IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPEAL (L) NO. 32551 OF 2024
WITH
INTERIM APPLICATION NO. 32629 OF 2024
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 25579 OF 2024

Ebix Cash World Money Limited, A company within the meaning of the Companies Act, 2013 and having its office at 8th Floor, Manek Plaza, Kalina CST Road, Kolekalyan, Santacruz (East), Mumbai 400 098.

... Appellant/ Org. Respondent no. 2

V e r s u s

1. Ashok Kumar Goel, Top Floor, Times Tower, Kamla Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai 400 013.

2. Vyoman India Private Limited, (Formerly Vyoman Tradelink India Private Limited) A company within the meaning of the Companies Act, 2013 and having its registered office at New Prakash Cinema, N. M. Joshi Marg, Lower Parel, Mumbai – 400 013.

3. Ebix Cash Limited & Ors. (Formerly Ebix Cash Private Limited), A company within the meaning of the Companies Act, 2013 and having its registered office at 101, First Floor, 4832/24, Ansari Road, Darya Ganj, New Delhi – 110 002 and its Corporate

... Respondents/ Org.Petitioner Nos.1 & 2

office at Plot No. 122 & 123, NSEZ, Phase-II, Noida Gautam Buddha Nagar, Uttar Pradesh 201 305.

4. Ebix Singapore Private Limited, A company registered under the laws of Singapore and having its address at 1 Harbourfront Avenue #14-07, Keppel Bay Tower, Singapore (098632).

5. Ebix Payment Services Private Limited, A company within the meaning of the Companies Act, 2013 and having its registered office at 2nd Floor, Manek Plaza, Kalina CST Road, Kolekalyan, Santacruz (East), Mumbai – 400 098.

... Respondents/
Org.Petitioner Nos.1, 3 & 4

COMMERCIAL ARBITRATION APPEAL (L) NO. 35549 OF 2024
WITH
INTERIM APPLICATION NO. 35612 OF 2024
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 25579 OF 2024

Ebix Cash Limited (Formerly Ebix Cash Private Limited), A company within the meaning of the Companies Act, 2013 and having its registered office at 101, First Floor, 4832/24, Ansari Road, Darya Ganj, New Delhi – 110 002 and its Corporate office at Plot No. 122 & 123, NSEZ, Phase-II, Noida Gautam Buddha Nagar, Uttar Pradesh 201 305.

... Appellant
Org. Respondent no.1

V e r s u s

1. Ashok Kumar Goel, Top Floor, Times Tower, Kamla Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai 400

013.

2. Vyoman India Private Limited, (Formerly Vyoman Tradelink India Private Limited) A company within the meaning of the Companies Act, 2013 and having its registered office at New Prakash Cinema, N. M. Joshi Marg, Lower Parel, Mumbai – 400 013.

... Respondents/ Org. Petitioner Nos. 1 & 2

3. Ebix Cash World Money Limited, A company within the meaning of the Companies Act, 2013 and having its office at 8th Floor, Manek Plaza, Kalina CST Road, Kolekalyan, Santacruz (East), Mumbai 400 098.

4. Ebix Singapore Private Limited, A company registered under the laws of Singapore and having its address at 1 Harbourfront Avenue #14-07, Keppel Bay Tower, Singapore 098632.

5. Ebix Payment Services Private Limited, A company within the meaning of the Companies Act, 2013 and having its registered office at 2nd Floor, Manek Plaza, Kalina CST Road, Kolekalyan, Santacruz (East), Mumbai – 400 098.

... Respondents/ Org.Petitioner Nos. 2 to 4

Mr. Chetan Kapadia, Senior Advocate, with Ms. Vidisha Rohira, Mr. Vijay Dhingreja and Ms. Vaishnavi Ambadan, Advocates i/by VJ Juris, for the Appellant in CARBA(L)/32551/2024 and for Respondent no. 3 in CARBA(L)/35549/2024.

Mr. Mayur Khandeparkar, Advocate with Mr. Chetan Yadav and Ms. Pratibha Tiwari, Advocates, i/by R.V. & Co., for the Appellant in CARBA(L)/35549/2024 and for Respondent No. 3 in CARBA(L)/32551/2024.

Mr. Sharan Jagtiani, Senior Advocate with Mr. Nitesh Jain, Ms. Juhi Mathur, Mr. Atul Jain, Ms. Sonia Dasgupta, Ms.

Surbhi Agarwal and Mr. Abhimanyu Chaturvedi, Advocates, i/by Trilegal, for the Respondent in CARBA(L)/32551/2024.

CORAM: A. S. CHANDURKAR &
RAJESH S. PATIL, JJ.

Date on which the arguments concluded: **20th DECEMBER 2024**

Date on which the judgment is pronounced: **26th MARCH 2025**

JUDGMENT (*Per A. S. Chandurkar, J.*)

1. Admit. Both the Commercial Arbitration Appeals are taken up for final disposal.

2. The challenge raised in these appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996, (for short, 'the Act of 1996') is to the judgment dated 08.10.2024 passed by the learned Single Judge in exercise of jurisdiction under Section 9 of the Act of 1996. By the said judgment, the Commercial Arbitration Petition preferred by the respondent nos. 1 and 2 has been allowed and interim relief in terms of prayer clauses (b), (e) and (f) have been granted. As a result, the appellants have been directed to furnish an irrevocable bank guarantee of nationalized bank or any such other security in favour of the Prothonary, Bombay High Court, for a sum of Rs.145 crores being 80 percent of the Enhanced Call Price redeemable by the respondent nos. 1 to 3. The

appellants have also been injuncted from dealing and/or encumbering and/or disposing off and/or creating third party rights and/or alienating any of the movable or immovable properties or assets owned by them. The appellants have also been directed to disclose all their assets on oath including providing fresh and better particulars along with all necessary details of such movable and immovable properties.

