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

COMMERCIAL ARBITRATION PETITION NO. 398 OF 2025
WITH
CONTEMPT PETITION (L) NO.29255 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 398 OF 2025

Osterreichischer Lloyd Seereederei (Cyprus) Ltd. ....Petitioner
Versus
Victore Ships Pvt. Ltd. ....Respondent

WITH
INTERIM APPLICATION (L) NO. 28906 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 398 OF 2025

Victore Ships Pvt. Ltd. ....Applicant
IN THE MATTER BETWEEN
Osterreichischer Lloyd Seereederei (Cyprus) Ltd. ....Petitioner
Versus
Victore Ships Pvt. Ltd. ....Respondent

Mr. Prathamesh N. Kamat *a/w. Mr. Shiv Iyer, Ms. Ankita Sen, Ms. Arpeeta Panvalkar, Mr. Vishesh R. Kulkarni and Mr. Kayush Zaiwalla i/b Renata Partners, for Petitioner.*

Mr. Vishal Kanade *a/w. Ms. Prachiti Naik, Ms. Tanaya Patankar i/b Adv. Manish Rai, for Respondent.*

Ms. Laxmi Yadav, *Authorized Representative of Respondent.*

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CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: MARCH 10, 2026

JUDGEMENT:

Context and Factual Background:

1. This is a Petition filed under Section 9 ("***Section 9 Petition***") of the Arbitration and Conciliation Act, 1996 ("***the Act***") with the Petitioner, Osterreichischer Lloyd Seereederei (Cyprus) Limited ("***Petitioner***"), seeking interlocutory measures of protection, pending enforcement of a foreign arbitral award dated March 23, 2020 ("***Foreign Award***"), to secure the amount awarded in the sum of USD 269,105.08 ("***Award Amount***").

2. The Petitioner has parallelly filed Commercial Arbitration Petition No. 403 of 2025 under Sections 47 and 48 of the Act, seeking enforcement and execution of the said Foreign Award ("***Enforcement Petition***").

3. The fundamental opposition to the captioned Petition from the Respondent, Victore Ships Private Limited, ("***Respondent***") is premised on the ground that the jurisdiction under Section 9 is not available when a Petition under Part II of the Act has been initiated for enforcement of foreign awards. Since enforcement and execution are

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rolled up into one petition under Part II, it is contended by the Respondent that "enforcement" and "execution" are interchangeable terms and the approach to Section 9 of the Act would not be available. Since a foreign award is considered to be a decree for enforcement, the contention is that the Section 9 Court cannot be approached as conflicting views may emerge in the proceedings under Part II of the Act and under Section 9 of the Act.

Contentions of the Parties:

4. I have heard Mr. Prathamesh Kamat, Learned Advocate for the Petitioner and Mr. Vishal Kanade, Learned Advocate for the Respondent, and with their assistance examined the record and the judgements sought to be relied upon by them.

5. Mr. Kanade places reliance primarily on a decision of a Learned Single Judge passed in ***Centrient***[1] which holds that Section 9 proceedings would not lie once proceedings to execute an arbitral award have been filed. Mr. Kanade would submit that the jurisdiction of Section 9 can be invoked before commencement and during conduct of arbitral proceedings (subject of course to Section 17) but after the arbitral award is made, the approach under Section 9 would need to be

[1] *Centrient Pharmaceuticals India Pvt. Ltd. v. Hindustan Antibiotics Ltd. – 2019 SCC OnLine Bom 1614*

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before the same is enforced. Relying on judgements that declare that proceedings under Part II roll up recognition and enforcement into one, he would submit that the filing of a Petition for enforcement under Part II partake the character of execution proceedings and therefore the approach under Section 9 would be barred.

6. Mr. Kanade would rely on ***Fuerst Day Lawson***[2] and ***LMJ International***[3] to indicate that the proceedings under Part II being a composite one, it would not be proper to invoke Section 9 of the Act once the Court is presented with a Petition under Part II of the Act.

7. Mr. Kamat would counter this with reliance upon ***Heligo Charters***[4] to contend that this issue is already addressed by a Learned Division Bench of this Court and that ***Centrient*** is distinguishable on facts, since it not only relates to a domestic arbitral award but also was rendered in a situation where execution proceedings were underway. On the other hand, for Part II, the award is not automatically a decree but needs to be recognised which has to positively be granted, until which time, it would be appropriate to ensure that the award does not become a paper award.

