*** THE HONOURABLE SRI JUSTICE NINALA JAYASURYA**

**THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

**+ ICOMAA. No.2 of 2024**
% 03.01.2025

**Between:**

Tuf Metallurgical Private Limited

**...Petitioner**

**And**

Bst Hk Limited and Others

**...RESPONDENT(S)**

**Counsel for the Appellant: Sri B.S.PRASAD Sr. Counsel for Sri N.SIVA REDDY**

**Counsel for the Respondent(S): O.MANOHAR REDDY**

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> Head Note:

? Cases Referred:

[1] 2022 AIR (SC) 4685
[2] 2020 SCC Online Del 721
[3] 2022 SCC Online SC 1219
[4] 2008 (2) SCC 302
[5] 2007 (2) SCC 125

APHC010504772024

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**
**(Special Original Jurisdiction)**

**[3510]**

FRIDAY ,THE THIRD DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE SRI JUSTICE NINALA JAYASURYA**
**THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

**INTERNATIONAL COMMERCIAL ARBITRATION APPEAL NO: 2/2024**

**Between:**

**...PETITIONER**

Tuf Metallurgical Private Limited

**AND**

Bst Hk Limited and Others **...RESPONDENT(S)**

**Counsel for the Petitioner:**
1.N SIVA REDDY
**Counsel for the Respondent(S):**
1.SAI SANJAY SURANENI

**The Court made the following:**

**HON'BLE SRI JUSTICE NINALA JAYASURYA**

**AND**

**HON'BLE SRI JUSTICE NYAPATHY VIJAY**

**ICOMAA.No.2 of 2024**

**JUDGMENT:** *(Per Hon'ble Sri Justice Nyapathy Vijay)*

The present appeal is filed under Section 37 of Arbitration and Conciliation Act, 1996 questioning the order dated 12.09.2024 passed by the learned single Judge of this Court in I.A.No.2 of 2024 in ICOMAOA.14 of 2024.

2. **Facts of the case:** The brief facts leading to this case are as under:

The 1st Respondent company was registered under the Laws of Hong Kong and the Appellant company was incorporated under the Indian Companies Act, 1956 and both are engaged in the business of trading of iron ore. The Appellant and Respondent No.1 had executed a contract on 19.12.2023 for sale/purchase of 55000 WMT (+/- 10% WMT) iron ore fines vide contract No.BST/TUF/20231219. As per the contract, the Appellant represented that the Cargo with certain specifications would be supplied. The relevant part of the

specification for the purpose of this case is that the iron ore would be having an 'Fe' content of 56%.

3. As per Clause 4.1 of the Contract, the base price of the Cargo was USD 96.00 per DMT CFR FO on the premise that the cargo of iron ore has 56% 'Fe' content. As per Clause 5, if the 'Fe' content of the Cargo was below 54.00%, the 1st Respondent had a right to renegotiate the price.

4. As per Clause 6 of the Contract, 96% of provisional payment would be made by the 1st Respondent on submission of Letter of Credit (L/C). The balance of 4% payment would be realized by submission of documents referred in Clause 7.2 of the Contract. The certificates of quality and quantity issued by a named surveyor S.K. Mitra would be the basis on which the provisional payment of 96% would be made and the clause further provided that the final survey of the Cargo would be conducted by C.I.Q (Entry-Exit Inspection and Quarantine of the People's Republic of China) for determining the final quality and quantity of the Cargo shipped. The contract provided that the CIQ results at the discharging port would be final. The ***'Fe'*** refers to the iron content in the Cargo.

5. While so, a Cargo was loaded at Vizag port on 'MV Oriental Wind' by the Appellant on 08.01.2024 along with a certificate issued by the nominated surveyor i.e. S.K. Mitra. As per the certificate issued, the 'Fe' content of the Cargo is 56.04%. Upon shipment of the Cargo and after due submission of document (L/C), the Appellant realized provisional payment of 96% of the value of the Cargo amounting to US$ 4,908,653.99. The Cargo was discharged at Lanshan port, China on 28.01.2024. On inspection of the Cargo by CIQ at the discharge port, the 'Fe' content of the Cargo was found to be an average of 52.21%. As the CIQ report was final, as per clause 9 of the Contract, since the 'Fe' content of the Cargo was less than 54%, the Respondent No.1 invoked the contractual clause and called for a price re-negotiation.

