HC-KAR

NC: 2026:KHC:43982-DB
COMAP No. 172 of 2026

CNR: KAHC010225402026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO. 172 OF 2026

BETWEEN:

1. AVEC AMOR ENTERPRISES LLP
THROUGH ITS PARTNER, MR. RAJEEV JAIN
REGISTERED UNDER THE LIMITED
LIABILITY PARTNERSHIP ACT, 2008
WITH ITS REGISTERED OFFICE AT
OFFICE NO.01, 2ND FLOOR
E-172, SECTOR-63, NOIDA,
NOIDA, GAUTAM BUDDHA NAGAR
NOIDA, UTTAR PRADESH - 201 301

...APPELLANT

(BY SRI GAURAV C PATIL, ADVOCATE [V/C])

AND:

1. SRK POWERTECH PVT. LTD.
REPRESENTED THROUGH ITS DIRECTORS
REGISTERED UNDER THE COMPANIES ACT, 2013
WITH ITS REGISTERED ADDRESS AT
PLOT NO.51-52, UDYOG VIHAR
PHASE IV, GURUGRAM - 122 001
HARYANA, INDIA.

ALSO AT,
2ND FLOOR, VAISHNAVI PROPERTIES
30/1, SILICON TERRACES
HOSUR MAIN ROAD, KORAMANGALA
ADIGODI, BENGALURU - 560 095

2. ORIENTAL INSURANCE COMPANY LIMITED
NO.H-1A/18, SECTOR-63
NEAR DOMINO'S PIZZA SHOP
NOIDA - 201 301, UTTAR PRADESH
REPT. BY ITS MANAGER
ORIENTAL INSURANCE CO. LTD.
NO.44/45, TP HUB, RESIDENCY ROAD
LEO SHOPPING COMPLEX
BENGALURU - 560 025

…RESPONDENTS

(BY SRI R.V. GOUTHAM, ADVOCATE FOR C/R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 37(1)(b) OF THE ARBITRATION AND CONCILIATION ACT, 1996 READ WITH SECTION 13(1A) OF COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 16.04.2025 PASSED BY THE LEARNED LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (COMMERCIAL COURT), BENGALURU IN COM.AA.274/2024 (ANNEXURE-A) & ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning an order dated 16.04.2025 passed by the learned LXXXVII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru [**Commercial Court**] in Com. A.A.No.274/2024.

2. Respondent No.1 [hereafter **SPPL**] had filed the said application under Section 9 of the A&C Act, *inter alia*, praying as under:

> "WHEREFORE the Applicant above-named most respectfully prays that, for the reasons stated hereinabove, this Hon'ble Court be pleased to grant interim measures of protection to the Applicant, pending commencement and conclusion of arbitration proceedings as between the Applicant and Respondents hereto, by way of:
>
> (a) directing Respondent No.2 to deposit the insurance claim amount under the Policy No.272500/11/2024/8 before this Hon'ble Court in an interest-bearing account or in any other form that this Hon'ble Court deems fit, till the conclusion of the arbitration proceedings between the Applicant and the Respondents; and/or
>
> (b) directing Respondent No.1 to secure the amount of Rs.6,58,56,664/-by depositing it before this Hon'ble Court in an interest-bearing account or in any other form that the Hon'ble Court deems fit till the conclusion of the arbitration

proceedings between the Applicant and the Respondents; and/or

(c) directing Respondent No.1 to disclose in detail, a statement of assets of Respondent No.1, particularly identifying the goods supplied by the Applicant that remain undamaged subsequent to the fire at the warehouse of Respondent No.1; and/or

(d) directing Respondent No.1 to disclose the remaining goods supplied by the Applicant available with the distributor/network partner of Respondent No.1 in Bangalore; and/or

(e) such other interim measures of protection as may be deemed necessary, just, and fair, in the circumstances, in the interests of justice and equity."

3. The disputes between the parties arose in the context of the Distribution Agreement dated 22.06.2023, whereby SPPL appointed the appellant as a distributor for all products for promotional gifting within India on a principal-to-principal basis [**Distribution Agreement**]. In terms of clause 6.3 of the said Distribution Agreement, the appellant was obliged to pay the invoice amounts within a period of sixty (60) days from the date of invoice. The said clause is set out below:

"6.3 The Distributor shall pay the full amount invoiced to it by the Supplier in Indian Rupees within 60 (sixty) days of the date of invoice. Interest shall be payable on any unpaid invoices to the Supplier by the Distributor at the rate of 2% (two percent) per month or part thereof (i.e. 24% (twenty four percent) annually) or the maximum

allowed under applicable laws, whichever is higher, until the entire unpaid amount is paid to the Supplier and confirmed by the Supplier in writing."

