BASAVRAJ GURAPPA PATIL
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 30411 OF 2026

Action Construction Equipment Limited ...Petitioner

Versus

Tyger Capital Private Limited ...Respondent

Mr. Aseem Naphade a/w. Mr. Ambrin Khan i/b. Manohar Samal and Aishwarya Jain, for the Petitioner.

Mr. Ahan Gadkari a/w. Ms. Shreya Bhatia i/b. Mohit Gadkari & Co., for the Respondent.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 7th OCTOBER, 2026

PRONOUNCED ON : 14th OCTOBER, 2026

JUDGMENT:

1. The present Petition has been filed under the provisions of Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), and impugns an Order dated 21st August 2026 ("**Impugned Order**"), passed by the learned Sole Arbitrator ("**Tribunal**"), in an Application filed by the Respondent under Section 17 of the Arbitration Act. The Respondent is the Claimant in the Arbitration in which the Impugned Order has been passed.

2. However, before addressing the rival contentions, it is useful to set out the following facts for context viz.

   i. The Respondent is in the business of the manufacture and sale of farm equipment, including tractors.

   ii. On 5th October 2020, the Petitioner and Respondent entered into a Memorandum of Understanding ("**MOU**") pursuant to which the Respondent agreed to extend finance to customers of the Petitioner for the purchase of tractors manufactured by the Petitioner. The tenure of the said agreement was approximately 1 year and 5 months. It is, however, not in dispute that the MOU has been extended from time to time.

   iii. The Respondent terminated the MOU by a letter dated 24th February 2025 and subsequently invoked arbitration. The Respondent had, in a Section 9 Petition, sought security for a sum of Rs.1,62,83,536.22/- which was stated to be due and payable to Respondent by the Petitioner.

   iv. By an Order dated 14th January 2026, this Court appointed a Sole Arbitrator and permitted the Respondent to convert the Petition under

Section 9 to an Application under Section 17 of the Arbitration. The Petitioner was also directed to file an Affidavit of disclosure of Assets.

v. The Section 17 Application was then heard, and by the Impugned Order, the Tribunal directed the Petitioner to furnish a bank guarantee for a sum of Rs. 1,56,19,419.22/- in favour of the Respondent.

vi. Hence, the present Petition.

Submissions on behalf of the Petitioner:

3. Mr. Naphade, the learned Counsel appearing on behalf of the Petitioner, at the outset submitted that the MOU executed between the parties was in the nature of a “Contract for Loss Sharing", whereas the Tribunal had construed the MOU as a “Contract of Guarantee”.

4. He then submitted that there was a material distinction between a contract for loss sharing and a contract of guarantee. He submitted that, in a contract of guarantee, the liability of the guarantor is co-extensive with that of the principal debtor, whereas, under a loss-sharing arrangement, the liability arises only upon the occurrence of the contractually contemplated loss.

5. He submitted that Clause D of the MOU made it clear that the Petitioner's liability would arise only upon the occurrence of a loss, which was to be computed in the manner set out therein. He therefore submitted that the Respondent was first required to establish both the occurrence and quantum of the loss before claiming to be entitled to the same. He submitted that the Respondent could not, merely upon the occurrence of a default by a borrower, seek to recover the entire amount from the Petitioner without first establishing the quantum of loss in the manner contemplated under the MOU.

6. Mr. Naphade then invited my attention to Clause D of the MOU, which provided for "loss share arrangement", which contemplated that (i) the occurrence of a default and 90 days' passage, and (ii) equipment that is untraceable and incapable of being repossessed for 180 days, whereupon the liability mentioned therein would arise upon the Petitioner. The relevant portion of Clause D for ease of reference is reproduced below, viz.

> *"In the event of default by the customer/borrowers in a delinquent case, ACE would share 100% of the losses suffered by the ACPL within thirty (30) days from the date of claim. The claim will be sent on monthly basis.*

(cases which are disbursed from 5th Oct'20 will be considered for 100% Loss sharing.)

