



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (L) NO.399 OF 2026

M/s. Morning Star Shipping And
Trading Pvt Ltd.

...Petitioner

V/s.

Vhyaghreshwar Minerals Industrial
Producer Co-operative Society Limited

...Respondent

Mr. Rajiv Chavan, *Senior Advocate with Mr. Sanjeev Singh, Ms. Sonam Pandey, Ms. Asmi Desai & Mr. Siddharth Mishra i/b. Mr. Ritesh A. Singh for the Petitioner.*

Mr. Mayur Khandeparkar *with Mr. H.V.Kode and Ms. J.S. Karnik for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 17 FEBRUARY 2026.

PRONOUNCED ON: 23 FEBRUARY 2026.

JUDGMENT:

1) The Petitioner has filed this Petition under Section 9 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking interim measures before commencement of the arbitral proceedings. Petitioner seeks interim measures for restraining Respondent from interfering with its lawful business and operations relating to raising, excavating, processing, transporting and selling Bauxite Ore from the Mahal Mirya Bauxite Mine in accordance with the Agreement/Deed for Raising and Selling of Bauxite Ore dated 12 January 2021. The Petitioner also seeks

interim measures to restrain the Respondent from obstructing, preventing or interfering with its right to remove, transport, store or dispose of the excavated Bauxite Ore. The Petitioner also seeks direction against the Respondent to provide the User ID and Password for Integrated Lease Management System (ILMS) Portal required for issuance of Transit Passes for transport of Bauxite Ore from the mine site to purchasers/ end users. The Petitioner also seeks direction to Respondent to comply with all requisite statutory and regulatory requirements *inter-alia* in respect of GST registration for ensuring lawful movement, sale and invoicing of the Bauxite ore.

2) The Petitioner is a private limited company engaged in the business of mining related operations. The Respondent is a co-operative society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and carries on activities connected with mineral extractions and mining operations. The Respondent represented to the Petitioner that it is a lawful holder of valid mining lease in respect of Mahal Mirya Bauxite Mine admeasuring approximately 79.981 hectares situated at village Mahal Mirya, Taluka-Pen, Dist. Raigad. According to the Petitioner, its Director and Chairman of Respondent-Society were known to each other and Petitioner was already engaged in the activities of purchase and sale of Bauxite ore from the Respondent. The Petitioner and the Respondent entered into the Agreement for Raising and Selling of Bauxite Ore dated 12 January 2021, under which the Respondent permitted and authorized the Petitioner to raise and sell Bauxite Ore from the subject mine to the extent of 1,50,000 Metric tons Bauxite Ore per annum. The duration of

the Agreement was from the date of signing thereof till 13 December 2028. The Petitioner agreed to pay to Respondent a sum of Rs. 3,00,00,000/- out of which Rs.2,00,00,000/- was paid on signing of the agreement and Rs. 1,00,00,000/- was payable within 90 days. It was agreed that out of the said sum of Rs. 3 crores, Rs. 1.50 crores were payable as goodwill non-refundable amount and Rs. 1.50 crores were to be adjusted against royalty payable under the Agreement. Petitioner agreed to pay royalty at the rate of Rs.80 per MT plus applicable GST for Bauxite Ore extracted from the mine. The Agreement provided for adjustment of advance amount of Rs. 1.50 crores from the royalty payable by the Petitioner.

3) The Petitioner states that the Chairman of Respondent-Society, Mr. Ashok Patil represented to the Petitioner that his own company M/s AGP Minechem Pvt. Ltd. was fully capable of raising, excavating and extracting the Bauxite Ore from the subject Mine and accordingly the Petitioner entered into Agreement with M/s AGP Minechem Pvt. Ltd. (**AGP Minchem**) for excavating of 1,50,000 metric ton Bauxite Ore per annum. The Petitioner states that the Respondent made Petitioner execute an agreement with Ms. Rekha Godbole, Managing Committee Member of the Respondent under which she was to be compensated at the rate of Rs. 10 per MT Bauxite Ore raised and extracted from the subject Mine. The Petitioner claims that it has paid the entire agreement amount of Rs. 3 crores to the Respondent. According to the Petitioner, it was mutually decided that Rs. 40 out of royalty rate of Rs. 80 per MT would be deducted and adjusted towards the advance amount of Rs. 1.50 crores paid by the Petitioner. That subsequently, it

was decided to adjust the entire royalty at the rate of Rs. 80 per MT towards the advance paid by the Petitioner.

