Shabnoor

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

COMM ARBITRATION PETITION (L) NO.20605 OF 2026

1. Trentar Private Limited
2. Stesalit Systems Limited … Petitioners

Vs.

1. Hemant Khemka
2. Arun Kumar Khemka
3. Kusum Khemka
4. AK Khemka HUF
5. Gitanjali Khemka
6. Rohan Khemka
7. Maruna Exports Private Limited … Respondents

Mr. Vineet B. Naik, Senior Advocate with Ms. Gunjan Jayakar, Mr. Sukand Kulkarni, Mr. Miheer S. Jayakar, Mr. Utkarsh Kumar, & Mr. Shubh Sahai i/by Cyril Amarchand Mangaldas for the petitioner.

Mr. Vikram Nankani, Senior Advocate with Mr. Tanay Agarwal, Mr. Sourav Ganguly, & Mr. Anukul Seth for respondent No.1.

Mr. Prakash Shah, Senior Advocate with Mr. Anukul Seth for respondent Nos.2 to 7.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 10, 2026.

PRONOUNCED ON : JULY 14, 2026

JUDGMENT:

1. This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioners seek interim protection against respondent Nos. 1 to 7 in relation to disputes arising out of the Share Purchase Agreement and the Shareholders' Agreement dated 8 August 2023. According to the petitioners, they have a monetary claim of about INR 43.4 Crores against the respondents. They seek protection of the said claim, restraint against the respondents from dealing with or disposing of their assets, and protection of their contractual rights till the Arbitral Tribunal is constituted. It is their case that though arbitration was invoked on 4 June 2026, respondent Nos. 2 to 7 have not nominated their arbitrator. Therefore, the Arbitral Tribunal has not yet been constituted, and the present Petition has been filed under Section 9 of the Act.

2. The facts giving rise to the Petition are briefly as follows. On 8 August 2023, the parties executed the Share Purchase Agreement and the Shareholders' Agreement at Mumbai. Under the Share Purchase Agreement, petitioner No. 1 agreed to purchase 90% of the issued, subscribed and paid up equity share capital of petitioner No. 2 from respondent Nos. 1 to 7. The total value of the transaction was about INR 55 Crores. Out of this amount, INR 26.33 Crores was towards the purchase price of the shares and INR 28.67 Crores was to be advanced by petitioner No. 1 as an unsecured shareholders' loan for payment of certain liabilities existing on the Closing Date.

3. Thereafter, on 8 September 2023, the parties executed Amendment Agreements to both the Share Purchase Agreement and the Shareholders' Agreement. These agreements are collectively referred to as the Transaction Documents. According to the petitioners, after completion of the transaction, petitioner No. 1 paid the agreed purchase consideration to respondent Nos. 1 to 7 and also advanced the shareholders' loan to petitioner No. 2. As a result, petitioner No. 1 became the holder of 90% of the equity shares of petitioner No. 2, whereas respondent No. 1 continued to hold the remaining 10% shares.

4. The petitioners contend that even after completion of the transaction, respondent No. 1 continued to substantially manage and control the business and affairs of petitioner No. 2 till 30 September 2023, which period is described as the Transition Period. During this period, petitioner No. 2 is stated to have borrowed INR 7.25 Crores from ICM Finance Pvt. Ltd. and INR 3 Crores from Deepa Bagla Financial Consultants Pvt. Ltd. without the knowledge or consent of petitioner No. 1. According to the petitioners, if these borrowings were made before the Closing Date, they were in breach of Clause 6.4(xii) of the Share Purchase Agreement. In any case, the petitioners contend that these borrowings, their alleged non-disclosure and their utilisation form part of the disputes between the parties.

