain petition under Section 9 of the Arbitration Act. Similar view was taken by Delhi, Madras and Karnataka High Courts. On the other hand, the High Court at Telangana, Gujarat High Court and Punjab & Haryana High Court had taken a contrary view that even unsuccessful party in arbitral proceedings can maintain petition under Section 9 of the Arbitration Act. The divergence of views expressed by various High Courts attracted attention of the Hon'ble Supreme Court in ***Home Care Retail Marts Pvt. Ltd.*** (supra) in which following substantial question of law was framed in para-2 of the judgment:

> 2. The substantial question of law that arises for consideration in the present batch of appeals is whether a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') at the post-award stage, by a party that has lost in the arbitral proceedings and has no enforceable award in its favour, is maintainable in law?

26) Referring to plain language of Section 9 of the Arbitration Act and taking into consideration the meaning of the expression 'a party' used therein, the Apex Court held that Section 9 of the Act does not draw

any distinction between successful and unsuccessful parties in arbitration proceedings. It further held that statutory framework does not prescribe any qualification that would confine the availability of post award relief under Section 9 solely to award holders. It is held that the meaning of the expression 'a party' cannot be contextually modulated or varied depending on the outcome of arbitral proceedings. The Apex Court thus concluded that the interpretation adopted by this Court in ***Dirk India*** (supra) is inconsistent with the statutory scheme. The Court has held in paras-40 and 41 of the judgment as under:

> 40. The interpretation adopted in Dirk India (supra) appears inconsistent with the statutory scheme. By restricting the availability of post-award interim relief to a successful party, the judgment introduces a limitation unsupported by the language of Section 9 of the Act. If the legislature, while consciously deviating from the UNCITRAL Model Law, intended to impose such a restriction, it would have done so expressly.
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> 41. Consequently, this Court is of the considered view that the object and purpose of Section 9 of the Act is to ensure that parties retain the right to approach the Court for interim measures until the judicial process has reached its culmination.

27) In ***Home Care Retail Marts Pvt. Ltd.***, the Apex Court went ahead to hold that Sections 34/36(2) and Section 9 of the Arbitration Act apply in distinct spheres and that mere availability of recourse under Section 34 of the Act or stay under Section 36(2) cannot operate as a bar to seeking protection under Section 9. The Court has held in paras-42 and 43 of the judgment as under:

42. The mere availability of recourse under Section 34 of the Act or of a stay under Section 36(2) of the Act cannot operate as a bar to seeking protection under Section 9.

43. Sections 34 as well as 36 provide remedies against an award or a stay thereof, whereas Section 9 ensures protection of the subject matter or the amount in dispute. An unsuccessful party cannot secure protection of its claim under Section 34 or Section 36. To deny interim relief under Section 9 would leave such a party remediless. In fact, if the Court declines to entertain an application of a losing party for interim relief, there would be no forum available for protection of the subject matter, even where the award under challenge is stayed and potentially liable to be set aside. Moreover, the ultimate outcome may alter the rights of parties and, therefore, distinction between a 'winning' and a 'losing' party cannot govern access to the remedy under Section 9 of the Act.

28) In ***Home Care Retail Marts Pvt. Ltd.*** (supra), the Apex Court further held that ***Dirk India Pvt. Ltd.*** (supra) had proceeded on a fundamentally erroneous premise that Section 34 Court can only dismiss objections to the arbitral award or set it aside, which assumption was erroneous in the light of judgment of the Constitution Bench in ***Gayatri Balaswamy vs. ISG Novasoft Technologies Ltd.***[6]. The Apex Court has held in paras-44, 45 and 47 of the judgment as under:

44. The fundamental premise on which *Dirk India*, *Nussli Switzerland Ltd.*, *Padma Mahadev* and *A. Chidambaram* (supra) held that an unsuccessful party, post award, is disentitled to seek interim relief is that under Section 34 of the Act, the Court may either dismiss the objection to the arbitral award or set it aside, therefore the interim measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award.