6. After negotiations, Addendum No.BST/TUF/20231219-1 dated 06.03.2024 was executed by the Appellant and Respondent No. 1. As per the Addendum, the parties agreed to appoint third-party agency, selected by Respondent No.1 i.e. Bureau Veritas (BV), to conduct dynamic re-sampling and re-inspection of the Cargo. On 30.04.2024, BV issued a certificate that the average 'Fe' content of the Cargo was 52.60%. On the

basis of the BV certificate, the price of the Cargo was to be adjusted with reference to the prevailing import price for 'Fe' 53-52% of Indian Origin at the time of issuance of certificate by BV.

7. Parallelly, the Respondent No.1 sold the Cargo to an importer in China, i.e. New Tianjin Steel ITG Mining Company Ltd., which in turn sold the Cargo to its buyer, one Zhejiang Hanggong Energy Co., Ltd., in the domestic market in China @ US$ 56/DMT which was the prevailing import price in China for Indian origin iron ore fines having 'Fe' content of 53-52%. Accordingly, the Respondent No.1 sought for re-negotiation of the original price of the Cargo. As per the Addendum dated 06.03.2024, the price payable by the Respondent No.1 for the Cargo @ US$ 56/DMT for 51,915.17 DMT was 2,907,249.41. As the Appellant received the provisional payment of US$ 4,908,653.99, the Respondent No.1 claimed a refund of US$ 2,001,404.58 from Appellant i.e. US$ 4,908,653.99 (-) 2,907,249.41.

8. As there was no response from the Appellant, in spite of emails, a formal notice was issued by the Respondent No.1 in May 2024. Though, the Appellant replied to the emails preferring to settle the dispute amicably, however, the Appellant neither

paid the amount nor settled the claim. As the contract provides for Arbitration at SIAC, Singapore, and as the contract is between a foreign entity and an Indian company, the Respondent No.1 filed an application before this Court under Section 9(1) of the Arbitration and Conciliation Act seeking attachment of iron ore of 50,000 MTS belonging to the Appellant, which is lying at Vizag Port valued around US$2,5000,000.

9. The learned single Judge initially granted interim order on 27.06.2024, calling upon the Appellant to furnish a security in favour of the 1st Respondent for a sum of US$ 2,423,404.58 within 48 hours of notice, failing which, 50,000 WMT of iron ore fines of the Appellant at Plot of Orca Logistic private Ltd,. Visakhapatnam/2nd Respondent would be attached. Questioning the same, the Appellant filed appeal ICOMAA.No.1 of 2024 before a Division Bench of this Court and the same was disposed of on 05.07.2024 without interfering with the order of attachment and the learned single Judge was requested to receive the objections of the Appellant and to pass appropriate orders on merits, as expeditiously as possible.

10. Thereafter, the Appellant filed its reply affidavit and filed I.A.No.2 of 2024, seeking to vacate the interim order granted by

the learned single Judge dated 27.06.2024. The Appellant denied the contentions urged in the application and contended that the provisions of Order 38 Rule 5 CPC would apply *mutatis mutandis* to the relief sought by the Respondent No.1. The Appellant contended that TMPL is a company incorporated in the year 1999 and is a part of TUF Group.

11. It was pleaded that it is a manufacturer of cored wires and owns a cored wires plant in Kolkata and Ferrochrome at Visakhapatnam and is also engaged in trading steel, foundry and metal industry. Further plea was that the Appellant was having a net worth of Rs.91.351 crores as on 31.03.2023 and the net worth of the group companies was Rs.200 crores as on 31.03.2023 and that the Appellant is not a fly-by-night operator and higher standards are required to be established warranting interference for sustaining the order of attachment passed by this Court.

12. The judgment of the Hon'ble Supreme Court in ***Sanghi Industries Limited v. Ravin Cables Ltd., and another***[1] was referred to substantiate their plea that pre-conditions under Order 38 Rule 5 CPC should be satisfied and unless the same is

[1] 2022 AIR (SC) 4685

established, the interim relief under Section 9 of the Arbitration Act cannot be sustained. The factum of entering into a contract is not disputed and the contractual conditions are not in dispute. It was pleaded that Clause 13 of the contract provides for arbitration at Singapore International Arbitration Centre (SIAC Rules) and that the said agreement is to be governed by the laws of Singapore.

