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

COMM ARBITRATION PETITION (L) NO.5535 OF 2025

Kotak Mahindra Bank Limited ... Petitioners

Vs.

Sitaram Energy and Logistics Limited ... Respondent

WITH

COMM ARBITRATION PETITION (L) NO.5944 OF 2025

Kotak Mahindra Bank Limited ... Petitioner

Vs.

1. Kamal Kishore Mall
2. Manish Mall ... Respondents

Ms. Tikshta Modi with Ms. Vedika Pedhambkar i/by Akhil Modi & Associates for the petitioner.

Mr. Kaushik Saha with Mr. Hassnain Kazi and Ms. Shraddha S. Vavhal for the respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 22, 2026.

PRONOUNCED ON : JULY 23, 2026

JUDGMENT:

1. By filing these petitions under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioner has approached this Court seeking various interim and protective reliefs pending commencement and completion of the arbitration proceedings.

2. Since the issues arising in both petitions are substantially the same and arise out of the same transaction, both petitions are being decided by this common judgment. Arbitration Petition (L) No.5535 of 2025 has been filed against the borrower, whereas Arbitration Petition (L) No.5944 of 2025 has been filed against the co borrowers.

3. The facts giving rise to the present petitions may now be briefly stated. On 27 June 2014, Family Credit Limited, the original lender, entered into a Loan Agreement with the respondent for a loan of Rs.12,35,63,477. On the same day, the respondent also executed a Deed of Hypothecation creating security over the assets described therein. Subsequently, on 24 January 2017, Family Credit Limited merged with L&T Finance Limited. Thereafter, on 29 March 2019, L&T Finance Limited executed a Deed of Assignment in favour of the present petitioner, by which all rights under the Loan Agreement together with the securities created thereunder stood assigned to the petitioner. On 22 April 2024, the assignor informed the respondent that the Loan Agreement and all rights arising therefrom had been assigned to the petitioner. On the same day, the petitioner issued a Loan Recall Notice demanding payment of outstanding dues amounting to Rs.11,63,41,502. According to the petitioner, the records available on the portal of the Ministry of Corporate Affairs as on 27 December 2024 showed that the respondent had outstanding liabilities of about Rs.16.70 crores payable to more than thirty banks and financial institutions. Thereafter, on 16 January 2025, the petitioner invoked the arbitration agreement by issuing a notice under the Arbitration and Conciliation Act, 1996 and simultaneously called upon the respondent to disclose the present status and condition of the hypothecated assets. According to the petitioner, in February 2025 it came to know that third party rights had been created in respect of one of the hypothecated assets, namely Vehicle No. GJ 16 AF 8906. The petitioner has also relied upon the respondent's Annual Report dated 19 February 2025, wherein the respondent acknowledged outstanding dues of Rs.7,60,21,638 payable to the original lender. Thereafter, on 31 March 2025, the petitioner instituted the present petitions under Section 9 of the Arbitration and Conciliation Act, 1996 seeking various interim protective measures.

4. During the pendency of these petitions, on 28 November 2025, this Court granted interim reliefs in terms of prayer clauses (a), (b) and (c). Thereafter, on 16 January 2026, the respondent filed an Affidavit of Disclosure consisting only of a one page Profit and Loss Statement. Since the disclosure was found to be incomplete, this Court, by order dated 19 June 2026, directed the respondent to file a comprehensive Affidavit of Disclosure in terms of prayer clauses (a) and (b). Pursuant to that direction, the respondent filed a further affidavit on 7 July 2026. Thereafter, on 14 July 2026, the petitioner filed an additional affidavit pointing out that the respondent's own disclosures contained admissions regarding its assets and the manner in which those assets had allegedly been dealt with or dissipated.

5. Ms. Modi, learned Advocate appearing for the petitioner, submitted that the petitioner is entitled to all the interim reliefs claimed in the present petitions. Ms. Modi submitted that the respondents have contended that the petitioner cannot invoke arbitration because the Deed of Assignment does not contain a separate arbitration clause. She submitted that Clause 10.1 of the Loan Agreement dated 27 June 2014 clearly provides that the expressions "Borrower" and "Lender" include their respective successors and permitted assigns. The said clause also gives complete authority to the lender to assign, transfer or sell all or any of its rights under the Loan Agreement as well as the Deed of Hypothecation. According to her, once such an express right of assignment is available under the Loan Agreement itself, all rights arising under that agreement, including the right to invoke arbitration, automatically pass to the assignee. In support of this submission, reliance was placed on *Siemens Factoring Private Limited v. Future Enterprises Private Limited*, Commercial Arbitration Application No.174 of 2022, decided on 1 March 2023, and *DLF Power Limited v. Mangalore Refinery & Petrochemicals Limited*, Arbitration Petition No.509 of 2011, decided on 20 July 2016.