3. The facts that are relevant for considering the appeals are that on 12.05.2017, the appellants and the respondent nos. 1 to 5 entered into a Share Holders Agreement (SHA). On account of alleged breaches of the SHA being stated to be committed by the appellants, disputes arose as a result of which the same were referred to arbitration. The said proceedings were conducted in accordance with Singapore International Arbitration Chamber (SIAC). On 01.06.2023, the Arbitral Tribunal passed its Partial Award upholding the termination of the SHA and the obligation of the appellants to purchase the shares of the respondent nos. 1 and 2. The Arbitral Tribunal however rejected the valuation report that was submitted by Deloitte on the ground that it lacked independence. Fresh valuation was accordingly directed to be undertaken. The Arbitral Tribunal by its Order dated

01.09.2023, awarded an amount of Rs.9 Crores as costs in favour of the respondent nos. 1 and 2. The said respondents therefore filed petitions under Section 49 of the Act of 1996 before the Delhi High Court seeking enforcement of the Partial Award and the Cost Award. The respondent no. 1 on 30.11.2023 appointed Price Waterhouse and Company LLP (PwC) as the eligible valuer for determining the Enhanced Call Price. PwC submitted its valuation report on 02.01.2024 and determined the enhanced call price at the rate of Rs.181 crores. The respondent nos. 1 and 2 called upon the appellants to make payment of the aforesaid amount. The same was however refused by the appellants. On 19.01.2024, the Delhi High Court passed an order of status quo as regards the assets of the appellants in the proceedings for enforcement filed by respondent nos. 1 and 2. As the appellants failed to make payment at the Enhanced Call Price, the appellants initiated arbitration under Clause 20 of the SHA under the SIAC Rules. They also applied for emergency interim relief under Schedule-I of the SIAC Rules. Thereafter, on 13.03.2024 the Delhi High Court allowed the petitions filed by the respondent nos. 1 and 2 under Section 49 of the Act of 1996 for enforcement of the Partial Award

and the Cost Award. These orders not having been challenged by the appellants, they have attained finality.

4. On 14.03.2024, the Emergency Arbitrator passed an Emergency Interim Award under Article 20.1 of the SHA and directed the appellants to furnish an irrevocable bank guarantee from an internationally recognised financial or other institution in Singapore or India for the sum of Rs.145 crores within a period of fourteen days. The respondent nos. 1 and 2 sought compliance of the aforesaid decision. However, according to the appellants, they were unable to furnish a bank guarantee in view of the order of status quo dated 19.01.2024 passed by the Delhi High Court. Hence the appellants on 16.04.2024, moved the Delhi High Court seeking modification of the order dated 19.01.2024. The said order was partially modified on 01.05.2024. The appellants also filed an application on 31.05.2024 under Rule 10 of Schedule 1 of the SIAC Rules seeking modification of the Emergency Arbitrator's decision in paragraph 202(d) of the Emergency Interim Award seeking substitution of the bank guarantee with some other form of security. On 24.07.2024, the Arbitral Tribunal rejected this request made on behalf of the appellants and directed them to provide security in the

form of bank guarantee for the amount of Rs.145 crores within a period of fourteen days. As the necessary compliance was not undertaken, the respondent nos. 1 and 2 filed an Arbitration Petition under Section 9 of the Act of 1996 on 13.08.2024. The Arbitration Petition was heard by the learned Judge and at the conclusion of the hearing on 26.09.2024, the judgment was reserved. In the meanwhile, on 02.10.2024 the Final Award came to be passed. Thereafter, on 08.10.2024 the Arbitration Petition filed under Section 9 of the Act of 1996 came to be decided. It is the aforesaid judgment that is subject matter of challenge in these appeals.

5. Mr. Chetan Kapadia, learned Senior Advocate for the appellants in Commercial Appeal No. 32551 of 2024 made the following submissions :

(a) The relief of injunction and directions in the form of attachment before judgment were granted without considering as to whether the principles under provisions of Order XXXVIII and Order XXXIX of the Code of Civil Procedure, 1908, (for short, 'the Code'), were satisfied - According to the learned Senior Advocate, before grant of

relief in the nature of injunction and a direction having the effect of attachment of the assets of the appellants before the judgment, it was necessary for the respondent nos. 1 and 2 to have made out a strong *prima facie* case and also satisfy the grounds for attachment before judgment under Order XXXVIII Rule 5 of the Code. Without considering the effect of the judgment of the Supreme Court in Sanghi Industries Limited vs. Ravin Cables Ltd.[1] which mandated requirement of specific allegations with cogent material, such relief had been granted. It was urged that in the aforesaid decision, it had been held that unless and until the pre-conditions under Order XXXVIII Rule 5 of the Code were satisfied and unless there were specific allegations alongwith cogent material on record coupled with satisfaction of the Court that the party is likely to defeat the award that may be passed, there would be no occasion to consider and grant such relief. It was urged that this decision of the Supreme Court had been considered by a Division Bench of the Delhi High Court in Skypower Solar India Private Limited v Sterling and Wilson International FZE[2]. Though this decision was cited before the learned Judge, the same had been distinguished erroneously. Reference was also made to the judgment of the

1 2022 INSC 1050

2 2023 SCC OnLine Del. 7240

Gujarat High Court in Sadbhav Engineering Limited vs. Efftech Infra Engineers[3], wherein the decisions of the Supreme Court in Essar House Private Limited vs. Arcellor Mittal Nippon Steel India Limited[4] and Sanghi Industries Limited (supra)had been referred to and satisfaction of the requirements of Order XXXVIII Rule 5 of the Code had been insisted upon. Reliance was also placed on the judgment of learned Single Judge in Philip Mamen vs. Joseph Thomas[5] dated 13.03.2024, wherein similar principles had been reiterated. It was thus urged that in the absence of the respondent nos. 1 and 2 satisfying the requirements of Order XXXVIII Rule 5 of the Code, no relief in the form of restraining the appellants from dealing with their properties could have been passed.

