IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO.7499 OF 2025

Alphard Maritime Ltd. ...Petitioner

Versus

Samson Maritime Limited & Ors. ...Respondents

Mr. Venkatesh Dhond *a/w. Mr. Rohaan Cama, Jimisha Dalal, Sanchit Suri & Aryan Sharma i/b. Singularity Legal, Advocates for Petitioner.*

Mr. Sharan Jagtiani, Senior Advocate *a/w. Joran Diwan i/b. Diwan Law Associates, Advocate for Respondent Nos.1 & 2.*

Mr. Janak Dwarkadas, Senior Advocate *a/w. Mr. Nitesh Jain, Juhi Mathur, Atul Jain, Sonia Dasgupta, Prerna Shankar & Abhimanyu Chaturvedi i/b. Trilegal, Advocate for Respondent No.3*

CORAM: SOMASEKHAR SUNDARESAN, J.

RESERVED ON: MARCH 20, 2025

PRONOUNCED ON: APRIL 2, 2025

JUDGEMENT:

1. This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("***the Act***") seeking urgent interlocutory reliefs pending arbitration in connection with disputes and differences between the parties under a 'Settlement Agreement' dated September 16, 2024 ("***Settlement***

Agreement") executed between the Petitioner, Alphard Maritime Ltd. ("***Alphard***"), Respondent No. 1, Samson Maritime Ltd. ("***Samson***") and Respondent No. 2, Underwater Services Company Ltd. ("***Underwater***").

2. Respondent No. 3, J.M. Baxi Marine Services Private Limited ("***Baxi***") is an entity to which the entire shareholding in Underwater is sought to be transferred by Samson. Alphard contends that such transfer is violative of Samson's commitments to Alphard under the Settlement Agreement, and therefore seeks temporary interdiction of such transfer pending commencement of arbitration.

Settlement Agreement:

3. An overview of the bargain between the parties would be in order. In Recitals A, B and C of the Settlement Agreement, breaches by Samson in obligations owed to Alphard in past transactions are recorded. For breach of a covenant to deliver an encumbrance-free vessel under a Memorandum of Agreement dated September 25, 2023 ("***2023 MOA***"), Samson was to pay Alphard USD 4 million. On January 25, 2024, the parties executed a Memorandum of Understanding for Alphard to acquire 100% shareholding in Underwater from Samson and nine vessels owned by Underwater ("***2024 MOU***"), which was not complied with by Samson. In April 2024, these three

parties executed another tripartite agreement relating to dues owed to Alphard for a charter hire of a vessel, in the sum of USD 2.5 million payable by Samson to Alphard ("***April 2024 Agreement***").

4. On July 8, 2024, these parties executed an agreement crystallizing their liabilities in a net set-off amount of USD 6,757,214 ("***Set-Off Amount***") payable against the purchase price under the 2024 MOU, and if the sale under the 2024 MOU was not completed, the Set-Off Amount would be payable by Samson to Alphard in five banking days upon demand being made. The 2024 MOU was not compiled with and the Set-Off Amount was demanded by Alphard in August 2024. The parties then engaged in negotiations to arrive at the Settlement Agreement on September 16, 2024. This is the agreement under which disputes and differences have arisen, and in which the arbitration agreement relevant for purposes of this Petition, is contained.

5. The salient features of the Settlement Agreement may be summarised thus:

a) Samson would pay the Set-Off Amount within seven business days of executing the Settlement Agreement;

b) Within 30 days of the Settlement Agreement, they would execute agreements, the final execution drafts of which were finalised and annexed to the Settlement Agreement for acquisition by Alphard: (i) of identified vessels owned by Underwater; (ii) of identified vessels owned by Samson; (the vessels at (i) and (ii), collectively, "***Vessels***") and (iii) acquisition of 100% of the share capital of Underwater owned by Samson ("***Shares***");