5. The petitioners further state that in order to examine the financial affairs of petitioner No. 2, Deloitte Touche Tohmatsu India LLP conducted a forensic investigation. An interim report was prepared on the basis of work completed till 11 September

2025 and the final report was issued in June 2026. According to the petitioners, the report records various irregularities including unsupported and allegedly sham sales, undisclosed remuneration and consultancy arrangements, payments to connected parties, borrowings during the Transaction and Transition Period, deficiencies in vendor records, payroll irregularities, inventory discrepancies and personal expenses of respondent No. 1 being charged to petitioner No. 2.

6. According to the petitioners, after these irregularities came to light, they repeatedly raised their concerns with respondent No. 1 regarding collections, audit findings, non-availability of records, borrowings during the Transaction and Transition Period and the amount claimed by them. A meeting was held between the parties at JW Marriott, Aerocity, New Delhi on 19 November 2025. However, according to the petitioners, no satisfactory explanation was given and no settlement could be arrived at. Thereafter, on 14 April 2026, respondent No. 1 resigned from the office of Director of petitioner No. 2.

7. In these circumstances, the petitioners, through their Advocates, issued a legal notice dated 28 April 2026. According to the petitioners, the notice constituted a notice of breach under Clause 14.1(iii) of the Shareholders' Agreement, an indemnity claim notice under Clauses 9.1.1, 9.1.2 and 9.1.3 of the Share Purchase Agreement and also invoked the specific indemnity under Clause 9.3 of the Share Purchase Agreement. By the said notice, the petitioners quantified their principal claim at INR 28,68,80,202 together with interest at the rate of 18% per annum from 1 August

2023.

8. It is the petitioners' case that respondent No. 1 did not cure the alleged breaches within the contractual period provided under the Shareholders' Agreement. According to the petitioners, this resulted in an Event of Default, thereby entitling petitioner No. 1 to exercise its Call Option rights in respect of the 10% shareholding held by respondent No. 1 in petitioner No. 2. Respondent No. 1 thereafter replied to the legal notice denying the allegations and raising several defences. Respondent Nos. 2 to 7 also denied their liability and contended that they were only passive shareholders and had no role in the day-to-day affairs of petitioner No. 2. The petitioners have disputed all these contentions.

9. Thereafter, respondent No. 1 invoked arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 in terms of the arbitration clauses contained in the Share Purchase Agreement and the Shareholders' Agreement. Respondent No. 1 nominated Mr. Justice Mukul Mudgal, former Judge, as his nominee arbitrator and also made monetary claims aggregating about INR 37.50 Crores, excluding interest.

10. The petitioners, through their Advocates, replied to the said notice. They denied the claims made by respondent No. 1 and also invoked arbitration against respondent Nos. 1 to 7 under the arbitration clauses contained in the Transaction Documents. The petitioners nominated Mr. Justice Ferdino I. Rebello, former Judge, as their nominee arbitrator and reserved all their contractual and legal rights, including their right to exercise the Call Option under the Shareholders' Agreement.

11. Thereafter, respondent No. 1, through his Advocates, replied to the petitioners' notice dated 4 June 2026. He denied the petitioners' claims and reiterated his nomination of Mr. Justice Mukul Mudgal as his nominee arbitrator. He also stated that he was not representing respondent Nos. 2 to 7 and was not expressing any view on their behalf. According to the petitioners, respondent Nos. 2 to 7 have neither nominated their joint nominee arbitrator nor taken any steps pursuant to the petitioners' invocation of arbitration. As a result, the Sellers' nominee arbitrator has not been appointed.

12. According to the petitioners, till the filing of the present Petition, the Arbitral Tribunal has not been constituted. Since respondent Nos. 2 to 7 have not nominated their arbitrator, the Presiding Arbitrator also could not be appointed. The petitioners state that they have a genuine apprehension that unless immediate protection is granted, the respondents may deal with or dispose of their assets in a manner which may frustrate the arbitral proceedings and any award that may ultimately be passed. It is in these circumstances that the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996 has been filed seeking interim protection.

