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Interim Reliefs in Arbitral Proceedings

Powerplay between Courts and Tribunals

August 2024

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and Tribunals**

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Background

Arbitration has emerged as the preferred mechanism for the resolution of commercial disputes amongst the various dispute resolution mechanisms available. One of the reasons for proliferation of arbitration has been the flexibility provided to the parties to conduct arbitral proceedings as per the law chosen by them, along with arbitrators of their choice and at a venue and place convenient to the parties, as opposed to a court proceeding. Moreover, party autonomy being the thumb rule in arbitral proceedings, parties are also generally permitted to agree upon the procedure governing the resolution of the disputes.

The arbitral process is normally accompanied by certain procedural safeguards such as interlocutory or interim measures that safeguard parties during the pendency of the proceedings.

It has been observed that parties engage in dilatory tactics to delay proceedings or prejudice the rights of the opposite parties by inter alia dissipating assets or interfering with the functioning of bodies (in case of a company where both parties are stakeholders). In such a situation, the final relief granted by a tribunal may be rendered nugatory or meaningless unless the arbitral tribunal or court is able to safeguard the rights of parties during the pendency of the arbitral proceedings. Therefore, in the intervening period between the juncture at which the ‘dispute’ arose (in certain circumstances even before the commencement of arbitration) and till the execution of the award, certain interim measures may be necessary to protect a party’s rights and ensure that justice is done.

The nature of interim relief sought by the parties may vary based on the facts and circumstances of the dispute. In certain situations, the effective provision of interim reliefs may involve directions to third parties also. With the changes introduced by various amendments¹ to the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) and wider powers vested with arbitral tribunals, interim reliefs are made easy and accessible to parties to secure the ultimate arbitral award. In this backdrop, it is of paramount importance to understand the nature of interim reliefs that can be granted by courts and arbitral tribunals and their respective limitations.

1 Arbitration and Conciliation Amendment Act, 2015 (“2015 Amendment Act”) and Arbitration and Conciliation Amendment Act, 2019 (“2019 Amendment Act”).

Who can apply for Interim Measures?

Any party to the arbitration agreement can make an application for interim measures in the course of the arbitral proceedings. However, after making of the arbitral award, only a successful party that is entitled to seek the enforcement of the award can apply to the court under Section 9¹ of the Arbitration Act for protection in terms of Section 9(ii) of the Arbitration Act.

This emanates from the understanding that the scheme of Section 9 postulates an application for the grant of an interim measure of protection after the making of an arbitral award and before it is enforced for securing the property for the benefit of the party which seeks enforcement of the award.² As was observed by the Bombay High Court (quoted below), an unsuccessful party would not be, in any event, entitled to enforcement for the simple reason that there is no award in its favour to be enforced:

“If an application is made at the instance of such an unsuccessful party under Section 9, there will not be any occasion to grant any interim measure which will be in the aid of the execution of the arbitral Award as such a party will not be entitled to seek enforcement under Section 36.”³

Consequently, even on the award being set aside, the party whose claim has been rejected vide the said award, cannot apply for interim measures under Section 9 of the Arbitration Act. This is premised on the understanding that the court, under Section 34 of the Arbitration Act does not act as a court of appeal, and does not review the merits of the dispute.⁴

1 See Annexure III.

2 Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited 2013 (7) Bom. C.R.493.

3 Wind World (India) Ltd. v. Enercon GmbH and others 2017 SCC Online Bom 1147, at [18].

4 Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited 2013 (7) Bom. C.R.493.

Interim Measures in Arbitration

In India, the Arbitration Act was formulated on the basis of UNCITRAL Model Law on International Commercial Arbitration, 1985 (“**Model Law**”), provides for interim measures under Sections 9 and 17 by courts and arbitral tribunals respectively.

Section 9 of the Arbitration Act is broadly based on Article 9 of Model Law and provides for the grant of interim measures by a court. Unlike the Model Law, Section 9 provides for interim measures of protection not just before the commencement of arbitral proceedings¹ and during the arbitral proceedings but also post the arbitral award has been delivered but before it is enforced. Courts have interpreted “*before it is enforced*” to mean till the award is fully satisfied.²

The 2015 Amendment Act has introduced certain changes to the provisions on interim reliefs with respect to the kind of reliefs available and the time-frame for seeking such reliefs before courts. In case of arbitrations commenced on or after 23 October 2015, if an order of interim reliefs has been granted by a court prior to the constitution of the arbitral tribunal, the parties are required to initiate arbitral proceedings within a period of ninety days.