[2] *Fuerst Day Lawson v. Jindal Exports Ltd. – (2001) 6 SCC 356*
[3] *LMJ International Ltd. v. Sleepwell Industries Company Ltd. – (2019) 5 SCC 302*
[4] *Heligo Charters Private Limited v. Aircon Feibars FZE, 2018 SCC OnLine Bom 1388*

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Analysis and Findings:

8. At the threshold, the opening portion of Section 9(1)of the Act may be noticed:

> *A party may, **before** or **during arbitral proceedings** or **at any time after** the making of the arbitral award **but before it is enforced in accordance with section 36**, apply to a court—*
>
> ***[Emphasis Supplied]***

9. Section 9 of the Act is contained in Part I of the Act which deals with domestic arbitral awards and therefore it would be appropriate to also extract Section 2(2) of the Act:

> *2(2) This Part shall apply where the place of arbitration is in India:*
>
> *Provided that **subject to an agreement to the contrary**, the **provisions of section 9**, 27, and clause (a) of subsection (1) and sub-section (3) of section 37 **shall also apply to** international commercial arbitration, even if the place of arbitration is outside India, and **an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act**.*
>
> ***[Emphasis Supplied]***

10. Therefore, in terms of Section 2(2), Section 9 would indeed apply to a foreign award but the short issue is whether it would continue to be available once a Petition under Part II is filed seeking recognition and enforcement of the foreign award.

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11. The judgements sought to be relied upon by Mr. Kamat, particularly the decision of the Learned Single Bench and the upholding judgement of the Learned Division Bench in the context of a foreign award in ***Heligo Charters***, dealt with a contention that there is no scope for interim measures being sought in respect of a foreign award unless the foreign award is put into execution.

12. The issue presented by Mr. Kanade is different in substance and nuance – the objection is that with the filing of a Petition having been made under Part II, the ability to invoke Section 9 has come to an end. To make this point, he relies on ***Centrient*** and draws a parallel between the filing of execution proceedings and filing of the Part II Petition. ***Centrient*** dealt with the phrase "*but before it is enforced in accordance with Section 36*" used in Section 9(1) of the Act in context of when a party can apply for interim reliefs to the Court. In that context, the provisions of Section 36 were also examined in ***Centrient*** to hold that once the period for challenge under Section 34 expires, the arbitral award becomes enforceable as if it were a decree. On facts, it was found that the award-creditor had actually initiated execution proceedings. Therefore, it was held that once an arbitral award becomes capable of enforcement as if it were a decree, and in fact steps to execute such

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decree had been initiated, the recourse to Section 9 of the Act would become unavailable.

13. Section 2(2) of the Act makes Section 9 applicable to international commercial arbitration even if the place of arbitration were outside India and the arbitral award made *is enforceable and recognised under Part II of the Act*. This plain provision should suffice to indicate that there can be no controversy at all. However, once Section 9 applies, how it would work in relation to foreign awards is the subject matter of dispute.

Section 36 and Part II Compared:

14. Against this backdrop, one must examine how to apply Section 9 to a foreign award by operation of Section 2(2) of the Act, and examine whether there are any differences between the provisions of Section 36 and the relevant provisions of Part II of the Act because Section 9 uses the phrase "*but before it is enforced in accordance with Section 36*".

15. Therefore, one has to examine the terms on which a foreign award is enforced to see if the temporal standard under Section 36 of the Act, in terms of timelines, would limit the period of operation of the

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jurisdiction under Section 9 in relation to foreign awards. In other words, it would be necessary to examine how a foreign award becomes a decree in India and whether the mere filing of a Part II Petition for recognition would constitute a bar for purposes of the phrase "*but before it is enforced*" used in Section 9, even if one could ignore the words "*in accordance with Section 36*" that follows thereafter in relation to foreign awards (to which Section 36 has no application).

16. The provisions of Section 36 read thus:

> *36. Enforcement.—*
>
> *(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*
>
> *(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*
>
> *(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*
>
> *Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money,*

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have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a Prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).]

[Emphasis Supplied]

17. In Part II, a few provisions are noteworthy and are extracted below:

46. When foreign award binding.—

Any foreign award which would be enforceable under this Chapter *shall* ***be treated as binding for all purposes*** *on the persons as between whom it was made, and may accordingly* ***be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India*** *and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.*

47. Evidence.—

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(1) ***The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court****—*

> *(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;*
>
> *(b) the original agreement for arbitration or a duly certified copy thereof; and*
>
> *(c) such evidence as may be necessary to prove that the award is a foreign award.*

(2) ***If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English*** *certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.*

Explanation. – *****

48. Conditions for enforcement of foreign awards.*—*

(1) ***Enforcement of a foreign award may be refused****, at the request of the party against whom it is invoked,* ***only if that party furnishes to the court proof that****—*

(a) to (d) *******

(e) ***the award has not yet become binding on the parties****, or has* ***been set aside or suspended by a competent authority of the country*** *in which, or under the law of which, that award was made.*

(2) ***Enforcement of an arbitral award may also be refused if*** *the Court finds that—*