13. The petitioners contend that they have made out a strong prima facie case for grant of interim relief. According to them, petitioner No. 1 invested about INR 55 Crores under the transaction, consisting of INR 26.33 Crores towards the purchase consideration and INR 28.67 Crores as the shareholders' loan. In return, respondent Nos. 1 to 7 gave various representations, warranties, covenants, and indemnities under the Share Purchase Agreement in relation to the accounts of the company, receivables, related party transactions, liabilities, payments to employees and consultants, conduct of business and indemnification against losses.

14. The petitioners further submit that there is a real possibility of dissipation of assets. According to them, respondent Nos. 1 to 7 have already received substantial amounts under the transaction. They state that the purchase consideration of INR 26.33 Crores was paid to respondent Nos. 1 to 7 and the shareholders' loan of INR 28.67 Crores was utilised for repayment of liabilities existing on the Closing Date. The petitioners rely upon the forensic report and the fund flow material to contend that the said amounts were utilised towards repayment of various loans and liabilities including payments to Hemant Khemka, Arun Khemka, Maruna Exports, unsecured 0% OCD and ICM Finance Pvt. Ltd. According to them, these monies are capable of being transferred, converted, encumbered or moved through different accounts, entities or other structures.

15. The petitioners further rely upon the forensic report and the fund flow material to contend that during the Transaction and Transition Period, petitioner No. 2 borrowed INR 7.25 Crores from ICM Finance Pvt. Ltd. and INR 3 Crores from Deepa Bagla Financial Consultants Pvt. Ltd. According to the petitioners, these amounts were thereafter utilised for making payments to related parties, vendors, consultants and connected entities including Arun Khemka, Maruna Exports, Fabcon Manufacturers Pvt. Ltd., Technowiz Consulting Services, Galaxy Enterprises, DR Enterprise, Planning Solutions, Loginn Hospitality and certain individuals. The petitioners contend that these transactions show movement of funds through lenders, promoter related persons, vendors, consultants and connected entities.

16. On the basis of the above facts, the petitioners have sought various interim reliefs from this Court.

17. The petitioners have prayed for directions requiring respondent Nos. 1 to 7 to disclose their movable and immovable assets by filing affidavits. They have further sought an order restraining the respondents from creating third party rights or otherwise dealing with their assets up to the value of about INR 43.4 Crores. In the alternative, they seek a direction requiring the respondents to deposit the said amount before this Court or to furnish adequate security. The petitioners have also sought an injunction restraining respondent No. 1 from dealing with his 10% shareholding in petitioner No. 2 so that the petitioners' alleged Call Option rights remain protected. They have also prayed for ad interim reliefs, costs and such other orders as this Court may consider appropriate.

18. Mr. Naik, learned Senior Advocate appearing for the petitioners, took me through various clauses of the Share Purchase Agreement dated 8 August 2023. He submitted that the respondents have committed several breaches of the terms of the Agreement. He referred to the provisions relating to the Closing Date, representations, warranties, covenants, seller warranties and indemnities. According to him, the respondents created fictitious sales to artificially increase the EBITDA of the Company. He further submitted that during the period between 1 August 2023 and 30 September 2023, the respondents incurred additional borrowings in breach of the contractual terms. He submitted that the details of the petitioners' claims are specifically stated in paragraph 22 of the Petition.

19. Learned Senior Counsel further relied upon the forensic investigation report prepared by Deloitte Touche Tohmatsu India. According to him, the report, at least prima facie, shows additional borrowings, fictitious sales and payments made to entities owned and controlled by respondent No. 1. On the strength of the findings recorded in the report, he submitted that the petitioners have made out a strong prima facie case and are entitled to the relief sought in prayer clause (a), directing the respondents to disclose their assets by filing affidavits.