c) The Vessels and Shares are collectively termed the "***Asset***" in the Settlement Agreement. The Settlement Agreements provides for the maximum consideration values – total consideration of Rs. 213.5 crores; consideration for the Vessels, capped at Rs. 170 crores and the consideration for the Shares, capped at Rs. 43.5 crores. The final actual consideration was to be arrived at in terms of the agreed-form drafts annexed in the Schedules to the Settlement Agreement, but subject to the aforesaid ceilings;

d) Alphard has an option to execute these agreements for acquisition of the Asset. Put differently, it is for Alphard to choose not to execute, but Samson and Underwater are obliged to execute them. Towards this end, in Clause 3.4, Samson and Underwater have

covenanted not to sell the Asset to any person other than Alphard unless Alphard were to designate another person to acquire the Asset or Alphard were to refuse to execute the agreements contained in the Schedules to the Settlement Agreement; and

e) Under Clause 3.3, Samson and Underwater are to indemnify Alphard for any breaches of these provisions.

Invocation of Arbitration:

6. The governing law of the Settlement Agreement is the law of the Republic of Singapore. The venue and seat of arbitration is Singapore. The arbitration is to be administered by the Singapore Chamber of Maritime Arbitration ("***SCMA***"). The rules of SCMA would govern the conduct of arbitration. Arbitration has been invoked and the process of appointment of an arbitrator is underway. The SCMA does not have a framework for an emergency arbitrator making interim orders.

7. On February 20, 2025, Alphard issued a Notice of Arbitration under the SCMA Rules. Para 21 in the Notice of Arbitration stated that Samson and Underwater are liable under the Settlement Agreement to indemnify Alphard for breach of obligations. Paragraph 22, which set out the reliefs indicated as

would be pressed in arbitration included a prayer indemnifying Alphard for the loss suffered, which is to be quantified. The other reliefs indicated in the Notice of Arbitration were for payment of Set-Off Amount. In Paragraph 23, Alphard reserved the right to seek other reliefs in the light of any change in circumstances.

8. On March 1, 2025, Samson replied by email to state that everything in the Notice of Arbitration was denied and called for a copy of the Settlement Agreement – virtually indicating that they did not even have the executed counterpart of that instrument. On March 5, 2025, Alphard sent a further legal notice pursuant to the Notice of Arbitration, pointing out that the Settlement Agreement was executed in counterparts. The legal notice also elaborated the indemnity claim. Alphard articulated that the loss to be indemnified is the difference between market value of the Vessels (asserted by Alphard to be Rs. ~598 crores) and the purchase price (stated by Alphard to be Rs. 170 crores). The USD value of this difference was asserted to be the loss to be indemnified. In addition, it was stated that Alphard had come to know that Samson and Underwater were discussing sale of the Shares to Baxi. Asserting that they were obliged not to transfer the Shares to anyone, Alphard called upon them to cease and desist from such transfer.

Contentions of the Parties:

9. The short question that falls for consideration at this stage is whether the prayers made in this Petition deserve to be granted in aid of and to secure the subject-matter of the arbitration. I have heard Mr. Venkatesh Dhond, Learned Senior Counsel on behalf of Alphard, Mr. Sharan Jagtiani, Learned Senior Counsel on behalf of Samson and Underwater, and Mr. Janak Dwarkadas, Learned Senior Counsel on behalf of Baxi.

10. At the heart of the decision to be taken at this stage is whether the transfer of Shares ought to be frozen, before the Arbitral Tribunal can consider the merits of the matter. Mr. Dhond would contend that the obligation not to transfer the Shares contained in Clause 3.4 of the Settlement Agreement is an explicit requirement in the Settlement Agreement, which secures the performance of the Settlement Agreement. Mr. Dhond would submit that the transfer of the Shares in favour of Alphard was a binding commitment reached in the Settlement Agreement. It was only Alphard who had a right to walk away from executing the agreement for purchase of the Shares but Samson and Underwater had no choice but to execute the agreement. Even the execution draft for the agreement to purchase shares, initialled by the parties in agreed form, has been annexed in the schedules to the Settlement Agreement. Therefore, Mr. Dhond would

submit, the Settlement Agreement is in the nature of an option for Alphard and an obligation for Samson and Underwater. To secure the option, the Shares have been locked in under Clause 3.4, and the transfer to Baxi behind the back of Alphard ought to be restrained.