…

Scenarios of loss occurrence and consideration for loss sharing irrespective of the reason:

- *Customer/Borrower falls into 90 + DPD (day past due): To start action on repossession. ACE to support for Farm Equipment tracing & repossession;*
- *Farm Equipment not traceable or not able to repossess beyond 180 days DPD then case to be considered for Loss sharing.*
- *In the event of default 3rd the asset is repossessed then, post repossession first preference will be given to Dealer/OEM to either release back, settle or liquidate the asset.*
- *When the asset is repossessed and not getting liquidated for a period of 45 Days from the date of communication to ACE, ACPL is free to auction and liquidate the asset and lodge the loss claim accordingly.*
- *The Loss amount to be calculated on the installments dues, Principal outstanding and cost of repossession (maximum of Rs.7500) and warehousing/parking (maximum of Rs.100 per day subject to 3 cap of Rs.l000), It is agreed that overdue charges are not to be included/considered for loss calculation."*

7. Mr. Naphade submitted that the Tribunal had proceeded on the erroneous assumption that the expression "losses suffered" occurring in Clause D referred to the outstanding dues of the borrowers. According to him, such an interpretation was plainly contrary to the express terms of the MOU, which contemplate computation of the "Net Loss" after accounting for

amounts recovered from the sale proceeds of the underlying assets. He submitted that the contractual obligation, as contemplated in the MOU, was therefore not an absolute obligation on the Petitioner to discharge the outstanding dues of the borrowers, but was only restricted to the loss suffered.

8. He then invited my attention to paragraph 9 of the Application filed under Section 17 to point out that the Respondent had stated that *"some of the accounts currently under claim may be resolved during the pendency of the proceeding*". This, he submitted, made it clear that the Respondent had accepted that the amounts in default could subsequently be recovered and therefore would not qualify as a loss.

9. He pointed out that in paragraph 28 of the Rejoinder, the Respondent had contended that recovery from an individual borrower would not extinguish the Petitioner's liability to bear 100% of the Net Loss. Mr. Naphade submitted that such an interpretation of the MOU was plainly contrary to both the express terms of the MOU and the contractual mechanism prescribed under Clause D for determining the Net Loss.

10. Mr. Naphade further submitted that the contractual formula for determining the Net Loss was clear, i.e., the Principal Outstanding together with an unrealised amount of EMIs, after deducting the amount received from the sale proceeds, would constitute the Net Loss. He submitted that the Tribunal had, however, treated the unpaid amount of EMIs themselves as the loss and thereby permitted the Respondent to recover 100% of the outstanding dues from the Petitioner, not just the loss. He further submitted that the interest component had also been included within the "unrealised EMIs", although such interest could not form part of the loss contemplated under the MOU.

11. Mr. Naphade next submitted that there was no material on record to demonstrate that the Petitioner was alienating, dissipating or removing its assets with a view to defeat any relief that may ultimately be granted in favour of the Respondent. He submitted that the Impugned Order did not contain any finding to that effect.

12. He submitted that the Petitioner had filed an Affidavit of disclosure of Assets in compliance with the direction contained in the Order dated 14th

January 2026, which stated that as on 31st March 2025, the Petitioner had assets valued at approximately Rs.27,10,84,00,000/- against total liabilities of approximately Rs.10,94,41,00,000/-.

13. Mr. Naphade submitted that the Tribunal had passed the Impugned Order despite the fact that the Respondent had failed to satisfy the trinity for the grant of interim relief, namely, the existence of a prima facie case, balance of convenience, and irreparable loss or injury. He placed reliance upon the decision of the Hon'ble Supreme Court in ***Sanghi Industries Pvt. Ltd. v. Ravin Cables Ltd. & Anr.***[1] to submit that while the Court could, under the provisions of Section 9, pass an order securing the amount in dispute on the basis of principles analogous to those governing the grant of relief under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 ("**CPC**"), must satisfy the conditions set out in Order XXXVIII Rule 5. In the present case, he submitted that, despite the conditions not having been satisfied, the Impugned Order was passed.

[1] 2022 SCC OnLine SC 1329.

14. Mr. Naphade conceded that though the question of interpretation of a contract would fall within the domain of the Arbitral Tribunal, an order of the Tribunal which is premised upon a patently erroneous interpretation of a contract was amenable to interference under Section 37 of the Arbitration Act. In support of his contention, he placed reliance upon the decisions of the Hon'ble Supreme Court in ***South East Asia Marine Engineering and Constructions Ltd. v. Oil India Ltd.***[2] and ***State of Chhattisgarh v. Sal Udyog Pvt. Ltd.***[3]

15. Basis the above, he submitted that the Impugned Order was liable to be set aside since the same was contrary to the terms of the MOU.

