AGK

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

COMM ARBITRATION PETITION NO.1052 OF 2025
WITH
INTERIM APPLICATION NO.7283 OF 2025

Golden Star Marine SA ... **Petitioner**

Vs.

Orphan Shipping Private Limited ... **Respondent**

Mr. Shyam Kapadia with Ms. Jyotika Jain, & Ms. Harshini Iyengar i/by Bose & Mitra & Co., for the petitioner.

Ms. Ridhi Nyati with Ms. Diksha Brahma, & Mr. Rishi Murarka for the respondent.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: JULY 15, 2026.**
PRONOUNCED ON	**: JULY 17, 2026**

JUDGMENT:

1. This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner is asking for interim protection from this Court. According to the petitioner, an arbitral award has already been passed in its favour, but there is a serious fear that the respondent may dispose of or reduce its assets before the award amount is recovered. Therefore, the petitioner seeks orders for protecting the respondent's assets and securing the amount awarded under the arbitral award.

2. The facts, as stated by the petitioner, are these. On 16 December 2019, the petitioner and the respondent entered into a Time Charterparty agreement. Under this agreement, the petitioner's vessel was engaged for one charter trip from Kandla, India to Chittagong, Bangladesh. After completion of the voyage, the petitioner raised its Final Hire Statement on 9 March 2020 claiming an amount of USD 318,127.84 from the respondent. Thereafter, on 5 November 2020, the respondent raised claims against the petitioner before the Arbitral Tribunal. According to the respondent, it had suffered losses because the vessel remained off hire for certain periods, its performance was slow, proper generators and crane motors were not provided at the ports, and there were breakdowns of the crane and other machinery. On these allegations, the respondent claimed an amount of USD 300,717.19 from the petitioner.

3. The petitioner filed its Statement of Defence on 14 December 2020. It denied the respondent's claims and mainly contended that those claims could not be entertained because they were filed beyond the time permitted under the Charterparty. The petitioner relied upon Clause 99 of the Charterparty and submitted that the respondent's claim was barred by limitation under the agreed contractual terms. Thereafter, on 29 January 2021, the respondent filed its reply along with its defence to the petitioner's counterclaim. Since limitation was a substantial issue between the parties, the Arbitral Tribunal framed a preliminary issue on 5 November 2021 regarding whether the respondent's claim was barred under Clause 99 of the Charterparty. Both parties addressed detailed submissions before the Tribunal on this issue.

4. After considering the rival submissions, the Arbitral Tribunal delivered its award on the preliminary issue on 17 March 2022. The Tribunal accepted the petitioner's contention and held that the respondent's claim was barred by limitation. According to the petitioner, thereafter the arbitration proceedings continued. However, from 1 March 2024, the respondent stopped participating in the proceedings and also stopped replying to the communications sent by the Arbitral Tribunal through email. During this period, one of the arbitrators, Mr. Farrington, resigned on 6 March 2024 due to ill health. The petitioner thereafter appointed Mr. George Lambrou as the substitute arbitrator. On 4 April 2024, directions were issued requiring both parties to exchange their LMAA questionnaires by 19 April 2024. The petitioner complied with this direction and filed its LMAA Questionnaire and Schedule of Costs within time. The respondent did not file its documents. Even after the Tribunal granted an additional opportunity on 23 April 2024, the respondent did not submit its questionnaire. Thereafter, on 1 May 2024, the Tribunal directed both parties to file their expert reports and final written submissions.

5. In compliance with the directions of the Tribunal, the petitioner filed its Expert Report on 17 May 2024. According to the petitioner, this report supported its stand that the respondent was responsible for the damage caused to the crane. Thereafter, on 23 May 2024, the Tribunal extended the time available to both parties for filing expert reports till 29 May 2024. Finally, on 17 October 2024, the Arbitral Tribunal delivered its Final Award. The petitioner's claim was allowed and the respondent was directed to pay USD 318,127.84 together with interest at the rate of 4.5% per annum, compounded every quarter from 23 March 2020 until full payment. The Tribunal also directed the respondent to pay arbitration fees of GBP 11,850 and to reimburse the petitioner's costs on the standard basis.