11. Mr. Jagtiani and Mr. Dwarkadas would oppose grant of any such relief on two fundamental grounds – *first*, that the Settlement Agreement has an indemnity provision, which has in fact been explicitly invoked by Alphard in the Notice of Arbitration, thereby giving specific performance a go-by; and *second*, the Shares were already pledged to Baxi in January 2025 and this was even recorded in an amendment to the Articles of Association of Underwater, which gave constructive public notice and thereby notice to Alphard. Put differently, the upshot of the submission is that the ship has sailed. They would also argue that the agreements in the schedules to the Settlement Agreements at best represent an agreement to agree and not a binding commitment.

12. Mr. Jagtiani would also submit that Alphard has not shown readiness and willingness to perform the Settlement Agreement. He would submit that there has been no effort on the part of Alphard to arrive at the actual purchase price in terms of the agreed form drafts in the Schedules to the

Settlement Agreement. His client's affidavit in reply would allege that the Petition suffers from a five-month delay, and that it represents a selective part-enforcement of the Settlement Agreement – only to purchase the Shares and not the Vessels, which itself would undermine readiness and willingness. The affidavit in reply also contends that the email dated March 1, 2025 was not a reply to the Notice of Arbitration and therefore the Petition is false in its representation that the next legal notice was a reply to the said email. Alphard is said to have taken out motions to arrest the vessels of Samson and Underwater and this Petition is resisted on the premise of constituting forum shopping. It is also argued that the balance of convenience lies in favour of not granting the relief of freezing the assets of Samson since the indemnity claim and award of damages would suffice to address the interests of Alphard while Samson's financial health would be impaired by blocking the Shares.

13. An affidavit in reply has been filed on behalf of Baxi. In a nutshell, it is asserted that in January 2025 (no specific date is provided) the entire share capital of Underwater was pledged by Samson for a proposed transaction. Baxi has acquired rights in the Shares in good faith and that cannot be jeopardised, it is submitted, by allowing a freeze on transfer of the Shares. While Baxi has stated that it is a *bona fide* pledgee for value, it has also adopted the argument that Alphard has opted for damages in its Notice of

Arbitration and it cannot be allowed to improve its case to seek specific performance. To demonstrate the existence of the pledge, Baxi has annexed the Pledge Master Report issued by ICICI Bank, with which it has a dematerialised securities account to show that the entire share capital of Underwater stands pledged.

Analysis and Findings:

14. I have had the benefit of assistance of the Counsel in reviewing the record. At the threshold, it should be made clear that all the analysis in this judgement is purely on a *prima facie* basis and that too solely in aid of examining what temporary interim measure would be appropriate to safeguard and preserve the subject-matter of the arbitration agreement, should such protection be necessary, also taking care to balance the competing interests of the parties. Evidently, each of the parties involved is a sophisticated and well-advised commercial entity. That apart, evidently, the parties have had dealings for a long time and the Settlement Agreement is but a current juncture in the chequered journey of their commercial relationship. It is only the arbitral tribunal that ought to arrive at firm findings on many of the issues argued before me with the same vigour and spirit as a final hearing.

15. In my opinion, for purposes of these proceedings, the limited facet that would be relevant in the Settlement Agreement is the fact that Samson and Underwater had explicitly covenanted not to sell the Asset to any person other than Alphard. In fact, when this Petition was mentioned for urgent hearing, it was the impending transfer of the Shares to Baxi that was stated to be the driver for the urgent consideration.