45. This assumption is untenable in law, for it now stands conclusively settled by the Constitution Bench Judgment in *Gayatri Balasamy* (supra) that Courts exercising jurisdiction under Sections 34 and 37 of the Act possess the power to modify an arbitral award where the award is severable, by excising the invalid portion from the valid portion, and/or by correcting clerical,

6 (2025) 7 SCC 1

> computational, or typographical errors, and/or by modifying post-award interest in appropriate circumstances. It has also been held that this Court, in exercise of its powers under Article 142 of the Constitution, has the authority to amend the award.
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> **47.** Additionally, the expressions '*subject matter of arbitration*' and '*amount in dispute*' used in Section 9(1)(ii) of the Act are broader in scope, width and amplitude than the phrase '*fruits of arbitration*'. Where the Legislature has expressly provided that measures under Section 9 of the Act may secure the subject matter of arbitration or the amount in dispute, the Court in *Dirk India, Nussli Switzerland Ltd., Padma Mahadev* and *A. Chidambaram* (supra) could not have restricted its ambit to securing an enforceable claim of the successful party. Such a restrictive interpretation is impermissible when the language of the provision is plain and categorical.

29) The Apex Court thereafter went on to give purposive interpretation to the expression '*a party*' and held that the Court can not only stay the Award but also grant interim measures under Section 9 of the Arbitration Act to balance the equities. Giving example of a bank guarantee, the Court has held that in addition to stay of Award under Section 36(3), the unsuccessful party is also entitled to seek interim measures in relation to a bank guarantee. The Apex Court held in para-49 of the judgment as under:

> 49. Even applying the test of purposive interpretation, '*a party*' must mean any party to the arbitration agreement. This Court can envisage situations where a party that has lost in arbitration may nonetheless require interim protection. For instance, where an arbitral award has been rendered without proper notice to a party, or where a party is able to *prima facie* demonstrate that the award has been induced or tainted by fraud or corruption. In such situations, the Court may not only stay the award but also grant interim measures under Section 9 of the Act to balance the equities. Similarly, in certain cases, an unsuccessful party may have obtained interim protection during the arbitral proceedings, such as an order restraining invocation of a bank guarantee. Upon the rendering of the arbitral award, such interim protection ordinarily stands vacated. However, the unsuccessful party may challenge the award under Section 34 of the Act and obtain a stay on the enforcement of the arbitral award under Section 36(3) of the Act. In such circumstances, immediate removal of interim protection, for example, in relation to a bank guarantee,

> may result in irreversible prejudice to the unsuccessful party whose challenge to the arbitral award is pending adjudication.

30) In ***Home Care Retail Marts Pvt. Ltd.***, the Apex Court has further held that courts are not disabled from granting 'non prejudicial' interim measures in favour of unsuccessful party where such relief does not affect enforceability of Award. The Apex Court held in para-50 of the judgment as under:

> 50. Further, the Courts are not disabled from granting '*non-prejudicial*' interim relief in favour of an unsuccessful party in arbitral proceedings, particularly where such relief does not affect the enforceability of the award but merely preserves ancillary rights pending adjudication under Section 34 of the Act as was sought in the case of *Wind World (India) Ltd.* (supra).

31) The Apex Court in ***Home Care Retail Marts Pvt. Ltd.*** (supra) has specifically dealt with the instance of 'partially successful party' against whom higher amount of counter claim is allowed and has held in para-51 as under:

> 51. Another interesting conundrum may be where a party is partially successful, inasmuch as, part of its claims are allowed but as a consequence of a higher amount of counter-claim being allowed, it is branded as an unsuccessful party in accordance with *Dirk India* (supra) and is not in a position to prevent the other party from selling its assets after the award has been rendered. It is possible that in Section 34 proceedings, the arbitral award may be modified to the extent that the counter-claim is set aside and severed from the award. However, without interim relief, assets may dissipate rendering final success illusory.