Submissions on behalf of the Respondent:

16. *Per contra*, Mr. Gadkari, learned Counsel appearing on behalf of the Respondent, submitted that the scope of interference under Section 37 of the Arbitration Act was extremely limited and that interference was warranted only where the Impugned Order was shown to be perverse,

[2] (2020) 5 SCC 164.
[3] (2022) 2 SCC 275.

arbitrary, or capricious. He submitted that the mere existence of another possible view, or an attempt by an appellant to invite the Court to reappreciate the material on record and arrive at an independent conclusion, fell outside the permissible scope of interference under Section 37. In support of his contention, he placed reliance upon the decision of this Court in ***Ashoka Buildcon Ltd. v. Maha Active Engineers India Pvt. Ltd.***[4]

17. Mr. Gadkari further submitted that the Petitioner had failed to establish any ground under Section 37 warranting interference by this Court with the Impugned Order. He contended that the Petitioner was merely seeking to re-agitate issues that had already been considered and decided by the Tribunal. Such an exercise, he submitted, was impermissible, particularly since the Impugned Order had been passed by the Tribunal in the exercise of its discretion under Section 17 of the Arbitration Act. According to him, such exercise of discretion ought not to be interfered with under Section 37 unless it was demonstrably arbitrary, perverse, or capricious. In support of

[4] 2025 SCC OnLine Bom 2040.

this submission, he relied upon the decisions in ***Wander Ltd. v. Antox India (P) Ltd.***[5]**,** ***Pashmina Realty Pvt. Ltd. v. Ekta Housing Pvt. Ltd.***[6], and ***SFC Solutions India (Sealing) Pvt. Ltd. v. Talegaon Industrial Parks Pvt. Ltd.***[7]

18. On the merits, Mr. Gadkari submitted that it was a matter of ordinary commercial practice that an EMI amount comprises both principal amount and interest, and hence the Petitioner's objection to the inclusion of the interest component in the unrealised amount of EMIs was plainly unsustainable.

19. He submitted that the Tribunal had correctly understood the essence of what the Parties had provided for in Clause D, which was the governing mechanism for determining the losses payable by the Petitioner. He further submitted that the contractual framework contemplated under Clause D had been duly followed by the Respondent and that the computation of loss

[5] 1990 Sup SCC 727.
[6] Judgment dated 22nd January 2026 passed by Bombay High Court in CARBP No. 646 of 2025.
[7] 2026 SCC OnLine Bom 2226.

did not include "*overdue charges*", which were expressly excluded under the MOU.

20. Mr. Gadkari then explained that the terms of the MOU were so structured since the Respondent was entering a high-risk market and was intended to allocate the risks between the parties while providing commercial protection to the Respondent. He submitted that there was no dispute that the MOU constituted a loss-sharing arrangement and that it expressly defined the manner in which the Net Loss was to be computed. He emphasised that the Respondent had never contended that the MOU constituted a contract of guarantee.

21. He further submitted that the Petitioner, having accepted the contractual liability and agreed to the mechanism prescribed under Clause D, could not subsequently resile from what was specifically agreed to by the Parties. Mr. Gadkari submitted that the Tribunal had passed the Impugned Order after considering the particulars of the 49 NPAs, accounts in stock, repossession losses and written-off accounts, all of which had been

communicated to the Petitioner by email in accordance with the terms of the MOU.

22. Mr. Gadkari submitted that the accounts forming part of the claim constituted a fluctuating portfolio, since some accounts could be resolved during the pendency of the proceedings while others could continue to remain eligible for loss sharing under the MOU. He submitted that the possibility of fluctuation in the claims pertaining to individual borrowers could not, by itself, constitute a ground for refusing interim relief. In support of this contention, he placed reliance upon the decision of this Court in ***Ashoka Buildcon Ltd. v. Maha Active Engineers India Pvt. Ltd.***

23. He submitted that the Petitioner had failed to discharge its contractual obligations under the MOU, despite having derived commercial benefits from the sale of the equipment financed by the Respondent. He submitted that, having availed of such benefits, the Petitioner could not now seek to avoid its contractual obligation to share the losses arising from those transactions. He also pointed out that the Respondent was required to bear the burden of NPA provisions, capital lock-in, and other consequences

arising from the financing arrangements, and the MOU did not contemplate these being borne solely by the Respondent but also obligated the Petitioner to share in the resulting losses.