6. She further submitted that the Deed of Assignment itself contains detailed provisions transferring every right of the original lender in favour of the petitioner. She invited attention to Clause 1.1 of the Deed of Assignment, which defines the expressions "Borrowers", "Financing Documents" and "Underlying Documents" in very wide terms. According to her, these definitions include not only the Loan Agreement but also every connected agreement, deed, security document, post dated cheque, ECS mandate, undertaking, declaration, authorisation and every other document connected with the financial assistance and the securities created in respect thereof. She submitted that this clearly shows that the assignment was intended to transfer the entire transaction and not merely the monetary receivables.

7. Learned counsel further submitted that Clause 2.1 of the Deed of Assignment expressly states that the assignor, being the lawful owner of the receivables, has absolutely and irrevocably assigned all its rights, title, interest, benefits and security interests under the underlying documents in favour of the petitioner. She submitted that the same clause also authorises the petitioner to recover the outstanding dues, institute legal proceedings and take every necessary action in its own name without acting as an agent of the assignor. She further relied upon Clause 3.1(xvii), which requires the assignor to hand over all records relating to borrowers and all legal proceedings, including orders, awards and decrees passed by Courts, Tribunals or other authorities. She also pointed out that Schedule I to the Deed of Assignment specifically mentions the respondent company, namely Sitaram Energy and Logistics Limited, at Serial No.7342. According to her, these provisions clearly establish that every contractual and legal right available to the original lender, including the right to invoke arbitration, stood transferred in favour of the petitioner.

8. Ms. Modi further submitted that there is no dispute that in the year 2024 the respondents received a written intimation informing them that the Loan Agreement had been assigned in favour of the petitioner. The said communication specifically recorded that all the terms and conditions of the Loan Agreement would continue to remain unchanged and would thereafter operate for the benefit of the petitioner. She submitted that even after receiving this intimation, the respondents continued to make payments to the petitioner under the very same Loan Agreement. According to her, such conduct clearly amounts to acceptance of the assignment and recognition of the petitioner's rights under the agreement. She submitted that once the respondents accepted the assignment and continued to act under the assigned contract, the arbitration agreement also travelled with the assignment even though no separate arbitration agreement was executed between the parties. She further relied upon the judgment of this Court in *Siemens Factoring Private Limited v. Future Enterprises Private Limited*, wherein this Court distinguished *Vishranti CHSL v. Tattva Mittal Corporation Private Limited*, 2020 SCC OnLine Bom 7618, by holding that where the original agreement itself expressly permits assignment, the arbitration agreement also passes to the assignee. According to her, the assignment clause contained in the present Loan Agreement is even wider than the clause considered in *Siemens Factoring*.

9. Learned counsel also placed reliance upon the judgment of the Calcutta High Court in *Tata Communications Ltd. v. Rudrapriya Constructions LLP*. She submitted that the Calcutta High Court has held that where a subsequent agreement expressly provides that the terms of an earlier agreement shall apply *mutatis mutandis* and shall form part of the subsequent agreement, the arbitration clause contained in the earlier agreement also becomes part of the later agreement without requiring any separate or fresh consent of the assignee. According to her, the same principle squarely applies to the facts of the present case.

10. Ms. Modi next submitted that there is no serious dispute regarding the respondent's liability under the Loan Agreement. According to her, the respondents themselves have admitted that because of operational difficulties and financial losses suffered during the COVID 19 period, they could not make timely payments. She submitted that the respondents have never denied their liability under the Loan Agreement and have only stated that they require some more time to verify the exact outstanding amount since the accounts are old and voluminous. She further pointed out that in the Annual Report for the financial year ending 31 March 2023, the respondent acknowledged outstanding dues of Rs.8.03 crores payable to the original lender. Even in the Annual Report for the financial year ending 31 March 2025, the respondent again acknowledged outstanding dues of Rs.7.60 crores. According to her, these admissions clearly establish the existence of outstanding liability.

11. Ms. Modi thereafter submitted that by order dated 28 November 2025 this Court directed the respondents to disclose all their movable and immovable assets, bank accounts, bank balances, debts and receivables by filing a proper Affidavit of Disclosure. Pursuant thereto, the respondents filed an affidavit dated 16 January 2026 through their Director, Mr. Manish Mall. According to her, that affidavit merely annexed a one page Statement of Assets and Liabilities as on 31 March 2025 and did not contain the particulars specifically directed by this Court. She submitted that after the petitioner pointed out these deficiencies, the respondents filed another Affidavit of Disclosure dated 7 July 2026 wherein certain details regarding bank accounts, an immovable property situated at Dahej Industrial Estate in Gujarat and some other assets were disclosed. According to her, the subsequent disclosure itself demonstrates that the earlier affidavit was incomplete and did not comply with the directions of this Court.

