AGK

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

ARBITRATION PETITION (L) NO.17655 OF 2026

Godrej Finance Limited **... Petitioner**

Vs.

1. **Valor Hospitality Private Limited**
2. **Atiq Ismail Kapadia,**
3. **Zareen Atiq Kapadia**
   W/o. Atiq Ismail Kapadia **... Respondents**

Ms. Bijal Gogri i/by GNP Legal for the petitioner.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: JULY 24, 2026.**
PRONOUNCED ON	**: JULY 28, 2026**

JUDGMENT:

1. The petitioner has filed this Petition under Section 9 of the Arbitration and Conciliation Act, 1996. According to the petitioner, the Business Loan Agreement signed between the parties contains Clause 25.6, which provides for arbitration. On that basis, the petitioner has approached this Court and has asked for ad interim and interim protection pending the arbitration proceedings.

2. The case of the petitioner is that on 22 November 2024 the respondents approached the petitioner and applied for financial help by submitting a loan application for a business loan. After considering the request, the petitioner sanctioned a business loan of Rs. 25,00,000/-. Thereafter, on 16 December 2024, both sides executed the Loan Agreement and the loan amount was made available to the respondents. It is the petitioner's case that after taking the loan, the respondents did not pay the instalments as agreed. According to the petitioner, the respondents failed to maintain financial discipline and acted in breach of the terms and conditions of the Loan Agreement. The petitioner has further stated that because of continuous default, a Loan Recall Notice dated 31 December 2025 was issued in respect of Loan Account No. GFL3001BL0058305. By the said notice, the respondents were called upon to repay the entire outstanding amount within seven days. The petitioner claimed an amount of Rs. 20,77,299/-, together with interest at the rate of 17% per annum from 1 January 2026 till payment or realisation, as provided under the Loan Agreement. According to the petitioner, even after the recall notice was issued, the respondents neither replied nor cleared the outstanding dues. It is stated that the petitioner also made telephone calls and personally contacted the respondents, but no payment was received. The petitioner has therefore contended that the respondents have failed to repay the recalled loan amount and continue to remain indebted. According to the petitioner, it is entitled to recover the outstanding amount in terms of the Loan Agreement, which is produced as Exhibit "B" to the Petition. The petitioner has further alleged that it has learnt that the respondents have started taking steps to dispose of or transfer their assets with the intention of defeating the petitioner's claim and preventing recovery of the outstanding dues. On these allegations, the present Petition has been filed seeking interim protection from this Court.

3. Learned Advocate for the petitioner submitted that the respondents were granted a business loan facility but committed default in repayment of the loan. It is submitted that even after receipt of the Loan Recall Notice, the respondents failed to repay the outstanding amount. Learned counsel further submitted that the respondents have neither filed any reply to oppose the present Petition nor remained present before this Court despite due service. It is also submitted that this Court had earlier directed the respondents to disclose their assets and other financial particulars, but the said order has not been complied with. On these grounds, it is contended that the petitioner has made out a prima facie case and is entitled to the interim reliefs as prayed for in the Petition.

REASONS AND ANALYSIS:

4. I have carefully seen the record and also considered the submissions made by learned Advocate for the petitioner. Though respondents are properly served, nobody has come before this Court. They have also not filed any reply for denying the case in the Petition. Earlier, this Court also passed order asking the respondents to give details of their movable and immovable properties and other financial matters. Even that order is not followed till today. Therefore, this Court has to consider the present Petition from the documents produced by the petitioner and the law relating to grant of interim protection under Section 9 of the Arbitration and Conciliation Act, 1996.

5. The first submission of the petitioner is that both sides entered into one Business Loan Agreement containing an arbitration clause. Under that agreement, the petitioner gave business loan of Rs.25,00,000/- to the respondents. It is further submitted that after taking the loan amount, the respondents did not pay the installments as agreed and committed default. Because of this default, the petitioner issued one Loan Recall Notice asking the respondents to pay the entire outstanding amount. According to the petitioner, even after receiving the said notice, the respondents did not clear the dues.

