Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN IT'S COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.24230 OF 2026

Hemlata Ajay Ramani … **Petitioner**

V/s.

Alag Property Constructions Pvt Ltd. … **Respondents**

SHABNOOR AYUB PATHAN

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Date: 2026.10.05 11:27:31 +0530

Mr. Mutahhar Khan a/w Mr. Maulik Tanna, Mr. Krupesh Bhosle, Ms. Krutika Dongarkar, & Mr. Harshal Gandhi, for the Petitioner.

Mr. Bhavik Lalan a/w Mr. Sanjay P. Shinde, for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 30, 2026.

PRONOUNCED ON : OCTOBER 5, 2026.

JUDGMENT:

1. By filing this Petition, the Petitioner is seeking interim reliefs. One of the main reliefs sought is a direction to the Respondent to deposit an amount of Rs.58,97,600/- (Rupees Fifty-Eight Lakhs Ninety-Seven Thousand Six Hundred only). According to the Petitioner, this amount is due and payable by the Respondent under the registered Deed of Cancellation dated 28 March 2026. The Respondent had issued a cheque towards payment of this amount. However, when the cheque was presented, it was

returned dishonoured.

2. The facts which have led to filing of the present Petition are, in brief, as follows. On 31 March 2021, the Petitioner and the Respondent entered into an Agreement for Sale in respect of Flat No.1001 in the new building known as "Alag Endeavour". Under the Agreement for Sale, the Respondent was required to give possession of the said flat to the Petitioner on or before 31 December 2025. According to the Petitioner, the Respondent, without taking the consent of the Petitioner, extended the date for giving possession of the flat up to 30 June 2026. In the meantime, in or about the year 2025, Mulund Endeavour CHS Ltd. filed Commercial Arbitration Petition (L) No.21165 of 2025. In that Petition, one of the reliefs sought was termination of the development rights of the Respondent. Since the Respondent was not in a position to give possession of the said flat, the Petitioner, in or about December 2025, asked the Respondent to refund the amounts already paid by her along with interest. For seeking such refund, the Petitioner filed Complaint No.CC12503104 before the MahaRERA Authority. Thereafter, on 28 March 2026, the Petitioner and the Respondent executed and registered a Deed of Cancellation. As per the said Deed of Cancellation, the Respondent became liable to refund the amounts payable to the Petitioner.

3. Towards payment of the said liability, the Respondent issued a post-dated cheque dated 30 June 2026 for Rs.58,97,600/-, which was the principal amount payable to the Petitioner. When the cheque was presented for payment, it was dishonoured on 1 July 2026 with the endorsement "Funds Insufficient". After the cheque

was dishonoured, the Petitioner, through her Advocate, issued a statutory notice dated 6 July 2026 to the Respondent and its Director. The notice was sent on 7 July 2026 under three postal receipts and was duly delivered to the concerned addressees. The same notice was sent by email to the Respondent and its Director on 8 July 2026. In these circumstances, the Petitioner has approached this Court by filing the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996. By this Petition, the Petitioner seeks interim measures in respect of the amount which, according to her, has become payable under the Deed of Cancellation and in view of the subsequent events stated above.

4. Mr. Mutahhar Khan, Learned Advocate for the Petitioner, submits that because of the circumstances prevailing at the relevant time, the Respondent was not in a position to complete the construction and give possession of the said Flat to the Petitioner as agreed under the Agreement for Sale. Therefore, the Petitioner expressed her desire to cancel the said Agreement for Sale and to get back the amount paid by her along with interest. The Learned Advocate for the Petitioner submits that discussions and negotiations took place between the Petitioner and the Respondent and both parties arrived at an amicable settlement. It was agreed that the Agreement for Sale would be cancelled by executing a registered Deed of Cancellation. It was agreed that the Respondent would refund to the Petitioner the part consideration amount of Rs.58,97,600/- (Rupees Fifty-Eight Lakhs Ninety-Seven Thousand Six Hundred only).