4) Petitioner claims that it later discovered that Respondent had approval for mining plan permitting extraction of only 98,004 MT per annum and not 1,50,000 MT per annum. The Petitioner thereafter engaged with the technical consultants for the purpose of enhancing and revising the mining plan for improving the approved capacity to 1,50,000 MT per annum. During the course, the Petitioner was informed that a Bank Guarantee was mandatory for approval of the enhanced mining capacity. That though the responsibility of submitting Bank Guarantee was on the Respondent, Petitioner in good faith remitted amount of Rs. 20,00,000/- to the Respondent for furnishing the Bank Guarantee. According to the Petitioner the Agreement was executed by misrepresentation of mining capacity of 1,50,000/- MT per annum and on account of actual reduced approved capacity of only 98,004 MT per annum, the Petitioner could not excavate Bauxite Ore of desired volume so as to justify payment of the royalty at the rate of Rs. 80 per MT. Petitioner claims to have suffered quantified loss of Rs. 1,69,58,904.11/- calculated at margin of Rs. 200 per metric ton. The Petitioner also claims that it has also suffered loss on account of Respondent's failure to deposit the GST collected from it.

5) The Respondent served the Petitioner with notice dated 18 November 2025 terminating the Agreement on ground of failure to pay sum of Rs. 20,00,000/-, delay in payment of royalties etc. Petitioner replied to the termination notice on 4 December 2025. According to the

Petitioner the Respondent changed and blocked the User ID and Password of ILMS Portal and thereby prevented the Petitioner from issuing Transit Passes, thereby obstructing transportation, sale and movement of the Bauxite Ore. In the above backdrop, Petitioner has filed the present Petition seeking interim measures in following terms:

34. THE CLAIMANT THEREFORE PRAYS THAT;

- a) Pending the hearing and final disposal of the arbitration proceedings and until the execution of the arbitral award that may be passed therein, restrain the Respondents, their office bearers, committee members, agents, servants, employees, assignees, transporters, contractors, or any other persons claiming through or under them, by an order and injunction of this Hon'ble Court, from directly or indirectly interfering in any manner whatsoever with the lawful business and operations of the Petitioner relating to raising, excavating, processing, transporting, and selling bauxite ore from Mahal Mirya Bauxite Mine, admeasuring approximately 79.981 hectares, situated at Village Mahal Mirya, Taluka and District Raigad, Maharashtra, strictly in terms of the Agreement/Deed for Raising and Selling of Bauxite dated 12th January 2021, including interference with the Petitioner's agents, servants, employees, transporters, contractors, or any persons acting for and on behalf of the Petitioner.
- b) Pending the hearing and final disposal of the arbitration proceedings, restrain the Respondents, their agents, servants, employees, assignees, or any persons claiming through or under them, by an order and injunction, from obstructing, preventing, or interfering with the Petitioner's right to remove, transport, store, or dispose of the excavated bauxite ore, finished material, overburden, or any other raw material already raised and lying at the mine site, or from interfering with the continuation of mining-related operations already commenced.
- c) Pending the hearing and final disposal of the arbitration proceedings, direct the Respondents, in the interest of justice, equity, and smooth conduct of mining operations, to forthwith provide and/or activate the User ID and Password for the Integrated Lease Management System (ILMS) portal, which is mandatorily required for issuance of Transit Passes for transportation of bauxite ore from the mine site to purchasers/end users, and further direct the Respondents to ensure uninterrupted, continuous, and future

access to the ILMS portal, so as to prevent any operational or financial loss to the Petitioner.

d) Direct the Respondents to comply with all requisite statutory and regulatory requirements, including but not limited to providing and/or facilitating the GST registration details/GST number, and taking all consequential steps necessary to make the GST framework operational for the mining operations undertaken by the Petitioner, so as to ensure lawful movement, sale, and invoicing of bauxite ore.

e) Grant ad-interim reliefs in terms of prayers (a) to (d) above.

f) Award costs of the present petition to the Petitioner.

g) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

6) The Respondent has appeared in the Petition and filed affidavit-in-reply opposing the same. The Petitioner has filed rejoinder, to which the Respondent has filed sur-rejoinder. Since the pleadings in the Petition are complete, the same is taken up for hearing and final disposal.