(b) The finding recorded that the appellants were guilty of 'obstructionist conduct', was contrary to settled legal principles - It was submitted that the learned Judge erred in coming to the conclusion that on account of "obstructionist conduct" of the appellants, interim relief was liable to be granted. There was a distinction between

3 AIR 2024 Guj 40

4 2022 INSC 957

5 Commercial Arbitration Petition (L) No. 20182 of 2023

contesting proceedings/defending a claim on one hand and obstructing the conduct of proceedings on the other. The former could not be treated as “obstructionist conduct’ so as to warrant passing of an order of furnishing a bank guarantee as granted by the learned Judge vide prayer clause (b). As a respondent, it was entitled to put up its defence in the best possible manner and the steps taken in that regard could not be considered to its disadvantage. The appellants were entitled to safeguard their financial interest and hence steps taken during the course of such proceedings could not result in the appellants being placed at a disadvantageous position. It could not be said that the conduct of the appellants was such that it could be treated that the appellants intended to obstruct the arbitration proceedings in any manner whatsoever. This aspect had erroneously weighed with the learned Judge while granting relief in the arbitration petition. Referring to the various proceedings between the parties, it was submitted that bonafide steps taken while contesting such proceedings could not be termed to be "obstructive conduct". After contesting such proceedings on merits, various orders had been passed which did not indicate that the appellants intended to frustrate the arbitration proceedings or the award that could be passed. It was thus

submitted that by giving undue importance to this aspect, the learned Judge proceeded to hold against the appellants.

(c) Reliance placed on the Emergency Award by the learned Single Judge was erroneous - In this regard, it was submitted that the Delhi High Court in Raffles Design International India Private Limited & anr. vs. Educomp Professional Education Limited & Ors.[6], had held that an Emergency Award was not capable of being enforced under the Act of 1996 and the only mode for enforcing the same was by filing a civil suit. Notwithstanding the passing of the Emergency Award, the Court while considering proceedings under Section 9 of the Act of 1996 was required to consider the grant of interim relief independent of the orders passed by the Emergency Arbitrator. The learned Judge however proceeded to hold that the parties were bound by the decision of the Emergency Arbitrator and accepted all the findings recorded in the Emergency Award. In absence of any independent assessment of the facts of the case, the Emergency Award could not have been the basis for grant of any relief to the respondent nos. 1 and 2. The learned Judge committed an error in giving importance to the observations

6 2016 SCC OnLine Del. 5521

in the Emergency Award. It was thus urged that even on this count, the impugned order was liable to be set aside.

(d) The Final Award having been passed, no relief under Section 9 of the Act of 1996 could have been granted as the said proceedings were filed before the Final Award was passed - It was submitted by the learned Senior Advocate for the appellants that after the Emergency Award was passed on 14.03.2024, the respondent nos. 1 and 2 filed the Arbitration Petition under Section 9 of the Act of 1996 on 14.08.2024. The said respondents, therefore, had invoked the jurisdiction prior to the passing of the final award. After the Arbitration Petition was heard and was reserved for passing judgment on 26.09.2024, the Final Award came to be passed on 02.10.2024. This fact was brought to the notice of the learned Judge on 07.10.2024 and a copy of the Final Award was also tendered for perusal. The Arbitration Petition came to be decided on 08.10.2024. However, the relevant fact that the Final Award had been passed after filing of the Arbitration Petition under Section 9 of the Act of 1996 had not been considered. It was urged that the cause of action for invoking the provisions of Section 9 of the Act of 1996 was available either before or during arbitral

proceedings or at any time after the making of the arbitral award and the same would vary from case to case. Though such jurisdiction was invoked by the respondent nos. 1 and 2 prior to passing of the Final Award, the cause of action for the same would not survive after the Final Award was passed. On this premise, the Arbitration Petition ought not to have been decided on merits as the learned Judge was apprised of the fact that the Final Award was passed prior to the order being passed in the Arbitration Petition under Section 9 of the Act of 1996. Reference in this regard was made to the decision in Centrient Pharmaceuticals India Private Limited vs. Hindustan Antibiotics Limited & Ors.[7]. This aspect went to the root of the matter and, on this count also the impugned judgment was liable to be set aside.

On the aforesaid grounds, it was urged that the impugned judgment dated 08.10.2024 be set aside and the Abritration Petiton filed under Section 9 of the Act of 1996, be dismissed.

7 2019 SCC OnLine Bom 1614

6. Shri Mayur Khandeparkar, learned Counsel appearing for the appellants in Commercial Arbitration Appeal no. 35549 of 2024, submitted as under :

(a) Maintainability of the Arbitration Petition under Section 9 of the Act of 1996 - It was urged that since the respondent nos. 1 and 2 were seeking enforcement of the Emergency Arbitrator's decision as well as order passed by the Arbitral Tribunal, the Arbitration Petition filed under Section 9 of the Act of 1996, was not maintainable. The said respondents ought to have filed an Enforcement Petition under Section 49 of the Act of 1996. The decision of the Emergency Arbitrator was in fact an Award which was required to be enforced in the manner as prescribed under the Act of 1996. Inviting attention to the SIAC Rules and especially Clauses 1.3, 20.1, 30.2 and 30.3 thereof, it was submitted that the respondent nos. 1 and 2 ought to take recourse to the provisions contained in Part-II of the Act of 1996. Reliance in that regard was placed on the decision in Raffles Design International India Private Limited & anr. (supra). Further, the application of Part-I of the Act of 1996 to the arbitration proceedings had been excluded by the parties. Reliance was also further placed on the judgment of

the Supreme Court in BGS SGS Soma JV vs. NHPC Limited[8]. Though Clause 30.3 of the SIAC Rules permitted consideration of a request for grant of interim relief, the same was permissible only in exceptional circumstances. No such exceptional circumstances had been brought on record by the respondent nos. 1 and 2.