6. From the documents filed along with the Petition, it appears that the Loan Agreement and Loan Recall Notice are on record. At this stage, nothing is brought before this Court to show that these documents are false, or they are not connected with the transaction between the parties. Since the respondents have remained absent, there is also no dispute raised regarding execution of the Loan Agreement, giving of the loan amount, default in repayment or issuing of the Loan Recall Notice. Therefore, only for deciding this request for interim protection, the documents produced by the petitioner are sufficient to show a prima facie case that some amount has become due and payable under the Loan Agreement. This finding is only for the present purpose, and it shall not decide the rights of the parties before the Arbitral Tribunal.

7. The next submission of the petitioner is that even after many requests, telephone calls, personal visits and issuance of the Loan Recall Notice, the respondents have not paid the outstanding amount. According to the petitioner, this conduct shows that the respondents are trying to avoid payment of the amount payable under the agreement.

8. It is true that only because a loan amount is not repaid, it does not mean that every interim relief under Section 9 must be granted. A money claim and a case requiring immediate protection are not always of the same nature. Therefore, this submission may not be enough for granting every relief asked in the Petition. Still, this circumstance supports the petitioner's case that there is a money dispute between the parties and, if facts require, such claim may need protection.

9. The petitioner has then submitted that it has received information that the respondents have started selling, transferring or otherwise dealing with their properties so that recovery of the outstanding amount may become difficult. Such allegation is made in the Petition. Normally, if the other side denies such allegation, the Court has to examine the surrounding facts more carefully. But in the present matter, no reply is filed. The respondents have not given any explanation denying these allegations. Mere absence of denial cannot make every allegation proved. Still, because there is no opposite case placed before this Court, the petitioner's case is required to be examined on the available material.

10. Learned Advocate for the petitioner has also relied upon the conduct of the respondents after filing of the present Petition. It is submitted that though the respondents were served, they have not remained present before this Court. More importantly, this Court had directed the respondents to disclose details of their movable and immovable properties and other financial particulars. That direction was issued so that this Court could see whether any interim protection was necessary. Even that order has not been complied with.

11. This conduct is of importance. When this Court passes an order, parties are expected to follow the same unless there is some legal reason. If one party remains absent and also does not disclose its assets despite direction of the Court, such conduct can be taken into consideration while deciding an application under Section 9. This conduct alone may not prove dishonest intention. Even then, it creates a reasonable apprehension that if no interim protection is granted now, then even if the petitioner succeeds in arbitration, enforcement of the award may become difficult later.

12. The judgment of the Supreme Court in *Essar House (P) Ltd. v. Arcellor Mittal Nippon Steel (India) Ltd.*, (2022) 20 SCC 178 holds that while deciding a petition under Section 9, the Court has to keep in mind the basic principles of the Code of Civil Procedure. At the same time, every technical provision of the Code need not be applied strictly. The object of Section 9 is to protect the subject matter of arbitration and to ensure that justice is not defeated. The Supreme Court has further held that Section 9 gives wide powers to the Court for securing the amount in dispute. While considering such application, the Court has to see whether the applicant has made out a good prima facie case, whether the balance of convenience is in favour of interim protection and whether the applicant has approached the Court without unnecessary delay.

The Supreme Court has also clarified that interim relief cannot be refused only because the pleadings do not satisfy every technical requirement relating to attachment before judgment under the Code of Civil Procedure. The Supreme Court has also observed that in every case the applicant is not required to prove actual transfer or disposal of assets. If the material before the Court shows a strong possibility that the assets may become unavailable or that the arbitral award may become difficult to enforce, appropriate interim protection can still be granted. Therefore, the Court has to see the overall circumstances of the matter and need not insist upon direct proof of every intended transfer.

13. Keeping these principles in mind, this Court finds that the petitioner has produced the Loan Agreement, the Loan Recall Notice and the statement showing the outstanding dues. No reply has been filed disputing these documents. The respondents have not denied the transaction or their liability before this Court. More importantly, after service of the Petition, they remained absent and also failed to comply with the order directing disclosure of their assets. This conduct makes the present matter different from an ordinary money recovery case where the defendant appears and contests the claim.

