

## India Infoline Ltd. Vs Central Business Services Ltd.

**Court:** Calcutta High Court

**Date of Decision:** June 11, 2014

**Citation:** (2014) 4 WBLR 818

**Hon'ble Judges:** Indra Prasanna Mukerji, J

**Bench:** Single Bench

**Advocate:** A. Roy, Advocate for the Appellant; A. Mitra, J. Chowdhury, S. Roy Chowdhury and A. Sardar, Advocate for the Respondent

### Judgement

Indra Prasanna Mukerji, J.

By this application, the petitioner Central Business Services Ltd. invokes the principles of law laid down by the

Hon'ble Supreme Court in M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd., and in a subsequent judgment in Firm Ashok Traders and

Another etc. Vs. Gurumukh Das Saluja and Others etc., . They seek dismissal of the Section 9 application preferred by the India Infoline Ltd. and

an order for making over to them the entire deposit made pursuant to an order passed in that application, lying with the Joint Receivers. In the

1999 case, the Hon'ble Supreme Court opined as follows:

20. 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 case, be sufficient to establish the manifest intention to have the dispute referred to 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 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.

2. In the 2004 case it laid down the following dictum:

The party having succeeded in securing an interim measure of protection before arbitral proceedings cannot afford to sit and sleep over the relief,

conveniently forgetting the "proximately contemplated" or "manifestly intended" arbitral proceedings itself. If arbitral proceedings are not

commenced within a reasonable time of an order under Section 9, the relationship between the order under Section 9 and the arbitral proceedings

would stand snapped and the relief allowed to the party shall cease to be an order made "before" i.e. in contemplation of arbitral proceedings.

3. What has happened in this case is that after obtaining an order under Section 9 of the said Act, India Infoline Ltd. did not take any steps to set

in motion the arbitration clause or to take steps in Court for appointment of an arbitrator.

4. The order in the Section 9 application appointed the Advocates for the parties as Joint Receivers. The said order is dated 17th August, 2010.

The claim of Central Business Services Ltd. was for enhanced rent was payable by India Infoline Ltd. to them from April 2010 till March 2011.

India Infoline Ltd. vacated the premises after 31st March, 2011. This claim to enhance the rent was of course, disputed by India Infoline Ltd. In

those circumstances, the Court appointed Joint Receivers being Advocates on record for the petitioners with whom India Infoline Ltd. was

directed to deposit the differential rent/charges etc.

5. Central Business Services Ltd. filed the Section 11 application where this Court appointed an arbitrator.

6. The contention of Mr. Mitra, learned senior Advocate, is that since India Infoline Ltd. did not take steps to commence arbitration, it was in

breach of its undertaking to Court in terms of the aforesaid decisions of the Hon"ble Supreme Court. Hence, this company should not be given any

benefit of the order in the Section 9 application. It ought to be dismissed with variation of the order dated 17th August, 2010 so that the entire

deposit is made over by the Joint Receivers to Central Business Services Ltd.

7. On a reading of the principles of law laid down by the Hon"ble Supreme Court in the above decisions, in my opinion, this kind of a situation was

not in the contemplation of the Court.

8. The situation which has arisen here is that the respondent in the Section 9 application has filed a proceeding under Section 11 of the Act,

although the petitioner did not.

9. My pronouncement of the law is that upon the respondent in a Section 9 application filing the Section 11 application and the petitioner not filing

it, the requirement of filing of a Section 11 application or commencement of arbitration to justify an order in a Section 9 application is fulfilled. This

is so because in a suit, a plaint must be filed in Court before the interim application. Section 9 permits the cart to be attached before the horse or an

interim application to be filed before commencement of the arbitral reference. All that the Court is to ensure is that the main proceeding of

reference is started within reasonable time of the Section 9 proceeding. It does not matter who starts it.

10. Another point raised by Mr. Mitra is that in the Section 11 application, India Infoline Ltd. vigorously opposed the existence of the arbitration

clause to cover the entire disputes between the parties. This is another reason why the Section 9 application should be dismissed and the interim

order modified.

11. I do not think it proper to set the Section 9 application and the order passed therein at naught.

12. But the above circumstances and the conduct of the parties do show that Central Business Services Ltd. has a strong prima facie case for the

money and further the money in deposit with the Joint Receivers should be handed over to Central Business Services Ltd. to be kept by this

company in a separate interest bearing account upon intimation to India Infoline Ltd. until further orders of this Court or until an award is passed in

the matter.

13. It is expected that such deposit should be made over to Central Business Services Ltd., by the Joint Receivers by 15th July, 2014.

14. I order accordingly. I do observe that steps be taken by the parties so that arbitration is proceeded with and an award passed as expeditiously

as possible. This application is accordingly disposed of. The Joint Receivers stand discharged.