20. On the other hand, Mr. Nankani, learned Senior Advocate appearing for respondent No. 1, opposed the Petition. He submitted that the petitioners were aware of the alleged losses and the transactions in question since November 2023. Despite such knowledge, the present Petition came to be filed only on 18 June 2026. According to him, this itself shows that there was no urgency for invoking the jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act. He further submitted that both parties have already nominated their respective arbitrators and the Presiding Arbitrator has also been appointed. Therefore, according to him, the petitioners ought to seek interim relief before the Arbitral Tribunal. He also submitted that the Petition deserves to be dismissed on the ground that material facts have been suppressed.

21. Learned Senior Counsel further submitted that the audited financial statements for the financial year 2024 to 2025 were approved and signed by the nominee Directors appointed by the petitioners themselves. According to him, this important fact has not been disclosed by the petitioners in the present proceedings.

22. Learned Senior Counsel further submitted that respondent No. 1 was never given an opportunity to respond to the forensic investigation report prepared by Deloitte Touche Tohmatsu India. Referring to the findings recorded in the report, he submitted that the alleged losses relate either to transactions before execution of the Share Purchase Agreement or to transactions after the Closing Date mentioned in the Agreement. He further submitted that the petitioners have not disclosed the communication dated 3 December 2025 addressed by the respondents to the nominee Directors of the petitioners. He also relied upon the detailed reply given by respondent No. 1 to the legal notice, wherein each of the observations in the Deloitte report has been specifically answered. According to him, the said reply clearly shows that respondent No. 1 has not committed any breach of the Share Purchase Agreement. He further submitted that although the forensic consultant was appointed on 17 July 2025, the nominee Directors of petitioner

No. 1 approved and signed the audited financial statements of petitioner No. 2 for the financial year 2024 to 2025 on 21 July 2025 without recording any objection regarding the very transactions which are now questioned on the basis of the forensic report. According to him, the forensic report merely re-examines transactions which were already reflected in the audited financial statements for the financial years 2023 to 2024 and 2024 to 2025, after the petitioners had taken complete management and financial control of petitioner No. 2.

23. Insofar as the allegation regarding fictitious or sham sales is concerned, learned Senior Counsel submitted that the transactions with Polonium Business Solutions and Modern Railtech Equipment Manufacturers Pvt. Ltd. were genuine commercial transactions. According to him, all these transactions were duly recorded in the books of account, GST records and the audited financial statements.

24. In relation to the allegation that fictitious or sham sales had artificially increased the EBITDA by about ₹7.37 Crores, learned Senior Counsel denied the allegation in its entirety. He submitted that the transactions with Polonium Business Solutions and Modern Railtech Equipment Manufacturers Pvt. Ltd. were genuine business transactions and were properly reflected in the books of account, GST records and audited financial statements. He further submitted that Modern Railtech Equipment Manufacturers Pvt. Ltd. was a disclosed related party and the petitioners were aware of this fact during their due diligence before execution of the transaction documents and even thereafter. He also submitted that the petitioners have calculated the alleged loss by applying a multiplier of ten times the EBITDA. According to him, neither the Share Purchase Agreement nor the Shareholders' Agreement provides for any such method of valuation or calculation. He therefore submitted that the claim is speculative, unsupported by the contractual provisions and cannot be treated as a crystallised claim.

25. With regard to the allegation relating to non-disclosure of remuneration payable to Mr. Amit Chatterjee amounting to ₹5.40 Crores, learned Senior Counsel submitted that the claim is wholly without basis. According to him, Mr. Amit Chatterjee was neither a Director, shareholder nor a Key Managerial Personnel of petitioner No. 2. He submitted that the consultancy charges payable to him were duly recorded in the books of account and were always within the knowledge of the petitioners, who continued to avail of his services even after the Closing Date. According to him, the amount claimed has been artificially calculated without any contractual or legal basis and is therefore merely speculative.