32) However, the Hon'ble Apex Court has prescribed a caveat in ***Home Care Retail Marts Pvt. Ltd.*** (supra) that interim measures under Section 9 of the Arbitration Act in favour of unsuccessful party can only be made in rare and compelling cases and that the threshold for grant of

interim relief would be higher in the case of an unsuccessful party. The Court has held in para-52 and 60 of the judgment as under:

> 52. Consequently, in rare and compelling cases, it may be necessary to permit the unsuccessful party to invoke Section 9 of the Act to seek continuation of the existing interim protection. This assumes greater significance, as noted earlier, in light of the decision in *Gayatri Balasamy* (supra) which recognises the Court's power under Section 34 of the Act to modify an arbitral award, including the power to sever '*the "invalid" portion from the "valid" portion of the award*'.
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> 60. Undoubtedly, the threshold for grant of interim relief will be higher in the case of an unsuccessful party in arbitration seeking such relief. In rare and compelling cases, permitting the unsuccessful party to invoke Section 9 of the Act would prevent irreparable prejudice and preserve the efficacy of the challenge proceedings. However, the rights of such a party cannot be curtailed merely on the apprehension of possible misuse of a statutory provision.

33) Thus, in ***Home Care Retail Marts Pvt. Ltd.,*** the Apex Court has held that the judgment of Division Bench of this Court in ***Dirk India,*** and other judgments of Delhi, Madras and Karnataka High Courts taking similar view, do not lay down good law. The conclusions in the judgment in para-61 and 62 are as under:

> **61.** For the aforesaid reasons, this Court holds that the judgments of the Bombay, Delhi, Madras, and Karnataka High Courts insofar as they deny an opportunity to unsuccessful parties in arbitration to apply for relief under Section 9, do not lay down good law. The contrary views expressed by the Telangana, Gujarat, and Punjab & Haryana High Courts correctly reflect the statutory position.
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> **62.** Consequently, this Court holds that any party to an arbitration agreement, including an unsuccessful party in arbitration, may invoke Section 9 of the Act at the post-award stage. However, the Courts would be well advised to exercise care, caution and circumspection while dealing with a Section 9 application filed by an unsuccessful party in arbitration.

34) In the present case, Petitioner is largely unsuccessful in the arbitral proceedings as it has the liability to pay higher amount to the Respondent under the Award (*INR 271.12 crores)* as compared to its entitlement to receive amount of INR 42.95 crores. However, applying the ratio of the judgment in ***Home Care Retail Marts Pvt. Ltd.,*** Petitioner can still maintain application under Section 9 of the Arbitration Act for seeking post-award interim measures. Petitioner is hopeful of Section 34 Court setting aside part of the Award which seeks to award a sum of INR 271.12 crores in favour of Respondent. This is why Petitioner wants continuance of security in respect of sum of INR 42.95 crores awarded in its favour which represents 35% LD levied by it. Petitioner thus claims post-award interim measures in its capacity as 'partially successful party'. Additionally, the Petitioner believes that it is would also receive from Section 34 Court balance 65% LD amount from the Respondent and therefore wants the entire 100% LD amount of INR 122.73 crores being secured by the Respondent. Thus, even in capacity as 'unsuccessful party', Petitioner is seeking interim measures under Section 9 of the Arbitration Act. The Petition is thus maintainable in view of law enunciated in judgment in ***Home Care Retail Marts Pvt. Ltd.*** and the objection of maintainability sought to be raised by Mr. Nankani deserves to be repelled.

35) Petitioner's insistence on renewal/extension of the bank guarantee is otherwise not entirely misplaced since it got prevented from deducting 100% LD amount of INR 122.73 crores on account of Respondent securing the same by a bank guarantee. Under contractual

clause 6.3.4, Respondent furnished bank guarantee of INR 150.35 crores (representing 10% contract price) and asked for release of LD amount. This is a reason why Petitioner-ONGC insists that till dispute over LD amount is resolved by Section 34 Court, Respondent must keep the bank guarantee renewed and extended. The issue for consideration is whether this interim measure needs to be made under Section 9 of the Arbitration Act, in the facts and circumstances of the present case?