Specific Performance:

16. At the heart of the unanimous objection from the Respondents is that the Notice of Arbitration simply does not choose specific performance as a relief pursued. Therefore, it is argued Alphard is to be restricted to a claim for indemnity for all time to come in these proceedings. In my opinion, this is an extreme proposition at this stage of the proceedings. First, the standard to be applied. As a Section 9 Court, if I were to come to view that *ex facie*, the record shows that specific performance is simply incapable of being granted at all, it would be inappropriate to grant interim relief in aid of specific performance. On the other hand, if I were to conclude that specific performance cannot be ruled out, the question would become what appropriate measure would preserve the subject-matter of the arbitration agreement.

17. In this light, it is necessary to examine the Notice of Arbitration issued on February 20, 2025. The Rules of Arbitration of the SCMA do not indicate that the reliefs sought is a mandatory hide-bound component of the Notice of Arbitration that is etched in an indelible manner. This instrument is an indicative instrument giving notice of, among others, the dispute that is sought to be resolved by arbitration, the nature of the claim, and where possible, an indication of the amount sought to be claimed. It is purely an instrument to commence the process of initiating arbitration. Even the non-delivery of the Notice of Arbitration to the Registry of the SCMA would not invalidate it. Likewise, the reply to the Notice of Arbitration is not sacrosanct. Even if it is not filed, the process of appointing the arbitral tribunal shall continue. After the arbitral tribunal is appointed, the Case Statement is to be filed. It is the Case Statement that is required to contain all the reliefs and remedies sought, along with quantifiable claims and computations.

18. Consequently, I am not convinced that the Notice of Arbitration would cast the case of a party in stone in an indelible manner never to be expanded or varied. That apart, the sequence of events in the instant case does not make the expansion of the reliefs unreasonable. The Notice of Arbitration was issued on February 20, 2025. Alphard claims to have gotten to know

that Samson was striking a deal with Baxi after issuing the Notice of Arbitration. Alphard issued a legal notice just two weeks later, on March 5, 2025 calling out Samson for negotiating with Baxi in alleged violation of Clause 3.4 of the Settlement Agreement, and reminding about the obligation to keep the Shares locked in the hands of Samson.

19. The reply affidavit on behalf of Samson and Underwater puts too fine a point on whether this notice was a reply to an email of March 1, 2025 and whether that email was a reply to the Notice of Arbitration. On a perusal of the record, this appears to be much ado about nothing. The email dated March 1, 2025 indeed refers to the Notice of Arbitration in its subject line and calls for a copy of the executed Settlement Agreement – indicating that Samson and Underwater are unaware of the Settlement Agreement necessitating a copy to know what is being referred to. The legal notice of March 5, 2025, refers to this email and to the Notice of Arbitration. This legal notice draws Samson's attention to the contention that in violation of Clause 3.4, negotiations with Baxi are suspected to be carried out. In my opinion, purely on a *prima facie* basis there is nothing unreasonable or untoward in this sequence of events to suggest that there is an afterthought on the part of Alphard by seeking protection for the Shares. Indeed, the Notice of Arbitration also reserved the right to expand issues upon change of

circumstances, and knowledge of negotiations to undermine the very availability of the subject-matter of the arbitration would reasonable necessitate an expansion.

20. In any event, I am not convinced that the Notice of Arbitration, which is an indicative document can bind a party for all time to come. It is not a pleading – it is an indicative instrument to start the process of appointment of the arbitral tribunal. It is the Case Statement that would cast the reliefs of a claimant in stone, in my opinion, and not the Notice of Arbitration. Therefore, I am not convinced by the argument that the reliefs indicated in the Notice of Arbitration being a claim for indemnity would preclude a claim for specific performance being made in the Case Statement.

Pledge to Baxi and dematerialisation of Shares:

21. The next issue that must be considered is the sequence of events. Baxi's affidavit claims that a transfer of interest in the form a pledge of the entire shareholding of Samson in Underwater has already been effected. For an affidavit sworn on oath in a pleading seeking to convince a Court about the *bona fides*, commercial sense and rational veracity of the pledge, in my opinion, Baxi's affidavit is delightfully vague in material particular. The affidavit indicates that "as of January 2025" the entire shareholding stood

pledged "for sums advanced" by Baxi to Samson. What sums were advanced and when they were advanced is not even attempted to be spelt out. Besides, the *bona fide* creation of a pledge ought to be capable of being shown as having been effected on a given date or set of dates. The affidavit simply says "as of January 2025" without so much as a date in January 2025 or a set of dates preceding January 2025 being set out as the date of contracting the pledge.

