

Bombay High Court Nimbus Communications Ltd vs Board Of Control For Cricket In ... on 3 September, 2015 Bench: R.D. Dhanuka This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm 1 ARBP167.12FINAL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 167 OF 2012

Board of Control for Cricket in India,)
a society registered under the Tamil Nadu)
Societies Registration Act, 1975, having its)

head office at Cricket Centre, Wankhade Stadium)
'D' Road, Churchgate, Mumbai - 400 020)
suing in the name of its Secretary,)
Mr.Sanjay Jagdale) Petitioner

Versus

1. Nimbus Communications Ltd.,

a company registered under the provisions of

the Companies Act, 1956 having its registered

office at Nimbus Centre, Oberoi Complex,)
Off. New Link Road, Andheri (West),)
Mumbai - 400 053)

2. Neo Sports Broadcast Private Limited)
company registered under the provisions of the)

Companies Act, 1956 having its registered)
office at Nimbus Centre, Oberoi Complex,)
Off. New Link Road, Andheri (West),)
Mumbai - 400 053)

..... Respondents

ALONGWITH
ARBITRATION PETITION NO. 595 OF 2012
Nimbus Communications Ltd.)
a company registered under the Companies Act,)

1956 having its registered office at)
Nimbus Centre, Oberoi Complex,)
Off. New Link Road, Andheri (West),)
Mumbai - 400 053) Petitioner

Versus
Board of Control for Cricket in India,)

::: Uploaded on - 03/09/2015

::: Downloaded on - 06/09/2015

This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015

Kvm

2

ARBI

a Society Registered under the Tamil Nadu)
Societies Registration Act and having its address)

at Cricket Center, Wankhade Stadium,
Mumbai - 400020

)
)

..... Respondent

Mr.T.N.Subramanian, Senior Advocate, a/w. Ms.Akhila Premkumar, Mr.Aditya Mehta, Mr.Adarsh Saxena, Ms.Prabhjyot Chhabra, i/b.Cyril Amarchand Mangaldas for the Petitioner in Arbitration Petition No.167 of 2012 and for the Respondents in

Arbitration Petition No.595 of 2012.

Mr.Aspi Chinoy, Senior Advocate, a/w. Ms.L.M.Jenkins, i/b.Juris Consultus for the Respondent no.1 in Arbitration Petition No.167 of 2012 and for the Petitioner in

Arbitration Petition No.595 of 2012.

Mr.Zal Andhyarujina, a/w. Mr.Naser Rizvi, i/b.Thakore Jariwala & Associates for the Respondent no.2 in Arbitration Petition No.167 of 2012.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 28th JULY, 2015
PRONOUNCED ON : 3RD SEPTEMBER, 2015

JUDGMENT :

By this petition filed under section 9 of the Arbitration and Conciliation Act, 1996 the petitioner seeks an order and directions against the respondents to deposit all the monies which they have received from the advertisers as consideration for broadcast of advertisements on the television channels owned and

operated by the respondents in relation to 2011 Cricket Series under the Media Rights License Agreement (for sake of convenience hereinafter referred to as the said MRLA) and seeks injunction against the respondent no.2 from paying over, parting with, reimbursing, adjusting or in any way transferring the said monies payable under the purported Television Rights Agreement dated 16 th September, 2010 to the respondent no.1 and seeks various other reliefs. Some of the relevant facts for the purpose of deciding this petition are as under :- This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL 2. On 15th October, 2009, the petitioner and respondent no.1 entered into the said MRLA for broadcasting international cricket matches (Tests, ODIs and Twenty20s) for the years 2010 to 2014, Rights Period commencing from 1 st April, 2010 until 31st March, 2014. Under the said agreement, the respondent no.1 had agreed to deliver to the petitioner an irrevocable and unconditional bank guarantee for the purpose of securing its obligation to pay, the Rights Fee payable in accordance with clause 7 of the said agreement to the petitioner. The said agreement provided for payment schedule and various other rights and obligation of the parties. Clause 28 of the said agreement provides for an arbitration agreement. 3. On 21st October, 2009, the petitioner and respondent no.1 executed an addendum to the said agreement dated 15th October, 2009. It was provided that the said addendum will prevail over the said agreement dated 15th October, 2009. 4. The respondent no.1 became liable to pay the Rights Fee to the petitioner on various dates provided under the said agreement dated 15 th October, 2009 in respect of Australia, New Zealand, West Indies series. It is the case of the petitioner that the respondent no.1 did not comply with its obligation of the payment of Rights Fees of the petitioner within time and committed breaches of its obligation. Though there was some part payment made by the respondent no.1, the same was paid belatedly. 5. On 17th March, 2011, the petitioner issued a notice for invocation of the bank guarantee and termination of contract in view of the overdue payment in relation to second installment of Rights Fees for 2010 New Zealand series. On 11 th This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL June, 2011, the petitioner issued a notice of invocation of the bank guarantee and termination of contract in view of overdue payment of Rs.86,02,19,232/-. 6. On 22nd August, 2011, the petitioner and respondent no.1 executed another addendum to the said agreement dated 15 th October, 2009. On 5th November, 2011, the petitioner issued a notice for invocation of the bank guarantee and termination of contract in view of the overdue payment of Rs.137,87,50,000/- towards Rights Fees in respect of West Indies Series. 7. On 16th November, 2011, the petitioner through its advocate issued a notice to the respondent no.1 pointing out various breaches on the part of the respondent no.1 of the said agreement and called upon the respondent no.1 to pay the balance amount of Rs.87,87,50,000/- along with interest on the sum of Rs.137,87,50,000/- within a period of 5 days from the date of the said letter making it clear that in case of failure, the petitioner would be constrained to exercise its available rights and remedies under the said agreement including termination of the said agreement under clause 10.3(a) thereof and invocation of