Alternatively, it was submitted that it was not permissible for the learned Judge to have considered the observations made by the Emergency Arbitrator and the Arbitral Tribunal for granting any relief to the respondent nos. 1 and 2. The valuation of shares undertaken by PwC could not have been the basis for grant of interim relief by the learned Judge. Considering the fact that the list of assets of the appellants was much more than the value of the claim made by respondent nos. 1 and 2 coupled with the fact that the said assets were not encumbered, the learned Judge erred in granting relief in the Arbitration Petition. The nature of relief as granted would relate to a direction issued under the provisions of Order XXXVIII Rule 5 of the Code and hence without making out a case in that regard, no such relief could have been granted. It was thus urged that on the

8 2019 INSC 1349

aforesaid grounds, the impugned judgment dated 08.10.2024 was liable to be set aside.

7. Shri Sharan Jagtiani, learned Senior Advocate for respondent nos. 1 and 2, supported the impugned order and opposed the submissions made on behalf of the appellants.

(a) As regards jurisdiction to grant interim relief under Section 9- It was submitted that the Court exercising jurisdiction under Section 9 of the Act of 1996, had a wide power to grant relief in an appropriate case. Referring to the decisions of the Supreme Court in Essar House Private Limited (supra) and Sepco Electric Power Construction Corporation vs. Power Mech Projects Ltd.[9], it was pointed out that the Supreme Court considered the law laid down by this Court in its earlier decisions and had held that when an application seeking interim measures had made out a good *prima facie* case coupled with presence of balance of convenience, the Court had ample powers under Section 9 of the Act of 1996 to grant such a relief. Seeking to distinguish the judgment of the Supreme Court in Sanghi Industries Limited (supra), it was urged that the facts in the said case

9 2022 INSC 981

clearly indicated that there were serious disputes on the amount claimed by the rival parties to the said proceedings. The conduct of parties was found relevant in the aforesaid decision and when seen from the context of the facts of the case in hand, it was clear that the conduct of the appellants was such that it warranted passing of interim directions. In such situation, the insistence for strict compliance with the provisions of Order XXXVIII Rule 5 of the Code was not at all warranted especially when the efficacy of the arbitration process was required to be supported. It was thus submitted that the pleadings in the Arbitration Petition filed under Section 9 of the Act of 1996 as raised were sufficient to warrant passing of interim directions.

(b) Obstructionist or unreasonable conduct was an established test for grant of security - It was submitted that conduct of parties was a relevant consideration under provisions of Section 9(1) of the Act of 1996. If it was shown that the opposite party was seeking to defeat and/or delay the enforcement of orders passed during the course of the arbitration proceedings, the same could be taken into consideration under Section 9 of the Act of 1996. Referring to various hurdles raised at the behest of the appellants, it

was submitted that the appellants failed to make payment of the amount awarded under the Cost Award for a period of more than ten months. Further, the valuation undertaken by the PwC was also sought to be disregarded by the appellants without any justifiable reason. The appellants also failed to furnish the bank guarantee despite orders passed in that regard. Such conduct indicated that the appellants were in clear breach of the orders passed in the proceedings and the same could not be ignored on the ground that the appellants were merely defending the claim made against them. In this regard, the learned Senior Advocate placed reliance on the decisions in Valentine Maritime Ltd. vs. Kreuz Subsea Pte. Ltd.[10], J. P. Parekh & anr. vs. Naseem Qureshi & Ors.[11], Deccan Chronicle Holdings Limited vs. L & T Finance Limited[12] and Skypower Solar India Private Limited (supra). It was thus urged that on the aforesaid grounds, the impugned judgment did not call for any interference.

(c) Award passed by the Emergency Arbitration - It was submitted that though the decision of the Emergency Arbitrator was called an “Emergency Interim Award”, the

10 (2021) 3 Bom CR 78

11 2022 SCC OnLine Bom 6716

12 2013 SCC OnLine Bom 1005

reliefs granted were interim in nature which was clear from reading of Clause 30.3 of the SIAC Rules. The nature of the decision of an Emergency Arbitrator had been considered by the Supreme Court in Amazon.com NV Investment Holdings LLC vs. Future Retail Limited & Ors.[13]. The decision of the Emergency Arbitrator therefore could be made the basis for grant of relief under Section 9 of the Act of 1996. The learned Judge did not commit any error by referring to the aforeaid decision and considered the same as a factor for grant of interim relief.

(d) Passing of Final Award did not affect maintainability of the Arbitration Petition under Section 9 of the Act of 1996 - In this regard, it was urged that when the Arbitration Petition under Section 9 of the Act of 1996 was filed, the Final Award was yet to be passed. Merely on the ground that the Final Award was passed on 02.10.2024 after which the Arbitration Petition came to be decided on 08.10.2024, the said proceedings were not rendered infructuous. Considering the nature of relief sought by respondent nos. 1 and 2 in the Arbitration Petition, the passing of the Final Award would not have any impact on the said proceedings. Reference was made to the decision of the

13 2021 INSC 385

Supreme Court in Ultratech Cement Ltd. vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited.[14] to urge that the prayers made in the Arbitration Petition would cover the period after pronouncement of the Award by the Tribunal and prior to it being enforced. A similar objection was considered by the Madras High Court in M/s. L & T Finance Limited vs. M/s. J. K. S. Constructions Private Limited[15] and the same was turned down. Moreover, the Final Award as passed was in favour of the respondent nos. 1 and 2 and hence that was an additional factor to support the grant of relief to the respondent nos. 1 and 2. Hence, no illegality was committed by the learned Judge by refusing to give much importance to the passing of the Final Award pending consideration of the Arbitration Petition filed under Section 9 of the Act of 1996.