22. The affidavit also does not stipulate what was the nature of the assistance by Baxi. It simply uses the term "furtherance of a *proposed transaction*". If there was a proposed transaction, and there already was a commitment preceding it not to transfer the Shares, the creation of the pledge would not turn the needle to create any equities in favour of Samson and Baxi – on the contrary it would point to Alphard being ambushed with an ambiguous unexplained transaction, necessitating some intervention to preserve the subject-matter of the Settlement Agreement.

23. The Pledge Master Report annexed by Baxi to the reply affidavit deserves analysis. This document would show that the pledge was actually created on March 1, 2025. Since this is the date on which the shares in Underwater held in electronic dematerialised form were marked with a

pledge in the records of the depository, I put a question to Mr. Jagtiani as to when the shares held by Samson in Underwater were dematerialised in the first place. Upon instructions, it was submitted to the Court that the dematerialisation was effected on February 26, 2025. This query was put to Mr. Jagtiani because normally shares privately held, even in a wholly-owned public limited subsidiary company are not held in electronic form since it would incur costs in the form of demat holding charges payable to the depository participant and the depository. Therefore, to consider the dates of actions of the parties, it was pertinent to find out when Samson made Underwater submit itself to the depository system.

24. Since, admittedly, the dematerialisation of the Shares itself took place only on February 26, 2025, it stands to reason that this was a reaction to the Notice of Arbitration dated February 20, 2025. If this became known through trade intelligence to Alphard, and that too in the context of an email dated March 1, 2025 asking for a copy of the Settlement Agreement that was being claimed under, it would stand to reason that Alphard would need to sharpen its attack by seeking compliance with Clause 3.4 to ensure that the Shares are intact and not dissipated. It is remarkable that the email feigning ignorance of the executed Settlement Agreement is also dated March 1, 2025, which is the date on which the Shares were dematerialised. As a response to

the Notice of Arbitration dated February 20, 2025, on the same date as the date on which the Shares were pledged in the depository system, it would not lie in the mouth of the Respondents to argue that the case initiated by Alphard was cast in stone on February 20, 2025 and could never be elaborated, and that too when even in the indicative Notice of Arbitration, Alphard had reserved the right to deal with changed circumstances. In my opinion, when forming my *prima facie* opinion of the best balance to be reached pending arbitration, the submissions of Mr. Jagtiani and Mr. Dwarkadas on behalf of Samson and Baxi do not inspire acceptance.

25. In the course of arguments, to buttress the prior interest of Baxi, Mr. Dwarkadas also tendered across the bar, an amendment to the Articles of Association of Underwater that is said to have been carried out. The suggestion was that the Articles of Association of Underwater (a public limited company) had been amended to specifically provide for creation of a pledge in favour of Baxi. A perusal of the same indicates that here too what precise amount was advanced by Baxi for such assistance to be secured by a pledge of the entire shareholding in Underwater is not clear. It is only an enabling amendment to provide for such a pledge. Besides, in my opinion, it is totally unreasonable to expect a party to a commercial contract with a body corporate to keep checking if the constitutive documents of the body

corporate have undergone a change throughout the subsistence of the contract.