7) Mr. Chavan, the learned Senior Advocate appearing for Petitioner submits that the Respondent has erroneously terminated the Agreement on the false pretext and that the reason for termination is actually to enable AGP Minechem to perform the contract of excavation of Bauxite Ore for the remainder period. That AGP Minechem is a company of chairman of Respondent-Society. That the termination is effected to remove the Petitioner and for ensuring direct contractual relationship of Petitioner with AGP Minechem. That after Petitioner's termination, the contract is awarded to AGP Minechem.

8) Mr. Chavan further submits that the Petitioner had paid the entire amount of Rs. 3 crores under the agreement to the Respondent. That nothing is due and payable on the part of the Petitioner to the Respondent. That as per own statement of the Respondent, an amount of Rs. 76,03,366/- is actually due and payable by Respondent to the Petitioner. That the entire allegation of delayed payment of royalty is false as parties agreed for adjustment of the entire amount of royalty against the advance payment of Rs. 1.5 crores. That the allegation of nonpayment of amount of Rs. 20,00,000/- is factually incorrect as Petitioner has completed payment of entire amount of Rs. 3 crores as per the Agreement. He submits that clause 23 of the Agreement provides for issuance of notice of 3 months before the termination, which is not issued by the Respondent. That the contract could be terminated only in the event of Petitioner indulging in illegal mining or failure to pay royalty to the Respondent. That both the eventualities have not occurred in the present case. That therefore the termination is illegal.

9) Mr. Chavan further submits that the Bauxite Ore worth Rs. 5 crores, which is already excavated by the Petitioner, is lying at the mine site and the Petitioner is being prevented for transporting and selling the same. That the said extracted Bauxite Ore belongs to the Petitioner and Respondent's new contractor (i.e. Respondent's Chairman) is actually transporting and selling the same. He further submits that grant of urgent interim measures is necessary to preserve the subject matter of arbitration. He submits that since the termination of the agreement is wholly illegal, Respondent cannot be permitted to

excavate the Ore through the company belonging to its chairman. That the goodwill charges of Rs. 1.5 crores are paid by the Petitioner to Respondent under a hope that the Petitioner would be entitled to extract the Ore from the mine site up to 13 December 2028. That the Respondent cannot terminate the contract and retain the goodwill charges. That Respondent has already collected advance royalty of Rs. 1.50 crores and more than 50% of the said advance royalty amount is yet to be adjusted against Petitioner's liability to pay royalty to the Respondent. He prays for grant of interim measures as sought for in the Petition.

10) Mr. Khandeparkar, the learned counsel appearing for the Respondent opposes the Petition contending that grant of interim measures in favour of the Petitioner is not warranted considering passage of long time after termination notice dated 18 November 2025. He submits that the new contractor, who is engaged vide Agreement dated 24 November 2025, has already commenced the operations at the site from 24 November 2025. That the new contractor is not impleaded to the petition and grant of any interim measures would directly affect the interest of the said contractor. Mr. Khandeparkar would submit that payment of royalty within stipulated time was a material term of the contract. Inviting my attention to para 6 of the Termination Notice, he would submit that Petitioner always delayed payment of the royalty and has failed to pay royalty after 31 January 2023. That Petitioner has also not paid amount of Rs. 20,00,000/- towards initially agreed amount of Rs. 1.50 crores towards advance royalty. That the concept of deduction from advance royalty could commence only after Petitioner made full