the bank guarantee provided by the respondent no.1 and also to claim damages arising out of the breaches committed by the respondent no.1. 8. The respondent no.1 vide its letter dated 21st November, 2011 to the petitioner apologized for delay in making full payment of the first 50% of the West Indies tour of India 2011. The respondent no.1 stated that in view of a tumultuous phase for the economy in general and the advertising industry in specific in last two months, those extra ordinary circumstances had severally impacted the business of its licensee broadcasters in India and across the world. It was also stated that the large amount of cricket being played has caused a degree of fans This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL apathy towards the game which had not help the matter unfortunately as a result thereof, there had been the extraordinary poor turnout of cricket fans for even the International ODI and Test matches. It was alleged that even in respect of T-20 format played at the cricket passionate city of Kolkata, it showed turnout of 50% in number of spectators. 9. The respondent no.1 requested the petitioner to grant 45 days grace period for the payment towards dues of Rs.740,875,000/- on the West Indies Tour of India and assured to make the said payment on or before 20 th December, 2011 and undertook to pay the said payment latest by 30 th December, 2011. 10. The respondent no.1 also requested for 30 days extension for the other payments due from the respondent no.1 to the petitioner for the season 2011-12 as per the said agreement dated 15th October, 2009. The respondent no.1 acknowledged that in past the petitioner had been sympathetic towards respondent no.1 for adjustment of the payment schedule and requested for extension of the payment due date and to hold in abeyance the notice of 16th November, 2011 issued to the respondent no.1. 11. On 5th December, 2011, the petitioner replied to the said letter dated 21st November, 2011 and called upon the respondent no.1 to make the balance payment of Rs.87,87,50,000/- with overdue interest immediately and rejected the request of the respondent no.1 for additional time. 12. On 12th December, 2011, the petitioner through its advocates addressed a letter to the respondent no.1 recording that respondent no.1 had committed breaches of the provisions of clause 7.2 of the said agreement and the said material breach had not been remedied inspite of the notice issued by the petitioner by the said notice the petitioner terminated the said agreement and This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL informed all their actions to invoke the bank guarantee separately. 13. On 13th December, 2011, the petitioner by three separate letters invoked the bank guarantees issued by the Indian Bank, Punjab National Bank and Union Bank of India on behalf of the respondent no.1 under the said MRLA. The petitioner forwarded copies of those three letters addressed to the banks for invocation of the bank guarantees to the respondent no.1. 14. On 13th December, 2011, the petitioner through its advocates' letter to the respondent no.1 issued a cease and desist notice to the respondent no.1 from broadcasting the feed and footage of the ongoing Ranji Trophy Match between Gujarat and Tamil Nadu on its television channel Neo Cricket or any other television channel and called upon to forthwith remove all equipment and personnel that had been stationed by

the respondent no.1 at the stadium at Gujarat. 14. On 13th December, 2011, the respondent addressed a letter to the petitioner and stated that it was always willing to pay the balance sum of Rs.50 crores to the petitioner but requested for an extension of time due to poor economic conditions and non confirmation of the Pakistan Tour of Indian 2012. The respondent no.1 alleged that it had authorised the petitioner to encash the bank guarantees for the amount of payment due if Rs.50 crores making it fully compliant as per the said MRLA and if the petitioner choose not to opt for the payment mode suggested by the respondent no.1, it would continue to make outstanding payment of Rs. 50 crores to the petitioner immediately and requested to confirm that no further action would be taken on the respondent no.1 and the termination would be withdrawn on such payment. This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL 15. On 13th December, 2011, the respondent no.1 by three separate letters all dated 13th December, 2011 requested the Union Bank of India, Punjab National Bank and Indian Bank of India and not to act on the notice received from the petitioner for encashment of the bank guarantees. On 14th December, 2011, the respondent no.1 by three separate letters to three banks requested not to allow the petitioner to encash the bank guarantee on the basis of the reasons stated in the said letters. 16. On 14th December, 2011, the respondents filed an Arbitration Petition (L) No. 1425 of 2011 in this court against the petitioner and three banks inter alia praying for an injunction against the petitioner from demanding or receiving or recovering any amount from the banks and injunction against the banks from making any payment to the petitioner or any one else under those bank guarantees and also applied for termination of the said MRLA dated 15th October, 2009. 17. On 15th December, 2011, the banks through its counsel made a statement before this court that those banks did not intend to make payment pursuant to the invocation of the guarantees to the petitioner herein and contended that they were not liable to make any payment under the said guarantees. In view of the statement made by the bank, this court did not think it necessary to consider the application for injunction restraining those banks from making payment under the bank guarantees at that stage. It was however made clear that in the event of those banks changing their views and decided to make payment pursuant to the invocation of the bank guarantees, they shall not make payment thereunder for a period of three working days after service of the notice to that effect upon the petitioner and their advocates and also upon the respondent no.1 herein. This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL 18. On 16th December, 2011, the petitioner herein filed a petition (L) No.1439 of 2011 for interim measures against the respondent no.1 and also the banks. The banks through its learned counsel made a statement before this court that the banks did not intend at that time to return the margin moneys placed by the respondent no.1 herein with them in respect of the guarantees issued by those banks at the request of respondent no.1 in favour of the petitioner. This court accordingly directed the banks not to return the margin money to the respondent no.1 till the expiry of the three working days after service of a notice in

writing upon the petitioner and its advocates informing them of their intention to do so. 19. On 29th December, 2011, the respondent no.1 addressed a letter to the petitioner demanding refund of Rights Fees already paid on various grounds under the said MRLA. On 5 th January, 2012, the petitioner rejected the said demand made by the respondent no.1 and invoked Clause 28.3 of the said MRLA and referred the dispute to the arbitration in terms thereof. The petitioner nominated and appointed a former Chief Justice of India as an arbitrator and called upon the respondent no.1 to appoint an arbitrator on their behalf within a period of 30 days. 20. According to the petitioner, the respondent no.2 which is the only subsidiary company of respondent no.1 was generating suitable amount of revenue by airing advertisement through television channels owned and operated by respondent no.1. It was the case of the petitioner that the revenue generated from the said advertising would ultimately be accounted for and paid to the 1 st respondent by the respondent no.2. 21. On 6th January, 2012, the petitioner filed the present petition praying for an order directing the respondents to disclose the amounts already received This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL and/or receivable from the advertisement and praying for furnishing security in the form of deposit and various other reliefs. According to the petitioner on the date of filing of the present petition, the respondent no.1 was liable to pay amount of Rs.305,06,87,500/- to the petitioner with further interest thereon. On 13 th January, 2012, the respondent no.1 filed an affidavit in the present proceedings and disclosed that the respondent no.1 had entered into purported television rights agreement with respondent no.2 and also addendum dated 11th July, 2011. 22. On 19th January, 2012, the learned Single Judge of this court passed an ad-interim order in this petition directing the respondent no.1 to disclose the amounts already received/receivable from the advertisers towards consideration for broadcast of advertisements of television channels owned and operated by the respondents in relation to the 2011-Cricket Series and directed the respondent no.1 to furnish the security by depositing Rs.305 crores in this court within four weeks. 23. On 27th January, 2012, the learned Single Judge of this court in the draft chamber summons handed in by the petitioner for amendment of the present petition, passed an order directing the respondent no.1 not to dispose of, alienate, encumber, part with possession or create any third party rights in respect of the shares held by it in respondent no.2 and not to modify the shareholding pattern of respondent no.2 without giving two weeks notice to the petitioner. The petitioner thereafter filed Chamber Summons No.249 of 2012 for amendment of the present petition. 24. On 10th February, 2012, the respondent no.1 and respondent no.2 filed separate appeals bearing Nos. 191 of 2012 and 193 of 2012 impugning the order dated 19th January, 2012 passed by the learned Single Judge. Respondent no.2 This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL filed Appeal No.192 of 2012 impugning order dated 27th January, 2012. 25. On 27th January, 2012, the Division Bench of this court directed the respondent no.1 to furnish solvent security in the form of a bank guarantee of a nationalised bank in the amount of Rs.305 crores within