26. On the other hand, it would stand to reason that Samson and Underwater, having committed to not transferring any of the Shares to any party other than Alphard, they would have had to take the consent of Alphard to effect such an amendment. Evidently, it is not Samson's case that it had taken such consent from Alphard. On the contrary, it is Baxi's case that the amendment of the Articles constitutes constructive public notice, which Alphard is deemed to have knowledge of. To expect a counterparty who holds a right corresponding to the commitment not to alienate the Shares, to keep checking the public records of the Registrar of Companies to check if a violation of its contractual rights can be discerned, and to be told that it was not vigilant enough, in my opinion, is an unreasonable and commercially irrational expectation. In the field of commerce there is a presumption of *bona fides* in the conduct of parties to a contract. Commercial activity cannot be expected to operate in an environment of presumption of *mala fides* leading to the need for eternal vigilance through every conceivable means of forensic investigation available. Worse, it is untenable that failure to have such forensic vigil would be a ground to erode the case for interlocutory relief pending arbitration of disputes on such contentious facts.

27. In my opinion, the very argument based on the constructive notice of amendments to the Articles of Association by which Alphard is said to have had notice and that Alphard was lax in seeking relief, erodes the equities against the Respondents. Besides, the timing of dematerialising of the shares of a privately held company (even if it is a public limited company) and the ambiguity in critical and material particular, in Baxi's assertion on oath that a pre-existing interest had been created in January 2025, casts a cloud over the pledge created in favour of Baxi.

28. This brings up the next issue – however dodgy the pledge may be, since it does exist, what would be the appropriate measure to be adopted. The pledge has evidently been created by Samson on the Shares held by Samson in Underwater. The pledge is not appropriately explained at all. Since the pledge is in favour of a third party, necessarily the third party has to be heard. Such hearing of the third party enables the Court to take care of any interests that may have to be addressed. This is why Baxi has been made a party and has been given an opportunity to file an affidavit in reply. Baxi and Samson having been given a chance to explain their conduct. Their replies do not inspire confidence. Therefore, having heard the third party, it would only

follow that there is a need to prevent further action on the pledge – its invocation or the appropriation of the Shares pending arbitration.

Option vs. Obligation:

29. In my opinion, the draft agreements in the schedules to the Settlement Agreement are recorded in an agreed form. The precise value to be ascribed to the Asset was not firmed up but a cap on the value was firmed up. The actual value was left blank. In the agreed form of the Share Purchase Agreement too the purchase price was left blank. The draft agreement records the fact that a private equity investor belonging to the Kotak Group ("***Kotak***") had won an arbitral award in respect of its investment in Underwater. Samson had not met the obligation owed to Kotak. Therefore, the Purchase Price was to be discharged by first paying the debt owed by Underwater to its lenders, with the balance being paid to Kotak towards discharge of the dues owed by Samson under the arbitral award in favour of Kotak. Therefore, the Settlement Agreement itself was not an agreement to agree but the draft agreements for the purchase of the Asset were clearly not fully complete in the material particular of the purchase consideration. However, another nuance arises in this regard – the Settlement Agreement capped the consideration at Rs. 170 crores for the Vessels and Rs. 43.5 crores for the Shares.

30. For purposes of assessing if such a contract is amenable to specific performance, it may be possible to argue that the material particular of final and actual purchase price was not yet firmed up and therefore that would erode the case for specific performance. However, the fact that the parties had envisaged the cap on the purchase price would mean that it was not totally open-ended, and if at all the framework worked to the benefit of Alphard with a cap on the purchase price and a right not to sign the purchase agreements.

31. This is why, on a *prima facie* basis, Mr. Dhond may be justified in his contention that the Settlement Agreement has the cumulative effect of an option having been created in favour of Alphard – to purchase the Asset, including the Shares. Effectively, *prima facie*, the parties have agreed to a "call option" where one party has a right to require the other party to sell at a price not exceeding a specified price. In a call option, the other party has an obligation to honour the transfer when the option is exercised i.e. when the party owning the right, calls upon the other party to transfer and perform the corresponding obligation.