6. The petitioner has, therefore, prayed for several interim reliefs. It seeks a direction requiring the respondent to furnish security, either by cash deposit or by an unconditional bank guarantee, for a sum of about USD 439,584.28, equivalent to approximately INR 3.76 crore, together with further interest as may be directed by the Court. The petitioner also seeks orders restraining the respondent from selling, transferring, creating third party rights or otherwise dealing with its movable and immovable assets. Similar protection is sought in respect of the respondent's office premises, office furniture, fixtures, computers, equipment, motor vehicle and the office property stated to be situated at Nagpur. The petitioner has also prayed for disclosure of all assets on oath, disclosure of transactions entered into after publication of the foreign award, and for appointment of a Court Receiver or attachment of assets to the extent of the awarded amount.

7. Mr. Kapadia, learned counsel appearing for the petitioner, submits that the petitioner has already obtained a Final Award against the respondent. Under the Award, the respondent has been directed to pay USD 318,127.84 together with interest at the rate of 4.5% per annum, compounded every three months, till the entire amount is paid. Apart from this, the respondent has also been directed to pay the arbitrators' fees of GBP 11,850. According to him, despite the Award having become final and binding, the respondent has not paid any amount to the petitioner. He further points out that even the earlier Preliminary Award directing payment of GBP 12,450 has also remained unpaid. On this basis, he submits that the conduct of the respondent itself shows that it has no intention of voluntarily satisfying the arbitral awards.

8. Learned counsel for the petitioner further submits that immediate protection is necessary because there is a genuine apprehension that the awarded amount may ultimately become impossible to recover. He relies upon the respondent's own audited financial statements for the financial year 2023 to 2024. According to those statements, the respondent's revenue from operations has drastically fallen from about INR 5,954.90 lakh in the financial year ending 31 March 2023 to only INR 1,006.75 lakh in the year ending 31 March 2024. According to him, such a steep fall itself reflects serious financial difficulty. He further submits that although the respondent's assets are shown at about INR 22.23 crore, its liabilities are approximately INR 39.11 crore. Thus, its liabilities exceed its assets by nearly INR 16.87 crore, resulting in a negative net worth. He also points out that the respondent is shown as having no inventory as on 31 March 2024. Considering these financial figures, he submits that there is a real and reasonable apprehension that the respondent may not have sufficient financial capacity to satisfy the foreign award if immediate protective orders are not granted.

9. On the other hand, Ms. Nyati, learned counsel appearing for the respondent, opposes the petition. She submits that the petitioner has already initiated proceedings for enforcement and execution of the foreign award dated 17 October 2024. According to her, the respondent has serious objections to the enforceability of the award and those objections will be considered in the enforcement proceedings. Therefore, according to her, until the foreign award is declared enforceable by the competent Court, the present petition itself is premature and not maintainable. She further submits that the petitioner has failed to make out even a prima facie case for grant of such wide interim reliefs. According to her, there is absolutely no material showing that the respondent is disposing of its assets with an intention to defeat the award. She also submits that the petitioner has neither pleaded nor proved any special circumstances which would justify such drastic orders before enforcement of the award. Another objection raised by her is that the petition suffers from delay. She points out that the Preliminary Award was delivered on 17 March 2022 and the Final Award was delivered on 17 October 2024, whereas the present petition came to be filed only on 4 November 2025. According to her, such long delay clearly shows absence of any urgency, and therefore the discretionary reliefs sought by the petitioner deserve to be refused on the ground of laches.

10. Learned counsel for the respondent also disputes the factual statements made regarding the respondent's immovable properties. She submits that the respondent does not presently own any office premises or any immovable property at Nagpur or elsewhere in India. She further states that the premises situated at 101, The Summit, near Hanuman Mandir, Off Western Express Highway, Mumbai, are not owned by the respondent. She also submits that the office premises situated at 104, Level I, The Chambers, Hanuman Road, Vile Parle East, Mumbai, are neither owned nor presently occupied by the respondent. Therefore, according to her, no injunction or restraint can be granted regarding properties which do not belong to the respondent.

