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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision : 21.04.2026**

+ O.M.P.(I) (COMM.) 32/2025 & I.A. 2644/2025 (Stay)

M/S CLIX CAPITAL SERVICES PVT LTDPetitioner

Through: None.

versus

M/S AMMA AJIT HEALTH CARE PVT LTD & ORS.

.....Respondents

Through: Ms. Mani Gupta, Advocate.

CORAM:**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

1. The present Petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking the following reliefs:

“In the facts and circumstances mentioned herein above it is therefore most respectfully prayed that this Hon'ble court may graciously be pleased to:-

- i. Appoint **Sh. DUMPALA AMARNATH (Mob: 9032050678, Email: Dumpala.amarnath@elix.capital)**, Officer / Executive of the Petitioner Company as Receiver to take over the possession of the financed medical equipment mentioned below from the possession of the respondents, their agent, employee, guarantors, co-borrowers or from anyone else who is/are in possession of the said financed machines/equipment and the receiver may be also allowed to take police assistance if necessary for the said purpose; and permit the receiver to look after the Management and up keep of the said subject property/financed machines/ medical equipment.

S.No.	Equipment Model	Manufacturer	Dealer	Units
1.	ICU Ventilator for Adult, Pediatric	Cardio Labs	JS Industries	2



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2.	ICU Ventilator with both Invasive & Non- Invasive	Cardio Labs	JS Industries	3
3.	Patient Monitor with Etco2 & Dual IBP	Bird Medtech	JS Industries	5
4.	Multipara Patient Monitor	Bird Medtech	JS Industries	30
5.	C-ARM Electro Manual Top Sliding OT Table	JS Industries	JS Industries	2
6.	C-ARM Electro Manual Top Sliding OT Table	Bionet	JS Industries	3
7.	Anesthesia Workstation with Ventilator	Cardio Labs	JS Industries	1
8.	Anesthesia Work Station	Cardio Labs	JS Industries	1
9.	Defibrillator 1000 HCT-Dual Powered	Bionet	JS Industries	3
10.	LED OT Lights Cat Series	JS Industries	JS Industries	2
11.	LED OT Light Single Dome	JS Industries	JS Industries	1
12.	Laparoscopy Equipment Set	Erbe - Germany	JS Industries	1
13.	Surgical Diathermy	Enertec	JS Industries	2
14.	AeroScan CD25 Colour Doppler Ultrasound System	Konica	JS Industries	1
15.	Video Laryngoscopy	Bionet	JS Industries	2
16.	Fetal Monitor (7" Screen)	Bionet	JS Industries	1
17.	X-Ray 250 MA Hi Free evince with Table	Allengers	JS Industries	1
18.	DR System,35C Retrofit	Care Stream	JS Industries	1
19.	C-ARM HF59 Plus	Allengers	JS Industries	1



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20.	Mobile X-Ray 30MA	Allengers	JS Industries	1
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- ii. Restrain Respondents, its heirs, agents, servants, employees, representatives etc. from disposing off, selling, alienating, dismantling or creating third party interest or from concealing the whole or any part of above referred hypothecated medical equipments.
- iii. Direct the concerned SHO of the area where the subject property/financed machines/ medical equipment is found to help the receiver in taking possession of the subject property/ financed machines/ equipments and also provide the police help.
- iv. Petitioner Company be allowed to further deal with the subject property/ financed machines/ medical equipment as per the order/direction of the Arbitral Tribunal.
- v. Pass such other/further order(s) as this Hon'ble Court may deem fit and proper in the favor of Petitioner Company and against the respondent in the interest of justice.”

2. A perusal of the record would show that, by virtue of the Order dated 03.02.2025, certain interim directions were granted in favour of the Petitioner in the following terms:

“4. In the meantime, keeping in view the aforesaid, at this stage, the respondents, its heirs, agents, servants, employees, representatives etc. are restrained from disposing off, selling, alienating, dismantling or creating any third party interest or from concealing the whole or any part of above referred hypothecated medical equipments.”