5. The Learned Advocate for the Petitioner submits that accordingly, the Respondent gave the Petitioner a post-dated cheque bearing No.013669 dated 30 June 2026, drawn on HDFC Bank, Vikas Palazzo Branch, Mulund (West), Mumbai-400080, for an amount of Rs.58,97,600/-. The said cheque was signed by Mr. Pratik Mukesh Somaiya, Director and Authorised Signatory of the Respondent. According to the Petitioner, the Respondent had given an assurance that the said post-dated cheque would be honoured when it was presented for payment. The Learned Advocate for the Petitioner submits that a Deed of Cancellation dated 28 March 2026 was executed between the Respondent, through Mr. Pratik Mukesh Somaiya as the Developer, and the Petitioner as the Purchaser. The said Deed of Cancellation was duly stamped and registered with the Joint Sub-Registrar of Assurances, Mumbai-30, under Document Sr. No.MUM-30/6196/2026. The Learned Advocate for the Petitioner submits that thereafter, on 30 June 2026, the Petitioner deposited the said post-dated cheque bearing No.013669 for Rs.58,97,600/- with her bank, namely Kotak Mahindra Bank. However, the cheque was not honoured and was returned unpaid with the remark “Funds Insufficient”, as shown in the bank memo dated 1 July 2026. The Learned Advocate for the Petitioner submits that although the Respondent had assured the Petitioner that the cheque would be honoured when presented, the cheque was nevertheless returned unpaid. It is therefore submitted that the Respondent has failed to pay the amount which became due and payable to the Petitioner under the Deed of Cancellation dated 28 March 2026. According to the Petitioner, the said amount

is still outstanding and has not been paid till date.

6. The Learned Advocate for the Petitioner additionally submits that the Respondent Company has been carrying on construction work, including development and redevelopment of different buildings, for several years. According to the Petitioner, the Respondent has been involved in various redevelopment projects concerning Mulund Trupti Co-operative Housing Society Ltd. ("Trupti Society"), Santosh Apartment Co-operative Housing Society Ltd. ("Santosh Society"), Mulund Endeavour Co-operative Housing Society Ltd. ("Endeavour Society"), Niranjan Apartment Co-operative Housing Society Ltd. ("Niranjan Society") and Kanta Surendra Co-operative Housing Society Ltd. ("Kanta Surendra Society"). The Learned Advocate for the Petitioner submits that Trupti Society, Santosh Society and Endeavour Society have already terminated their respective Development Agreements with the Respondent Company. These Societies have filed different proceedings, including arbitration proceedings, against the Respondent. In those proceedings, they have, among other things, sought recovery of unpaid rent and possession of their respective plots. It is, therefore, submitted that the Respondent is facing various arbitration proceedings before different Arbitral Tribunals.

7. The Learned Advocate for the Petitioner further submits that Santosh Society has filed Commercial Execution Application No.99 of 2025 for enforcement of an interim award and the said proceedings are still pending. It is submitted that during the hearing of Interim Application No.2442 of 2025 filed by the Respondent in those proceedings, the Respondent, through its

Advocate, had clearly submitted that the amounts lying in all the accounts of the Respondent which were disclosed before the Court were negligible. This submission was recorded by the Court in its order dated 20 November 2025 passed in Commercial Execution Application No.99 of 2025. The Learned Advocate for the Petitioner submits that the said order dated 20 November 2025 was challenged by the Directors of the Respondent before the Supreme Court by filing SLP (C) Diary No.279 of 2026. It is submitted that the injunction granted against the Respondent Company continues to remain in force and the said SLP is still pending. It is further submitted that the Supreme Court passed an order dated 12 January 2026 in the said SLP.