11. In reply, Mr. Kapadia submits that the pleadings and documents on record clearly justify grant of interim protection. According to him, the respondent's own reply has in fact strengthened the petitioner's apprehension rather than removing it. He submits that the petitioner's concern from the beginning was that the respondent's financial position had become weak and its assets had substantially reduced. The audited accounts now clearly show that the respondent does not hold any inventory. They also show a drastic reduction in revenue from about INR 5,954.90 lakh to about INR 1,006.75 lakh within one financial year, which is nearly an 83% decline. He further points out that the respondent's liabilities exceed its assets by about INR 16.87 crore, showing that it has a negative net worth.

12. He further submits that when the petitioner had obtained financial information from the records available on the website of the Ministry of Corporate Affairs during the year 2025, the respondent itself had shown its registered office at 104, Level I, The Chambers, Hanuman Road, Vile Parle East, Mumbai. However, within a short period, the respondent has now taken a completely different stand by saying that it neither owns nor possesses that property. According to the petitioner, the respondent has also shifted to rented premises at 101, The Summit. The respondent now claims that it does not own any immovable property anywhere in India. This, according to the petitioner, is inconsistent with the auditor's report for the financial year 2023 to 2024, wherein it was stated that the immovable properties stood in the name of the company. The petitioner also points out that the same auditor's report refers to an office project at Nagpur shown as work in progress with a value of about INR 70 lakh. According to the petitioner, the respondent has now attempted to explain this by producing only an electricity bill relating to some property at Nagpur without satisfactorily explaining the earlier disclosure. It is therefore submitted that these changing statements regarding ownership of properties and the disappearance of assets within a short period create a genuine apprehension that the respondent's assets are being reduced or dealt with. According to the petitioner, unless immediate protective orders are granted, the foreign arbitral award may ultimately remain only on paper without any practical possibility of recovery.

REASONS AND ANALYSIS:

13. I have considered the submissions made from both sides. I have also gone through the pleadings, documents and other record. Present petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. At this stage, this Court is not deciding whether the foreign award is executable or whether the objections proposed by the respondent in enforcement proceedings are correct. The issue before this Court is whether the facts placed on record show that temporary protection is necessary, so that if the foreign award is held enforceable, it should not become a paper award because no assets remain available. Therefore, this Court has to see the matter from this limited side. It is not deciding the enforceability of the foreign award.

14. There is no dispute between the parties that the Final Award dated 17 October 2024 has been passed in favour of the petitioner. Under that Award, the respondent has been directed to pay USD 318,127.84 together with contractual interest. The respondent has been directed to pay the arbitral costs and Tribunal fees. It is not disputed that till today nothing has been paid. The petitioner has pointed out that the amount directed to be paid under the Preliminary Award towards costs has not been paid. The respondent nowhere disputes that these Awards exist. Its contention is that since the Final Award is under challenge in enforcement proceedings, no interim protection should be granted. Therefore, the existence of the Awards is admitted. What is disputed is only what consequence should follow from those Awards.

15. The first objection raised by the respondent is that the present petition has been filed prematurely because enforcement proceedings are pending, and the objections raised by the respondent are required to be decided. In my opinion, this submission cannot be accepted. Section 9 gives power to the Court to grant interim protection whenever the facts of the case require such protection. The purpose behind this provision is to preserve the subject matter and also to ensure that the benefit flowing from the arbitral proceedings does not become meaningless. If every award holder is asked to wait till the enforcement proceedings are completed, irrespective of the facts, then the object of interim protection may fail. The power under Section 9 is intended to be exercised where the facts show that preservation is required. Therefore, merely because enforcement proceedings are pending, it cannot be said that the jurisdiction of this Court under Section 9 comes to an end. Such an interpretation will take away a power conferred upon the Court. Hence, this objection cannot result in rejection of the petition.