(e) Maintainability of the Arbitration Petition filed under Section 9 of the Act of 1996 - The learned Senior Advocate for the respondent nos. 1 and 2 submitted that there was no question of the said respondents seeking to enforce the Emergency Award or the decision of the Arbitral Tribunal confirming the Emergency Arbitrator's decision. Referring to the proviso to Section 2(2) of the Act of 1996, it was submitted that the provisions of Section 9 were

14 2018 15 SCC 210

15 2014 SCC OnLine Madras 302

applicable to International Commercial Arbitration even if the place of Arbitration was outside India. The objection to the maintainability of the Arbitration Petition as raised by the appellants was misconceived and the proceedings as filed were rightly entertained on merits.

(f) Scope for interference under Section 37 of the Act of 1996 - It was urged that the scope for interference in exercise of jurisdiction under Section 37 of the Act of 1996 was limited. In the absence of any demonstrable error or failure of justice, there was no reason to interfere with the exercise of discretion by the learned Judge under Section 9 of the Act of 1996 only on the ground that another view of the matter was possible. Since the learned Judge had taken a reasonable and possible view on the basis of the material on record, the Appellate Court would not substitute its view for that of the learned Judge while entertaining an appeal under Section 37 of the Act of 1996. Even on this count, there was no case made out to grant any relief to the appellants. Reliance was placed on the decision in Shyam Sel and Power Limited and another Vs. Shyam Steel Industries Limited [16] in this regard.

16 2022 INSC 303

On the aforesaid contentions, it was urged that both the appeals preferred by the appellants were liable to be dismissed.

8. We have heard the learned Counsel for the parties at length and with their assistance we have perused the documents on record. We have also gone through the written submissions placed on record by the learned Counsel for the parties. We have thereafter given our due consideration to the submissions as made. In our view, the impugned judgment of the learned Judge does not call for any interference in exercise of jurisdiction under Section 37 of the Act of 1996. We say so for the following reasons:

(a) Scope for interference under Section 37 of the Act of 1996 -

The contours of jurisdiction under Section 37 of the Act of 1996 are well settled. If it is found that the view taken by the learned Judge in proceedings under Section 9 of the Act of 1996 suffers from a demonstrable error or results in failure of justice, it would be permissible for the Court to interfere in exercise of appellate jurisdiction under Section 37 of the Act of 1996. If, however, the Court in exercise of jurisdiction

under Section 9 has taken a reasonable and possible view based on the material on record which does not appear to be either arbitrary, capricious or perverse, it would not be permissible for the Appellate Court to substitute that view on the ground that if it had exercised such jurisdiction, it would have taken a different view. Similarly, the principle behind minimal judicial interference in arbitral proceedings coupled with a leaning in favour of preserving the sanctity of arbitral proceedings is also required to be borne in mind. Keeping these aspects in mind, the challenge as raised to the impugned order would be required to be examined.

(b) Maintainability of the Arbitration Petition under Section 9 of the Act of 1996 - According to the appellants in Commercial Appeal No. 35549 of 2024, since the respondent nos. 1 and 2 were seeking implementation of the Emergency Award, the proceedings filed under Section 9 of the Act of 1996 for such purpose would not be maintainable. The Emergency Award as passed could be executed by filing a Civil Suit.

In this regard, it may be noted that as per the proviso to Section 2(2) of the Act of 1996, recourse to the provisions of Section 9 can be had in the matter of International

Commercial Arbitration notwithstanding the fact that the place of arbitration is outside India. In the present case, this requirement is satisfied as the place of arbitration is outside India. It is true that enforcement of the decision of the Emergency Arbitrator by filing proceedings under Section 9 of the Act of 1996 would not be permissible. We, however, find that the respondent nos. 1 and 2 were not seeking enforcement of the decision of the Emergency Arbitrator in the proceedings filed by them. They seek to rely upon the Emergency Award as a factor in their favour for seeking interim relief under Section 9 of the Act of 1996. This is clear from the averments made in the Arbitration Petition filed under Section 9 of the Act of 1996. The decision in Amazon. com NV Investment Holdings LLC (supra) emphasises the importance of party autonomy and the passing of interim directions by the Emergency Arbitrator sometimes described as "award". The learned Judge having considered the aforesaid objection raised to the maintainability of the proceedings in paragraphs 29A to 29D of the impugned judgment, we are in agreement with the finding recorded that since the respondent nos. 1 and 2 were not seeking enforcement of the Emergency Award but were relying upon it for seeking interim relief, the said proceedings as filed

were maintainable and were liable to be entertained on merits. We, therefore, find that the Arbitration Petition filed under Section 9 of the Act of 1996 was maintainable and the same was rightly entertained on merits.

(c) Requirement of pleadings/satisfaction of the ingredients of Order XXXVIII Rule 5 of the Code -

(i) We have perused the averments in the Arbitration Petition filed under Section 9 by the respondent nos.1 and 2. After referring to the passing of the Partial Award, Cost Award, the decision of the Emergency Arbitrator and the Review order, it is stated that there was a strong likelihood of the said respondents succeeding in the SIAC arbitration. The financial position of each appellant has been referred to coupled with the delay caused in complying with the Partial Award and the Cost Award without furnishing any cogent explanation. On the premise that the liability to make payment of the enhanced Call Price was already crystallised and admitted, the respondent nos.1 and 2 have stated that if the appellants were not directed to provide security as prayed for, they would

not be able to obtain the fruits of the SIAC arbitration or the adjudication prior to the Final Award.