8. The Learned Advocate for the Petitioner further submits that Endeavour Society has obtained an interim award from the Learned Sole Arbitrator in the arbitration proceedings against the Respondent. Under the said interim award, the Respondent has been directed to pay substantial amounts towards rent, which according to the Petitioner is at least Rs.6 crores. It is submitted that the Respondent was unsuccessful in challenging the said interim award and has been directed to hand over possession of the said plot to Endeavour Society. The Learned Advocate for the Petitioner submits that on 14 July 2026, the Respondent transferred and assigned its redevelopment rights relating to Niranjan Society and Kanta Surendra Society in favour of Shraddha Yog Lifespaces LLP for lump-sum consideration. The said transfer and assignment were made by two registered Deeds of Assignment, both dated 14 July 2026. The Learned Advocate for

the Petitioner submits that from all these facts and circumstances, it can be seen that the Respondent has committed various defaults in its redevelopment projects and is facing different arbitration, execution and contempt proceedings. It is submitted that the Respondent has lost its redevelopment rights in respect of Trupti Society, Santosh Society and Endeavour Society. It is further submitted that the Respondent has transferred and assigned its redevelopment rights in respect of Niranjan Society and Kanta Surendra Society for lump-sum consideration.

9. Mr. Khan, learned Advocate for the Petitioner, submits that the cheque in question was annexed to the registered Deed of Cancellation. He submits that any difference in the cheque number is not material, as both the numbers referred to by the Respondent appear on the cheque. According to him, the numbers 000147 and 013669 are printed at the bottom of the cheque which is annexed to the registered instrument. He therefore submits that the Respondent cannot question the genuineness or validity of the cheque.

10. The Learned Advocate for the Petitioner therefore submits that, to the best of the Petitioner's knowledge, the Respondent presently does not have any redevelopment or development project and no business is being carried on by the Respondent Company. It is submitted that the conduct of the Respondent and its Directors creates a serious apprehension that the Respondent may not comply with the orders passed by the Court. There is an apprehension that the amount which is due and payable to the Petitioner may not be recovered unless appropriate interim

protection is granted by this Court.

11. The Learned Advocate for the Petitioner therefore submits that, until the arbitral proceedings are heard and decided, this Court may direct the Respondent to deposit before this Court the amount of Rs.58,97,600/- (Rupees Fifty-Eight Lakhs Ninety-Seven Thousand Six Hundred only).

12. Mr. Bhavik Lalan, Learned Advocate for the Respondent, submits that it is denied that the Petitioner had expressed her desire to book a flat in the said building or that the Respondent had agreed to sell Flat No.1001, admeasuring 1109 sq. mtrs. RERA carpet area, situated on the 10th Floor of Wing-C of the building known as "Alag Endeavour". It is further denied that an Agreement for Sale dated 31 March 2021 was executed in respect of the said Flat for a total consideration of Rs.2,97,31,600/-. It is denied that the Petitioner had paid Rs.58,97,600/- towards purchase of the said Flat. The Learned Advocate for the Respondent submits that the Petitioner is trying to recover the alleged amount invested by her along with exaggerated and excessive interest. It is submitted that there is a dispute as to whether the amount claimed to have been paid by the Petitioner was received and there is a dispute regarding the claim made in the present Petition.

13. The Learned Advocate for the Respondent further submits that Mr. Atul Ramani and the Director of the Respondent are well acquainted with each other and that Mr. Atul Ramani was an investor in the Respondent's project. It is submitted that several disputes arose between Mr. Atul Ramani and the Respondent,

resulting in various proceedings, some of which are still pending. It is further submitted that different orders have been passed by the Civil Courts and the High Court in the proceedings between Mr. Atul Ramani and the Respondent.

14. The Learned Advocate for the Respondent submits that two petitions were filed before the NCLT under Sections 8 and 9 of the Insolvency and Bankruptcy Code. Those petitions came to be rejected. It is submitted that an appeal against one of those orders is pending before the NCLAT. The Learned Advocate for the Respondent submits that the Agreement referred to in the Petition did not arise from any independent legal liability of the Respondent. It is submitted that there was no obligation which was required to be performed by the Respondent under the said Agreement. According to the Respondent, there were other disputes between the parties which were required to be settled. The Learned Advocate for the Respondent submits that the present Petition is an attempt by the Petitioner to compel and pressurize the Respondent to settle the disputes according to the demands of the Petitioner. It is submitted that there is no legal liability upon the Respondent towards the Petitioner and that the claim made in the present Petition is disputed.