two weeks. The Division Bench allowed the Chamber Summons No. 249 of 2012 filed by the petitioner and permitted the amendment to the arbitration petition. The Division Bench also extended ad-interim order passed by the learned Single Judge on 27 th January, 2012 for a further period of four weeks from the date of the said order to enable the petitioner to apply for appropriate reliefs before the learned Single Judge in the arbitration petition. The Division Bench vacated the directions contained in the order passed by the learned Single Judge in terms of the statement which had been made by the petitioner before the Court leaving it open to the petitioner to apply before the learned Single Judge for appropriate reliefs against the respondent. All the rights and contentions of the parties were kept open to be urged before the learned Single Judge in the present arbitration petition. 26. The respondent no.1 filed Special Leave Petition against the said order and judgment dated 27th February, 2012 (Special Leave to Appeal No.9314 of 2012) in the Supreme Court. By an order dated 4 th April, 2012, Supreme Court refused to entertain the said Special Leave Petition and directed the learned Single Judge to dispose of the proceeding at the earliest and preferably within four weeks from the date of the communication of the said order. It was clarified that the matter was to be decided by the learned Single Judge without being influenced by the observations made while passing ad-interim order. 27. On 19th March, 2012, the respondent no.1 filed an affidavit in reply This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL alleging that respondent no.2 had various other businesses apart from those rights accrued from the respondent no.1. It was alleged that the revenue generated by the respondent no.2 is not payable to respondent no.1. Respondent no.1 had granted broadcasting rights relating to the subject matter of the said MRLA to the respondent no.2 vide television rights agreement and alleged that respondent no.2 was exclusively entitled to exploit all the rights under the said MRLA. On 19 th March, 2012, the respondent no.2 filed affidavit in reply contending that the arbitration petition was not maintainable against respondent no.2. It was alleged that the respondent no.2 had acquired rights to generate the revenue from the exploitation of the said rights under the said MRLA from the respondent no.1 and that the respondent no.2 was not entitled to collect revenue from the advertisement. It was alleged that there were certain disputes between the respondent no.1 and respondent no.2. 28. Sometime in the year 2012, the petitioner filed three summary suits in this court against Punjab National Bank, Indian Bank and Union Bank of India respectively since the banks had refused to permit the petitioner to encash various bank guarantees issued on behalf of the respondent no.1. By an order dated 20 th December, 2012, the learned Single Judge of this court disposed of the summons for judgment filed by the petitioner in the said three summary suits and directed those three banks to deposit the aggregate sum of Rs.400 crores with the Prothonotary and Senior Master of this court on or before 15 th February, 2012 as the condition for granting leave to defend the suit granted to those three banks. In the appeal filed by the banks, the Division Bench extended the date for deposit of Rs.400 crores. 29. The petitioner challenged the said order before the Supreme Court. This Order is modified/corrected by

Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL By an order dated 15th April, 2013, the Supreme Court disposed of the said Special Leave Petition, converted into a Special Appeal to Appeal No.4834 of 2013 and directed the banks to deposit the said amount of Rs.400 crores in this court with the Prothonotary and Senior Master within fortnight from the date of the said order and permitted the petitioner herein to withdraw the said amount if deposited by those three banks subject to undertaking given by the petitioner that in case the suit fails, the petitioner shall return the deposited amount to the respective banks along with interest at the rates that would have earned if kept in a fixed deposit with the respondent banks as directed in the order of the Court. The petitioner furnished the undertaking before the Supreme Court and has withdrawn the said amount of Rs.400 crores which are lying with the petitioner today. 30. During the pendency of the present petition, the respondents made various statements before this court which are continued from time to time and continued till disposal of this petition. The petitioner has also filed a Contempt Petition No.34 of 2012 in this court against the respondents alleging deliberate violation of the order passed by the Division Bench on 27 th February, 2012 and the said contempt petition was argued along with this arbitration petition. 31. During the hearing of the present petition, the petitioner also filed Arbitration Petition (L) No.1449 of 2015 in this court against the respondent no.1 herein inter alia praying for interim measures and applied for attachment of the amount due and payable by the petitioner to the respondent no.1 under an arbitral award dated 14th August, 2014 arising out of the equipment agreement. 32. By an order dated 12th August, 2015, this court has passed an ad-interim order in the said arbitration petition and has directed the petitioner herein to This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL deposit the sum of Rs.7,42,32,492/- with interest at the rate of 10% per annum from 1st May, 2013 and cost within a period of four weeks from the date of the said order and has directed the Prothonotary and Senior Master to invest the said amount in the fixed deposit of a nationalised bank. This court has made it clear that if the petitioner deposits the said amount, the petitioner would not be liable to make any payment to the respondents under the said award dated 14th August, 2014 along with cost and upon such deposit, there shall be an attachment on the said amount to secure part of the claim of the petitioner. It was made clear by this court that if the amount is deposited by the petitioner, the same would be subject to the further orders that would be passed by this court in the present Arbitration Petition No.167 of 2012 and other connected proceedings. 33. By an order dated 19th August, 2015, the said order dated 12 th August, 2015 was clarified and the petitioner is directed to deposit a sum of Rs.8,70,66,010/- with further interest on the sum of Rs.7,42,32,492/- at the rate of 10% per annum from 1st May, 2013 until the date of deposit to the arbitration cost within four weeks from the date of the said order dated 19th August, 2015. The said order dated 12th August, 2015 was clarified with consent of the learned counsel appearing for the respondent no.1 herein. 34. Mr.Subramanian, learned senior counsel appearing for the petitioner invited my attention to the various annexures to the arbitration