14. It is true that the petitioner has not produced direct evidence showing that the respondents have transferred their properties. If this circumstance is considered, the material may appear insufficient. However, the law declared by the Supreme Court holds that proof of completed alienation is not necessary in every matter. This Court has to see all surrounding circumstances together. Continuous default in repayment, absence before this Court, failure to file reply and non-compliance with the order directing disclosure of assets together create a reasonable apprehension that if interim protection is not granted, the petitioner's claim may finally remain unsecured.

15. Therefore, the submission of the petitioner that interim protection is necessary deserves acceptance. At the same time, only because the Petition is not contested, every prayer made in the Petition cannot be granted. The relief granted should be only to the extent necessary for protecting the arbitral proceedings and securing the amount in dispute. The order of this Court should protect the petitioner's claim without going beyond what is necessary at this stage.

16. After considering the pleadings, documents placed on record, conduct of the respondents and the principles laid down by the Supreme Court in *Essar House (P) Ltd.*, this Court is satisfied that the petitioner has made out a good prima facie case. The balance of convenience is also in favour of the petitioner. If interim protection is not granted, there is reasonable possibility that the arbitration proceedings may become ineffective and the award, if ultimately passed in favour of the petitioner, may become difficult to enforce. On the other hand, if suitable interim protection is granted at this stage, it will only preserve the subject matter and secure the petitioner's claim till the disputes are finally decided in arbitration. Therefore, this Court holds that the petitioner has made out a case for grant of appropriate interim protection under Section 9 of the Arbitration and Conciliation Act, 1996.

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

(i) The Arbitration Petition is partly allowed;

(ii) Pending commencement and conclusion of the arbitral proceedings and till enforcement of the arbitral award, if any, in accordance with Section 36 of the Arbitration and Conciliation Act, 1996, the respondent Nos.1 to 3 shall, within a period of two weeks from the date of uploading of this order, disclose on affidavit all their movable and immovable assets, whether encumbered or unencumbered, details of all bank accounts with the present balance therein, investments, Income Tax Returns for the last three assessment years and such other assets held by them;

(iii) The respondent Nos.1 to 3 shall, within a period of two weeks from the date of uploading of this order, furnish solvent security to the satisfaction of this Court for a sum of Rs.20,77,299/-. Such security may be in any one of the following forms:

(a) an unconditional and irrevocable Bank Guarantee issued by a Nationalised Bank or a Scheduled Commercial Bank in favour of the Prothonotary and Senior Master, High Court, Bombay, valid till conclusion of the arbitral proceedings and for a further period of eight weeks thereafter, with a provision for renewal until further orders of this Court; or

(b) Fixed Deposit Receipts issued by a Nationalised

Bank or a Scheduled Commercial Bank for an aggregate amount of Rs.20,77,299/-, duly marked under lien in favour of the Prothonotary and Senior Master, High Court, Bombay.

In the event the respondents fail to furnish such security within the aforesaid period, they shall deposit the sum of Rs.20,77,299/- with the Prothonotary and Senior Master, High Court, Bombay, within one week thereafter.

(iv) Until compliance with clause (iii) above, the respondent Nos.1 and 2, their servants, agents or any person claiming through or under them are restrained from creating any third party rights, transferring, alienating, encumbering or otherwise dealing with their movable and immovable properties;

(v) The Bank Account of respondent No.1 maintained with ICICI BANK Account No.123405000816, Juhu Tara Road Branch, Near SNDT University, Santacruz (West), Mumbai 400 049, IFSC Code ICIC0001234, shall remain under debit freeze to the extent of Rs.20,77,299/-. The concerned Branch Manager shall ensure that no debit transaction reducing the balance below the aforesaid amount is permitted. However, the respondent shall be at liberty to operate the account beyond the said amount. Upon furnishing security or depositing the amount as directed in clause (iii) above, the debit freeze shall stand lifted without any further orders;

(vi) In view of the above directions, the prayer for appointment of the Court Receiver is kept in abeyance at this stage. Liberty is granted to the petitioner to apply for appointment of a Receiver in the event of breach of this order or if the circumstances so require;

(vii) The observations made in this order are prima facie in nature and confined only to the consideration of the present application under Section 9 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall decide the disputes independently and on their own merits without being influenced by any observations contained in this order;

(viii) The Petition is accordingly disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)