payment of Rs. 1,50,00,000/-. That since full advance amount of royalty is not paid, Petitioner is not entitled for adjustment of royalty. He further submits that Petitioner was expected to extract 1,50,000 MT of Bauxite Ore per annum. As against expected extraction quantity of 6,00,000 MT, Petitioner has extracted only 2,74,789.502 MT Bauxite Ore from 2021 till date. That Petitioner itself has terminated the contract with its sub-contractor alleging shortfall in extraction and that therefore shortfall is an admitted position. That Respondent is unable to recover the full mining potential from the Mine on account of failure on the part of the Petitioner to extract even half of mining potential. That Petitioner has not sought stay on Termination Notice. That the Respondent has claims against the Petitioner. That Petitioner has already invoked arbitration clause vide notice dated 26 December 2025. That Petitioner has failed to submit Bank Guarantee required for the purpose of enhancement of mining capacity to 1.50 lakh MT per annum in violation of contractual stipulations. That Petitioner has been repeatedly given notices from 10 June 2025 and that the ground of failure to issue three months' prior notice is baseless.

11) Mr. Khandeparkar further submits that the claim of Respondent of Bauxite Ore worth 5 crores lying at the site is entirely fallacious as Petitioner's own statement issued to its sub-contractor shows extraction of only 276.19 and 15,239.11 metric tons in April and May 2025 respectively and even if the entire quantity (15,515 MT) is said to be lying at the site, the value thereof would not exceed Rs. 8 lakh considering the average margin indicated by the Petitioner of Rs. 200

per MT. Mr. Khandeparkar would accordingly pray for dismissal of the Petition.

12) Rival contentions of the parties now fall for my consideration.

13) The disputes and differences between the parties have arisen out of Agreement for Raising and Selling Bauxite Ore dated 12 January 2021, under which the Respondent had granted to the Petitioner license to extract maximum quantity of 1,50,000/- MT per year Bauxite Ore from the Mine site for period upto 13 December 2028 on payment of royalty at the rate of Rs. 80 per metric ton + GST. The Agreement provided for payment of sum of Rs.3,00,00,000/- by Petitioner to the Respondent, out of which, Rs. 1.50 crores was for goodwill of the Respondent and was not refundable whereas the balance amount of Rs. 1.50 crores was towards advance royalty, which was to be adjusted as per clause 5 of the Agreement. After adjusting the royalty against advance, the Petitioner was required to pay to the Respondent royalty on or before 7th day of each month. The relevant Clause Nos.1, 2, 5, 6, 7, 10, 20, 22 and 23 in the agreement read thus.

1. The duration of this agreement is for a period commencing from signing of this agreement to 13 December 2028.

2. The CONTRACTOR shall extract and raise a maximum quantity of 1,50,000MT per year as per Environmental permission. However, in the event of shortfall in the extraction and raising of the Bauxite ore on the part of the CONTRACTORS, the MINE OWNER shall be eligible for the royalty equivalent to excavated/mined or under this contract. This payment will be made on or before 15 June of every year before the next season starts.

5.The CONTRACTOR agrees to pay MINE OWNER sum of Rs. 3 Crs (Rs. Three Crore only as per below understanding: -

I. Rs. 2Crs on signing of agreement, paid as per below -

- a. Through RTGS dated on 10.12.2020 amounting to Rs.9,00,000/-
- b. Through IMPS dated on 10.12.2020 amounting to Rs.1,00,000/-
- c. Through RTGS dated on 18.12.2020 amounting to Rs.1,00,00,000/-
- d. Through RTGS dated on 18.12.2020 amounting to Rs.60,00,000/-
- e. Through RTGS dated on 24.12.2020 amounting to Rs.10,00,000/-
- f. Through NEFT dated on 11.01.2021 amounting to Rs.20,00,000/-

II. Rs. 1 Cr within 90 days of signing of agreement.

It is further agreed that Rs. 1.5 Crs will be MINE OWNER GOODWILL (non – refundable) and balance Rs. 1.5 Crs will be adjustable against MINE OWNER ROYALTY. The balance adjustment in MINE OWNER ROYALTY from date of 3 er. complete Payment will be as below: -

- I. During First year/ season, Rs.10 lakhs will be deducted.
- II. During Second year/ season, Rs. 20 lakhs will be deducted.
- III. During Third year/ season, Rs. 20 lakhs will be deducted.
- IV. During Fourth year/ season, Rs. 20 lakhs will be deducted.
- V. During Fifth year/ season, Rs. 20 lakhs will be deducted.
- VI. During Sixth year/ season, Rs. 20 lakhs will be deducted.
- VII. During Seventh year/ season, Rs. 20 lakhs will be deducted.
- VIII. During Eight year/ season, Rs. 20 lakhs will be deducted.