petition and also to various affidavits filed by the parties including the orders passed by the learned Single Judge of this court, by the Division Bench and also the Supreme Court. My attention is also invited to the order passed by the learned Single Judge in the summons for judgment filed by the petitioner, order passed by the Division Bench and also by the Supreme Court arising out of such order passed in summons for This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL judgment. My attention is also invited to various balance-sheets of the respondent no.1, annual report and financial statement of respondent no.1 for various financial years in support of his submission that the respondent no.1 is heavily indebted and that the respondent no.1 has admitted its liability towards the petitioner. 35. It is submitted by the learned senior counsel that there was violation of various obligations on the part of the respondent no.1 in making payment of the Rights Fees to the petitioner on account of financial strain faced by the respondent no.1. The respondent no.1 had apologized for delay in making payment and had asked for extension from time to time. He submits that though the respondent no.1 had furnished unconditional bank guarantees to secure the payment of Rights Fee of the petitioner, when the petitioner applied for encashment of those bank guarantees, the respondent no.1 addressed letters to the banks not to permit the petitioner for encashment of those bank guarantees on frivolous grounds. He submits that the respondent no.1 had suppressed those letters addressed to the banks from the petitioner and from this court. My attention is invited to those letters addressed by the respondent no.1 to those banks not to permit the petitioner to encash those bank guarantees. He submits that in view of such letters addressed by respondent no.1, those banks refused to pay amount under those unconditional bank guarantee to the petitioner. 36. Learned senior counsel submits that though the fact of filing summary suits by the petitioner against those banks on the basis of the bank guarantees issued by the banks on behalf of the respondent no.1 was brought to the notice of this court in the present proceedings, the learned Single Judge after considering the submission of both the parties had passed a detailed order and judgment directing the respondent no.1 to deposit the sum of Rs.305 crores. He submits that though This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL the said order passed by the learned Single Judge in the present proceedings was upheld by the Division Bench and by the Supreme Court, the respondent no.1 has not complied with the said order of deposit of Rs.305 crores till date deliberately and has committed contempt of the order passed by this court. 37. Learned senior counsel also invited my attention to various paragraphs from the affidavit filed by the respondent no.1 in the contempt petition filed by the petitioner. It is contended in the affidavit that the respondent no.1 did not apply for stay of the impugned order passed by the learned Single Judge since the Division Bench had indicated that the matter would be disposed of finally at the admission stage itself and no purpose would have been served by applying stay of the order passed the learned Single Judge. 38. My attention is invited to the cross examination of the witness examined by the respondent no.1 before the arbitral tribunal admitting that the respondent

no.1 had not complied with the directions of this court passed under section 9 of the Arbitration and Conciliation Act, 1996. The witness has deposed that despite of their discussion with the three banks who had issued the original bank guarantees totaling to Rs.2000 crores, the respondent no.1 was not able to convince the bank to issue another Rs.305 crores of the bank guarantee because their view was that approximately Rs.1600 crores of bank guarantee remained in possession of the petitioner and the status of those bank guarantees was being agitated in another suit, so they would not risk issuing further bank guarantee. 39. Learned senior counsel invited my attention to paragraph (60) of the sur-rejoinder dated 23rd April, 2012 filed by the respondent no.1 in the present proceedings contending that there was no reason for the petitioner to retain those This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL bank guarantees since the summary suits filed by the petitioner against three banks were also infructuous and in as much as the guarantees were not encashable and the petitioner was not entitled to receive any monies under the guarantees. 40. It is submitted by the learned senior counsel that the petitioner cannot attach and recover the said amount of Rs.400 crores, which is allowed to be withdrawn by the petitioner pursuant to the undertaking rendered by the petitioner before the Supreme Court since the said amount will have to be returned by the petitioner with interest in view of the order passed by the Supreme Court and pursuant to an undertaking rendered by the petitioner if the petitioner fails in those summary suits. He submits that since the said amount lying with the petitioner is not available for attachment in view of the undertaking rendered by the petitioner, the said amount cannot be considered as due security in the hands of the petitioner and in any event cannot be considered as due compliance of the orders passed by this court on the part of the respondent no.1. He submits that the deposit made by the banks was towards conditional leave granted in those summary suits between the petitioner and those banks and the said proceedings are independent proceedings under independent contract. He submits that the said amounts thus cannot be considered as the security in favour of the petitioner for attachment and for satisfaction of the award if any rendered in favour of the petitioner. He submits that those banks are contesting the suits filed by the petitioner and have filed third party notices in the said proceedings. 41. Learned senior counsel for the petitioner invited my attention to the auditor's report of the respondent no.1 as on 31st December, 2012 and submits that the respondent no.1 has 89% shares of the respondent no.2. The loss is underestimated by the respondent no.1. In the said auditor's report, the auditors This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL have opined that the books were not properly maintained by the respondent no.1. He submits that the financial status of the respondent no.1 has versioned today. The respondent no.1 has not disputed the claims in the petitioner. He submits that the statement made by the respondent no.1 in respect of the shares held by the respondent no.1 in respondent no.2 is in force for more than two years. My attention is also invited to the affidavit in reply filed by the respondent no.2 and it is submitted that even according to the respondent no.2, shareholding of the re-

spondent no.1 in respondent no.2 could be reduced. 42. It is submitted that the petitioner would not be able to recover its legitimate dues even if succeeds in the arbitral proceedings from the respondent no.1 if the shareholding of respondent no.1 in respondent no.2 is reduced and thus respondent no.1 shall be restrained diluting shares of respondent no.1 in respondent no.2. He submits that there are no other assets available in the hands of the petitioner for recovery of its legitimate dues against the respondent no.1. He submits that the petitioner has good chances of succeeding in the arbitral proceedings. 43. It is submitted by the learned senior counsel for the petitioner that though the respondent no.1 has made false counter claim of Rs.2000 crores against the petitioner in the arbitral proceedings, respondent no.1 did not apply for providing any security against the petitioner which itself indicates that there is no substance in their counter claim. 44. Mr.Subramanian, learned senior counsel placed reliance on the judgment of this court in case of Deccan Chronicle Holdings Limited vs. L & T Finance Limited in Appeal (L) No. 130 of 2013, delivered on 8 th August, 2013 and This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL in particular paragraphs 9 and 10 and submits that even if while deciding an application for attachment before judgment, basis of Order 38 Rule 5 would have to be borne in mind by the court, the rigors of every procedural provisions of the Code of Civil Procedure cannot be put in place of defeat the grant of relief which would subserve the paramount interests of justice. He submits that this court has ample power to mould the relief in appropriate cases to secure the ends of justice and to perverse the sanctity of the arbitral process. He submits that after considering the financial condition of the borrower in that matter, this court has upheld the order passed by the learned single judge directing the borrower to furnish security to secure the claim of the lenders. 45. Learned senior counsel also placed reliance on the law laid down by the Division bench of this court in this matter and would submit that though the Supreme Court has directed the learned Single Judge to decide the matter without being influenced by the orders passed by this court, the law laid down by the learned Single Judge and Division Bench of this court can be still be relied upon by the petitioner and is binding on the learned Single Judge. 46. It is submitted by the learned senior counsel that even if the respondent no.1 was not able to arrange for margin money to enable the banks to furnish security as ordered by the Court, the petitioner is not responsible for the same. The banks have also made claims against the respondent no.1 and thus respondent no.1 itself is responsible for not complying with the orders passed by this court and Supreme Court. He submits that since the respondents have not complied by the orders passed by this court and also by the Supreme Court, interim measures as prayed in the petition be granted. This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL 47. Learned senior counsel however submits that the petitioner is not pressing any relief against the respondent no.2 directly which would be in the nature of garnishee proceedings but seeks injunction against the respondent no.1 from diluting its shareholding in respondent no.2. He submits that the respondent no.1 be also directed to file an affidavit of disclosure disclos-