13. As regards the factual dispute with regard to the 'Fe' content, the Appellant contended that at the time of loading of the Cargo from Visakhapatnam, three samples were taken and the 'Fe' content was shown as 56.2%, 56.3% and 56.4% and the claim of the Respondent No.1 based on the analysis at the time of unloading at the port of discharge in China was in serious dispute. It was further pleaded that negotiations were going on between the parties and the parties physically met in Hong Kong and while those proceedings are pending, the present application was filed.

14. It was pleaded that under Section 9 of the Arbitration and Conciliation Act, application cannot be entertained post constitution of an Arbitral Tribunal in a foreign seated arbitration and a judgment of High Court of Delhi in ***Ashwani Minda v. U-***

***Shin Ltd***.,[2] was relied on in the pleadings. It was contended that the Respondent No.1 had issued a notice of arbitration to the learned Registrar, SIAC on 04.07.2024 and a copy was marked to the Appellant in accordance with Rule 3.1 at SIAC Rules. The Respondent No.1 having invoked the SIAC Rules 2016, which provides for expeditious procedure in urgent interim reliefs, filed the present application with ill-intent.

15. The learned single Judge had considered the coordinate judgments of the Hon'ble Supreme Court in ***Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited***[3] and ***Sanghi Industries Limited's*** case (1 supra) *vis-à-vis* procedure to be followed before ordering attachment and after evaluation relied on ***Essar House Private Limited*** case as the same was more reasoned on the aspect as to whether provisions of Order 38 Rule 5 CPC would be applicable to attachment under Section 9 of the Arbitration and Conciliation Act and dismissed the IA.No.2 of 2024 filed by the Appellant. Questioning the same, the present appeal is filed.

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[2] 2020 SCC Online Del 721
[3] 2022 SCC Online SC 1219

16. Heard Sri B.S.Prasad, learned Senior Counsel for Sri N.Siva Reddy on behalf of the Appellant and Sri O.Manohar Reddy, learned senior counsel on behalf of the Respondents.

17. ***Contentions:*** Learned Senior Counsel for the Appellant contended that the procedure under Order 38 Rule 5 CPC should have been followed as opined by the Hon'ble Supreme Court in ***Sanghi Industries Limited's*** case (1 supra), as the same being a later judgment. Learned senior counsel also relied on the fact that the Appellant is a well-reputed company having assets of around Rs.91 crores as on 31.03.2023 and the property which is attached is the trading commodity of the Appellant and their business has been badly hit in view of the attachment order passed by the learned single Judge.

18. Learned senior counsel for the Respondents contended that the order of the learned single Judge should be sustained as the receipt of 96% is not in dispute based on 'Fe' content @ 56% which was apparently not correct as per the analysis done at the port of unloading in China. It was therefore contended that the Respondent No.1 had suffered huge loss on account of in-correct sample report submitted by the Appellant. Learned

senior counsel contended that though the value of the company as on 31.03.2023 is shown as Rs.91 crores approximately, it was contended that the Appellant company does not have any fixed assets and the only realizable source of amount is the property which is attached. It is his contention that if the appeal is allowed, it would not be possible for the Respondent No.1 to realize the claimed amount as there are no immovable assets of the Appellant company and as the Appellant company is only a trading company, the net worth of Rs.91 crores as on 31.03.2023 is not safe to be relied upon.

19. As regards the conflicting judgments of the Hon'ble Supreme Court in ***Essar House Private Limited*** (3 supra) and ***Sanghi Industries Limited's*** case (1 supra), learned senior counsel contended that ***Essar House Private Limited*** should be followed as there was a specific contention urged to follow the principles of Order 38 Rule 5 CPC while ordering attachment under Section 9 of Arbitration Act and the Hon'ble Supreme Court had overruled the objection and as such that judgment should be followed. It was contended that similar arguments were advanced in the ***Sanghi Industries Limited's*** case (1

supra), as such, the same need not be taken as a binding precedent by this Court.