26. In respect of the loan of ₹7.25 Crores obtained from ICM Finance Pvt. Ltd., learned Senior Counsel denied the claim. He submitted that the transaction documents do not recognise any concept of a Transition Period. According to him, the loan was a genuine short term working capital facility obtained for the ordinary business requirements of petitioner No. 2. He further submitted that even according to the petitioners' own demand letters dated 22 November 2025 and 6 December 2025, only about ₹4.21 Crores is alleged to have been wrongly utilised, thereby admitting that the remaining amount was used for legitimate business purposes. Despite this, the petitioners have sought recovery of the entire loan amount of ₹7.25 Crores. According to him, the claim is therefore internally inconsistent and cannot be sustained.

27. In relation to the loan of ₹3 Crores obtained from Deepa Bagla Financial Consultants Pvt. Ltd., learned Senior Counsel submitted that the borrowing was also a genuine working capital facility utilised in the ordinary course of business. He pointed out that even according to the petitioners' own demand letters dated 22 November 2025 and 6 December 2025, only about ₹1.68 Crores is alleged to have been improperly utilised. Even then, the petitioners have claimed the entire amount of ₹3 Crores. According to him, this itself shows that the claim is internally inconsistent and unsustainable.

28. Learned Senior Counsel further submitted that the Board of Directors of petitioner No. 2 was reconstituted on 22 August 2023. Thereafter, during the meetings of the Board and by communications dated 6 December 2025 and 16 January 2026, respondent No. 1 gave detailed explanations regarding each of the alleged discrepancies. He further submitted that petitioner No. 1 continued to enjoy the benefit of the services and facilities financed from the loan obtained from ICM Finance Pvt. Ltd. even after the Closing Date. He also submitted that the statutory auditors considered both the loans and their utilisation while finalising the annual financial statements, which were thereafter approved and signed by the Directors nominated by petitioner No.

1. On these grounds, he submitted that the present Petition is without merit and deserves to be dismissed.

REASONS AND ANALYSIS:

29. I have considered the rival submissions and the material placed on record.

30. The petitioners submit that this Court should grant interim protection as the Petition was filed at a stage when the Arbitral Tribunal was not constituted. According to them, respondent Nos. 2 to 7 had failed to nominate their arbitrator after invocation of arbitration. Because of such failure, the Tribunal was not in existence and immediate protection under Section 9 of the Arbitration and Conciliation Act, 1996 became necessary. It is their case that unless urgent orders were passed, the respondents may deal with their assets and thereby make the arbitral proceedings ineffective. They therefore submit that this Court should grant the reliefs prayed.

31. On the other hand, learned Senior Counsel appearing for respondent No. 1 submits that the position has materially changed. According to him, both sides have nominated their respective arbitrators. The two nominee arbitrators have appointed the Presiding Arbitrator. Thus, the Arbitral Tribunal stands constituted. It is submitted that once the Tribunal has become functional, the parties should seek interim protection before the Tribunal under Section 17 of the Arbitration and Conciliation Act. According to him, there is no reason for this Court to continue to exercise jurisdiction under Section 9.

32. I have also considered the other submissions made by both sides on the merits of the claims. The petitioners rely upon the Share Purchase Agreement, the Shareholders' Agreement, the forensic report prepared by Deloitte Touche Tohmatsu India and the alleged breaches relating to borrowings, fictitious sales, connected party transactions, indemnity obligations and contractual warranties. According to them, these materials establish a strong prima facie case and show a possibility that the respondents may deal with their assets before the disputes are decided.

33. The respondents dispute these allegations. According to them, the forensic report is disputed. They contend that respondent No. 1 was never given an opportunity to explain the report before it was relied upon by the petitioners. They further submit that the transactions questioned were reflected in the books of account and the audited financial statements, which were approved and signed by the nominee Directors of the petitioners. They also dispute the calculations made by the petitioners regarding alleged losses and submit that many claims are speculative and not based upon the contractual provisions. According to them, the alleged fictitious sales, consultancy payments and borrowings are all genuine transactions. They contend that the petitioners have suppressed material facts and that there is no urgency because the petitioners were aware of the alleged transactions for a considerable period before filing the present Petition.