ing about all the assets whether encumbered or unencumbered within such time as this court may deem fit. 48. Mr.Andhyarujina, learned counsel appearing for respondent no.2 submits that the respondent no.2 is a separate legal entity. There is no arbitration agreement between the petitioner and the respondent no.2. He submits that since no arbitration award can be made against the respondent no.2, no interim relief can be granted by this court against the respondent no.2. He submits that the respondent no.2 is a subsidiary company of the respondent no.1 and is an independent company. The court has to consider the facts of each case. The respondent no.2 has a separate shareholding management. There is an independent agreement between the respondent no.2 and third party which would be affected if any interim relief as prayed against the respondent no.2 is granted by this court. He submits that there is arms length transaction between the respondent no.1 and respondent no.2. It is submitted that the petitioner has not made out any case for reliefs against a third party in this proceedings under section 9 of the Arbitration Act. He submits that if the reliefs in terms of prayer clause (cc), (cd) and (ce) of the petition are granted, it would seriously prejudice the interest of respondent no.2 and no relief can be granted against the respondent no.2 in the present proceedings. Learned counsel for the respondent no.2 submits that at one stage, the respondent no.2 had decided to reduce the shareholding of the respondent no.1. The respondent no.2 has already made statement before this court which is in force. This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL 49. Mr.Chinoy, learned senior counsel for the respondent no.1 submits that this court cannot adjudicate upon the merits of the claims made by the petitioner against the respondent no.1 and the counter claim made by the respondent no.1 against the petitioner which are subject matter of the arbitral proceedings. He submits that no claim has been made by the petitioner against the respondent no.1 arising out of the termination of the said MRLA. The respondent no.1 has already made payment of substantial amount to the petitioner. 50. Learned senior counsel invited my attention to the averments made by the petitioner in paragraphs 6 to 9 of the arbitration petition and submits that none of those averments would fall under Order 38 Rule 5 of Code of Civil Procedure even on demurer. He submits that reliefs claimed for securing the claim of the petitioner under section 9(ii) (b) of the Arbitration Act read with Order 38 Rule 5 of the Code of Civil Procedure, 1908 which are drastic provisions have to be strictly construed and satisfied before granting any relief under those provisions. He submits that the petitioner has not produced any credible material to show the intention of the respondent no.1 to defeat or delay the execution of the award. He submits that this court has to keep in mind the principles under Order 38 Rule 5 of the Code of Civil Procedure while passing any such order which would be in the nature of attachment before judgment. 51. In support of this submission, learned senior counsel placed reliance on the judgment of this court in case of Networth Stock Broking Ltd. vs. K.Vinaya Prasad (2009) 4 Bom.C.R.553 and in particular paragraph 8 and judgment of this court in case of Vijay Agarwal vs. Lehman Brothers Advisors Pvt. Ltd., 2009(5) Mh.L.J. 302 and in particular paragraph 11. Learned senior counsel

also placed reliance on the judgment of this court in case of Raman Tech.& Process Engg.Co. This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL And another vs. Sonanki Traders (2008) 2 SCC 302 and in particular paragraphs 4 to 6 and would submit that the respondent no.1 had not furnished any security in favour of the petitioner and thus unsecured claim of the petitioner cannot be converted into a secured claim by granting any order for providing security under section 9(ii) (b) of the Arbitration Act read with Order 38 Rule 5 of the Code of Civil Procedure. 52. Learned senior counsel for the respondent no.1 submits that the TRA between the respondent nos.1 and 2 was executed much prior to the date of termination of the MRLA. It is submitted that the petitioner thus cannot be allowed to urge that the agreement entered into between the respondent nos.1 and 2 was with an intention to delay or defeat the outcome of the arbitral proceedings. He submits that the onus is on the petitioner to show that the respondent has sold any properties or is likely to sell any property with an intention to delay or defeat the outcome of the arbitral proceedings which the petitioner has not able to demonstrate before this court. He submits that the petitioner has not made out any requirement under section 9(ii) (b) nor has made any averments in the arbitration petition. 53. In his alternate submission, learned senior counsel for the respondent no.1 submits that the petitioner has already security in its hand of Rs.400 crores which are deposited by the banks in this court and which are allowed to be withdrawn by the petitioner. My attention is invited to paragraph 8 of the arbitration petition and it is submitted that even the arbitration petition filed by the petitioner proceeds on the footing that the petitioner already has security of Rs.400 crores in its hands. He submits that providing of additional security entails huge margin money. Since the petitioner has retained the security which entails margin This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL money, the petitioner cannot be allowed to ask for further security from the respondent no.1. He submits that the petitioner has affirmed and confirmed the existence of security and thus cannot be granted double security. He submits that before seeking any relief in the present proceedings for furnishing security again by the respondent no.1, the petitioner shall be directed to give up its security of Rs.400 crores. My attention is also invited to paragraph (nn) of the averments made by the petitioner at page 441 of the affidavit in which the petitioner has denied that the petitioner has given up the security of Rs.400 crores. 54. Learned senior counsel placed reliance on the judgment of Supreme Court in case of V.G.Quenim and another vs. Bandekar Brothers (P) Ltd. (2002) 10 SCC 513 and in particular paragraphs 2 and 3 and it is submitted that this court cannot grant an order by way of attachment before judgment and also by way of injunction at the same time. 55. Mr.Chinoy, learned senior counsel does not press Arbitration Petition No.595 of 2012. 56. Mr.Subramanian, learned senior counsel for the petitioner in rejoinder submits that though this court has to bear in mind principles of Order 38 Rule 5 while passing any interim order for attachment and/or securing the claim of the petitioner under section 9, rigors of Order 38 Rule 5 does not apply to application under section 9. He submits that the purpose of granting