24. He also submitted that the Petitioner had in the Affidavit of disclosure of Assets filed pursuant to the order dated 14th January 2026, failed to adequately disclose the ongoing disputes and liabilities. He submitted that the Petitioner's conduct demonstrated a prima facie intention to defeat the Respondent's claim and to obtain an unjust financial benefit at the Respondent's expense. This, he submitted, was another factor that weighed in favour of the Tribunal directing the Petitioner to furnish a bank guarantee.

25. Mr. Gadkari submitted that the relevant considerations for an application under Section 17 of the Arbitration Act were the existence of a prima facie case, the balance of convenience, and whether the applicant had approached the Tribunal with reasonable dispatch and that the irreparable injury need not be made out in the strict sense in proceedings under Section 17 of the Arbitration Act. In support of his contention, he placed reliance

upon the decision of this Court in the case of ***Ashoka Buildcon Ltd. v. Maha Active Engineers India Pvt. Ltd***.

26. He submitted that the Petitioner's reliance upon the decision in the case of ***Sanghi Industries Pvt. Ltd. v. Ravin Cables Ltd.*** was misconceived, since it was well settled that the provisions of the CPC did not apply with the same strict rigour to arbitral proceedings as they did to proceedings before a Court. He placed reliance upon the decisions in ***Essar House Pvt. Ltd. v. Arcellor Mittal Nippon Steel (India) Ltd.***[8] and ***SPML Infra Ltd. v. Hitachi India Pvt. Ltd.***[9], to point out that in cases where a strong prima facie case and balance of convenience were established, the Tribunal was not required to apply the provisions of the CPC in a manner that would defeat the grant of appropriate interim relief. He also placed reliance upon the decision in ***Jagdish Ahuja v. Cupino Ltd.***[10] to submit that the Court is not strictly bound by the provisions of Order XXXVIII Rule 5 of the CPC

[8] (2022) 20 SCC 178.
[9] 2021 SCC OnLine Del 5221.
[10] 2020 SCC OnLine Bom 849.

while considering relief under Section 9 of the Arbitration Act from granting appropriate interim relief.

27. Mr. Gadkari also placed reliance upon the decision of the Delhi High Court in the case of ***Indiabulls Commercial Credit Ltd. v. Ambience Pvt. Ltd.***[11] to submit that, for the purpose of assessing the risk of irreparable injury, actual proof of dissipation of assets is not an indispensable requirement and that a credible apprehension may, in an appropriate case, be sufficient. He submitted that, in the present case, the Petitioner's suppression of material disputes and liabilities in its Affidavit of disclosure of Assets furnished a sufficient basis for such credible apprehension.

28. He therefore submitted that the Petitioner had failed to demonstrate any perversity, arbitrariness or capriciousness in the Impugned Order and that no case for interference under Section 37 of the Arbitration Act was made out. The Petition, according to him, therefore deserved to be dismissed with costs.

[11] 2024 SCC OnLine Del 9193.

Reasons and Conclusions:

29. Having heard learned counsel and having considered the rival contentions and the case law relied upon by the parties, I find as follows viz.

A. It is well settled that the jurisdiction of the Court under Section 37(2)(b) of the Arbitration Act is extremely circumscribed, and interference with an order passed under Section 17 of the Arbitration Act is warranted only when the order is arbitrary, capricious or perverse; when the order is contrary to the terms of the contract; or when the Tribunal has ignored relevant material or contentions. In this regard the Respondent's reliance upon the decisions in ***Wander Ltd., Pashmina Realty Pvt. Ltd.*** and ***SFC Solutions India (Sealing) Pvt. Ltd.*** is apposite. It is also equally well settled, as held in the case of ***Ashoka Buildcon Ltd.***, that where the Tribunal has exercised its discretion reasonably and judicially, the mere fact that the Appellate Court may have arrived at a different conclusion would not by itself constitute a ground on which the Impugned Order would be interfered with.