34. At this stage, this Court is not required to finally decide these disputed questions. Whether the forensic report correctly records the transactions. Whether the respondents have committed breaches of the Share Purchase Agreement. Whether the alleged borrowings violate the obligations. Whether the claims are crystallised or speculative. Whether the petitioners are entitled to indemnity. These are all matters which require examination of documents and evidence. Such questions cannot be finally determined in proceedings under Section 9.

35. The question is whether this Court should continue to entertain the present Petition after constitution of the Arbitral Tribunal.

36. Section 9 empowers the Court to grant interim protection before, during or after arbitral proceedings in appropriate cases. At the same time, once the Arbitral Tribunal is constituted, the statutory scheme gives primacy to the jurisdiction of the Tribunal to consider applications for interim measures under Section 17. The legislative intention is that after constitution of the Tribunal, interim relief ordinarily should be sought before the Tribunal. The Court would continue to exercise jurisdiction where the remedy under Section 17 is shown to be inefficacious or incapable of granting relief.

37. In the present matter, it is not disputed before me that both parties have nominated their respective arbitrators and thereafter the nominee arbitrators have appointed the Presiding Arbitrator. The Arbitral Tribunal is now constituted. The Tribunal is competent to examine every factual and legal issue arising between the parties. It also possesses statutory power under Section 17 to grant appropriate interim protection, including orders relating to disclosure of assets, preservation of property, furnishing of security and other interim measures.

38. The petitioners have not demonstrated any special circumstance which would indicate that the statutory remedy before the Tribunal is ineffective. Mere existence of disputed monetary claims or allegations regarding movement of funds would not justify continuation of proceedings before this Court after the Tribunal has become available. The Tribunal is competent to appreciate the forensic report, the transaction documents, the replies exchanged between the parties, the audited financial statements and every other material relied upon by both sides while considering an application for interim protection.

39. The petitioners have attempted to show urgency by relying upon the apprehension that the respondents may dissipate their assets. At present, however, such apprehension remains an allegation which is disputed by the respondents. Whether such apprehension is justified, whether the respondents have dealt with their assets in a manner requiring protection, and whether disclosure of assets or furnishing of security is necessary, are all issues which can be examined by the Arbitral Tribunal. Since the Tribunal now stands constituted, there is no reason to bypass the statutory mechanism.

40. The various submissions on the merits made by both parties have therefore been noted only to the extent necessary for deciding the present issue. They shall remain open for consideration by the Arbitral Tribunal. Nothing stated in this order shall be construed as an expression of opinion on the correctness of the forensic report, the contractual rights of the parties, the alleged breaches, the quantum of the claims or the defences raised by the respondents.

41. Taking an overall view of the matter, I am of the opinion that the continuation of proceedings under Section 9 is not warranted after constitution of the Arbitral Tribunal. Since the Tribunal is available, the parties should approach the Tribunal for appropriate orders.

42. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The present Petition is disposed of;

(ii) Since the Arbitral Tribunal now stands constituted, the petitioners are granted liberty to file an appropriate application under Section 17 of the Arbitration and Conciliation Act, 1996 before the Arbitral Tribunal seeking such interim measures as may be available in law;

(iii) If such an application is filed, the same shall be decided by the Arbitral Tribunal on its own merits and in accordance with law;

(iv) All contentions of the parties on facts and law are kept open for consideration by the Arbitral Tribunal;

(v) It is clarified that this Court has not expressed any final opinion on the merits of the rival claims, the correctness of the forensic report, the alleged breaches of the Transaction Documents, the entitlement of the petitioners to any monetary claim, or the defences raised by the respondents;

(vi) There shall be no order as to costs;

(vii) Pending Interim Applications, if any, do not survive and stand disposed of.

(AMIT BORKAR, J.)