6. The MINE OWNER's Royalty payable under this contract by the CONTRACTOR shall be Rs. 80 per metric ton plus GST / taxes at actual for the Bauxite ore extracted from the said mine. The minimum guarantee of yearly Mine owner royalty will be equal to the quantity approved in the Environmental Clearance certificate or equivalent to excavated / mined ore. The monthly MINE OWNER Royalty amount for current month will be paid in coming month against supporting tax invoice on or before 7th of every month. Rs. 20,00,000 on signing of agreement, paid as per below -

- I. Through NEFT dated on 11.01.2021 amounting to Rs. 10,00,000/- in advance against MINE OWNER Royalty.
- II. Through NEFT dated on 11.01.2021 amounting to Rs. 10,00,000/- in against Government Royalty.

7. All the taxes like Government royalty, cess, dead rent, etc., in connection with or regarding the raising of Bauxite ore for carrying out this agreement shall be paid by the MINE OWNER through

assistance from CONTRACTOR, The Government Royalty, DMF NMET & TCSas on date payable to Mine Owner through Contractor will be Rs. 110 pes metric ton for the Bauxite ore extracted from the said mine. In case there is difference in royalty either increase or decrease will be paid or debited to Mine Owner from time to time on submission of proof of revised royalty rates. The MINE OWNER will timely raise invoice on CONTRACTOR for the Government Royalty amount paid from time to time. It will be Duty of the contractor to see that there is no default or arrears payment of Government dues. Needles to state that the amount paid to Government statutory authority is additional separate/Independent to the Royalty paid to the mine owner by the contractor.

10. All the Bauxite ore to be extracted in the said mine shall solely remain property of the CONTRACTOR as per this Agreement with MINE OWNER and Subject to Clause no. 2 &7.

20. The MINE OWNER assures the CONTRACTOR that they will do or cause to be done all the formalities that may be required to be done for the smooth operation of this agreement as also the said mines for the sale of the product of the said mine. The MINE OWNER shall also do or cause to be done all Government formalities, filling of necessary documents with the concerned Government departments, filling of returns, further Environmental Clearance up to 13.12.2028, furnishing information from time to time at the cost of CONTRACTOR, etc the MINE OWNER has also assured that he will give application for sale permits duly signed to the CONTRACTORS or their representatives as and when requested by them.

22. If at any time any dispute or question arises between the parties touching the meaning, construction, or effect of this Agreement or of any clause or thing herein contained of regarding the respective liabilities and rights under this Agreement, then every such dispute or question except where specifically provided shall be referred to arbitration, as per the provisions of the Arbitration and Conciliation Act 1996 as amended from time to time and for the time being in force. The place of arbitration or sitting shall be at Mumbai.

23. This Agreement can only be terminated if the CONTRACTOR has done any illegal mining or fails to pay MINE OWNER royalty on timely basis. The notice period will be for 3 months and after settling the account by the MINE OWNER with CONTRACTOR on account of any money or advance received from time to time under this Agreement.

14) Under clause 10 of the Agreement, the extracted Bauxite Ore was the property of Petitioner, who was entitled to sale the same in the market. Respondent's entitlement was only to the extent of receipt of royalty at agreed rate of Rs. 80 per metric ton in addition to goodwill amount of Rs. 1.50 crore initially.