> *(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or*

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> *(b) the enforcement of the award would be contrary to the public policy of India.*
>
> *Explanation.1 & 2 — ********
>
> *(3) **If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may**, if it considers it proper, adjourn the decision on the enforcement of the award and may also, **on the application of the party claiming enforcement of the award, order the other party to give suitable security**.*
>
> ***49. Enforcement of foreign awards.—***
>
> ***Where the Court is satisfied that the foreign award is enforceable** under this Chapter, **the award shall be deemed to be a decree of that Court**.*
>
> ***[Emphasis Supplied]***

18. A plain reading of the foregoing would show that the statutory scheme for treatment of arbitral awards under Part I as contained in Section 34 read with Section 36 entails the following:-

> *(a)* an arbitral award is to be treated by the Section 36 Court (the execution court) as a decree of a Court in India for enforcement under the Code of Civil Procedure, 1908 ("***CPC***") if the time period for challenge under Section 34 has expired without any challenge being made;
>
> *(b)* the filing of a challenge under Section 34 would not lead to an automatic stay – the Section 34 Court could grant a stay on the arbitral award subject to conditions and for

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reasons recorded in writing, bearing in mind principles for stay of a money decree under CPC;

(c) if it is found by the Section 34 Court *prima facie*, that the arbitration agreement or the arbitral award was induced or affected by fraud or corruption, it shall stay the arbitral award;

(d) the grounds of challenge under Section 34 are well known and declared in multiple declarations of the law, and those would govern a decision on the challenge under Section 34.

19. Part II is itself titled "*Enforcement of Certain Foreign Awards*". The provisions of Part II extracted above, entail the following:

(a) Section 46 provides that when a foreign award is enforceable under Chapter I of Part II of the Act, it shall be treated as binding for all purposes in India;

(b) Section 47 of the Act, provides for the evidence to be produced by "the party applying for enforcement of a foreign award" and stipulates what needs to be produced. In other words, the onus is on the party seeking enforcement to apply to the Court with the stipulated evidence to seek enforcement;

(c) Section 48(1) deals with the conditions that have to be proven by the party against whom the award is invoked, for

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refusal of enforcement of a foreign award. One of these conditions set out in Section 48(1)(e) is the foreign award not having become binding on the parties under the law of the country in which or of whose law, the foreign award was made;

(d) Under Section 48(3), if the award-debtor has applied for having the foreign award set aside or suspended before the appropriate competent authority abroad, the Part II Court may adjourn the "*decision on enforcement*" and may also impose security measures to protect the award-creditor; and

(e) Section 49 provides that a foreign award shall become enforceable upon the Part II Court being satisfied that the foreign award is enforceable under Chapter I of Part II of the Act i.e. it is at this stage that the provisions of Section 46 treating the foreign award as a decree in India for all purposes would be attracted.

20. The triggering point for enforcement under Section 36 is the status of a *decree* being conferred upon a domestic arbitral award, which occurs on the expiry of the period of challenge under Section 34 (if no challenge is mounted); or upon the Section 34 Court rejecting a challenge; or indeed upon a Section 34 Court refusing to grant any stay on the operation of the arbitral award.

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21. The triggering point for enforcement of a foreign award under Section 46 is when the foreign award becomes enforceable under Chapter I of Part II i.e. when, under Section 49 of the Act, the Part II Court is satisfied that the foreign award is enforceable. It is at this stage that the foreign award is conferred with the status of a *decree*.

22. Therefore, a domestic award automatically becomes a decree upon the period for challenge expiring or upon the challenge being rejected or upon refusal to stay the domestic award. For a foreign award, a positive affirmation has to be made by the Part II Court to declare the foreign award as being enforceable for it to become a decree to then be subjected to enforcement proceedings. Put differently, a further positive affirmation and validation is necessary for the Indian Courts to treat a foreign award as a decree, but for a domestic award, unless the Section 34 Court intercedes, the arbitral award is statutorily treated as a decree.

23. When the proviso to Section 2(2) was inserted with effect from October 23, 2015 to make Section 9 applicable to foreign awards, the existing provisions of Section 9 was re-numbered as Section 9(1) and new sub-sections were inserted. Parliament, in its wisdom did not include any reference to Part II to bring about a time limit for the

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operation of Section 9 insofar as it relates to foreign awards. The existing provision in Section 9, making a linkage to the period prior to enforcement under Section 36 was left undisturbed. This is apparently reasonable and logical because of the specific distinction between how domestic awards and foreign awards respectively become decrees under the Act.

24. There being no caveat to the operation of Section 9 even while Parliament was conscious in extending Section 9 to foreign awards, one cannot infer and presume a time limit to the operation of Section 9 lightly. The point canvassed by the Respondent is one of judicial inference based on the scheme of the Act and importing the scheme applicable to domestic awards to the scheme applicable to foreign awards. Specifically, the observations that Part II proceedings entail rolling up enforcement and execution in the same proceedings is heavily relied upon by Mr. Kanade.