12. Learned counsel further submitted that a comparison of the financial statements for the years ending 31 March 2025 and 31 March 2026 clearly shows that the respondents have been reducing and diverting their assets. According to her, the respondents increased their investment in subsidiary companies from Rs.51,000 to Rs.1,29,000 during the relevant period. At the same time, the bank balance reduced substantially from Rs.31,58,475 to Rs.2,98,100. She further pointed out that trade receivables reduced from Rs.7.55 crores to Rs.6.96 crores, showing recovery of nearly Rs.59 lakhs from debtors. However, despite such recoveries, the bank balance reduced by nearly Rs.29 lakhs and fixed deposits also reduced by about Rs.16 lakhs. According to her, this indicates that the money realised from debtors has not remained available and appears to have been diverted elsewhere. She further submitted that security deposits reduced from Rs.1.69 crores to Rs.1.28 crores, liabilities towards NBFCs amounting to approximately Rs.1.13 crores were repaid during the same period, and advances received from customers also reduced from Rs.2.21

crores to Rs.1.76 crores. According to her, these facts clearly establish gradual depletion of the respondents' assets and justify grant of protective orders.

13. Per contra, Mr. Saha, learned Advocate appearing for the respondents, invited attention to the Deed of Assignment dated 29 March 2019 executed between L&T Finance Limited and the petitioner. He submitted that although Clause 2.1.1 transfers the assignor's rights, title and interest in the receivables and also authorises the petitioner to institute recovery proceedings or take legal action in its own name, the clause nowhere provides that the arbitration agreement itself stands transferred. He submitted that the petitioner acts in its own capacity as the legal acquirer of the receivables and not merely as an agent of the assignor. He further referred to Clause 2.2.1, which provides that any amount collected by the assignor after the cut off date shall immediately be transferred to the assignee. According to him, Clause 3.1(xvii) only requires transfer of records relating to legal proceedings already initiated by or against the assignor and delivery of awards, orders and decrees. It does not expressly transfer the arbitration agreement itself. He submitted that wherever the parties intended to transfer any specific right, the Deed of Assignment expressly mentions it. Since there is no express reference to transfer of the arbitration clause or disputes arising between the assignor and the borrower, such right cannot be assumed to have been assigned.

14. Mr. Saha further relied upon Section 7(5) of the Arbitration and Conciliation Act, 1996. He submitted that unless the Deed of Assignment specifically incorporates the arbitration clause contained in the Loan Agreement, it cannot be presumed that the arbitration agreement has become part of the assignment. According to him, mere transfer of contractual rights or receivables does not automatically result in transfer of the arbitration agreement.

15. He also invited attention to Clause 5.2 of the Deed of Assignment. According to him, the said clause merely authorises the petitioner to collect the receivables and other amounts due under the assigned accounts. Even this clause, according to him, does not contain any reference to arbitration. He further submitted that the definition of "Purchase Consideration" in the Deed of Assignment clearly indicates that the assignment was essentially a commercial transfer of receivables against payment of consideration by the petitioner to the assignor. According to him, the document therefore cannot be interpreted as assigning the arbitration agreement in the absence of an express provision to that effect.

16. In support of his submissions, Mr. Saha relied upon paragraphs 14, 17, 19, 22, 24 and 33 of the judgment of the Supreme Court in *M.R. Engineers and Contractors Private Limited v. Som Datt Builders Limited*, (2009) 7 SCC 696. He submitted that the Supreme Court has held that a mere reference to another contract does not automatically incorporate the arbitration clause contained in that contract. According to him, an arbitration clause becomes part of another agreement only where the parties have clearly expressed such intention or where the agreement adopts a standard form of contract containing an arbitration provision.

Therefore, according to him, the arbitration clause contained in the Loan Agreement cannot automatically be read into the Deed of Assignment.

17. Mr. Saha also relied upon the judgment of this Court in *Vishranti CHSL v. Tattva Mittal Corporation Private Limited*, 2020 SCC OnLine Bom 7618. He submitted that after considering the decision of the Supreme Court in *M.R. Engineers*, this Court held that an assignee cannot be presumed to have agreed to arbitration unless there is clear material showing intention of the parties to submit disputes to arbitration. According to him, the same principle governs the present case.

18. In rejoinder, Ms. Modi once again relied upon the judgment of this Court in *Siemens Factoring Private Limited v. Future Enterprises Private Limited,* Commercial Arbitration Application No.174 of 2022, decided on 1 March 2023. She submitted that this Court, after considering the judgment in *M.R. Engineers,* held that where all contractual rights of the original lender stand assigned and the borrower has recognised such assignment, there is no requirement of executing a separate arbitration agreement. She further pointed out that Exhibit E to the petition contains details of payments made by the respondents to the petitioner after the assignment. According to her, those payments clearly establish that the respondents accepted and acted upon the assignment and thereby acknowledged the petitioner's rights under the assigned agreement.