16. However, it is true that merely because an arbitral award exists, interim protection does not follow. The Court must examine whether the material produced before it creates a basis for believing that the successful party may face difficulty in recovering the awarded amount. Interim protection is a equitable relief. It cannot be granted because it is asked for. There must be facts from which a reasonable apprehension can arise. Therefore, the petitioner has to succeed on the strength of the material produced before the Court and not because an Award has been passed in its favour.

17. To establish such circumstances, the petitioner has relied upon the respondent's financial statements and auditor's report. According to the audited accounts for the financial year 2023 to 2024, the respondent's revenue from operations has fallen from about Rs.59.54 crore to Rs.10.06 crore within a period of one year.

Such a reduction is substantial and cannot be ignored. It prima facie indicates that the business activity of the respondent has reduced considerably. It is true that reduction in revenue cannot establish that a company is unable to discharge its liabilities. Business may increase or decrease for several reasons. But when the reduction is of this extent, the Court also cannot ignore it. It becomes one relevant circumstance while considering the respondent's overall financial position.

18. The petitioner has relied upon the balance sheet showing that the respondent's liabilities are considerably higher than assets. According to the figures placed before the Court, the respondent's assets are about Rs.22.23 crore whereas its liabilities are about Rs.39.11 crore. If these figures are considered, the liabilities exceed the assets by Rs.16.87 crore. The respondent has not produced any financial material showing that this financial position has improved thereafter. It has also not explained before this Court that these liabilities have been discharged or reduced. Therefore, at the present stage, the audited statements relied upon by the petitioner continue to remain the best available material before the Court for understanding the respondent's financial position.

19. The petitioner has pointed out that according to the books of accounts, the respondent does not have any inventory. Standing by itself, this circumstance may not carry much importance because every business is not carried on in the same manner. There may be businesses which are not expected to maintain any inventory. Therefore, this fact cannot lead to an inference that the respondent is under financial distress. However, when this circumstance is read together with the reduction in revenue and the liabilities being much more than the assets, it becomes one additional circumstance which may be taken into consideration while assessing the respondent's financial health.

20. Learned counsel appearing for the respondent submitted that the petitioner has failed to establish that the respondent is attempting to dispose of or dissipate its assets with the intention of defeating execution of the Award. According to the respondent, mere financial weakness cannot be treated as proof of dishonest intention. Every company facing financial difficulties cannot be presumed to be acting dishonestly. Commercial losses may arise because of various reasons. Therefore, the Court must proceed cautiously before drawing any adverse inference because the financial position of a company appears weak. Unless there are additional facts pointing otherwise, financial weakness cannot justify grant of drastic interim protection.

21. However, the facts of the present case do not end with the financial statements. The petitioner has invited attention to the respondent's stand regarding its immovable properties. According to the petitioner, the official records reflected that the respondent owned certain office premises. However, in the reply filed before this Court, the respondent has now stated that it neither owns any immovable property nor is in possession of the premises referred to in the petition. The respondent has denied ownership of the properties mentioned by the petitioner. These statements indicate that the position now put forward by the respondent appears different from the position which documents relied upon by the petitioner appeared to disclose.

22. It is true that the respondent has denied ownership of those immovable properties. However, such denial does not answer the grievance made by the petitioner. The petitioner has relied upon the auditor's report for the financial year 2023 to 2024 which reflects that immovable properties stood in the respondent's name and refers to an office project shown as work in progress at Nagpur. If thereafter those properties ceased to belong to the respondent, then some explanation regarding such change would have been expected. However, except making a general statement that the respondent does not presently own those properties, no explanation has been given explaining when the ownership came to an end. Such silence assumes significance because these are matters which are within the knowledge of the respondent.