the relief under section 9 is to ensure to protect the claim of the petitioner and to secure the amount in dispute. He submits that since the respondent no.1 had sent letters to the banks not to permit encashment of the unconditional bank guarantees and such letters were suppressed, the petitioner could not encash those bank guarantees. He submits that This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL pursuant to the liberty granted by the Supreme Court, the said amount of Rs.400 crores deposited by those three banks have been allowed to be withdrawn by the petitioner upon the petitioner rendering an undertaking to return the said amount with interest. He submits that the said amounts were deposited by those banks to defend summary suits filed by the petitioner against those banks under Order 37 Rule 6. He submits that those banks are opposing the suits filed by the petitioner and have also filed third party notices. He submits that those banks are not party to this proceedings. 57. Learned senior counsel submits that the suits filed by the petitioner against bank was for more than Rs.1600 crores and not only Rs.400 crores. He submits that the petitioner has already returned the bank guarantee of substantial amount to the respondent no.1 and in view of the return of such bank guarantee, the bank also must have returned the margin money paid by the respondent no.1 to those banks. He submits that the respondent no.1 has already admitted in the correspondence that the respondent no.1 would not be able to comply with the ad- interim order passed by this court in view of the bad financial condition of the respondent no.1. 58. Learned senior counsel for the petitioner submits that though the petitioner has been permitted to withdraw an amount of Rs.400 crores pursuant to the liberty granted by the Supreme Court, the said amount in the hands of the petitioner cannot be construed as a security and cannot be attached by the petitioner in the event of the petitioner succeeding in the arbitral proceedings. He submits that for the purpose of attachment of the property, such property must be available for the purpose of attachment and sale to recover the decretal amount. He submits that the banks have not given their no objection in favour of the This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL petitioner to attach the said amount of Rs.400 crores lying with the petitioner. It is submitted that the said amount lying in the hands of the petitioner is coupled with obligation of the petitioner to return the said amount to the respondent no.1 with interest if the petitioner fails in the summary suits filed by the petitioner against those banks. Learned senior counsel submits that the petitioner thus does not claim any double security as canvassed by the learned senior counsel for the respondent no.1. 59. It is submitted by the learned senior counsel for the petitioner that if the court direct the respondent no.1 to secure the claim and if the respondent no.1 complies with the said direction issued by the court, the petitioner is ready to deposit the said amount in the summary suits. Statement is accepted. 60. Learned senior counsel for the petitioner invited my attention to various financial documents and also the annual reports of the respondent no.1 and submits that the respondent no. 1 has admitted the liability of the petitioner and is heavily indebted. 61. Learned senior counsel also distinguished the judgment of this

Court in case of Vijay Agarwal (supra), V.G.Quenim and another (supra) and Networth Stock Broking (supra) on the ground that the rigors of Order 38 Rule 5 are not applicable to reliefs which can be granted under section 9(ii) (b) of the Arbitration Act. 62. Insofar as judgment of Supreme Court in case of Raman Tech. & Process Engg. Co. And another (supra) is concerned, learned senior counsel distinguishes the said judgment on the ground that the said judgment is not under This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL section 9 of the Arbitration and Conciliation Act, 1996 but has dealt with the proceedings under Order 38 Rule 5 of the Code of Civil Procedure. He submits that the said judgment of Supreme Court in case of Raman Tech. & Process Engg. Co. And another (supra) has been distinguished by the Division Bench of this court in case of present parties and also in several other judgments. 63. Learned senior counsel submits that insofar as respondent no.2 is concerned, the transaction between respondent nos.1 and 2 are not at arms length. Respondent no.2 is subsidiary of respondent no.1. Respondent no.1 is major shareholder of respondent no.2. He submits that the petitioner does not press reliefs which are in the nature of garnishee proceedings against the respondent no.2. However other reliefs are being pressed by the petitioner. REASONS AND CONCLUSIONS : 64. A perusal of the record indicates that though the learned Single Judge of this court in this proceedings had granted ad-interim measures in favour of the petitioner, which order has been upheld by the Division Bench and by the Supreme Court, the respondent no.1 has not complied with the said orders mainly on the ground that the petitioner has already retained substantial part of the bank guarantee submitted by the respondent no.1 and the bank had not issued further bank guarantees so as to comply with the orders passed by this court for want of margin money by the respondent no.1. The fact remains that the respondent no.1 was not in a position to comply with the ad-interim order passed by this court which was upheld by the Division Bench and the Supreme Court in view of the bad financial condition of the respondent no.1. This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL 65. A perusal of the financial documents produced on record in the present proceedings clearly indicates that the respondent no.1 is heavily indebted to various creditors including the petitioner. The liability of the respondent no.1 to the petitioner has been admitted in such financial documents and also in the pleadings. I am not inclined to accept the plea of the learned senior counsel for the respondent no.1 that even if any amount is due and payable by the respondent no.1 to the petitioner, no such order for deposit or for securing the claim of the petitioner can be passed by this court or that the claim of the petitioner being unsecured, cannot be directed to be secured in the manner in which the petitioner has prayed for. The judgment of Supreme Court in case of Raman Tech.& Process Engg.Co. And another (supra) has been distinguished by this court in various judgments referred to aforesaid while dealing with the proceedings filed under section 9 of the Arbitration and Conciliation Act, 1996. It has been held by the Division Bench of this court that though the principles of Order 38 Rule 5 of the Code of Civil Procedure, 1908 has to be kept in mind while deciding an

application under section 9 of the Arbitration Act, rigors of Order 38 Rule 5 of the Code of Civil Procedure does not apply to the proceedings under section 9. I am respectfully bound by the judgment of Division Bench of this court. 66. In case of Deccan Chronicle Holdings Limited vs. L & T Finance Limited (supra), Division Bench has followed the judgment of this court in case of Nimbus Communications Ltd. and another vs. Board of Control for Cricket in India which had arisen out of the ad-interim order passed by the learned Single Judge in the present proceedings has held that for deciding an application under section 9, the court would while bearing in mind the fundamental principles underlying the provisions of the Code of Civil Procedure, at the same time, have the discretion to mould the relief in appropriate cases to secure the ends of justice This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL and to preserve the sanctity of the arbitral process. It is also held in the said judgment that the rigors of every procedural provision of Code of Civil Procedure cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. 67. The learned Single Judge of this court in the case of L & T Finance Limited vs. Deccan Chronicle Holdings Limited, to secure the claims of the lender on the ground that the condition of the borrower was not such that the lender could recover any amount in case of succeeding in arbitration proceedings and on the ground that lender had good chances of succeeding in the arbitral proceedings has directed to secure the claim of the lender. The judgment of the learned Single Judge was upheld by the Division Bench in the matter of Deccan Chronicle Holdings Limited (supra) and the appeal of the borrower was dismissed. The said judgment applies to the facts of this case. I am respectfully bound by the said judgment of the Division Bench. 68. Insofar as judgment of this court in case of Vijay Agarwal (supra) is concerned, the Division Bench of this court in case of Nimbus Communications Ltd. vs. Board of Control for Cricket in India in Appeal (L) Nos. 90 of 2012, 91 of 2012 and 92 of 2012 dated 27th February, 2012 has adverted to the judgment of Supreme Court in case of Adhunik Steels Ltd. vs. Orissa Manganese and Minerals (P) Ltd. (2007) 7 SCC 125 and has held that rigors of every provisions of Code of Civil Procedure, 1908 cannot be extended to the proceedings under section 9 of the Arbitration Act. In my view, the said judgment of the learned Single Judge in case of Vijay Agarwal (supra) thus does not assist the case of the respondents. 69. Insofar as judgment of Supreme Court in case of V.G.Quenim and another (supra) is concerned, the Supreme Court has held that the court cannot This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL grant injunction in respect of the property and also attachment thereof before judgment at the same time. In my view, the said judgment does not apply to the facts of this case at all in any manner. The petitioner has not applied for any such duplicated relief in the present proceedings nor this court has proposed to grant such alleged duplicated relief in the present proceedings. 70. Insofar as judgment of this court in case of Networth Stock Broking Ltd. (supra) is concerned, the said judgment also has been decided relying upon the judgment of Supreme Court in case of Adhunik Steels Ltd.(supra) which was adverted to by the Division Bench of this