19. Ms. Modi also relied upon the judgment of this Court in *DLF Power Limited v. Mangalore Refinery & Petrochemicals Limited*, Arbitration Petition No.509 of 2011, decided on 20 July 2016. She submitted that after considering both *Vishranti CHSL* and *M.R. Engineers*, the Coordinate Bench held that once contracts containing arbitration clauses are validly assigned and the parties have acted upon such assignment, there is no requirement of executing a fresh arbitration agreement between the assignee and the other contracting party.

20. Lastly, Ms. Modi submitted that Clause 10.1 of the Loan Agreement expressly authorises the lender to assign all its rights without even issuing prior notice to the borrower. She submitted that despite such contractual liberty, the petitioner nevertheless informed the respondents about the assignment. According to her, once the respondents received the intimation and thereafter continued to perform their obligations by making payments to the petitioner, they cannot now dispute the validity of the assignment or the petitioner's right to invoke arbitration. She therefore submitted that the petitioner has made out a case for grant of all the interim reliefs sought in the present petitions.

<u>REASONS AND ANALYSIS:</u>

21. The Deed of Assignment contains the following relevant provisions:

> **4.1 Clause 1.1**
>
> "Borrowers" means the Persons specified in Schedule 1 of this Deed, to whom Financial Assistance has been extended by

the Assignor under the Financing Documents;

"Financing Documents" mean all the agreements, deeds and/or documents, executed in favour of the Assignor and/or entered into between the Assignor and the respective Borrowers, inter alia, setting out the terms and conditions on which the Assignor has agreed to provide/provided Financial Assistance to such Borrower/s;

"Underlying Documents" mean any one or more of the following: (i) Financing Documents; (ii) post dated cheques (PDCs); (iii) ECS Mandates; (iv) Security Documents; and (v) any other undertakings, authorizations, declarations, letters, agreements, instruments, writings or documents relating to the Receivables, Financial Assistance and Security Interests.

4.2 Clause 2.1

Assignment

2.1.1. As per the terms of these presents and in consideration of the Assignee (..), the Assignor as the true, legal and beneficial owner of the Receivables, hereby unconditionally and irrevocably sells, assigns, transfers, conveys and releases on an 'as is where is and as is what is' basis:

(i) [...)

(ii) [...)

(iii) all corresponding rights, title, interests, credit risk and benefits of the Assignor under the Underlying Documents; and

(hereinafter collectively referred to as the "Assets") [...]

the Assignee shall hereinafter be vested with all the rights and duties of the Assignor against the Borrowers in respect of the Assets, including the right to recover and receive all Receivables, the right to file a suit or institute such other recovery proceedings and take such other actions, as may be required for the purpose of recovery and/or realization of the Assets, in its own name and right and as a legal acquirer and not as representative or agent of the Assignor.

4.3 Clause 3.1(xvii)

The Assignor hereby agrees and undertakes that Assignor shall hand over to the Assignee, all records of the Borrowers and legal files in respect of all proceedings initiated by and against the Assignor in respect of Financial Assistance / Receivables, including but not limited to orders, awards, decree passed by any court, tribunal or authority within 90 (ninety) Business Days from the Effective Date or within such extended period, as may be mutually agreed to by the Assignor and the Assignee.

4.4 Schedule 1

The name of the respondent, namely Sitaram Energy and Logistics Limited, is specifically included in Schedule 1 to the Deed of Assignment at Serial No.7342.

22. It is not in dispute that, in the year 2024, the respondents received a letter from the Assignor informing them that the Loan Agreement and the connected rights had been assigned in favour of the petitioner. The said communication also specifically clarified that the assignment would not alter the existing terms of the Loan Agreement. On the contrary, it expressly recorded that:

> "Please note that all terms and conditions of the Loan Agreement shall remain unchanged and shall from the Effective Date continue for the benefit of KMBL."

23. Thus, according to the petitioner, the respondents were duly informed about the assignment and were also specifically notified that all the terms and conditions governing the Loan Agreement would continue to operate even after the assignment in favour of the petitioner.

Whether the petitioner has locus to invoke the arbitration agreement after assignment:

24. The first objection raised by the respondents goes to the basis of the present proceedings and, therefore, the same is required to be examined first. According to the respondents, there is no dispute that the financial dues and receivables under the Loan Agreement have been transferred in favour of the petitioner. However, according to them, only the monetary rights were transferred and the arbitration agreement never came to be assigned. It is their submission that unless the Deed of Assignment itself specifically says that the arbitration agreement is assigned, the petitioner cannot invoke arbitration proceedings. According to the petitioner, what came to be assigned was not merely the amount recoverable under the Loan Agreement but the entire bundle of rights, legal remedies and benefits available under the agreement. It is submitted that the arbitration clause is one such right and, therefore, it travelled together with the remaining rights. Thus, the real question which this Court is required to consider is whether, having regard to the documents executed between the parties and the subsequent conduct of the respondents, the petitioner can be said to have stepped into the shoes of the original lender and acquired the right to invoke the arbitration agreement.