3. A perusal of the Order Sheets further reveals that the matter has since remained pending before this Court, and no effective hearing seems to have taken place. In fact, at least on one occasion, it is recorded that the parties sought to reconcile their differences by resorting to Mediation. The Court is informed that the Mediation proceedings did not fructify.

4. There is nothing on record to show that any step has been taken by the Petitioner towards the commencement of the arbitration proceedings. To the contrary, none had appeared on behalf of the



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Petitioner on the last date, and none appears on behalf of the Petitioner even today.

5. This Court is of the view that unless there is a clear intent on the part of the party to proceed with arbitration proceedings, there arises no occasion for petitions filed under Section 9 of the Act to be kept pending on the Board of this Court. It is pertinent to note that proceedings under Section 9 of the Act are for the purpose of securing emergent reliefs, and to ensure that the subject matter and/or amounts claimed in the arbitration proceedings are protected/secured. The same cannot be permitted to continue to remain on the boards of Courts for an indefinite and infinite period of time and serve as a means to prolong the commencement of the arbitration proceedings.

6. The Hon'ble Supreme Court and this Court have held repeatedly that the necessary concomitant of a litigant approaching the Courts under Section 9 of the Act is the contemplation or manifest desire, to initiate Arbitration as between the parties. Needless to state, the interim protection was granted almost a year ago, and nothing to this effect has been forthcoming. This Court is guided by the judgement of this Court in *Satish Jha v. Headstrong Consulting Worldwide Ltd.*¹, wherein the learned Co-ordinate bench has held as follows:

“23. Again in the judgment of the Madras High court reported at 2005 (123) Company Cases 117, *Apple Finance Ltd. v. Gayatri Sugar Complex Ltd.*, the petitioner had filed an application under Section 9 of the Arbitration & Conciliation Act on 3rd April, 2003 and an advocate-commissioner was appointed on this application on 22nd December, 2003. This petition was taken up for consideration on 16th March, 2004 but the applicant had not taken any step to invoke the arbitral proceedings. This period of less than

¹ 2007 SCC OnLine Del 1088



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one year was held by the court as evidencing that the applicant had no intention to commence the proceedings as no reasons were available for the inordinate delay on the applicant. It was held that consequently the link between arbitration and the order passed stood snapped and the application would stand dismissed.

24. It is thus well settled that a party invoking the jurisdiction of the Court under Section 9 of the Arbitration & Conciliation Act, 1996 might not have actually commenced the arbitration proceedings when such petition is filed, but it must satisfy the court that the arbitral proceedings were actually contemplated or manifestly intended to commence the same. In case the applicant fails to manifest such intention, he loses his right to seek the indulgence of the court and that on this ground alone, the injunction application is liable to be dismissed.

25. In the instant case, the order of injunction was passed in favour of the petitioner on 22nd August, 2003 and the respondents filed its reply to the petitioner as back as on 28th August, 2003. In the reply, the respondent had taken the objection in para 13 of the reply on merits that the petitioner had not taken recourse to any provision of the joint venture agreement; that the petitioner had waived the arbitration clause and cannot rely upon the provision hereof and that the joint venture agreement in any case came to an end upon corporation of the joint venture company. The respondents had also submitted that the petitioners had taken no steps to invoke the arbitration nor they could do so in law inasmuch as there was no joint venture agreement between the parties.

30. In *Firm Ashok Traders* (supra), the Apex Court has held that section 9 permits the filing of an application before the commencement of the arbitral proceedings. The word “before” means, *inter alia* “ahead of; in presence or sight of; under the consideration or cognizance of. The two events sought to be interconnected by use of the term “before” must have proximity of relationship by reference to occurrence; the later event proximately following the preceding event as a foreseeable or “within sight” certainly. The party invoking section 9 may not have actually commenced the arbitral or manifestly intended and were positively going to commence within a reasonable time. What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself given an indication thereof. The distance of time must not be such as would destroy of relationship of the two events between which it exists and elapses.

