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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION NO. 168 OF 2026

Elixiray Consulting Private Ltd … Petitioner
V/s.
Neblio Technologies Private Limited … Respondent

Mr. Dushaynt Yadav i/b Pooja Dongre, for Petitioner.

Mr. Rohaan Cama with Ms. Riya Narichania, Mr. Shreyas Lavekar, Ms. Alisha D souza, mr. Abhinav Naik Naware i/b Indus Law, for Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 24, 2026

P.C.:

1. The Petitioner’s claim for interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 is founded principally upon an alleged admission said to have been made by the Respondent in the proceedings before the National Company Law Tribunal. According to the Petitioner, in the reply filed before the NCLT, the Respondent had categorically admitted its liability to the extent of Rs. 37,38,150/-. On the basis of such alleged admission, the Petitioner seeks to contend that the amount is admitted and undisputed and, therefore, warrants protection by way of interim measures under Section 9 of the Act.

2. The learned Advocate appearing for the Respondent, however, has invited my attention to the judgment subsequently delivered by the NCLT on merits, after the Petitioner was afforded an opportunity of placing its case before the Tribunal. The said judgment assumes considerable significance since the alleged admission relied upon by the Petitioner cannot be examined in isolation from the findings ultimately recorded by the NCLT upon consideration of the dispute between the parties. In paragraph 4.6 of its judgment, the NCLT has recorded a categorical finding that there existed a real and genuine pre-existing dispute between the parties in relation to the Operational Creditor's claim concerning fraudulent data. The NCLT has further found that such dispute was supported by concrete and credible evidence. In paragraph 4.10, the NCLT has recorded a further categorical finding that the Operational Creditor had failed to establish the existence of a crystallized and undisputed operational debt exceeding the prescribed threshold under Section 4 of the Insolvency and Bankruptcy Code, 2016. These findings cannot be disregarded while considering the nature of the claim now sought to be protected under Section 9 of the Arbitration Act.

3. It is significant that although the judgment of the NCLT was delivered on 23 January 2024, the same was not disclosed or placed before this Court by the Petitioner. The existence of the said judgment came to be brought to the notice of this Court only when the Respondent placed a copy thereof on record. It is thereafter that the Petitioner has accepted the existence of the said judgment. The omission assumes significance because the judgment contains findings directly bearing upon the very foundation on which the present Section 9 Petition is founded. A party seeking discretionary interim relief is expected to place before the Court the complete factual position and cannot rely upon a particular statement or proceeding while withholding the subsequent adjudication which materially qualifies or affects the effect of such statement.

4. The jurisdiction under Section 9 of the Arbitration and Conciliation Act is discretionary in nature. The Court, while exercising such jurisdiction, is required to consider the entire factual position placed before it and the conduct of the parties. A party seeking equitable and discretionary interim protection is under an obligation to make a full and fair disclosure of all material facts. This obligation extends not merely to facts which support the claim for interim relief, but equally to facts which may operate against the grant of such relief. A material adjudication having a direct bearing upon the alleged admission and upon the existence of the underlying debt is plainly a fact which ought to have been disclosed to the Court.

5. In the present case, the foundation of the Petitioner's claim is the alleged admission of Rs. 37,38,150/- made before the NCLT. That alleged admission, however, cannot be treated as determinative of the Petitioner's entitlement when the subsequent judgment of the NCLT, rendered after hearing the parties, records a specific finding that a real and genuine pre-existing dispute existed and that the dispute concerning the alleged fraudulent data was supported by concrete and credible evidence. The NCLT has further held that the Operational Creditor failed to establish a crystallized and undisputed operational debt satisfying the statutory threshold. Therefore, the alleged admission, when considered in the context of the complete proceedings before the NCLT, does not establish an admitted and undisputed liability so as to justify the grant of interim protection under Section 9.

6. The Court exercising jurisdiction under Section 9 cannot proceed on a selective consideration of the material placed before it. The Court must examine whether the circumstances relied upon by the Petitioner disclose a sufficient basis for the extraordinary interim protection sought. In the present case, the very claim upon which the Petitioner seeks protection is subject to a serious dispute, and the existence of that dispute has already been noticed and recorded by the NCLT upon consideration of the material before it. The findings recorded by the NCLT materially weaken the Petitioner's contention that the amount of Rs. 37,38,150/- constitutes an admitted and undisputed liability. In such circumstances, the Petitioner has failed to establish the requisite basis for exercise of the discretionary jurisdiction under Section 9 of the Act.

7. For the aforesaid reasons, and having regard to the findings recorded by the NCLT, the alleged admission relied upon by the Petitioner cannot, by itself, furnish a sufficient basis for granting interim relief. The Petition, therefore, fails and is liable to be dismissed.

8. Hence, the Petition is dismissed.

(AMIT BORKAR, J.)