25. Before examining the rival submissions, it becomes necessary to look at the contractual provisions governing the relationship between the parties. Clause 10.1 of the Loan Agreement authorises the lender to assign or transfer its rights under the Loan Agreement. Similarly, the expressions "Borrower" and "Lender" are defined so as to include their respective successors and permitted assigns. This would show that even at the time when the Loan Agreement was executed, the parties had contemplated that the lender's rights could pass to the another entity. Thus, assignment was not a new arrangement brought into existence after execution of the contract but was part of the contract accepted by the borrower. Though this may appear to be only an ordinary contract, it assumes importance because it indicates what the parties had intended from the beginning while entering into the transaction.

26. The Deed of Assignment dated 29 March 2019 requires consideration. Clause 2.1.1 records that the assignor "unconditionally and irrevocably sells, assigns, transfers, conveys and releases" all corresponding rights, title, interests and benefits under the underlying documents. The same clause provides that the assignee "shall hereinafter be vested with all the rights and duties of the Assignor against the Borrowers... including the right to recover and receive all Receivables, the right to file a suit or institute such other recovery proceedings and take such other actions... in its own name and right and as a legal acquirer and not as representative or agent of the Assignor." Clause 3.1(xvii) requires the assignor to hand over all records including orders, awards and decrees passed by Courts and Tribunals. Schedule I refers to the present respondent. If all these clauses are read together, they appear to indicate that the assignor intended to transfer not merely the money receivable under the Loan Agreement but also the commercial rights and legal remedies arising out of the transaction. Though every legal remedy is not separately mentioned in the Deed of Assignment, the language employed therein suggests that the petitioner was expected to exercise those rights in its own name.

27. The respondents, however, submit that reading all these clauses together, none of them refers to the arbitration agreement. According to them, wherever the parties intended to transfer a particular right, they expressly incorporated the same in the Deed of Assignment. Therefore, if there had been any intention to assign the arbitration agreement, the parties would have provided for it. Since no such clause is found in the Deed of Assignment, the Court should not presume that the arbitration agreement also travelled with the remaining rights. In support of this submission, reliance has been placed upon Section 7(5) of the Arbitration and Conciliation Act, 1996.

28. The legal principles governing incorporation of arbitration agreements by reference are now settled. In *M.R. Engineers & Contractors (P) Ltd.*, the Supreme Court explained that an arbitration clause contained in another document becomes part of a contract only where the contract contains a reference to that document, such reference demonstrates an intention to incorporate the arbitration clause and the arbitration clause is capable of governing disputes arising under the contract concerned. The Supreme Court further observed that a general reference to another agreement is not sufficient to incorporate the arbitration clause contained therein. Paragraph 33 of the judgment explains the underlying reason by observing that "An arbitration clause though an integral part of the contract, is an agreement within an agreement." In other words, merely because parties have entered into a contract, it does not follow that arbitration also stands accepted. Arbitration is a separate arrangement relating only to the mode of dispute resolution and requires a clear intention of the parties.

29. The respondents have also reliance upon the judgment of this Court in *Vishranti CHSL.* After considering the principles laid down in *M.R. Engineers*, this Court held that where a new party enters the arrangement through assignment, the intention to adopt arbitration must be specifically shown. The Court observed that the assignee cannot be presumed to have agreed to arbitration merely because other rights have been assigned. It was further held that a general expression such as "all terms and conditions" would not satisfy the requirement of Section 7 of the Arbitration Act. Proceeding on this reasoning, the respondents submit that since the present Deed of Assignment nowhere refers to the arbitration agreement, the petitioner cannot claim any right to invoke arbitration.

30. It is true that an arbitration agreement is distinct from the obligations relating to performance of the contract. Therefore, if the present matter had involved nothing more than a reference to another agreement, the principles laid down in *M.R. Engineers* and

Vishranti CHSL would have required serious consideration. However, precedents cannot be applied only by reading one or two observations in isolation. Every assignment has to be examined having regard to its own language, the surrounding facts and circumstances and the conduct of the parties after such assignment has taken effect.

31. In the present case, the factual position appears to be different. The Loan Agreement authorised assignment by the lender and the borrower had accepted such an arrangement from the beginning. After execution of the Deed of Assignment, the respondents received a communication informing them that the Loan Agreement had been assigned in favour of the petitioner. That communication specifically stated:

> "Please note that all terms and conditions of the Loan Agreement shall remain unchanged and shall from the Effective Date continue for the benefit of KMBL."