15) Petitioner claims that the Agreement was executed on a misrepresentation by the Petitioner that it had the approved limit of 1,50,000 MT per annum, which actually turned out to be only 98,004 MT per annum. On the other hand, it is Respondent's case that the mining plan approved was available upto the limit of 1,50,000/- MT per annum and only environmental clearance was required to be obtained in respect of the entire limit of 1,50,000 MT per annum on submission of a bank guarantee. Respondent accuses Petitioner of not submitting the bank guarantee, resulting in non-grant of environmental clearance in respect of the entire approved mining limit of 1,50,000 Mt per annum. However, it is not necessary to delve deeper into this aspect as the same is not really relevant to decide the issue of interim measures.

16) There is no dispute to the position that the Petitioner had engaged the sub-contractor named AGP Minechem, who was actually raising and extracting the Bauxite Ore from the mining site. Petitioner was apparently selling the raised and extracted ore by AGP Minechem in the market. According to the Petitioner itself, AGP Minechem did not extract Bauxite Ore of expected quantity of 1,50,000 MT per year and there was shortfall every year, resulting in total shortfall quantity of 4,20,028 MT during the years 2021 to 2025. This is reflected in

Petitioner's notice to AGP Minechem issued on 12 December 2025. However, it appears that the Agreement between Petitioner and Respondent did not provide for any minimum quantity of Bauxite Ore which was expected to be extracted. Clause 2 of the Agreement provided for 'maximum' quantity and not 'minimum' quantity of Bauxite Ore. The Respondent, on the other hand, contends that it is unable to receive the expected amount of royalty on account of gross under-extraction by the Petitioner. Petitioner has sought to highlight that the Respondent itself is responsible for under-extraction as the sub-contractor AGP Minechem is the company of Respondent Society's chairman. Again, this aspect is not relevant at this stage for deciding Petitioner's entitlement for interim measures.

17) Petitioner's contract has been terminated by the Respondent vide notice dated 18 November 2025. There are multiple reasons cited in the notice for termination (i) failure to pay amount of Rs. 20,00,000/- out of agreed sum of Rs. 3 crores. (ii) delay in payment of royalty, (iii) under-extraction of Bauxite Ore (iv) non-payment of royalty (v) failure to submit shortfall bank guarantee of Rs. 26,98,300/- to the Indian Bureau of Mines, (vi) engagement in malpractices and cheating of third parties by taking advances from them and not supplying them the agreed supply of cement grade Bauxite Ore from the mine, (vii) default in payment to AGP Minechem.

18) Respondent has contended that Petitioner has failed to pay the initial agreed amount of Rs. 1.50 + 1.50 = 3 Cr. and that there is short payment of Rs. 20 lakh. On the other hand, Petitioner contends that the

whole amount of Rs. 3 crores. is paid by it. There is thus some degree of dispute between the parties on the issue of payment of the entire initial amount of Rs. 3 crores. Mr. Khandeparkar has contended that the arrangement for adjustment of royalty against advance would kick-in only after the entire amount of Rs. 3 crores. is paid. Prima facie, the contention appears to be against the records and also contrary to the conduct of parties. There is Respondent's document on record (*to which reference is made in latter part of the order*) which seems to suggest adjustment of royalties by the Respondent. Again at this stage, it is not necessary to conduct detailed factual inquiry into that aspect.

19) So far as the allegation of delay in payment of royalty is concerned, the chart in paragraph 6 of the Termination Notice depicts delay in making payment of royalties on various dates. The chart further depicts that beyond 31 January 2023, the Petitioner has not paid any royalty to the Respondent. Paragraph 7 of the Termination Notice indicates that Rs. 1,05,79,535/- is due and payable to the Respondent towards extracted Ore. This is sought to be explained by Mr. Chavan by contending that initially, parties had agreed to adjust royalty at the rate of Rs. 40 per MT from the advance amount (of Rs. 1.50 crores), which was subsequently raised to Rs. 80 per MT and this is why, parties were making adjustment against the advanced royalty paid. Mr. Chavan has accordingly submitted that nothing is payable by the Petitioner to Respondent towards royalty. Mr. Chavan has strenuously relied on the statement shared by Respondent's chairman Mr. Ashok Patil on 15 May 2025 in support of his plea of adjustment of entire royalty of Rs. 80 per MT and contends that an amount of Rs. 76,03,366/- is still available