36) As observed above, the Apex Court in ***Home Care Retail Marts Pvt. Ltd.,*** while recognising right of an unsuccessful party to seek post-award interim measures under Section 9 of the Act, has prescribed a caution that such interim measures can be made only in rare and compelling cases and that the threshold for grant of such interim measures needs to be higher in case of unsuccessful party. Thus, interim measures under Section 9 of the Arbitration Act cannot be sought by an unsuccessful party only on the strength of usual parameters of *prima facie* case, balance of convenience and irreparable injury. Something more needs to be demonstrated by unsuccessful party for seeking interim measures under Section 9 in a post-award scenario.

37) Whether Petitioner has made out rare and compelling case and whether it crosses the higher threshold is the issue for consideration in the facts of the present case. Petitioner's case is that the Arbitral Tribunal has applied completely erroneous methodology while restricting the LD to only 35%. According to the Petitioner, even going by Tribunal's erroneous computation of delay attributable to Respondent

of 177 days, the LD at contractual weekly rate would translate to 13% of contract price. However, since there is contractual cap of 10%, Petitioner is entitled to levy liquidated damages upto the full cap of 10%. Additionally, Petitioner has also sought to criticize the Tribunal while computing the delay. However, even if the alleged error in computation of delay is momentarily ignored, it *prima facie* appears that Petitioner may be entitled to levy full 10% liquidated damages even for 177 days (*erroneously computed by the Tribunal as per Petitioner*). Thus, Petitioner has made out a strong prima facie case of error in restricting the LD to only 35% though it ought to be 13% (restrictable to contractual cap of 10%) even going by Tribunal's own computation of delay days. Without going into the evidentiary aspect of responsibility for delay and number of delays attributable to the Respondents, Petitioner has set up a prima facie case that the LD amount could not have been restricted to only 35%. This would be the first rare and compelling circumstance for making interim measures in favour of Petitioner/ONGC.

38) There is yet another strong, rare and compelling circumstance in favor of Petitioner-ONGC. As observed above, if Respondent-L&T was not to submit the bank guarantee, ONGC would have deducted the amount of liquidated damages from its running bills. Thus, by submitting the bank guarantee, Respondent prevented ONGC from deducting the LD. Thus, the bank guarantee was not submitted for securing performance or for ensuring quality of work. It was submitted by way of an assurance for Respondent refunding the amount of LD. During arbitral proceedings, Respondent renewed and extended the bank

guarantee rather than refunding the amount of LD to ONGC. Now, out of the total LD levied of approximately INR 122.73 crores, the Tribunal itself has awarded the Petitioner 35% LD amount of approximately INR 42.95 crores (*USD 28,25,336.00 + EURO 1,49,168.00 + INR 14,52,12,198)*. The Respondent-L&T has not challenged the Award and accordingly Petitioner's entitlement to secure sum of INR 42.95 crores is crystallised. If Petitioner's case is to be *prima facie* believed, it may be successful in securing entire 100% LD amount of 122.73 crores also. In such circumstances, a party, who prevents the other party from deducting the amount of LD by giving assurance of bank guarantee, needs to continue that assurance at least *qua* the amount awarded by the Arbitral Tribunal.

39) The claim awarded in favour of the Respondent of INR 271.12 crores cannot be confused with Petitioner's entitlement to receive LD amount of Rs.42.95 crores awarded by the Tribunal and its claim for remaining 65% LD amount raised in Section 34 Petition. The amount of INR 42.95 crores is actually Petitioner's amount lying with the Respondent for which security of bank guarantee is furnished by the Respondent. Therefore the principle of set off cannot be applied in the present case while determining the entitlement of ONGC to have a continuing security in respect of its LD claim. What is awarded to L&T is something recoverable towards alleged additional work. On the contrary, what is awarded to ONGC is in the nature of directions for refund of amount enjoyed by L&T by submitting the bank guarantee. Respondent has not questioned its liability to refund INR 42.95 crores to the Respondent. In such circumstances, if Respondent wants to avoid refund

of 35% LD of INR 42.95 crores by relying on the figure of INR 271.12 crores awarded in its favour, it can be permitted to do so, but the least that it needs to do is to extend and keep renewed the bank guarantee.