32. The conduct of the respondents after receipt of the above communication assumes importance. Instead of raising any objection that the petitioner had no authority to enforce the Loan Agreement, the respondents continued to deal with the petitioner under the same arrangement. Payments were also made to the petitioner after the assignment. The petitioner has produced material showing such payments. Such conduct becomes an important circumstance while considering whether the respondents accepted the petitioner as having stepped into the place of the original lender.

33. A similar issue came to be considered by this Court in *DLF*

Power Limited. In that case, after assignment of the contracts, the respondent dealt with the assignee as the successor of the contracting party. The Court observed that the respondent had accepted the assignee "as a lawful successor in all respect" and recognised "all rights, obligations and benefits including the arbitration agreement." The Court held that "no separate execution of the arbitration agreement was required" because the contracts containing the arbitration agreement had been assigned and thereafter both parties had acted upon those contracts. Thus, the Court attached importance not only to the language used in the assignment documents but also to the conduct of the parties acting upon the assignment.

34. The same principle was further explained by this Court in *Siemens Factoring Pvt. Ltd.*. The Court distinguished the decision in *Vishranti CHSL* by observing that *M.R. Engineers* recognises the distinction between a mere reference to another agreement and assignment of the entire relationship. It was observed that where the original agreement contemplates assignment, the assignee steps into the shoes of the original contracting party and, if both parties thereafter act upon such assignment, the arbitration agreement also accompanies the remaining rights. The Court held that if "all the rights in favour of LIQ has been assigned" and the assignment "was specifically acknowledged by the Respondent", there was "no need of separate execution of arbitration agreement."

35. In my considered opinion, the facts of the present case appear to be similar to the facts in *DLF Power* and *Siemens*

Factoring than those before the Court in *Vishranti CHSL*. Here also, assignment was never prohibited but was contemplated by the Loan Agreement. After the assignment, the respondents accepted the petitioner as the entity entitled to enforce the Loan Agreement and continued to perform their obligations. Payments were made to the petitioner. Further, Clause 2.1.1 of the Deed of Assignment transfers all rights, interests and benefits under the documents and authorises the petitioner to institute recovery proceedings in its own name. When these clauses are read together with the conduct of the parties, the surrounding circumstances appear to indicate that the petitioner was intended to occupy the same position held by the original lender under the earlier contract.

36. Therefore, the language of the Loan Agreement, the express permission permitting assignment, the provisions contained in the Deed of Assignment, the communication issued to the respondents after assignment and the conduct of the respondents in dealing with the petitioner as the successor of the original lender, when all these circumstances are considered together, sufficiently indicate the intention between the parties. In these peculiar facts and circumstances, I am of the view that the petitioner has acquired the necessary locus to invoke the arbitration agreement.

<u>Whether the petitioner has established entitlement to interim measures under Section 9 of the Arbitration and Conciliation Act, 1996:</u>

37. Having held that the petitioner is entitled to invoke the arbitration agreement, the question which falls for consideration is whether the facts placed before this Court justify exercise of powers under Section 9 of the Arbitration and Conciliation Act, 1996.

38. According to the petitioner, the respondents have not only committed default under the Loan Agreement but have admitted that substantial amounts remain payable. It is pointed out that in the affidavit in reply the respondents have stated that timely repayment could not be made because of operational disruption and financial losses suffered during the COVID-19 pandemic. The respondents have not denied that liability exists. Their explanation is that the accounts are old, voluminous and require detailed verification before the exact amount can be worked out. According to the petitioner, once such a stand is taken, it amounts to admitting that liability under the Loan Agreement still continues, though the precise amount may require reconciliation after examination of the accounts.

39. The petitioner has relied upon the Annual Reports of the respondent company. The Annual Report for the financial year ending 31 March 2023 records an outstanding liability of approximately Rs.8.03 crores payable to the original lender. Even thereafter, the Annual Report for the financial year ending 31 March 2025 records an outstanding liability of approximately Rs.7.60 crores. These statements were voluntarily disclosed by the respondents in statutory records. Such admissions carry their own significance and cannot be lightly ignored. Though the exact amount recoverable would have to be determined in arbitral proceedings, the existence of outstanding liability appears to have been acknowledged by the respondents.

40. In my view, merely because liability has been admitted, it does not follow that attachment of assets or freezing of bank accounts must follow. Every commercial concern receives money and also spends money in the ordinary course of business. Salaries have to be paid, statutory dues have to be discharged, operational expenses have to be incurred and payments have to be made to suppliers and other creditors. Likewise, receivables may reduce because customers make payment. However, the enquiry cannot stop there. The Court is required to examine whether prima facie material exists creating a reasonable apprehension that the respondents are dealing with their assets in such a manner that the arbitral proceedings may become ineffective. It is while considering this aspect that the disclosures made by the respondents assume importance.