court referred to aforesaid. ig The judgment relied upon by the learned senior counsel for respondent no.1 does not assist the case of the respondents. 71. The next submission of the learned senior counsel for the respondent no.1 is that the petitioner has already withdrawn a sum of Rs.400 crores pursuant to the liberty granted by the Supreme Court in the Special Leave Petition arising out of the orders passed by this court in the summons for judgment filed by the petitioner which amount are with the petitioner. It is the case of the respondent no.1 that the petitioner cannot be permitted to demand double security in respect of the same claim. It is not in dispute that the respondent no.1 had submitted various bank guarantees in favour of the petitioner through three banks under the provisions of the agreement entered into between the parties. All such bank guarantees issued by the banks on behalf of the respondent no.1 were unconditional bank guarantees. 72. A perusal of the record prima facie indicates that the respondent no.1 did not pay various amounts due and payable to the petitioner by the respondent This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL no.1 and had committed default of their obligation. The petitioner has thus invoked those bank guarantees. A perusal of the record further indicates that the respondent no.1 however had written various letters to those banks not to permit the petitioner to encash those bank guarantees on various grounds. In view of those banks not permitting the petitioner to encash the bank guarantees though were unconditional bank guarantees, the petitioner was required to file three summary suits in this court against those three banks and has filed summons for judgment in each of those three suits. Those banks had opposed the reliefs prayed by the petitioner in those three summons for judgment on various grounds. 73. The learned Single Judge of this court directed the banks to deposit diverse amount in this court. The Supreme Court ultimately disposed of the Special Leave Petition filed by the petitioner and directed those banks to deposit the sum of Rs.400 crores in this court and granted liberty to the petitioner to withdraw such amount upon the petitioner furnishing undertaking that in the event of the petitioner failing in those three suits, the petitioner would return the said amount with interest to those three banks. The petitioner has already rendered an undertaking and withdrew the said amount. The said three suits are defended by those three banks and the same are pending. It is not in dispute that those three banks have also filed third party notices in the said proceedings against the respondent no.1 herein. It is the case of the respondent no.1 itself that the banks were not willing to issue further bank guarantees in favour of the petitioner on behalf of the respondent no.1 and were demanding further margin money. 74. The question that arises for consideration of this court is whether amount of Rs.400 crores in the hands of the petitioner could be construed as a security which can be enforced by the petitioner in the event of the petitioner This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL succeeding in the arbitral proceedings and such amount would be available for attachment and for recovery of the awarded sum. Similarly issue has arisen between the parties in the Arbitration Petition (L) No.1449 of 2015 in case of Board of Control for Cricket in India

vs. Nimbus Communications Ltd. This court by an order dated 12th August, 2015 has considered this issue and has taken a prima facie view that in view of the letters addressed by the respondent no.1 to those three banks not to permit encashment of those bank guarantees, the banks did not allow the petitioner to encash those three banks guarantees, though the same were unconditional bank guarantees. 75. It is held that if the respondent no.1 would not have prevented the bank from allowing the encashment of bank guarantees, the petitioner would have encashed those guarantees. It is held by this court that the said amounts in the hands of the petitioner are coupled with an obligation to return the same with interest to the banks in the event of the petitioner not succeeding in the said suits. It is held that the said amount is allowed to be retained by the Supreme Court in the hands of the petitioner for the time being with an undertaking to return the same and is not allowed to be appropriated and thus in the prima facie view of the court, the said amount thus could not be considered as security free from all encumbrances. 76. This court has also taken a prima facie view that the three banks were granted leave to defend those suits on deposit of Rs.400 crores in the summary suits under Order 37 Rule 6(b) of the Code of Civil Procedure and thus it could not be said that the said amount of Rs.400 crores lying in the hands of the petitioner would be a security available in the hands of the petitioner in the event of the petitioner succeeding in the arbitral proceedings. This court has also considered This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL that fact that the banks have not made any statement in that proceedings that the bank would not have any claim in the said amount deposited in this court and allowed to be withdrawn by the petitioner. This court held that the petitioner is entitled to secure its claim in view of the defaults committed by the respondent by not complying with the order passed by this court in arbitration petition, order passed by the Division Bench and also by the Supreme Court. 77. By the said order, the petitioner passed an order of attachment of the amount which the petitioner were liable to pay to the respondent no.1 arising out of the arbitral award in another matter upon the petitioner depositing the said amount in this court. The said order was also made subject to the further orders that maybe passed in the present petition filed by the petitioner and other connected proceedings. The prima facie view taken by this court in the said Arbitration Petition (L) No.1449 of 2015 would also apply in the present proceedings between the same party on the same issue while dealing with this petition under section 9 and in taking prima facie view again in the present proceedings. 78. The petitioner has already made a statement before this court that in the event of respondent no.1 furnishing security in compliance with the order passed by this court so as to secure the claim of the petitioner, the petitioner would deposit the said amount of Rs.400 crores in this court and would not claim any right in the said amount. 79. Though the Supreme Court has while dismissing the special leave petition filed by the respondent no.1 has held that the learned Single Judge shall decide the present proceedings without being influenced by the order passed by this court, there is no dispute on the proposition that the law laid down by the This Order is modified/corrected by Speaking to Minutes