20. Only two issues were argued by the learned senior counsel regarding the factual necessity of attachment and procedure to be followed. The third issue that was raised in the pleadings with regard to non-applicability of Section 9 of the Arbitration Act when arbitration proceedings were invoked in SIAC, Singapore was not urged.

21. Now, the issue that falls for consideration is, *'whether the order of attachment of the learned single Judge calls for interference?*

22. ***Reasoning:*** The first aspect of the argument is that the procedure under CPC should be strictly adhered to and until the pre-conditions specified in Order 38 Rule 5 CPC are complied, the attachment cannot be ordered as held by the Hon'ble Supreme Court in ***Sanghi Industries Limited's*** case (1 supra).

23. In ***Essar House Private Limited*** (3 supra), a specific argument was advanced at paragraph 37 that the principles of CPC should be strictly followed before passing an order under

Section 9 of the Arbitration Act. In that context, the Hon'ble Supreme Court held at paragraph 39 that in deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of CPC, but the power to grant relief is not curtailed by the procedure envisaged in CPC. Paragraphs 39 and 40 are extracted below:

> *" **39.** In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of the CPC. At the same time, the power of the Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC.*
>
> ***40.** While it is true that the power under Section 9 of the Arbitration Act should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in the CPC, the technicalities of CPC cannot prevent the Court from securing the ends of justice. It is well settled that procedural safeguards, meant to advance the cause of justice cannot be interpreted in such manner, as would defeat justice."*

24. The above paragraphs indicate that the principles for granting interim order as provided in CPC cannot be given a go by, but the rigor of procedures prescribed in CPC need not be followed. Again, the Hon'ble Supreme Court at paragraph 49 held that after a *prima facie* case is made out, the mere technicality of absence of averments incorporating grounds for attachment before judgment under Order 38 Rule 5 CPC should

not deter the Court from passing an interim order under Section 9 of the Arbitration Act. The relevant part of paragraph 49 is extracted below:

> *"49. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC."*

25. Now, coming to the judgment of the Hon'ble Supreme Court in ***Sanghi Industries Limited's*** (1 supra), at para 4 it was held that unless and until the pre-conditions under Order 38 Rule 5 CPC are specified and unless there are specific allegations with cogent material and unless *prima facie* case, the Court is satisfied that the Appellant is likely to defeat the decree/Award, the interim order under Section 9 of the Arbitration Act may not be passed. The relevant portions at paragraphs 4 and 5 of the judgment are extracted below:

> ***"4.*** *Having heard learned counsel appearing on behalf of the respective parties and in the facts and circumstances of the case, more particularly, when the bank guarantees were already invoked and the amounts under the respective bank guarantees were already paid by the bank much prior to the Commercial Court passed the order under Section 9 of the Arbitration Act, 1996 and looking to the tenor of the order passed by the Commercial Court, it appears that the Commercial Court had passed the order under Section 9(ii)(e) of the Arbitration Act, 1996 to secure the amount in dispute, we*

*are of the opinion that unless and until the pre-conditions under Order XXXVIII Rule 5 of the CPC are satisfied and unless there are specific allegations with cogent material and unless prima-facie the Court is satisfied that the appellant is likely to defeat the decree/award that may be passed by the arbitrator by disposing of the properties and/or in any other manner, the Commercial Court could not have passed such an order in exercise of powers under Section 9 of the Arbitration Act, 1996. At this stage, it is required to be noted that even otherwise there are very serious disputes on the amount claimed by the rival parties, which are to be adjudicated upon in the proceedings before the arbitral tribunal.*

***5.*** *The order(s) which may be passed by the Commercial Court in an application under Section 9 of the Arbitration Act, 1996 is basically and mainly by way of interim measure. It may be true that in a given case if all the conditions of Order XXXVIII Rule 5 of the CPC are satisfied and the Commercial Court is satisfied on the conduct of opposite/opponent party that the opponent party 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/opponent party which may tantamount to any attempt on the part of the opponent/opposite party to defeat the award that may be passed in the arbitral proceedings, the Commercial Court may pass an appropriate order including the restraint order and/or any other appropriate order to secure the interest of the parties. However, unless and until the conditions mentioned in Order XXXVIII Rule 5 of the CPC are satisfied such an order could not have been passed by the Commercial Court which has been passed by the Commercial Court in the present case, which has been affirmed by the High Court."*

26. It is relevant to note that in ***Sanghi Industries Limited's*** case (1 supra), the interim order that was impugned therein was a direction to the Appellant therein to re-deposit the amount invoked vide bank guarantee. The interim order in that case was more in the nature of an interim mandatory injunction.