41. By order dated 28 November 2025, this Court directed the respondents to disclose particulars regarding their movable and immovable properties, bank accounts, receivables and other assets. Despite such direction, the respondents filed only a one-page statement showing assets and liabilities as on 31 March 2025. It is not disputed that the said statement did not contain the particulars directed by this Court. It was only after the petitioner pointed out the deficiencies in the disclosure and further directions were issued that the respondents filed affidavit dated 7 July 2026 furnishing particulars of their bank accounts, immovable property situated at Dahej Industrial Estate, Gujarat and other assets. This sequence of events, in my opinion, assumes importance while considering the request for interim protection.

42. The initial reluctance shown by the respondents in making a complete disclosure is a circumstance which deserves consideration. A litigating party appearing before the Court in proceedings under Section 9 is expected to place complete and fair particulars before the Court, where disclosure has been directed. Though the subsequent affidavit furnishes particulars, it does not wipe out the effect of the earlier incomplete disclosure. By itself, such conduct may not establish any dishonest intention. It lends some support to the apprehension expressed by the petitioner that complete particulars were not voluntarily disclosed at the earliest opportunity.

43. The petitioner has also compared the financial statements for the years ending 31 March 2025 and 31 March 2026. According to the petitioner, investments in subsidiary companies have increased whereas bank balances have reduced from approximately Rs.31.58 lakhs to approximately Rs.2.98 lakhs. Trade receivables have considerably reduced during the same period. On the basis of these figures, the petitioner submits that the respondents have diverted assets and substantially depleted the resources which were otherwise available for satisfaction of the claim.

44. At this stage, however, it would not be safe to conclude that every reduction in receivables or bank balances amounts to dishonest diversion of assets. Financial statements disclose the position of a business as on a particular date. There may be several reasons explaining increase in investments, reduction in receivables or movement of funds. Without detailed evidence, it would not be appropriate to record any finding that the respondents have acted dishonestly. Such questions would fall for consideration before the Arbitral Tribunal after evidence is adduced.

45. Even then, the question is whether all the surrounding circumstances, taken together, create a reasonable apprehension that the subject matter of arbitration requires protection. In the present case, several circumstances exist. The respondents admit that liability continues to remain outstanding. The first affidavit of disclosure did not comply with the directions issued by this Court. The subsequent disclosures indicate considerable reduction in assets. The petitioner has pointed out that one of the hypothecated assets has become subject to third-party rights. Each one of these circumstances, if viewed separately, may not justify grant of interim protection. However, when they are considered cumulatively, they assume importance.

46. The respondents have not placed before this Court any explanation reconciling the reduction in bank balances with the reduction in receivables. No explanation has been offered regarding increase in investments in subsidiary companies despite the outstanding liability towards the petitioner. It may be possible for the respondents to explain these movements before the Arbitral Tribunal. However, at the present stage these circumstances do create a reasonable apprehension that unless protective orders are passed, the assets available may not remain available for satisfaction of the arbitral award.

47. The petitioner has prayed for freezing of all bank accounts maintained by the respondents. After considering the material placed on record, I am unable to grant such relief. Freezing all bank accounts is the drastic interim measures available to the Court. Unless there is clear material showing an immediate attempt to remove or dissipate funds with a view to defeating the arbitral proceedings, such an order would travel beyond the permissible limits of Section 9. Though the material available is sufficient for grant of protective measures, it is not sufficient to justify complete freezing of all bank accounts.

48. The petitioner has sought a garnishee order directing Oil and Natural Gas Corporation Limited to deposit all rental income directly with the petitioner. Such a direction would divert the respondents' receivables even before the Arbitral Tribunal determines the rights of the parties. Though Section 9 undoubtedly confers wide powers upon the Court, such powers are required to be exercised with caution. Interim protection should not result in the claimant receiving the fruits of the claim before adjudication. Such a direction would alter the existing relationship between the respondents and a third party and may affect the respondents' ongoing business. Therefore, I am not inclined to grant the blanket garnishee relief sought by the petitioner. At the same time, the apprehension expressed by the petitioner cannot be ignored. In my view, the interest of justice would be protected if Oil and Natural Gas Corporation Limited is directed not to release any security deposit or terminal payment becoming payable to the respondents without giving prior notice to the petitioner until constitution of the Arbitral Tribunal. Such a limited direction preserves the petitioner's right to seek appropriate orders before the Arbitral Tribunal.