B. The primary contention of the Petitioner is that the Tribunal has construed the MOU as a contract of guarantee instead of a contract for loss sharing. I find this contention untenable since a perusal of the Impugned Order shows that the Tribunal, after considering Clause D and the relevant material, i.e., the particulars of 49 NPAs, stock and repossession losses and write-offs, computed the amount which the Petitioner has been directed to secure. The Tribunal has done so by interpreting the MOU and, in particular, Clause D and then arriving at a prima facie determination of what was contemplated by the same and, on that basis, directing the Petitioner to furnish a bank guarantee. I find nothing perverse, arbitrary or capricious in such an approach by the Tribunal. In my view, it cannot be said at this interlocutory stage that the Tribunal has acted in any manner contrary to the terms of the MOU, as the Impugned Order has done nothing more than direct the furnishing of a bank guarantee. The Tribunal was not required, at the interim stage, to finally adjudicate upon the precise quantum of loss or conclusively

determine the parties' respective contractual liabilities. The fact that there is loss is not disputed.

C. The Petitioner's contention that the Tribunal could not have included the interest component in the unrealised amount of EMIs is, at this stage, equally untenable. Clause D does not expressly stipulate that "unrealised EMIs" are to be confined to the principal component thereof. The EMI amount ordinarily comprises both principal and interest. The Tribunal, having construed the contractual expression "unrealised EMIs" in that context, was prima facie satisfied that the amounts forming part of such unrealised amount of EMIs ought to be secured. Such an interpretation cannot, at this interlocutory stage, be characterised as perverse, arbitrary or capricious. Hence, the decisions in ***South East Asia Marine*** and ***State of Chhattisgarh v. Sal Udyog Pvt. Ltd.*** upon which reliance was placed by the Petitioner, would not apply in the facts of the present case.

D. The Petitioner's contention that the Tribunal has failed to consider whether the Petitioner was likely to alienate, dissipate or remove its

assets with a view to defeating any relief that may ultimately be granted to the Respondent is also misconceived. This aspect was specifically considered by the Tribunal in paragraph 5(rr) of the Impugned Order. The challenge to the Impugned Order on the ground that it is silent on this issue is therefore factually incorrect.

E. In my view, in the facts of the present case, the Tribunal was justified in relying upon principles analogous to those underlying Order XXXVIII Rule 5 of the CPC in directing the Petitioner to furnish a bank guarantee for a sum of Rs. 1,56,19,419.22/-. I say so because (i) the Petitioner had not disputed its liability under Clause D of the MOU (ii) the Petitioner had failed to make payment of the loss claimed by the Respondent, despite being called upon to do so under the MOU; and (iii) the Respondent had placed material before the Tribunal indicating that the Petitioner had suppressed material information in its Affidavit of disclosure of Assets.

F. Given these facts, the reliance placed by the Respondent upon the decisions in ***Indiabulls Commercial Credit Ltd.***, ***Essar House*** and

SPML Infra Ltd is entirely apposite. In my view, the decision in Sanghi Industries does not apply to the present case because the facts are materially different. ***Sanghi Industries*** concerned an order directing the deposit of amounts in the context of the invocation of bank guarantees, and importantly even ***Sanghi Industries*** recognised that, while considering an application under Section 9 of the Arbitration Act, the Court must examine whether there are specific allegations and cogent material demonstrating a *prima facie* case and whether the concerned party is likely to act in a manner that would defeat or frustrate the eventual award. As already noted above, the Tribunal has duly considered all these aspects on the basis of the material placed before it.

G. Hence, in my view, the Impugned Order is neither perverse, arbitrary, nor capricious nor contrary to the terms of the MOU or any material contention. The Tribunal has exercised its discretion on the basis of the material available before it and has granted limited interim protection without finally adjudicating the merits of the Respondent's claim. Such

an exercise of discretion ought not to be lightly interfered with in proceedings under Section 37 of the Arbitration Act. I therefore find no ground to set aside, quash or vacate the Impugned Order.

H. There is no dispute that Clause D of the MOU contemplated a specific procedure for the computation and recovery of the Net Loss Share, which the Respondent was required to follow to claim the loss share from the Petitioner on a monthly basis. This procedure required a default to occur, followed by a period of 90 days, and, in the case of equipment that was untraceable and incapable of being repossessed, the passage of 180 days. Although the Petitioner has contended that the Impugned Order ought to be set aside on the ground that the Tribunal failed to examine whether the Respondent had complied with this procedure, in my view, such failure does not preclude the Tribunal from exercising its discretionary powers under Order XXXVIII Rule 5 of the CPC.

30. For the reasons mentioned hereinabove, I pass the following Order:

i. The captioned Arbitration Petition is dismissed.

ii. There shall be no orders as to costs.

[ARIF S. DOCTOR, J.]