Order dated 04/09/2015 Kvm ARBP167.12FINAL learned Single Judge of this court and Division Bench would be binding on this court while deciding the present proceedings. 80. A perusal of the record indicates that due to delay in making payment by the respondent no.1, it had apologized to the petitioner and had asked for extension from time to time. In my view, if the respondent no.1 would not have compelled those banks not to make payment to the petitioner in respect of those unconditional bank guarantees, the petitioner would have recovered the said amount and would not have required to file any suit against those banks. In that event, the petitioner would not have been required to furnish any such undertaking for withdrawing the said amounts to return the said amount with interest. 81. In my view, the said amount of Rs.400 crores allowed to be withdrawn by the petitioner pursuant to the liberty granted subject to the petitioner furnishing undertaking thus cannot be considered as a security which could be enforced for recovery of the dues of the petitioner if the petitioner succeeds in the arbitral proceedings. The banks who had deposited such amount have not withdrawn their rights and interest in the said amount of deposit and the matter is sub-judice. In my view there is thus no substance in the submission of the learned senior counsel for the respondent no.1 that the petitioner has prayed for double security in respect of the same claim from the respondent no.1. 82. In my view merely because the respondent no.1 has made counter claim of about 2000 crores against the petitioner, that could not be a ground for non complying with the ad-interim order passed by this court. Be that as it may, the liability of the respondent no.1 having been admitted, counter claim made by the respondent no.1 which is in the nature of damages cannot be equated with the This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL admitted liability of the petitioner. The orders passed by this court thus cannot be refused to be complied with by the respondent no.1 on that ground. The respondent no.1 could not have refused to comply with the ad-interim order passed by this court on the ground that the banks were demanding margin money for issuing further bank guarantees on behalf of the respondent no.1 in favour of the petitioner. The respondent no.1 itself was responsible for the same. 83. It is not in dispute that the respondent no.2 is fully owned subsidiary of respondent no.1. Respondent nos.1 and 2 had executed a Memorandum of Understanding dated 15th March, 2010 by which the 2nd respondent was granted certain television rights over international cricket matches played under the auspices or control of the petitioner which took place in India. A perusal of the agreement entered into between the respondent nos. 1 and 2 indicates that the respondents had arrived at an arrangement so as to implement the said MRLA. The petitioner has already terminated the said MRLA by the notice dated 12 th December, 2011. In my prima facie view the financial condition of the respondent no.1 has worsened that what it was when the ad-interim order was passed by this court on 19th January, 2012. 84. A perusal of the provisions of the agreement entered into between the respondents clearly indicates that the business which was being carried on by the respondent no.2 was assigned to the respondent no.2 by the respondent no.1. A perusal of the affidavit filed by the respondent no.1

itself would indicate that it was the contention of the 1st respondent that if the termination of the said MRLA was not stayed, the business of the respondent no.2 which was entirely built from the most valuable asset i.e. MRLA and the cricket series would result in closure of the business of the respondent no.2. The financial documents of the respondent no.2 This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL and respondent no.1 produced on record clearly indicates that the respondent no.2 has admitted that approximately more than Rs.700 crores was due and payable by the respondent no.2 to the respondent no.1. A similar amount is also reflected as recoverable in the accounts of the respondent no.1 from the respondent no.2. 85. The correspondence on record and the affidavits filed by the respondent no.2 also clearly indicates that at one stage, the respondent no.2 had proposed to dilute the shareholding of the respondent no.1 in respondent no.2. The respondent no.1 has already made a statement before this court from time to time which is in force. I am not inclined to accept the submission of the learned counsel appearing for the respondent no.2 that there is a dispute between the respondent no.1 and respondent no.2 and thus the respondent no.2 is not bound to pay any amount to the respondent no.1. No proceedings are brought to the notice of the court if any, filed by the respondent no.1 against the respondent no.2 or vis-a-versa. The petitioner thus in my view has made out a case for securing its claim made before the arbitral tribunal. 86. The Division Bench of this court by a common order passed on 27 th February, 2012 in the appeals filed by the respondent nos.1 and 2 respectively has negated the contention raised by the respondents. The respondent no.1 has not complied with the said order passed by the Division Bench also. 87. On perusal of the pleadings and documents filed in the present proceedings which were brought to my notice by the learned senior counsel appearing for the petitioner, respondent no.1 and the learned counsel for respondent no.2, I am of the view that the petitioner has good chances of succeeding in the arbitral proceedings. The respondent no.1 has not complied with This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL the ad-interim order passed by the learned Single Judge and also by the Division Bench being in financial distress. In my view, even if the petitioner succeeds in the arbitral proceedings, if respondent no.1 is not directed to secure the claim of the petitioner in this situation, the petitioner would not be entitled to recover its legitimate dues against the respondent no.1. The balance of convenience is in favour of the petitioner. 88. Insofar as submission of the learned senior counsel for the respondent no.1 that when the ad-interim order was passed by this court, the petitioner was without any security whatsoever in respect of its claims, however as on the date of hearing of the present application, the petitioner has sufficient security in its hand of Rs.400 crores allowed to be withdrawn pursuant to the liberty granted by the Supreme Court and thus no interim measures should be granted is concerned, in my view there is no merit in this submission of the learned senior counsel for the respondent no.1. This court has already take a prima facie view in Arbitration Petition (L) No.1449 of 2015 and has negated this contention. 89. I, therefore, pass the following order :- (a) The respondent

no.1 is directed to furnish security by depositing in this court a sum of Rs. Three Ninety Crores only within four weeks from today. (b) Prothonotary and Senior Master is directed to invest the said amount of Rs. Three Ninety Crores only if deposited by the respondent no.1 in the fixed deposit of a nationalized bank, initially for a period of one year and thereafter for like period This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL of one year each after obtaining further orders from this court. The petitioner would be at liberty to apply for enhancement of security amount. (c) There shall be interim relief in terms of prayer clause (cb). (d) The respondent no.2 is restrained by an order and injunction from paying over, parting with, reimbursing, adjusting or in any way transferring any amount due and payable to the respondent no.1 and shall deposit the said amount in this court within six weeks from today. (e) If the respondent no.1 deposits the sum of Rs. Three Ninety Crores only as directed aforesaid in this court within the time prescribed, the interim measures granted in paragraphs (c) and (d) aforesaid shall stand vacated. (f) Arbitration Petition Nos. 167 of 2012 and 595 of 2012 are disposed of in the aforesaid terms. No order as to costs. (R.D. DHANUKA,J.) Mr.Andhyarujina, learned counsel for the respondent no.2 seeks stay of the operation of the order recorded in paragraph 89(c) which is opposed by the learned counsel for the petitioner. Application for stay is rejected. (R.D. DHANUKA,J.) This Order is modified/corrected by Speaking to Minutes Order dated 04/09/2015 Kvm ARBP167.12FINAL CERTIFICATE " I certify that this judgment uploaded is a true and correct copy of original signed judgment." Uploaded by : K.V.Mayekar Uploaded on 03/09/2015