HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE SUBHASH UPADHYAY

Appeal from Order No. 93 of 2026

13 October, 2026

M/s Fiberfill Engineers --Appellant

Versus

Union of India and Others. --Respondents

Counsel for the appellant: Mr. Ashutosh Thakral, learned counsel

The Court made the following:

JUDGMENT: **(per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)**

This appeal from order is filed under Section 37 of the Arbitration and Conciliation Act 1996, read with Section 13(1A) of the Commercial Courts Act 2015, challenging the order dated 16.02.2026 passed by Learned Additional District Judge, Commercial Court, Dehradun in Arbitration Case No.100 of 2025. By the said order, petition filed under Section 9 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") by appellant, was partly allowed.

2. In his petition under Section 9, appellant had sought the following reliefs:

> *"A. Pass an ad-interim ex-parte injunction restraining the Respondents No. 1, 2, and 3, their officers, agents, servants, and anyone acting on their behalf, from invoking, or taking any steps whatsoever towards the forfeiture or realization of the Performance Guarantee*

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furnished by the Petitioner as a Fixed Deposit Receipt (FDR No. 316908 for Rs. 29,34,276/-, issued by Union Bank of India, Safdarjung Development Area, New Delhi);

B. Pass an ad-interim ex-parte injunction restraining the Respondent No. 4 (Union Bank of India) from encashing, paying, or releasing the amount under the said Fixed Deposit Receipt (FDR No. 316908 for Rs. 29,34,276/-) in favour of Respondents No. 1, 2, or 3;

C. Pass an ad-interim ex-parte injunction staying all further proceedings and any coercive action (including but not limited to the invocation of the Performance Guarantee) pursuant to the Show Cause Notices dated 09.10.2025, 16.10.2025, 27.10.2025, and 03.11.2025, pending the commencement and final adjudication of the arbitral proceedings;

D. Confirm the ad-interim injunction passed in terms of prayers (a), (b), and (c) after hearing the parties;"

3. Perusal of the petition filed by appellant reveals that appellant was apprehensive of punitive action under Clause 3(xii) of the Agreement as employer had issued four notices asking him to show-cause as to why the performance guarantee amounting to ₹29,34,276/- submitted by the appellant, be not encashed.

4. He further alleged in his petition that as per the contract entered into between him and Central Public Works Department, the construction work was to be completed within 18 months from the date of commencement i.e. 24.03.2024, however, due to default, on the part of the employer to provide a workable site and correct drawings,

work could not be completed and the contractor cannot be held responsible for such delay.

5. Petition filed by appellant under Section 9 was partly allowed by learned Commercial Court and the employer was restrained from blacklisting the appellant for a period of six months or till filing of application by him under Section 17 of the Arbitration and Conciliation Act for interim protection. However, the prayer made by appellant for restraining the employer from encashing the FDR deposited as performance guarantee was refused.

6. Appellant had sought injunction restraining the employer from taking any steps for forfeiture or realization of the performance guarantee deposited by him as FDR for ₹29,34,276/-. The order passed by learned Commercial Court, Dehradun cannot be faulted. In proceedings under Section 9 of the Arbitration and Conciliation Act, the following reliefs can be granted:

a) preservation, interim custody or sale of goods involved in arbitration;

b) securing the amount in dispute in arbitration;

c) granting interim injunctions or appointing receivers.

d) any other relief deemed necessary by the court to protect the subject-matter of the dispute.

7. A party can approach the court for interim measures before commencement of arbitration proceedings, during the arbitration proceedings and after passing of the arbitral award but before its execution.

8. Court's interference under Section 9 is discretionary and limited to granting interim measures. Court should ensure that its order assists rather than hinder the arbitration process. While passing an order under Section 9 of the Act, court has to consider:

1) *prima facie* case;

2) balance of convenience; and

3) irreparable loss or injury.

9. Arbitral Tribunal has the power to grant interim measures under Section 17 of the Act, however, if such measures are deemed insufficient, the party may still approach the court under Section 9 of the Act.

10. Under Section 9 of the Arbitration and Conciliation Act 1996, court generally cannot grant interim relief that runs contrary to the express terms of contract or amounts to re-writing the agreement entered into between the parties. An interim measure under Section 9 of the Act is meant to protect the subject-matter of the dispute or preserve the *status quo*, and not to alter or supersede clear contractual terms.

11. Jurisdiction of the court under Section 9 of the Act is identical to the jurisdiction of Civil Court granting temporary injunction under Order 39 of the Code of Civil Procedure. Interim relief can be granted only if the classic tests of *prima facie* case, balance of convenience and irreparable loss are met. The relief to be granted under Section 9 of the Act is a protective relief and final relief cannot be granted at the interim stage.

12. In para 2 of his petition filed before Commercial Court, appellant mentioned that threat to encash performance guarantee is given by referring to Clause 3(xii) of the Contract entered into between him and CPWD. If employer is entitled to invoke the performance guarantee for breach of terms of the contract by the contractor, as per the contract, then the court was justified in refusing injunction against invocation of performance guarantee.

13. The dispute whether the contractor has committed breach of terms and conditions of the contract by not completing the construction work within the stipulated time or the employer is responsible for the delay by not providing clear site or drawings etc. can be decided by the Arbitrator.

14. Invocation of performance guarantee by the employer will not cause such loss to the appellant, which cannot be compensated in terms of money. The dispute if

decided in favour of the appellant by the arbitrator, then appellant will be entitled to the reliefs claimed by him, including refund of the amount which he deposited as performance guarantee.

15. For the aforesaid reasons, we do not find any reason to interfere with the order passed by the Commercial Court. The Appeal from Order is, therefore, dismissed.

MANOJ KUMAR TIWARI, A.C.J.

SUBHASH UPADHYAY, J.

Dt: 13.10.2026
ss

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