with the Respondent towards advance royalty. There appears to be some discrepancy between the statement shared by Mr. Patil and the contractual terms. While Mr. Patil's statement does seem to suggest adjustment of royalties initially @ Rs. 40 per MT and later @ Rs. 80 per MT, clause 5 (II) of the Agreement indicates that the permissible adjustment was only Rs. 10 lakh for first year and Rs. 20 lakh for each of the year from second year onwards. The Agreement provided for adjustment of entire advance royalty of Rs. 1.50 crore during the 8-year contract period. Mr. Chavan submits that the adjustment has taken place as per the oral agreement between the parties. As of now, Mr. Chavan is unable to point out any correspondence or written agreement for adjustment of entire royalty from advance paid, on the basis of which it can be inferred that the parties have varied or novated the contractual terms. Again, this aspect needs to be adjudicated in the arbitral proceedings by evaluating the evidence and it is too early to record even a prima facie finding of Petitioner being in arrears of royalty.

20) One of the grounds for termination of the Agreement is alleged gross under-extraction by the Petitioner from the mine. In para 9 of termination notice it is alleged by the Respondent as under:-

9) It is also clear from the date of the said agreement that outer permissible limit of the mine to extract yearly 1,50,000 MT of ore was not able to be achieved by you which directly caused huge losses to the society in the corresponding value of non-extraction of ore calculated as Mine owner's royalty which is totally against the spirit of the contract and intent of both the parties to the said agreement. Needless to state that from the year 2021 to till date you have extracted only 2,74,789.502 MT as against the Total of approximately more than 6,00,000 MT and society has suffered huge monetary losses.

21) Mr. Chavan has countered this allegation of under-extraction by contending that no minimum quantity of extraction is agreed in the Agreement, which talks of only maximum quantity. There can be no doubt that under-extraction can affect royalty entitlement of the Petitioner. Again, this aspect can be considered by the arbitral tribunal during final adjudication of the claims.

22) Petitioner has contended that the termination is effected for ensuring that the Chairman of the Respondent directly operates the mining site to the exclusion of the Petitioner. There is no denial to the position (i) that AGP Minechem is the company of Respondent's chairman Mr. Ashok Patil; (ii) Petitioner engaged AGP Minechem as sub-contractor who actually raised and extracted the Ore in pursuance of the contract awarded to the Petitioner; (iii) Respondent has not executed the contract with AGM Minechem. While Petitioner accuses Respondent's Chairman of awarding contract to himself, Mr. Khandeparkar has contended that the Petitioner is estopped from raising this contention since he has accepted the distinction between AGP Minechem as company and Mr. Patil as a person while sub-contracting the work. In my view, whether there is any *malafide* intention on the part of the Respondent in terminating the contract and awarding the same to the company of its Chairman would be a relevant factor for deciding Petitioner's claim for damages.

23) Petitioner's claim of Respondent unjustly enriching itself by retaining the goodwill amount of Rs. 1.5 crores and also the amount of advance royalty needs to be adjudicated while deciding the claims

finally. If the termination is proved to be illegal, the Arbitral Tribunal can consider the prayer for refund of both the amounts. However, at this stage, that would not be a relevant factor for considering Petitioner's entitlement for interim measures.

24) I believe Petitioner's entitlement for interim measures needs to be considered in the light of the nature of prayers sought in the Petition. Petitioner's ultimate claim is for performance of the terminated contract. The termination has occurred on 18 November 2025. Petitioner has failed to move this Court with necessary alacrity. By now, period of 3 months has expired from the date of termination of the contract. A new contractor is already at the site by virtue of Agreement dated 24 November 2025 executed with AGP Minechem Pvt. Ltd. The Respondent has produced on record various documents to indicate commencement of mining activities at the site by the new contractor. The new contractor has apparently paid amount of Rs. 1 crore towards Government royalty on 12 December 2025. The activities of raising, extracting and selling the Ore has been going on for the last 3 months and Petitioner appears to be aware of the same. Respondent has relied on WhatsApp message sent by Petitioner to Ultratech Cement dated 28 November 2025 for preventing it from procuring the ore from the new contractor. However Petitioner failed to approach this Court immediately after the termination and has filed the Petition only on 7 January 2026. The voluminous documents produced along with the reply indicates that the new contractor has already taken over mining operations at the site. It is difficult to believe that the ore already raised or extracted by the Petitioner (value of which is claimed at Rs. 5 crores)