27. The commonality in both the judgments is that there should be a *prima facie* case and a possibility of erosion of asset value making the arbitral award nugatory. The only area of conflict is the reasoning in the ***Essar House Private Limited*** (3 supra) at paragraph 49 that even in the absence of necessary pleadings, the Court can exercise the power of attachment under Order 38 Rule 5 CPC.

28. The power of attachment under Order 38 Rule 5 CPC was explained in ***Raman Tech. & Process Engg. Co. v. Solanki Traders***[4] wherein it was held as a drastic and extraordinary power and that it should be used sparingly and strictly in accordance with the Rule.

29. The power of civil Court to pass interlocutory orders under Orders 38,39 and 40 CPC are provided in abridged form in Sections 9 and 17 of the Act, but the principles for grant of interim order remain constant.

30. Considering the drastic and extraordinary power of attachment, it would be quite odd to say that such a power can be exercised de hors the pleadings just because the language of

[4] 2008 (2) SCC 302

Section 9 of the Arbitration Act enables the civil Court to pass orders which are "just and convenient".

31. In this regard, it would be relevant to refer to the judgement in ***Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.***[5] It was held in that case that power to grant injunction and appointment of receiver under Section 9 of the Act should be in consonance with accepted principles for grant of interim order. The paragraph 11 thereof is extracted below:

> ***"11.*** *It is true that Section 9 of the Act speaks of the court by way of an interim measure passing an order for protection, for the preservation, interim custody or sale of any goods, which are the subject-matter of the arbitration agreement and such interim measure of protection as may appear to the court to be just and convenient.* ***The grant of an interim prohibitory injunction or an interim mandatory injunction are governed by well-known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was dehors the accepted principles that governed the grant of an interim injunction.*** *Same is the position regarding the appointment of a receiver since the section itself brings in the concept of "just and convenient" while speaking of passing any interim measure of protection. The concluding words of the section, "and the court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it" also suggest that the normal rules that govern the court in the grant of interim orders is not sought to be jettisoned by the provision.* ***Moreover, when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules***

[5] 2007 (2) SCC 125

> ***followed by that court would govern the exercise of power conferred by the Act.*** *On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under Section 9 of the Act."*

32. In this case, the Respondent No.1 at paragraphs 26(b), 29 and 30 of his application had specifically averred that the Appellant does not have any physical assets and may sell/alienate the iron ore lying at Vizag port if it is known to them that arbitration proceedings are being initiated and that the arbitration award would be rendered unfruitful. Paragraphs 26(b),29 and 30 of the application are extracted below:

> *"26(b) The 1st Respondent is a trader and from information available with the Petitioner, it appears that the 1st Respondent does not have any valuable/real assets, save and except cargoes traded by it. The Petitioner is aware that the 1st Respondent is the owner of 50,000 MTS of Iron Ore Fines (the* ***"Iron Ore****") which is currently lying at Vizag port. Apart from the Iron Ore, the Petitioner is not aware of any other cargo which is owned by the 1st Respondent. Thus, the Iron Ore at Vizag port is the only identifiable property/asset of the 1st Respondent situated within the jurisdiction of this Hon'ble Court. If the Iron Ore is permitted to be sold, alienated and/ or disposed off by the 1st Respondent, the only real/valuable asset belonging to the 1st Respondent will no longer be available to the Petitioner to execute any eventual award passed in its favour.*

*"29. The Petitioner submits that the reliefs sought for above be granted ex-parte in as much as if notice is provided to the 1st Respondent, the 1st Respondent may immediately sell and/ or alienate the Iron Ore. In that event, the present Petition as well as the SIAC arbitration will be rendered infructuous.*