REASONS AND FINDINGS:

15. The main question which comes before the Court is whether under Section 9 of the Arbitration and Conciliation Act, 1996, the Petitioner has shown sufficient grounds for directing the Respondent to deposit Rs.58,97,600/- till the arbitral proceedings

are decided.

16. First, it is necessary to see on what basis the Petitioner is asking for this amount. The Petitioner had entered into an Agreement for Sale dated 31 March 2021 in respect of Flat No.1001 in the building known as "Alag Endeavour". As per the Petitioner, possession of the Flat was to be given on or before 31 December 2025. Since the Respondent could not give possession, the Petitioner says that she decided to cancel the transaction and asked for return of the amount paid by her. Thereafter, the Deed of Cancellation dated 28 March 2026 came to be executed. The Petitioner is not claiming refund only on the basis of some oral promise made by the Respondent. Her case is that after discussions and negotiations between the parties, it was agreed that the earlier transaction would be cancelled and Rs.58,97,600/- would be refunded to her. This understanding was put in writing in the registered Deed of Cancellation.

17. In my view, this registered Deed of Cancellation is an important document for considering the present interim application. The Respondent has submitted that there was no separate legal liability upon it and that the Agreement referred to by the Petitioner did not create any obligation which was required to be performed. But this submission cannot be seen separately from the subsequent registered document. If the parties executed a registered Deed of Cancellation through the Director of the Respondent, then the earlier transaction and the manner in which it was cancelled cannot be ignored.

18. The Petitioner has relied upon the post-dated cheque bearing No.013669 dated 30 June 2026 for Rs.58,97,600/-. The cheque is stated to have been signed by Mr. Pratik Mukesh Somaiya, Director and Authorised Signatory of the Respondent. More importantly, the material before the Court shows that the cheque was annexed to the registered Deed of Cancellation. The Petitioner presented the cheque for payment. However, the cheque was returned unpaid with the endorsement "Funds Insufficient", as shown in the bank memo dated 1 July 2026.

19. The Respondent has denied that the Petitioner had paid Rs.58,97,600/- towards purchase of the Flat. The Respondent has disputed the transaction. This submission has to be considered. It is true that while exercising powers under Section 9, this Court should not decide disputed questions which are to be decided by the Arbitral Tribunal. But there is a difference between a claim which is disputed only by an oral statement and a claim which is supported by a registered document and a cheque issued in connection with that document. In the present case, the Respondent has not explained the execution of the registered Deed of Cancellation dated 28 March 2026. It has not explained why the post-dated cheque for the same amount was issued, which according to the Petitioner was towards refund. The Respondent has denied the liability. But the material before the Court shows that the Petitioner's claim cannot be treated as a claim which is without any basis.

20. The dishonour of the cheque is a relevant circumstance. The cheque was not returned because of some technical mistake. The

bank memo gives the reason as “Funds Insufficient”. This circumstance alone does not establish what is the financial position of the Respondent. But it does show that the payment which was expected through the cheque was not made. Therefore, at least prima facie, the Petitioner has shown that Rs.58,97,600/- was to be paid pursuant to the Deed of Cancellation and that the cheque issued towards the said amount was dishonoured. I am not giving any final finding that the Respondent has no defence. That question can be decided by the Arbitral Tribunal. For deciding the present application under Section 9 the Petitioner's claim is supported by the documents and the circumstances which were existing at the relevant time.