In the affidavit in reply filed by the appellants and the original respondent no.4, an objection to the maintainability of the arbitration petition under Section 9 was raised. Without prejudice, it was stated that the parent company, Ebix Inc had come out of bankruptcy proceedings and that the Plan in that regard had been accepted. It was also stated that the value of its unencumbered assets exceeded the amount of Rs.145 Crores. It was further stated that the arbitral proceedings had concluded and that the final award was likely to be passed shortly.

(ii) At the outset, it may be stated that the decision of the Supreme Court in Essar House Private Limited (supra) was referred to by the learned Judge to hold that in exercise of the power to grant interim relief under Section 9 of the Act of 1996, the Court was not strictly bound by the provisions of the Code. The decision in the case of Sanghi Industries Limited (supra) was however not cited before the learned Judge to contend that strict compliance with the requirements

of Order XXXVIII Rule 5 of the Code ought to be insisted before granting any interim measures under Section 9 of the Act of 1996. Since the latter decision had not been cited by the present appellants, we do not find it expedient to examine the challenge to the impugned judgment on the premise that the ratio of the decision of the Supreme Court in Sanghi Industries Limited (supra) had not been considered by the learned Judge. Having said that, we find that the ratio of the decisions in Essar House Private Limited and Sepco Electric Power Construction Corporation (supra) can be made applicable to the case in hand. In the aforesaid decisions, it has been held that though power under Section 9 of the Act of 1996 should not ordinarily be exercised ignoring the basic principles of procedural law, the technicalities of the Code cannot prevent the Court from securing the ends of justice. All that the Court was required to see was whether the applicant seeking interim measures had a good *prima facie* case, whether the balance of convenience was in favour of interim relief as prayed for and whether the applicant had approached the Court with reasonable expedition. If these aspects are satisfied, the Court exercising

power under Section 9 of the Act of 1996 ought not to withhold relief merely on the technicality of absence of averments incorporating the grounds for attachment before judgment under Order XXXVIII Rule 5 of the Code.

(iii) It is no doubt true that in Sanghi Industries Limited (supra), the Supreme Court has held that if in a given case all the conditions of Order XXXVIII Rule 5 of the Code are satisfied and that the Commercial Court is satisfied on the conduct of the opposite party that it is trying to sell its properties to defeat the Award that may be passed and/or any other conduct on the part of the opposite party which may tantamount to any attempt on its part to defeat the Award that may be passed in the Arbitral proceedings, the Commercial Court could pass an appropriate order including a restraint order to secure the interest of the parties. It may be noted that the Supreme Court in the said case however noticed that there were serious disputes on the amount claimed by the parties before it which were yet to be adjudicated in the proceedings before the Arbitral Tribunal. We may also note that in Sepco Electric Power Construction

Corporation (supra), the Supreme Court considered the decisions of this Court in Jagdish Ahuja Vs. Cupino Limited[17], Valentine Maritime Limited (supra) and the judgment of the Delhi High Court in Ajay Singh vs. Kal Airways Private Limited.[18] It specifically approved the view taken in the aforesaid decisions and thereafter held that the presence of a good *prima facie* case, balance of convenience and approaching the Court with reasonable expedition were relevant factors.

(iv) Thus, following the ratio laid down in Essar House Private Limited and Sepco Electric Power Construction Corporation (supra), we find that the learned Judge on being satisfied of a *prima facie* case being made out by the respondent nos. 1 and 2 coupled with the balance of convenience having tilted in their favour proceeded to grant interim relief. Viewed from this aspect, the ratio of the decision in Sadbhav Engineering Limited (supra) does not assist the case of the appellants. The facts in the said case indicate that the outstanding dues of the respondent were admitted by the appellant-Sadbhav Engineering Limited. Its financial position was not found

17 2020 4 Bom CR 1

18 2017 4 ArbLR 186

to be very sound. The learned Judge in proceedings under Section 9 directed the appellant to furnish bank guarantee for the outstanding amount. In appeal, it was urged on behalf of the appellant that unless the pre-conditions of Order XXXVIII Rule 5 of the Code were satisfied, the furnishing of bank guarantee could not have been directed. The Division Bench of the Gujarat High Court held that in the light of the facts on record, the ratio of the decision in Sanghi Industries Limited (supra) could not be applied. While dismissing the appeal filed under Section 37 of the Act of 1996 it was observed that refusal of interim appeal could result in a situation that the respondent would not be able to enjoy the fruits of success in the arbitration proceedings.

Thus, far from supporting the case of the appellants, the impugned judgment of the learned Judge is in tune with the observations in Sadbhav Engineering Limited (supra). On the ground that these requirements were satisfied by respondent nos. 1 and 2, interim relief has been granted. Given the facts of the present case including the interim directions of the Emergency Arbitrator, the ratio of the decision of the Supreme Court

in Sanghi Industries Limited (supra) and the judgment of learned Single Judge of this Court in Philip Mamen (supra) cannot be applied to the present case.