40) There is yet another factor which operates in favour of the Petitioner for making interim measures of extension and renewal of the bank guarantee. In the original Award dated 30 December 2024, the Arbitral Tribunal had issued following directions:

> 321. For Claim No.1: Claims for extension of Time and Consequential Release of Bank Guarantee in Lieu of Liquidated Damages + Related Compensation Claims.
> Counterclaim No.1: Refund of Amounts paid in return of Bank Guarantees in lieu of Liquidated Damages
>
> (i) Respondent is hereby directed to return to Claimant, the Bank Guarantee No. 00040100008747 dated 21st August 2015 from Axis Bank Limited, for the amount of USD 9,710,490 plus EURO 529,370 plus INR 52,42,50,100 which has been submitted to Respndent under clause 6.3.2 of the Contract by Claimant.
>
> (ii) Respondent is entitled to levy LD on Claimant to the extent of 35% of the LD imposed by it already which amounts to USD 2,825,336 + EUR 149,168 + INR 14,52,12,19. The above amount has to be paid by Claimant to Respondent within 30 days from the date of this award.
>
> (ii) the remaining amounts amounting to 65% of the LD imposed by Respondent must be refunded to Claimant within 30 days from the date of this award.
>
> (iv) The return of the Bank Guarantee is subject to Claimant making the above directed payment to Respondent.

41) Thus, as per the original Award, Respondent was to receive back the bank guarantee only upon making payment of 35% LD of USD 28,25,336 + EURO 1,49,168 + INR 14,52,12,198 (*approximately INR 42.95*

crores). This direction is altered in the Additional Award, made a year later, by issuing following direction in para-61:

> 61. Upon consideration of the submissions and perusal of the Award, the Tribunal deems it appropriate to allow the rectification sought by Claimant and delete sub-paras (ii) and (iv) of paragraph 321 of the Award. Accordingly, paragraph 321(ii) of the Operative Section of the Award shall stand substituted as follows:
>
> "***The respective amounts payable by Claimant and Respondent under this Award shall be subject to mutual adjustment, and only the net amount , after such adjustment, shall remain payable by the Party against whom the balance is found due. The said adjustment shall be effected wthin 30 days from the date of this Award.***"

42) Thus, what was originally granted in favour of the Petitioner-ONGC is taken away by making Additional Award and correctness of this direction is questioned by the Petitioner submitting that the same is beyond powers under Section 33 of the Arbitration Act. If the Additional Award was not made, Respondent would have been liable to pay the Petitioner amount of 35% LD as a precondition for return of the bank guarantee.

43) In ***Home Care Retail Marts Pvt. Ltd.*** (supra), the Apex Court has held in para-50 of the judgment that Section 9 Court can grant 'non prejudicial' interim relief in favour of unsuccessful party, particularly when such relief does not affect the enforceability of Award but merely preserves ancillary rights pending adjudication under Section 34 of the Arbitration Act. In my view, the present case perfectly meets the said parameter set forth by the Hon'ble Apex Court in para-50 of the judgment. Directing Respondent to extend and renew bank guarantee

does not come in the way of enforceability of the Award. Even after renewing the bank guarantee, Respondent can enforce the Award and recover the awarded sum of INR 271.12 crores. Thus, directing interim measures in Section 9 petition in favour of the Petitioner merely preserves the ancillary rights of parties pending adjudication under Section 34 of the Act.