21. The next question is whether only because the Petitioner has shown a prima facie monetary claim, the Respondent should be directed to deposit the entire amount. This question cannot be decided only by seeing that some amount is claimed from the Respondent. Under Section 9, the Court has power to take measures for securing the amount which is in dispute. The Supreme Court in *Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited*, (2022) 20 SCC 178 while considering Section 9, has observed that the provision permits the Court to pass an interim measure to “secure the amount in dispute in the arbitration” and that such power has to be used in a proper and careful manner. The Supreme Court has observed that the basic principles of procedural law are relevant, though the Court is not required to mechanically follow every technical requirement of the CPC.

22. This principle is relevant in the present case. The power under Section 9 cannot be used merely because there is some disputed claim for money. The party asking for protection has to show circumstances because of which such protection is necessary, so that the final arbitral award, if passed in its favour, does not become difficult to enforce. At the same time, the Court is not required to follow one fixed formula in every case. If the material before the Court shows that there is a real need for protection, the Court can consider an appropriate interim measure.

23. I, therefore, proceed to consider the other circumstances relied upon by the Petitioner. The Petitioner has referred to the redevelopment projects concerning Trupti Society, Santosh Society, Endeavour Society, Niranjan Society and Kanta Surendra Society. According to the Petitioner, various disputes have arisen regarding these projects and different proceedings are pending against the Respondent. The Petitioner has particularly relied upon Commercial Execution Application No.99 of 2025 filed by Santosh Society. It is submitted that during those proceedings, the Respondent, through its Advocate, had stated that the amounts lying in all the disclosed accounts of the Respondent were negligible. It is further submitted that this statement was recorded in the order dated 20 November 2025. This statement, when seen in the circumstances in which it was made and along with the other material relied upon by the Petitioner, is a circumstance which cannot be ignored while considering whether some protection is required. At the same time, merely because execution proceedings are pending, it cannot be said that the Respondent

intends to defeat the claim of the Petitioner. An execution proceeding shows that another person or Society is seeking enforcement against the Respondent. It does not automatically mean that the Petitioner will not be able to recover her amount. Therefore, the Court has to look at the entire circumstances and not only one circumstance separately.

24. The Petitioner has relied upon the interim award obtained by Endeavour Society. Under the said interim award, substantial rent is stated to be payable by the Respondent and possession of the plot is stated to have been directed to be handed over. These proceedings and the interim award may show that the Respondent is involved in serious financial and contractual disputes. But this fact alone cannot lead to a final conclusion that the Respondent will not pay the Petitioner's amount.

25. Another circumstance relied upon by the Petitioner is the transfer and assignment of redevelopment rights concerning Niranjan Society and Kanta Surendra Society under two registered Deeds of Assignment dated 14 July 2026. From the submissions recorded before me, the Respondent has not disputed that these registered assignments were made. According to the Petitioner, the rights were transferred for lump-sum consideration. This circumstance is relevant because it shows that the Respondent has dealt with some of its redevelopment rights after disputes had arisen regarding its projects. But merely transferring rights for consideration cannot by be treated as proof that the Respondent intended to defeat the Petitioner's claim. The amount received as consideration may be available as an asset of the Respondent.

26. The Petitioner has submitted that, according to her knowledge, the Respondent presently has no redevelopment project and no business is being carried on by the Respondent Company. This submission has to be considered carefully. The Court cannot treat it as an established fact merely because the Petitioner has such an apprehension. There should be reliable material to show the present financial position of the Respondent or that its assets are being disposed of. However, all the surrounding circumstances cannot be ignored. There is a registered Deed of Cancellation. There is a cheque issued towards the amount stated in that document. The cheque was presented on the agreed date and was returned with the endorsement "Funds Insufficient". There are various disputes and proceedings concerning the redevelopment projects of the Respondent, including execution proceedings. There are registered assignments of redevelopment rights shortly before the cheque was presented. When all these circumstances are considered together, there is a genuine concern about whether the amount of the Petitioner can be recovered easily if it is found payable.