*30. As soon as the 1st Respondent becomes aware that the asset which the Petitioner is seeking to attach through this petition is the Iron Ore lying at Vizag port, it may take positive steps to sell and/or alienate and / or transfer the stock in the name of a third party. If that happens this Petition and indeed the arbitration itself will be rendered infructuous. Thus, there is extreme urgency in the matter and the Petitioner submits that this is a fit case in which the Hon'ble Court ought to pass ex-parte orders."*

33. As there are necessary pleadings to the effect that there is a likelihood of erosion, diminution of assets and considering the urgency, this Court had passed an interim order on 27.06.2024 which reads as under:

"*In view of the prima facie case in favour of the petitioner for directing conditional order of attachment, this Court deems it fit to order accordingly.*

*Issue notice to 1st Respondent to furnish security in favour of the petitioner for sum of USD 2,423,404.58 within 48 hours of receipt of the notice failing which 50,000 WMT of Iron Ore Fines of the 1st Respondent currently lying at the plot of Orca Logistics Pvt. Ltd., 9-7-*

*40/7/2, Lakshmi Nagar Layout, Sivajipalem, Visakhapatnam, Andhra Pradesh be attached."*

34. Now that the first principle for grant of interim order of attachment i.e pleadings is established, the next question would be to see if the procedure is adhered to before ordering attachment. The Order 38 Rule 5 CPC contemplates a notice to the defendant to furnish security within a specified time, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security. The Order 38 Rule 5(3) CPC also provides for conditional attachment of the whole or part of the property so specified. Order 38 Rule 5(2) CPC provides an opportunity to the defendant to show cause the Court or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

35. The Order 38 Rule 5 CPC does not debar the Court to pass *ex parte* order of attachment if the Court is of the opinion that there is a requirement of doing so as the defendant might

dispose of the property in the interregnum. On attachment, the defendant can appear before the Court and show cause as to why attachment should be removed.

36. In this case, the interim order of the learned single Judge directing conditional attachment dated 27.06.2024 provides an opportunity to the Appellant to furnish security in favor of the Respondent No.1 for a sum of USD 2,423,404.58 within 48 hours of receiving of the notice, failing which 50,000 WMT iron ore fines were attached. Therefore, the learned single Judge adhered to the conventional principle of prima facie case, balance of convenience and adhered to the procedure prescribed.

37. Now coming to the sufficiency of prima facie case and balance of convenience. The undisputed fact is that the parties have entered into an agreement and 96% of the contract value was received on the basis of 'Fe' content in the cargo being more than 56%. The 'Fe" content in the cargo was checked again at the port of discharge as provided in the contract and the results showed that the 'Fe' content was 52.21%. The contract, as referred above, provides that the 'Fe' content at the port of unloading at China would be final.

38. As the test results of 'Fe' content in the cargo showed significant variation, Bureau Veritas (BV) was agreed to be the third umpire by the parties hereto for re-sampling and re-inspection and that the Bureau Veritas (BV) would issue certificate of inspection. The Inspection report of Bureau Veritas (BV) dated 30.4.2024 shows that the 'Fe' content was hovering between 52%-53%. Since two independent test reports i.e at the port of unloading and by Bureau Veritas (BV) show that the *'Fe'* content in the cargo is between 52%-53%, but the Appellant having received 96% of the contract value on the premise of 'Fe' content in the cargo being more than 56%, the claim of the Respondent No.1 cannot be brushed aside as their monies are with the appellant.

39. Though the Appellant contended that the net worth of the company is Rs.91 crores and is not a fly-by-night company, no physical assets or any other alternative security is provided either before the learned single Judge or before this Court. The plea of the Respondent No.1 in the application at paragraph 26(b) as extracted above that the appellant has no other asset than the iron ore attached appears not without any basis. In the absence of any alternative asset provided by the Appellant and

in the light of undisputed fact that the Appellant has received 96% of the contract value, this Court is of the opinion that interim protection should be given to Respondent No.1 (a company based in Hong Kong) so that the arbitral award if passed in favor of Respondent No.1 does not become unrealizable.

40. Therefore, this Court does not find any fault in the order dated 12.09.2024 passed by the learned single Judge, and the appeal is accordingly dismissed. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand closed.

**NINALA JAYASURYA, J**

**NYAPATHY VIJAY, J**

Date: 03.01.2025

Note: L.R. copy be marked.

KLP