44) In my view therefore, a rare and compelling case is made out for grant of interim measures in favour of the Petitioner even though it is largely an unsuccessful party in the arbitral proceedings. It has not completely failed in the arbitration and is partly successful. It is just that Respondent is awarded higher amount than the one awarded in favour of the Petitioner. As observed above, part of the amount covered by the bank guarantee is actually ONGC's money, which is utilised by Respondent-L&T. ONGC was entitled to deduct the same from bills of L&T. However, L&T prevented ONGC from making such deductions by furnishing a bank guarantee. Now that ONGC's entitlement for such deduction of LD is partially upheld, L&T cannot be heard to say that it would neither refund LD amount nor even secure the same till ONGC gets adjudicated the awarded claims of L&T as well as rejection of claim for 65% LD. The consequences of ONGC succeeding in Section 34 petition would be that L&T's claims of INR 271.12 crores would be set aside and it would have the liability to pay at least INR 42.95 crores to ONGC. If ONGC further succeeds in Section 34 petition in establishing that it is entitled for levy of 100% LD of INR 122.73 crores, L&T will have liability to pay amount of INR 122.73 crores to the Petitioner. Even if

Section 34 Court stops at setting aside the Award, L&T's claim of INR 271.12 crores would get nullified, Petitioner's claim for refund of INR 42.95 crores would still survive and Petitioner would be entitled to arbitrate again for recovery of balance 65% LD amount from L&T. Thus, in both scenarios, L&T's liability to secure 100% LD amount may continue. In my view therefore, a very strong, rare and compelling case is made out by Petitioner-ONGC for grant of interim measures.

45) Also, all that is sought by ONGC is mere extension and renewal of bank guarantee which is continuing for last more than a decade. It is not that ONGC would invoke or encash the renewed bank guarantee. This would ensure that L&T can retain monies of ONGC at least to the extent of INR 42.95 crores during pendency of Section 34 petition on the strength of award of claims to the tune of INR 271.12 crores in its favour. All that needs to be done for retaining in its pockets the monies of ONGC, is to extend and renew the bank guarantee. This, in my view, would be the bare minimum that L&T needs to do.

46) There is yet another angle from which the necessity for extension and renewal of bank guarantee by L&T can be viewed. In the event Section 34 Court directs ONGC to deposit the net awarded sum with interest as a pre-condition for stay of execution of the Award, L&T's interests would get protected while leaving ONGC in lurch without any security either in respect of 35% awarded LD or 100% claimed LD. In the event of ONGC succeeding in the Section 34 Petition, there would be no security left for ONGC for recovery of awarded 35% LD

amount. Here it must be borne in mind that what is awarded by the Tribunal is entitlement of Petitioner-ONGC to seek refund of 35% LD amount, which could have been deducted by it while paying Respondent's bills, but not deducted on account of assurance in the form of a bank guarantee In para-49 of the judgment in ***Home Care Retail Marts Pvt. Ltd.,*** the Apex Court has dealt with a situation where an unsuccessful party who has obtained interim protection during arbitral proceedings of stay on invocation of bank guarantee can pray for continuation of the same during pendency of objections to the Award under Section 34. Here the situation is converse where the Tribunal had directed L&T to keep alive the bank guarantee to secure Petitioner's claim for refund of LD. Since LD claim is partially granted in ONGC's favour, I do not see any reason why the bank guarantee needs to be returned to L&T during pendency of Section 34 petition.

47) The objection of Mr. Nankani about maintainability of the present Petition in the light of filing of Section 34 Petition and pendency of Section 36(3) Application is misplaced. The Apex Court has held, in no uncertain terms, in paras-42 and 43 of the judgment in ***Home Care Retail Marts Pvt. Ltd.*** that '*an unsuccessful party cannot secure protection of its claim under Section 34 or Section 36'*. Thus, Petitioner cannot expect interim relief from Section 34 Court as that Court can merely stay execution of the Award subject to deposit of the full or net awarded sum. Therefore, Section 9 is the correct remedy available for the Petitioner for the purpose of securing ancillary rights pending adjudication of Section 34 Petition.