32. It is in this context and background that one would need to consider the contentions of Mr. Jagtiani and Mr. Dwarkadas as to whether, inexorably, there is no scope at all for specific performance by reason of the election made in the Notice of Arbitration. According to them, the assertion of the reliefs sought is adequate to show the election for seeking indemnity for loss. This constituted a waiver of specific performance as of the date of the Notice of Arbitration (February 20, 2025), they would argue. According to them, when Alphard issued a further legal notice dated March 5, 2025, in reply to Samson's email of March 1, 2025, they had already lost their right to specific performance and were merely seeking to regain lost ground by purporting to call upon Samson to hold its hands and to come clean on its deal with Baxi. For the reasons stated above, such a proposition does not inspire confidence.

Readiness, Willingness and Delay:

33. The affidavit in reply on behalf of Samson and Underwater asserts that Alphard has not shown readiness and willingness to perform the Settlement Agreement. It would assert that there has been no effort on the part of Alphard to arrive at the actual purchase price in terms of the agreed form drafts in the Schedules to the Settlement Agreement. The affidavit alleges a five-month delay (since October 2024), and that it represents a selective part-

enforcement of the Settlement Agreement – only to purchase the Shares and not the Vessels, which itself would undermine readiness and willingness.

34. The affidavit in reply also contends that the email dated March 1, 2025 was not a reply to the Notice of Arbitration and therefore the Petition is false in its representation that the next legal notice was a reply to the said email. Alphard is said to have taken out motions to arrest the vessels of Samson and Underwater and this Petition is also resisted on the premise of constituting forum shopping.

35. The arguments against Alphard about readiness and willingness to perform not having been demonstrated, is substantially based on the Notice of Arbitration having given up specific performance, and therefore, not having demonstrated such readiness and willingness and that the next legal notice sent two weeks later, having brought in that element. What effects were taken by which party after September 16, 2024 and the nature of the dialogue between them, would be a matter of evidence that only the Arbitral Tribunal can examine and arrive a view on whether readiness and willingness was non-existent on Alphard's part. I have already dealt with that facet of the matter. *Prima facie*, Alphard was entitled to believe that its interests were not being undermined behind its back when commercial discussions were

underway. Besides, *prima facie*, indeed Alphard has a framework in the nature of a call option on the Vessels and the Shares. It is the Shares that are subject matter of urgent reliefs sought in this Petition. By Samson's own showing, pursuit of measures in relation to the Vessels are also underway under other remedies available in law. At this stage, the limited examination that would need to be done is to see if Alphard has altogether abandoned specific performance of the Settlement Agreement and is yet seeking an injunction only to harass the Respondent. The parties have indeed engaged commercially and it is the Shares that are evidently in jeopardy. Alphard is entitled to seek temporary protective relief under Section 9 of the Act. It would indeed be open to the Arbitral Tribunal to vary such temporary protective relief once it has had occasion to examine the evidence to arrive at its own *prima facie* view.

36. At this stage when I am making a *prima facie* conclusion as to the need for interim protective measures, if any, it is evident that no sooner than Alphard had reason to suspect that the very underlying Asset that is subject matter of its right to acquire the Shares under the Settlement Agreement was being undermined, Alphard moved Court. On March 7, 2025, the matter was mentioned, which is evidently two days after the notice of March 5, 2025.

37. As seen earlier, even with the benefit of the pleadings and Counsel submissions it is apparent that it was only after the Notice of Arbitration was issued on February 20, 2025, that the Shares were dematerialised into electronic form on February 26, 2025. The pledge was created on March 1, 2025 (although claimed in Baxi's affidavit, to have been contracted in January 2025 without a date). On that very date, a holding email was sent to Alphard , denying everything and demanding to have an executed copy of the Settlement Agreement under which Alphard invoked arbitration. It is noteworthy that March 1, 2025 was a Saturday. Besides, this email is directly in reply to the email delivery of the Notice of Arbitration and also refers to the Notice of Arbitration. Yet, the affidavit in reply on behalf of Samson and Underwater make much about this email not having been a reply to the Notice of Arbitration. Once Alphard was put to such a notice, it appropriately moved Court immediately seeking urgent reliefs. Before moving Court, the notice dated March 5, 2025 was also sent.