4. SPPL contended that during the course of its business, it had supplied its products and raised invoices. Whilst the appellant paid certain amounts, the invoiced amounts to the extent of ₹6,58,56,664/- (Rupees Six crores Fifty-eight lakhs Fifty-six thousand Six hundred and Sixty Four only) remained outstanding.. SPPL claims that since the appellant failed to make regular payments to discharge the outstanding liabilities, SPPL eventually stopped supplying the goods to the appellant on credit basis.

5. SPPL states that one of the explanations provided by the appellant for not making payments on time was that it was suffering losses. Further, a fire broke out in its godown, where the goods supplied by SPPL were stored, and the appellant suffered damage due to the fire. According to the appellant, goods of an approximate value of ₹5,36,00,000/- (Rupees Five Crores Thirty-six lakhs only), supplied by SPPL, were stored in the warehouse at the time of the fire.

6. In the aforesaid context, SPPL sought interim measures of protection as set out above. SPPL's case was that the financial condition of the appellant (a Limited Liability Partnership formed in 2017) had suffered setbacks. SPPL stated that the appellant had limited assets and profits and, therefore, there was a strong apprehension that, if SPPL succeeded in securing an arbitral award in its favour, it would not be able to realise the awarded amount. In that context, SPPL sought to preserve the compensation payable by respondent No.2 (Oriental Insurance Company) to the appellant to secure its claim.

7. The learned Commercial Court, in the given facts, allowed the said application and passed an order the operative part of which reads as under:

"**ORDER**

The application filed by applicant under Sec.9 of Arbitration and Conciliation Act, is Partly Allowed.

Respondent No.2 is hereby directed to deposit the insurance claim amount under the policy No.272500/11/2024/8 before this court within 2 months from the date of this order.

Further, respondent No.1 is directed to secure the amount of Rs.6,58,56,664/- and deposit the same before this court within 2 months from the date of this court."

8. The order contained an apparent error, as respondent No. 2 (Oriental Insurance Company Ltd.) was directed to secure Rs. 6,58,56,664/-. Plainly, the Oriental Insurance Company Ltd. was not liable to secure the claim made by SPPL and its liability was limited to the risk insured under the insurance policy purchased by the appellant. It is apparent that the order to secure the amount of ₹6,58,56,664/- was directed against the appellant and not the Oriental Insurance Company. The appellant, taking advantage of this, did not take any steps to secure SPPL's claim.

9. Thereafter, Oriental Insurance Company filed an application for correcting the said order, which was duly corrected on 24.11.2025. The orders indicate that the same was also subject to the application filed by respondent No.2 for proceeding against respondent No.1. The said applications were disposed of on 09.03.2026. Thereafter, the appellant has filed the present appeal.

10. Meanwhile, Oriental Insurance Company Ltd. (respondent No.2) also filed an appeal (COMAP No.217/2026), which this Court disposed of on 29.06.2026. This Court clarified that the impugned order is in the nature of a garnishee order and respondent No.2 is

not required to deposit any amount other than the amount admittedly payable by it.

11. It is relevant to note that respondent No.2 admitted the appellant's claim to the extent of ₹1,33,20,442/- (Rupees One Crore Thirty-three lakhs Twenty thousand Four hundred and Forty-two only). Thus, by the aforesaid order dated 29.06.2026, this Court clarified that Respondent No.2 is not required to deposit any amount in excess of the admitted liability.

12. The present appeal has been filed after an inordinate delay of 283 days. However, in view of the explanation provided, the said delay is condoned.

13. In this context, it is also material to note that the appellant had filed an appeal within time, which was disposed of since the applications filed by respondent No.2 were pending consideration before the learned Commercial Court.

14. Although SPPL had made averments to satisfy the conditions as stipulated under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 [**CPC**], the impugned order does not indicate that any of those contentions were examined or considered. The

impugned order has also referred to various judgments that were referred to by the parties, but did not examine the same.

15. Clearly, if SPPL establishes that the appellant is prima facie indebted to it and if orders of protection and interim measures are not granted, it would be unable to recover the amounts that may be awarded; it would be entitled to interim measures of protection.

16. This Court is informed that the Arbitral Tribunal has been constituted and SPPL has filed an application under Section 17 of the A&C Act seeking interim measures of protection.

17. In this view, we consider it appropriate to set aside the impugned order to the limited extent that it directs the appellant to secure the amount, with liberty for the SPPL to pursue its remedies for interim measures before the Arbitral Tribunal.

18. We clarify that the order directing Respondent No.2 to deposit the amount as admittedly payable to the appellant on account of the loss covered by it would continue to be operative.

19. The appeal is disposed of with the aforesaid observations.

20. All rights and contentions of parties to pursue/defend the application(s) under Section 17 of the A&C Act are reserved.

21. Pending applications also stands disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KMV
List No.: 2 Sl No.: 16