(d) "Obstructionist conduct" of the appellants -

(i) There was considerable debate as to whether prosecuting proceedings with a view to safeguard one's legal interest could amount to such party being guilty of "obstructionist conduct". As a broad principle, it may be stated that a party to a litigation is entitled to defend itself in accordance with law by objecting to the proceedings initiated against it. Steps taken in that regard during the course of such proceedings may not, in a given case, *per se* be considered as "obstructionist conduct". If, however, it is found that the conduct of a party is such that it lacks in bonafides or that its actions are of such nature that would result in frustration of the arbitration proceedings itself or if false contentions are raised, it may amount to such party being guilty of obstructive conduct. The conclusion in this regard would have to be drawn based on the facts of a given case and there cannot be any general parameter or yardstick on

the basis of which the conduct of a party can be termed as “obstructionist”.

(ii) According to the appellants, in the Partial Award dated 01.06.2023, the valuation report submitted by Deloitte had not been accepted by the Arbitral Tribunal on the ground that it was not found to be independent. This resulted in appointment of another valuer namely, PwC. The valuation undertaken by PwC was questioned by the appellants on justifiable grounds. Further, the order of status quo that was initially granted by the Delhi High Court, came to be vacated on 01.05.2024 accepting the stand of the appellants that its assets had far more worth than the last instalment of amounts payable by them. The appellants were also justified in seeking modification of the Emergency Award and it being unsuccessful in that regard, would not result in treating their conduct as “obstructive”.

On the other hand, according to the respondent nos. 1 and 2, the appellants failed to pay the amount of costs of Rs.9 crores despite the Cost Award requiring the respondent nos. 1 and 2 to seek enforcement of the same. The appellants did not co-operate in the matter of

undertaking valuation by PwC, which aspect was noted by the Emergency Arbitrator. The failure to comply with the Emergency Arbitrator's decision as well as the Review decision also indicated the obstructive conduct of the appellants. The respondent nos. 1 and 2 sought to distinguish the defence of claims as raised by the appellants from clear breaches and non-compliance by them.

(iii) We may note that the aspect of obstructionist stand/conduct of the appellants has been treated by the learned Judge as one more factor for grant of interim relief to the respondent nos. 1 and 2. It has been observed in paragraph 29-G that even without relying upon the decision of the Emergency Arbitrator, a very strong case for grant of interim relief had been made out by the respondent nos. 1 and 2 in view of the obstructionist stand/conduct of the respondents. The grant of interim relief is not based merely on the "obstructionist stand" of the appellants. Various other factors such as the decision of the Emergency Arbitrator on merits and/or the fairness of procedure of the Emergency Arbitrator not being questioned has also

weighed with the learned Judge. It has also been observed that there was no reason not to accept the findings recorded in the Emergency Arbitrator's decision as such approach would support arbitration and ensure its effectiveness. After relying on the decision in Amazon.com NV Investment Holdings LLC (supra), it was found that the appellants were bound by the Emergency Arbitrator's Award and thus ought to comply with the same. These findings also form the basis for grant of relief to the respondent nos. 1 and 2. On a reading of the impugned order as a whole, it cannot be said that it is only in view of the "obstructionist stand" of the appellants that relief has been granted to the respondent nos. 1 and 2.

(iv) In paragraph 29G of the impugned judgment, what has been commented upon is the conduct of the appellants. In our view, if the overall conduct of the appellants is taken note of, coupled with various other factors referred to by the learned Judge for arriving at a conclusion that the respondent nos. 1 and 2 had made out a *prima facie* case based on the decision of the Emergency Arbitrator, the conclusion recorded in the

impugned judgment that the appellants were trying to delay the enforcement of the orders passed in the arbitration proceedings appear to be justified in view of the material on record. Suffice it to observe that the aspect of "obstructionist conduct" is not the only ground relied upon by the learned Judge for granting relief to the respondent nos. 1 and 2 in the Arbitration Petition filed under Section 9 of the Act of 1996. Since it is found that the factors that are required to be satisfied for grant of interim measures as held in Essar House Private Limited and Sepco Electric Power Construction Corporation (supra), stand satisfied and that the overall conduct of the appellants as noted is a factor in favour of respondent nos. 1 and 2. The reasons assigned in paragraph 29 A to F are sufficient to sustain the impugned judgment. At the highest, even if the observations made in paragraph 29G of the impugned judgment are eschewed from consideration, the respondent nos. 1 and 2 have been rightly found entitled to relief. The conclusions recorded by the learned Judge while granting relief to the respondent nos. 1 and 2 therefore does not call for any interference.

(e) Effect of passing of the Final Award during pendency of the proceedings under Section 9 of the Act of 1996 -

(i) According to the appellants with the passing of the Final Award prior to the Arbitration Petition filed under Section 9 being decided, the cause of action for seeking interim relief at the pre-adjudication stage would be extinguished. This contention is raised in view of the fact that the hearing of the Arbitration Petition under Section 9 of the Act of 1996 was concluded on 26.09.2024 and the judgment was reserved. In the interregnum, on 02.10.2024, the Final Award was passed. The appellants placed a praecipe before the learned Judge on 07.10.2024 along with copy of the Final Award. The judgment in the Arbitration Petition was pronounced on the next day being 08.10.2024.

(ii) At the outset, it may be noted that except for filing a praecipe along with the copy of the Final Award, the appellants did not raise any contention before the learned Judge that with the passing of the Final Award, the Arbitration Petition under Section 9 of the Act of

1996 did not survive thereafter. The mere act of placing a praecipe with a copy of the Final Award before the learned Judge without anything further would not enable the appellants to contend that the learned Judge did not advert to the subsequent development in the form of passing of the Final Award during pendency of the proceedings under Section 9 of the Act of 1996. The appellants ought to have sought consideration of this aspect by making a motion in that regard with a request to the learned Judge to consider the effect of the subsequent event. Such request was not made and hence no fault can be found in the learned Judge not taking into consideration this subsequent event. Suffice it to observe that the subsequent event relied upon by the appellants was not brought on record by moving any interim application or by urging the learned Judge to take the said aspect into consideration as a subsequent event.