can still be at the site when the new contractor is operating the mine for the last 3 long months. The claim of ore worth Rs.5 crores lying at the site is unbelievable considering the date presented by the Petitioner to its sub-contractor, which indicates that only 15,515 MT was extracted in the months of April and May 2025, and there is no extraction activity in other months. Petitioner can prove the quantum of extracted Ore and claim its value before the Arbitral Tribunal.

25) Since new contractor is already appointed by the Respondent and since mining operations have already commenced by the new contractor, it would not be appropriate to reinstate the Petitioner's contract at this stage. Petitioner's claim against the Respondent would ultimately be in terms of money. If Petitioner is successful in proving that the contract is unlawfully terminated, the Tribunal can award damages. It is well settled that though interim mandatory injunction can be granted in a given case, the party praying for the same needs to make out a strong *prima facie* case. In the present case, Petitioner's reinstatement in the Mine would also mean ouster of the new contractor, who is not even made party to the Petition. Even if the new contractor is not a party to the arbitration agreement, this Court can make interim measures even against third parties in exercise of powers under Section 9 of the Arbitration Act. However, Petitioner has chosen not to implead the new contractor in the present Petition. Also, a very strong *prima facie* case is not made out for ensuring that Petitioner is reinstated at the Mine site. The other two parameters of irreparable loss and balance of convenience are also not fulfilled in the present case. Petitioner would not suffer any irreparable loss as it can be awarded

damages if termination is found to be unlawful. The balance of convenience is tilted against the Petitioner as the new contractor is operating the mine for the last 13 months. In my view therefore, no interim measures deserve to be granted considering the unique facts and circumstances of the present case.

26) The interim measures under Section 9 of the Arbitration Act are to be granted essentially to preserve the subject matter of arbitration. Since new contractor has already been appointed at the site, who has taken over mining operations and has made payment of huge amount of Rs. 1 crore towards Government royalty, the stage of preserving the mining site, which is subject matter of arbitration, has already surpassed. What Petitioner now expects is restoration of *status quo ante*. Considering the peculiar facts and circumstances of the present case where Petitioner can adequately be compensated in terms of money, it would not be appropriate to reinstate it as mining contractor in respect of the mining site by removal of the new contractor. Reliance by Mr. Chavan on the judgment of the Apex Court in ***Arcelor Mittal Nippon Steel India Limited V/s Essar Bulk Terminal Limited***¹ is inapposite as the said judgment is an authority on the issue of permissibility for Court to make interim measures under Section 9 after constitution of Arbitral Tribunal.

27) The Respondent has not disputed existence of arbitration Agreement. It appears that the Petitioner has already invoked arbitration vide notice dated 26 December 2025. Mr. Khandeparkar, on

¹ (2022)1 SCC 712

instructions, fairly conceded that Arbitral Tribunal can be constituted for adjudication of disputes and differences between the parties.

28) I accordingly, proceed to pass the following order:-

- (i) Petitioner's prayer for interim measures is rejected.
- (ii) However, Arbitral Tribunal is constituted for adjudication of disputes and differences between parties as under:

(A) Smt. Justice Anuja Prabhudessai, former Judge of this court is appointed as sole arbitrator to adjudicate the disputes and differences between the parties arising out of the Agreement for Raising and Selling Bauxite Ore dated 12 January 2021. The contact details of the Arbitrator are as under:-

Office Address:- 106, Aracadia Building NCPA Marg,
Nariman Point, Mumbai-400021.

Email ID:- justiceanujprabhudessai@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of uploading of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

(C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of 2 weeks from receipt of a copy of this order.

(D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

(E) The fees of the sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

30. The Tribunal shall adjudicate the claims of the parties uninfluenced by the findings recorded in the judgment.

31. With the above directions the Petition is **disposed of**.

[SANDEEP V. MARNE, J.]