25. However, to my mind, if at all one were to ignore the positive statutory choice of not imposing a time limit on the operation of Section 9 to a foreign award, one would need see if any absurd consequence would emerge by letting Section 9 run its full course even after a Part II Petition is filed. It is notable that under Part II, the foreign award has to

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pass muster through the prism of Section 48 after the award-creditor applies for enforcement with evidence stipulated under Section 47, before it can be recognised as a decree. This entails a positive affirmation of recognition. Until such time, without a specific prohibition, the plain language of Section 9 cannot be ignored by making extrapolations of the reference to Section 36 and reading into it an unstated reference to Part II.

26. Indeed, there could emerge a situation where the Section 9 Court is different from the Part II Court and there could be concurrent jurisdiction, but this by itself need not boggle the mind if it were a legislative scheme operating through the provisions of the Act. Indeed, the concurrent jurisdictions of Section 9 and Section 17 ran their course until Section 9(3) was inserted to provide that the Section 9 Court should ordinarily defer to the Section 17 jurisdiction exercised by the Arbitral Tribunal unless the remedy of Section 17 is not found efficacious. There being no such formulation in the statutory provisions to indicate that the concurrent jurisdictions of Section 9 and Part II must not operate, it is not for the Court to read into the scheme of the Act and refuse to exercise jurisdiction.

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27. Therefore, I am unable to agree with the contentions of the Respondent about the Section 9 Court having no jurisdiction once a Petition for recognition under Part II is filed. The Petition filed under Part II is first and foremost a petition for recognition and thereafter, without the need for another fresh set of proceedings being filed, upon the foreign award being conferred with the status of a decree under Section 49 of the Act, the proceedings would stand translated into execution proceedings. At least until that stage, it would be clear that even the submissions of schematic anomaly cannot be countenanced. It is after the stage at which the foreign award becomes a decree of an Indian Court that the words "*but before it is enforced in accordance with section 36*" used in Section 9(1) of the Act would present any basis for the Section 9 Court to refrain from entertaining prayers for any protective measures, since at that stage execution proceedings would have commenced, without the need to file a new set of proceedings.

28. Therefore, the observations by the Supreme Court in ***Fuerst Day Lawson***[5] and ***LMJ International***[6] would not be of relevance to denude the Section 9 Court of jurisdiction to protect the creditor of the foreign award from dissipation of assets and jeopardy to the assets of the award-debtor. This is why the larger legislative purpose of Section 9

[5] *Fuerst Day Lawson v. Jindal Exports Ltd, (2001) 6 SCC 356*
[6] *LMJ International Ltd V. Sleepwell Industries Company Ltd, (2019) 5 SCC 302*

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i.e. to protect the award-creditor, by indicating that jurisdiction is available even after making of an arbitral award, and the explicit scope of Section 2(2) i.e. to extend the scope of Section 9 to foreign award even after such awards are recognised in India, cannot be brushed aside and ignored.

29. For the aforesaid reasons, the objection to jurisdiction by the Respondent is without merit and is dismissed. There being no challenge to the merits of the Foreign Award, the same being a money decree, it would only be appropriate to grant protection to the Petitioner in the form of a direction to secure the amount awarded. In any case, since the Enforcement Petition has been filed, hearing of the same is expedited and the same shall be listed within two weeks of the upload of this judgement on this Court's website.

30. In the result, the following order would meet the ends of justice:

> *(a)* The Respondent is directed to deposit a sum of USD 269,105.08 in its Indian Rupee equivalent at the value of the USD-INR exchange rate as of today, with the Registry of this Court within a period of four weeks from today;
>
> *(b)* Pending such deposit, the Respondent is prohibited from selling, disposing, alienating, encumbering or creating any

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third-party interests in relation to the movable and immovable property owned by the Respondent save and except for generating proceeds of such disposal to make the deposit directed above;

(c) The Respondent shall disclose on affidavit, as per Exhibit-V to the Petition, within two weeks of the upload of this judgement on the Court's website, a detailed list of the Respondent's assets, including: (i) all its Bank Accounts; (ii) all the Assets of the Respondent; (iii) Assets sold by the Respondent in the last two years and the documents/deeds of sale; (iv) Detailed list of all creditors and debtors of the Respondent Company as on the date of hearing or such other date as this Hon'ble Court deems fit, (v) Detailed list of all legal proceedings including Winding-Up proceedings pending against the Respondent Company; (vi) Identity of all assets that are encumbered with full details of encumbrance including list of the mortgage/charge lenders.

31. With the aforesaid directions, the Section 9 Petition is ***disposed of***. The Part II Petition shall be listed two weeks from today.

32. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

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