(iii) Notwithstanding the aforesaid, we are of the considered opinion that in the facts of the present case, the passing of the Final Award shortly prior to the proceedings under Section 9 of the Act of 1996 being

decided would not have the effect of rendering the proceedings under Section 9 infructuous. Jurisdiction under Section 9 of the Act of 1996 can be invoked either before, during pendency of the arbitratral proceedings and even after the Award is passed till it is enforced. When the respondent nos. 1 and 2 filed the Arbitration Petition under Section 9, the Final Award was yet to be passed. In the said proceedings, the relief sought under Section 9 of the Act of 1996 was as under :

> "In the light of the above facts and circumstances, the petitioners respectfully pray that pending the commencement and final disposal of the SIAC Arbitration No. 080 of 2024 and making an enforcement of the Award therein, this Hon'ble Court be pleased to……"

It thus becomes clear that respondent nos. 1 and 2 sought relief under Section 9 pending the arbitration proceedings and the passing of the Award until its enforcement. When the judgment was pronounced in the Arbitration Petition, the Final Award was yet to be enforced. Thus, it is clear that relief was sought by the respondent nos. 1 and 2 till the Final Award was enforced. We may note that a similar prayer as made in

the Arbitration Petition herein was considered by the Supreme Court in Ultratech Cement Limited (supra) and it was held that the proceedings under Section 9 of the Act of 1996 did not become infructous with the passing of the award. It therefore, cannot be said that with the passing of the Final Award and prior to its enforcement, the Arbitration Petition filed under Section 9 of the Act of 1996 had become infructuous. The ratio of the decision in Centrient Pharmaceuticals India Private Limited (supra) cannot be applied to the facts of the present case.

(iv) The learned Senior Advocate for the respondent nos. 1 and 2 relied upon the decision of the Madras High Court in M/s. L & T Finance Limited (supra) to contend that passing of the Final Award during the pendency of the Arbitration Petition under Section 9 of the Act of 1996 would not result in the said proceedings being rendered infructuous. In the said decision, it was held that in view of the provisions of Section 9(1)(ii)(b) of the Act of 1996, a direction to furnish security for the claim amount could not be treated to be equivalent to the

enforcement of the award. Any remedy sought to secure the award or a prohibitory order to secure the award cannot be treated as a step in aid of execution. It was further observed that where an interlocutory proceeding in the form of a petition under Section 9 of the Act of 1996 is pending before a different forum which is not seized of the main proceedings, the interlocutory proceeding can continue as having been made on a stand-alone basis and it need not be necessarily made co-terminus with the main proceedings. We are inclined to agree with the aforesaid position. Accordingly we find that in the facts of the present case, the passing of the Final Award did not have the effect of rendering the proceedings filed under Section 9 as infructuous.

(f) Response of the appellants to the averments made in the Arbitration Petition filed under Section 9 of the Act of 1996 -

(i) The learned Judge in paragraph 29E has recorded a specific finding that the appellants failed to raise any dispute and/or grievance in the reply filed by them in the Arbitration Petition as regards the decision of the

Emergency Arbitrator and/or the fairness of procedure adopted by the Emergency Arbitrator. It has been observed that the only ground raised in the affidavit in reply was as regards the maintainability of the Arbitration Petition.

(ii) We have perused the averments made by the respondent nos. 1 and 2 in the Arbitration Petition as well as the affidavit in reply filed to the same. The averments made with regard reduction of the profits of the appellant no.1 herein, the overall value of the assets of the appellant no. 2 herein being reduced to almost half and correspondingly increase of its liabilities, the reference to the net loss as well as net current liabilities of the appellant no.3 herein have not been specifically disputed or denied by them. The financial position of the appellants also finds mention in the decision of the Emergency Arbitrator in paragraphs 133 and 134 thereof.

(iii) We, therefore, find that this aspect would be relevant while considering the question as to whether the respondent nos. 1 and 2 had made out a case for grant of relief under Section 9 of the Act of 1996. The

finding as recorded by the learned Judge in paragraph 29E of the impugned judgment not having been specifically challenged, there would be no reason to disregard said finding which is also the basis for granting relief to the respondents. As observed in J. P. Parekh and another (supra), the Court is also entitled to consider whether denial of a protective order would result in great prejudice to the party seeking a protective order. Viewed from this context, the learned Judge rightly exercised discretion in favour of respondent nos.1 and 2 by granting relief. Prejudice would be caused to the said respondents if such relief is denied to them.

9. We may note that the Court while deciding an application under Section 9 ought to bear in mind the fundamental principles underlying the provisions of the Code and also have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process as held in Deccan Chronicle Holdings Limited (supra). Thus taking an overall view of the matter, we do not find that the learned Judge committed any

error while granting relief under Section 9 of the Act of 1996. In the given facts, the view as taken is more than a possible view, rather the only view possible in exercise of jurisdiction under Section 9 of the Act of 1996. The discretion exercised by the learned Judge can hardly be said to be arbitrary, capricious or perverse warranting any interference. In exercise of appellate jurisdiction under Section 37 of the Act of 1996 are not inclined to upset that view.

10. Thus, both the Commercial Arbitration Appeals stand dismissed leaving the parties to bear their own costs. Consequently, the pending Interim Applications are also disposed of.

[RAJESH S. PATIL, J.] [A.S. CHANDURKAR, J.]

11. At this stage, the learned counsel for appellants seeks time to comply with the directions issued by the learned Judge under the impugned order. This request is opposed by learned counsel for the respondent nos.1 and 2. Considering the view as taken, we do not deem it appropriate to continue the arrangement.

[RAJESH S. PATIL, J.] [A.S. CHANDURKAR, J.]