The court, approached by a party with an application under section 9, is justified in asking the party and being told how and when that party proposes to commence the arbitral proceedings.



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Rather, the scheme in which section 9 is placed obligates the court to do so. The Apex Court held that the party having succeeded in securing the interim measures of protection, before arbitral proceedings cannot afford to sit and sleep over the relief, conveniently forgetting the “proximately contemplated” or “manifestly intended” arbitration proceeding itself. It was further authoritatively laid down that if arbitration proceedings were not commenced within reasonable time under Section 9 of the Act, the link between the arbitration proceedings and the order passed would stand snapped and the application would stand dismissed. Such order allowed to the party, shall cease to be an order made ‘before’ i.e. in contemplation of arbitral proceedings.

31. Thus delay on the part of the petitioner to commence the arbitration proceedings and its conduct by itself disentitles the petitioner to continuation of the injunction order or grant of equitable discretionary relief in the instant proceedings. Merely because the petition has remained pending for over four years and the petitioner has taken over almost three and half years to commence the arbitral proceedings would be a sufficient ground for denying the continuation of the injunction to it. In the instant case, the petitioner is disentitled to relief for the other grounds as well which have been noticed hereinabove.”

(emphasis supplied)

7. This Court is further guided by the judgement of the Apex Court in *Sundaram Finance v. NEPC India Pvt. Ltd.*², wherein the Hon’ble Supreme Court has held as follows:

“19. When a party applies under Section 9 of the 1996 Act, it is implicit that it accepts that there is a final and binding arbitration agreement in existence. It is also implicit that a dispute must have arisen which is referable to the Arbitral Tribunal. Section 9 further contemplates arbitration proceedings taking place between the parties. Mr Subramaniam is, therefore, right in submitting that when an application under Section 9 is filed before the commencement of the arbitral proceedings, there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings if, at the time when the application under Section 9 is filed, the proceedings have not commenced under Section 21 of the 1996 Act. In order to give full effect to the words “before or during arbitral proceedings” occurring in Section 9, it would not be necessary that a notice invoking the arbitration clause must be issued to the opposite party before an application under Section 9 can be filed. The issuance of a notice may, in a given

² (1999) 2 SCC 479



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case, be sufficient to establish the manifest intention to have the dispute referred to an Arbitral Tribunal. But a situation may so demand that a party may choose to apply under Section 9 for an interim measure even before issuing a notice contemplated by Section 21 of the said Act. If an application is so made, the court will first have to be satisfied that there exists a valid arbitration agreement and the applicant intends to take the dispute to arbitration. Once it is so satisfied, the court will have the jurisdiction to pass orders under Section 9 giving such interim protection as the facts and circumstances warrant. While passing such an order and in order to ensure that effective steps are taken to commence the arbitral proceedings, the court while exercising jurisdiction under Section 9 can pass a conditional order to put the applicant to such terms as it may deem fit with a view to see that effective steps are taken by the applicant for commencing the arbitral proceedings. What is apparent, however, is that the court is not debarred from dealing with an application under Section 9 merely because no notice has been issued under Section 21 of the 1996 Act.”

8. Furthermore, and as is provided for in Section 9(2) of the Act, in the event of any interim measure of protection being granted, arbitral proceedings have to be mandatorily commenced within a period of 90 days from the date of such order or within such further time as the Court may determine. Section 9(2) of the Act is reproduced herein for ready reference:

“9. Interim measures, etc. by Court.—

(2) Where, before the commencement of the arbitral proceedings, a court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.”

9. This Court is of the considered view that, given the statutory mandate under Section 9(2) of the Act, and considering that over a year has passed since the grant of the interim relief as sought for and the clear absence of any intent on the part of the Petitioner to commence arbitration proceedings, the present Petition would require



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to be dismissed.

10. Accordingly, the present Petition, along with pending application(s), stands disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 21, 2026/tk/va