27. The Respondent has relied upon the disputes involving Mr. Atul Ramani. The Respondent has referred to petitions filed before the NCLT under Sections 8 and 9 of the Insolvency and Bankruptcy Code and an appeal pending before the NCLAT. These facts, by themselves, do not have any direct connection with the Petitioner's claim under the registered Deed of Cancellation. The disputes between Mr. Atul Ramani and the Respondent are separate matters. Similarly, the NCLT and NCLAT proceedings by themselves

cannot decide whether the Petitioner is entitled to interim protection under Section 9. The Respondent has submitted that the present Petition has been filed only to compel or pressurize the Respondent to settle the dispute according to the demand of the Petitioner. At this stage, I do not find sufficient material to accept this submission. The Petitioner is not relying only upon a demand made by letter. She is relying upon a registered Deed of Cancellation and a cheque issued in connection with the same. Therefore, filing of the Petition cannot be treated merely as an attempt to pressurize the Respondent.

28. It is important to keep in mind that the Petitioner is not asking this Court to decide the entire monetary claim. She is asking for protection till the arbitral proceedings are decided. There is one thing which needs to be made clear. The prayer describes the amount as “admittedly due and payable”. The Respondent has disputed its liability. Therefore, it cannot be recorded that the Respondent has admitted the amount as payable. The finding at this stage is that the Petitioner's claim is prima facie supported by the registered Deed of Cancellation and the cheque, while the Respondent has raised a dispute regarding the liability. This distinction is important. An interim order should not be based upon an admission which is not made by the Respondent.

29. The balance of convenience is required to be considered. If the Respondent is directed to deposit the amount, the money will remain subject to further orders of the Court. The Respondent will still have full opportunity to contest its liability before the Arbitral Tribunal. On the other hand, if no protection is given and the

apprehension regarding the financial position of the Respondent is found to be correct, it may become difficult for the Petitioner to recover the amount after the arbitral proceedings are completed. The dishonoured cheque and the other circumstances referred to above give some support to the concern raised by the Petitioner. The possible prejudice to the Respondent has to be considered. The direction sought by the Petitioner is only to secure the amount and not to pay the amount to the Petitioner. The Respondent will continue to have the opportunity to place its defence before the Arbitral Tribunal and establish, if it can, that the amount was not legally payable. Therefore, a direction to deposit the amount will not decide the rights of either party.

30. For all these reasons, I find that the Petitioner has made out a prima facie case for protection under Section 9 of the Arbitration and Conciliation Act, 1996. The balance of convenience is in favour of securing the identified principal amount. There is a reasonable apprehension that if the amount is not secured at this stage, recovery of the amount, if found payable to the Petitioner, may become difficult. The material on record therefore justifies an interim direction requiring the Respondent to secure the amount of Rs.58,97,600/-, subject to the final decision in the arbitral proceedings.

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

i) The petition is partly allowed in terms of prayer clause (a), subject to the following directions:

ii) The respondent shall deposit before this court an amount of rs.58,97,600/- (rupees fifty eight lakhs ninety seven thousand six hundred only) within a period of four weeks from the date of this order;

iii) The amount so deposited shall be kept in a fixed deposit with a nationalised bank, initially for a period of one year, and shall be renewed from time to time until further orders of this court;

iv) The amount deposited pursuant to this order shall not be released to the petitioner at this stage. the rights and contentions of both parties in respect of the said amount are kept open for determination in the arbitral proceedings;

v) It is clarified that the observations made in this order are prima facie and only for the purpose of deciding the present application under section 9 of the arbitration and conciliation act, 1996. The arbitral tribunal shall decide the dispute on its own merits and shall not be influenced by the observations made in this order;

vi) The claim of the petitioner, if any, towards interest or any other amount is kept open for consideration in the arbitral proceedings;

vii) The respondent shall furnish a copy of the receipt of deposit and the fixed deposit receipt to the petitioner within one week from the date of such deposit;

viii) The petition stands disposed of in the above terms.

ix) All contentions of the parties are kept open.

(AMIT BORKAR, J.)