38. I am of the opinion, that the framework of claiming a delay of five months is not a reasonable one. It is not a delay and that too, of a nature that denudes the entitlement to interlocutory protection. On the contrary, no sooner than the serious risk of the very underlying Shares being taken away coming to Alphard's knowledge, Alphard has moved with alacrity.

Controversy over Rejoinder:

39. Extensive submissions have been made about the alleged absence of readiness and willingness on the part of Alphard. A rejoinder affidavit filed by Alphard came in for severe attack and criticism on behalf of the Respondents. The allegation about the rejoinder was that Alphard has sought to bring on record, contents of without-prejudice discussions among the parties. Discussions referred to in it were said to have been had by insisting that all parties leave their mobile phones outside the meeting room, which would be indicative that there ought to have bee no record of such discussions. Such allegations are strongly countered on behalf of Alphard, with the insistence that it is Alphard that was strung along by Samson and Underwater, which led to continual postponement of the decision to enforce, until became clear that Alphard was being ambushed by the deal with Baxi.

40. Considering the stage at which the proceedings are – interlocutory relief under Section 9 to preserve the subject-matter of arbitration, in my opinion, it is unnecessary to delve into the distraction of the rejoinder and its contents. This facet of the matter is best left to the parties to fight this out in the arbitration proceedings without the Section 9 Court being diverted (away

from the core issues raised) into matters of prejudice and allegations on each side about the conduct of the other in the run-up to these proceedings.

41. I have chosen not to rely on the rejoinder for any facet of my decision. I am therefore not alluding to it at all. Without even having to examine the contested rejoinder, in my opinion, a case has been made out for an urgent interlocutory relief in the form maintaining *status quo* on the Shares i.e. the entire equity share capital of Underwater held by Samson and currently subject of an inexplicable pledge in favour of Baxi. No further action shall be taken on the Shares so pledged whether by way of invocation of the pledge, or transfer or auction of the Shares to any third party until the Arbitral Tribunal has had occasion to convene and examine what the next course of action should be. The parties shall be at liberty to approach the Arbitral Tribunal after the Arbitral Tribunal has had occasion to examine reasonable evidence to effect any change to this position.

42. It is also argued that the balance of convenience lies in favour of not granting the relief of freezing the assets of Samson since the indemnity claim and award of damages would suffice to address the interests of Alphard while Samson's financial health would be impaired by blocking the Shares. I have already explained why I am of the view that Alphard cannot be said to have

foreclosed its right to specific performance for no reason other than having indicated a claim for indemnity in the Notice of Arbitration.

Directions and Order:

43. Therefore, for the reasons articulated above, the following order is passed:-

A) All the Shares held by Samson in Underwater, which constitutes 100% of the equity share capital of Underwater shall remain the same state as they now are, in the demat account of Samson without any further change being effected;

B) No further third party right or interest on the Shares, and no improvement of the third party interest already created on the Shares in favour of Baxi shall be effected;

C) Such *status quo* on the Shares shall be maintained if and until the Arbitral Tribunal arrives at a view (after having had occasion to consider the evidence) that such maintenance of *status quo* is not necessary for purposes of the potential outcome in or conduct of the arbitral proceedings;

D) Samson and Underwater shall disclose to Alphard and to the Arbitral Tribunal, in full particular the precise nature of its transactions with Baxi that necessitated the creation of the pledge in favour of Baxi along with all supporting documents. Such disclosure shall be explained in precise detail with precise timelines to indicate how such action was not in conflict with the committed terms of the Settlement Agreement. Such disclosure would enable the Arbitral Tribunal to consider whether any further relief should be granted to Alphard or whether the relief granted hereby ought to be varied, modified, strengthened or vacated.

44. With the aforesaid directions, this Petition is ***finally disposed of***. Considering the effective and smooth conduct of these proceedings, no case is made out for award of costs to any party although these proceedings entail consideration of a commercial dispute.

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

[SOMASEKHAR SUNDARESAN J.]