49. The petitioner has prayed for appointment of a Court Receiver with authority to take possession of and sell the respondents' properties. Appointment of a Receiver with actual possession is a drastic equitable relief. Such relief is granted only where intervention becomes necessary to prevent loss or clandestine disposal of the property. Though the material available indicates circumstances requiring protection of the assets, it does not justify dispossession of the respondents from their business properties. Passing such an order may interfere with their commercial activities. However, having regard to the admitted liability, the incomplete disclosure, the depletion of liquid assets and the absence of any explanation regarding movement of funds, some protective arrangement is necessary so that the disclosed assets remain available during the arbitral proceedings. In these circumstances, appointment of the Court Receiver as Receiver without actual possession would safeguard the petitioner's interest. The Receiver shall prepare an inventory and symbolic possession report.

50. The petitioner has prayed that the respondents should furnish security for the admitted outstanding amount. In my considered opinion, this relief deserves to be granted to a limited extent. The respondents' Annual Report for the financial year ending 31 March 2025 records outstanding liability of

Rs.7,60,21,638/- payable to the original lender. The respondents have not denied the existence of such liability. When this admitted liability is considered together with the prima facie material indicating depletion of assets, it becomes appropriate to direct the respondents to furnish security equivalent to the admitted liability.

51. Looking at the matter as a whole, the reliefs proposed to be granted appear to be proportionate to the circumstances emerging from the material presently available on record. In the considered opinion of this Court, such a balanced exercise of jurisdiction best advances the object and purpose underlying Section 9 of the Arbitration and Conciliation Act, 1996.

52. 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 commencement and conclusion of the arbitral proceedings and subject to further orders of the learned Arbitral Tribunal, the respondents, either by themselves, their directors, officers, servants, agents or any person claiming through or under them, are restrained from selling, transferring, alienating, encumbering, creating any third-party rights in, or otherwise dealing with the hypothecated assets described in the Loan Agreement and the documents executed pursuant thereto, except in the ordinary course of business and without prior leave of the learned Arbitral Tribunal or, until its constitution, of this Court;

(iii) The respondents shall, within a period of three weeks from the date of this order, file a fresh, complete and comprehensive affidavit of disclosure disclosing all their movable and immovable assets, bank accounts, fixed deposits, investments, receivables, liabilities and all material financial transactions undertaken after 31 March 2025, together with supporting documents;

(iv) The respondents shall maintain true and proper accounts of all receivables arising from the hypothecated assets and shall not assign, divert, encumber or otherwise deal with such receivables otherwise than in the ordinary course of business, until constitution of the Arbitral Tribunal and thereafter subject to such directions as may be issued by the learned Arbitral Tribunal;

(v) The respondents shall furnish security to by furnishing an unconditional and irrevocable Bank Guarantee of a nationalised or scheduled commercial bank, renewable from time to time until further orders by Arbitral Tribunal or this court in the sum of Rs.7,60,21,638/- (Rupees Seven Crore Sixty Lakh Twenty-One Thousand Six Hundred Thirty-Eight only) within a period of six weeks from the date of this order;

(vi) Pending constitution of the Arbitral Tribunal, Oil and Natural Gas Corporation Limited (ONGC) shall not release any security deposit or terminal payment, if any, becoming payable to the respondents without giving two weeks' prior written notice to the petitioner. This direction shall cease to operate upon the learned Arbitral Tribunal considering and passing appropriate orders on any application that may be filed by either party;

(vii) The Court Receiver, High Court, Bombay, is appointed as Receiver in respect of the assets disclosed by the respondents in their affidavits of disclosure. The Receiver shall take symbolic possession only, prepare an inventory and submit a report before this Court within eight weeks. The Receiver shall not take actual physical possession of the respondents' assets unless directed by this Court or by the learned Arbitral Tribunal;

(viii) The respondents shall extend full cooperation to the Court Receiver and shall furnish all documents and information required by the Receiver for preparation of the inventory;

(ix) The prayer seeking freezing of all bank accounts of the respondents is rejected;

(x) The prayer seeking a blanket garnishee order directing Oil and Natural Gas Corporation Limited to deposit all rental income or receivables directly with the petitioner is rejected;

(xi) The prayer seeking appointment of the Court Receiver with actual physical possession and power to sell the respondents' properties is rejected;

(xii) The observations made in this order are prima facie in nature and confined to adjudication of the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. The learned Arbitral Tribunal shall decide the disputes uninfluenced by any observations contained herein;

(xiii) Upon constitution of the learned Arbitral Tribunal, it shall be open to either party to apply under Section 17 of the Arbitration and Conciliation Act, 1996 for continuation, modification, variation, or vacation of the interim measures granted by this order. The learned Arbitral Tribunal shall consider such application on its own merits and in accordance with law;

(xiv) The interim protection granted by this order shall continue until the learned Arbitral Tribunal considers any application under Section 17 of the Arbitration and Conciliation Act, 1996 and passes appropriate orders thereon, or until further orders of this Court, whichever is earlier;

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

(xvi) All pending Interim Applications, if any, stand disposed of accordingly.

(AMIT BORKAR, J.)