23. Regarding the Nagpur property, the petitioner has relied upon the auditor's report showing an office under work in progress valued at Rs.70 lakh. The respondent has attempted to answer this by stating that it owns no immovable property and by relying upon an electricity bill relating to other premises. In my opinion, such explanation does not answer the petitioner's reliance upon the audited statements. An electricity bill cannot explain what happened to an asset which ppeared in the audited accounts unless material is produced showing the complete position. Therefore, at this stage, the doubts raised by the petitioner cannot be brushed aside as without any foundation.

24. Learned counsel for the respondent has also argued that the petitioner has approached this Court after considerable delay. According to the respondent, the Preliminary Award was passed in March 2022, the Final Award was passed in October 2024 and the present petition came to be filed in November 2025. It is therefore submitted that if there was any urgency, the petitioner would not have waited for such a long period. According to the respondent, this delay shows that the plea of urgency is not genuine.

25. In my view, mere passage of time cannot decide the controversy. Delay is one relevant circumstance while exercising equitable jurisdiction. However, it cannot be examined separately from the surrounding developments. The petitioner's case is not founded only upon the Award. It is founded upon the respondent's subsequent financial condition reflected in the financial statements and upon the later disclosures regarding assets. If the apprehension regarding recovery became stronger only after examining those later records, then merely because some time had passed after the Award, the petition cannot be rejected. At the same time, it cannot be ignored that such delay does reduce the force of the petitioner's plea. Therefore, although delay does not defeat the petition, it requires the Court to mould the relief instead of granting every prayer.

26. The respondent has contended that the petitioner has failed to plead any special circumstances warranting interim protection. I am unable to accept this submission. The pleadings refer to a substantial fall in revenue, liabilities exceeding assets, negative net worth and non-payment even of the arbitral costs awarded.

Whether these facts are established or not will be considered at the appropriate stage. However, for the purpose of the present proceedings, these cannot be described as unsupported allegations.

27. Considerable emphasis was placed by the respondent upon the objections to be raised against enforcement of the foreign award. In my view, those objections are not required to be examined in the present proceedings. If this Court enters into those questions now, it may overlap with the issues which are required to be decided in the enforcement proceedings themselves. Those questions are left open to be decided in the appropriate proceedings.

28. For all these reasons, I am of considered opinion that the final relief, therefore, must be moulded keeping balance in view.

29. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

(i) The Arbitration Petition is partly allowed;

(ii) Pending the enforcement and satisfaction of the Foreign Arbitral Award dated 17 October 2024, the respondent shall secure the awarded amount by furnishing security to the satisfaction of this Court in a sum equivalent to USD 318,127.84 together with interest accrued thereon under the Award and the costs awarded by the Arbitral Tribunal. Such security shall be furnished within a period of four weeks from the date of this order;

(iii) The security may be furnished either by depositing the amount before this Court or by furnishing an unconditional and irrevocable Bank Guarantee of a nationalised or scheduled commercial bank, renewable from time to time until further orders of this Court;

(iv) Until the security, as directed above, is furnished, the respondent shall not create any third party rights, alienate, transfer, encumber or otherwise deal with its movable or immovable assets to the extent of the value of the awarded amount, except in the ordinary course of its business;

(v) Within three weeks from today, the respondent shall file an affidavit of disclosure, affirmed by a responsible officer of the company, disclosing all its movable and immovable assets, bank accounts, investments, receivables and all transfers or encumbrances created after 17 October 2024;

(vi) It is clarified that the respondent shall be at liberty to deal with its assets in the ordinary and usual course of business. However, no transaction having the effect of defeating or frustrating the execution or enforcement of the Foreign Award shall be undertaken without obtaining prior leave of this Court;

(vii) The prayers seeking appointment of a Court Receiver and attachment of the respondent's assets are, at this stage, declined, with liberty to the petitioner to apply afresh in the event of breach of this order or if subsequent circumstances so warrant;

(viii) All observations made in this order are prima facie in nature and confined only to the adjudication of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. They shall not influence the proceedings for enforcement of the Foreign Award or any objections raised therein, which shall be decided on their own merits;

(ix) The Arbitration Petition is accordingly disposed of in the above terms.

(x) There shall be no order as to costs.

(AMIT BORKAR, J.)