48) Reliance by Mr. Nankani on judgment of this Court in ***ONGC vs Punj Lloyd*** (supra) is inapposite. The judgment is delivered squarely by relying on the judgment in ***Dirk India,*** which is no longer a good law. Also, in para-16 of the judgment, learned Single Judge of this Court has held that Section 34 Court can only set aside the Award resulting in fresh round of arbitration. In paras-44 and 45 of the judgment in ***Home Care Retail Marts Pvt. Ltd.*** (supra), the Apex Court has held this premise to be entirely erroneous on account of authoritative ruling by the Constitution Bench in ***Gayatri Balasamy*** (supra). Thus, the very basis of the judgment of this Court in ***ONGC vs. Punj Lloyd*** is held to be erroneous by the Apex Court in ***Home Care Retail Marts Pvt. Ltd.*** Similar is the position in respect of the judgment of Division Bench of this Court in ***ONGC vs. Consortium of Sime Darby Engineering*** (supra) which squarely follows the judgment of this Court in ***Dirk India*** and of Delhi High Court in ***Nussli Switzerland Ltd. v. Organising Committee Commonwealth Games***[7], both of which are held to be not laying down good law by the Apex Court in ***Home Care Retail Marts Pvt. Ltd..*** The judgment of Delhi High Court in ***Mukti Credits Pvt. Ltd.*** (supra) is not of much relevance for deciding the issue at hand. This Court has not gone into the merits of the award while deciding the issue of grant of interim measures in a post-Award scenario.

49) In view of the above discussion, Petitioner has clearly crossed the higher threshold for making interim measures in the facts of the present case. It has made out a very strong *prima facie* case for

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directing extension and renewal of the bank guarantee. Petitioner would suffer irreparable injury if the security, which it holds for the last more than a decade for the LD, is permitted to be terminated by not renewing the bank guarantee. The balance of convenience is also in favour of the Petitioner as the interim measures proposed to be granted are mere protective measures which would preserve *status quo* until Section 34 Petition is adjudicated as opposed to severe consequences involved in releasing the security against which public monies are parted with by Petitioner in favour of Respondent. Respondent would only have an obligation to extend the bank guarantee which has been in existence for over a decade. Refusal of interim measures would result in a manifest disproportion as the Petitioner would lose the security worth 10% of contract price while Respondent's only burden is the continued existence of the bank guarantee. Petitioner has assured this Court that it would not invoke or encash the bank guarantee and this balances out the scale of equities. In my view therefore, higher threshold is clearly made out by the Petitioner though it is not a fully successful party in arbitral proceedings. In fact, denial of interim measures in the facts of this case would cause violence to the ratio of judgment of the Apex Court in ***Home Care Retail Marts Pvt. Ltd.*** The Respondent-L&T therefore needs to be directed by way of interim measures to secure the subject matter of arbitration, being LD claim of the Petitioner, during pendency of Section 34 Petition.

ORDER

50) I accordingly proceed to pass the following Order:

Until the hearing and final disposal of Commercial Arbitration Petition (L) No. 9373 of 2026 filed by the Petitioner under Section 34 of the Arbitration Act, the Respondent shall extend and keep alive the Bank Guarantee No. 00040100008747 dated 21 August 2015 issued by Axis Bank Limited, for the amount of USD 9,710,490/- plus EUR 529,370/- plus INR 52,42,50,100/- provided to the Petitioner towards liquidated damages as per Clauses 6.3.2 and 6.3.4 of the Contract dated 3 July 2010 and in the event the same has expired for any reason, Respondent shall forthwith furnish a fresh and equivalent bank guarantee in favour of the Petitioner for an amount of USD 97,10,490/- plus EUR 5,29,370/- plus INR 52,42,50,100/-.

51) With the above directions, the Petition is allowed and disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT
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