Once arbitral proceedings have commenced, the parties would have to seek interim reliefs before the arbitral tribunal. A court would ordinarily not entertain a petition for interim reliefs in such a situation unless the party is able to prove the existence of circumstances that make a relief granted by an arbitral tribunal insufficient.

After an award has been rendered by the arbitral tribunal, the successful party may also choose to approach courts for interim reliefs to secure and safeguard the effectiveness of the arbitral award prior to its enforcement. The application would generally have to be made before a court prior to the enforcement of the award in case of both domestic and international commercial arbitrations. It is also a corollary that the unsuccessful party may not seek to stall the enforcement of the award by filing an application under Section 9 of the Arbitration Act.

Interim measures ordered by arbitral tribunal set out in Section 17 of the Arbitration Act, are also essentially based on Article 17 of the Model Law.

Previously, there was a debate whether the powers of an arbitral tribunal to grant interim reliefs were narrower compared to the power of a court under Section 9 of the Arbitration Act. However, with the amendments in place, the powers of an arbitral tribunal to grant interim reliefs have been made at par with those of the court under Section 9 of the Arbitration Act.

The operation of this provision is triggered only at the request of a party to the arbitral proceedings, only after the constitution of the tribunal. A party may seek interim reliefs up to the point in time at which an award is made by the tribunal.³

1 See *Sundaram Finance Ltd v NEPC India Ltd* (1999) 2 SCC 479 (The Supreme Court held that parties would have to demonstrate the intention to commence arbitral proceedings to be eligible for the grant of interim reliefs).

2 *Shanghai Electric Group Co. Ltd. v. Reliance Infrastructure Ltd.*, 2024 SCC OnLine Del 1606. (“Shanghai Electric”).

3 Earlier, a party could request for an interim relief under Section 17 of the Arbitration Act “at any time after the making of the arbitral award but before it is enforced in accordance with Section 36” as well. However, these words were omitted from Section 17 with the 2019 Amendment Act.

1. Reliefs under Section 9 of the Arbitration Act

A. Which Court to Apply?

‘Court’ as defined in Section 2(1)(e) of the Arbitration Act can either be a district court or a High Court having ‘original jurisdiction’, which would have the jurisdiction to decide the subject matter of the arbitration as if the same were the subject matter of a civil suit. In case of an international commercial arbitration, i.e., an arbitration relating to a commercial dispute where at least one of the parties is non-Indian, only a High Court of a state in India will have powers under the Arbitration Act. In cases where the subject-matter of an arbitration is a commercial dispute of a specified value,⁴ the commercial court or commercial division of the High Court constituted under the Commercial Courts 2015, as the case may be, would have jurisdiction.⁵

Following the Supreme Court’s judgment in *Bharat Aluminum Company v Kaiser Aluminum*,⁶ the court of the seat of arbitration will have jurisdiction under the Arbitration Act. Fixation of a seat of arbitration is equivalent to assigning exclusive jurisdiction to the courts of the seat for any supervisory functions over the arbitration proceedings, including powers to grant interim reliefs. Needless to say, such designation of the seat would oust the jurisdiction of all other courts.⁷ If the seat is not mentioned in the arbitration agreement, or has not been so determined by the arbitral tribunal, an application under Section 9 of the Arbitration Act may be preferred before a court in which part of the cause of action arises.⁸

In case an application is made to a court under Part I of the Arbitration Act with respect to the arbitration agreement, Section 42 of the Arbitration Act will apply to preclude the making of all subsequent applications under Part I (including those under Section 9 of the Arbitration Act) to any court except the court to which such application has been made. Similarly, if an application for interim relief is made to a court, all subsequent applications under Part I would have to be made to that court to which an application has been made under Section 9 of the Arbitration Act.

For assessing the powers of the court to grant interim measures under Section 9 of the Arbitration Act vis-à-vis powers of the arbitral tribunal under Section 17 of the Arbitration Act, the introduction of the following clause to Section 9 of the Arbitration Act merits discussion:

“(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under Sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.”

4 Commercial Courts Act 2015, s 2(1)(i): “Specified Value”, in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with Section 12 which shall not be less than three lakh rupees or such higher value, as may be notified by the Central Government.

5 Commercial Courts Act 2015, s 10.

6 (2012) 9 SCC 552.

7 Indus Mobile Distribution Private Ltd. v. Datawind Innovations Private & Ors (2017) 7 SCC 678.

8 BGS SGS Soma JV v NHPC Ltd., (2020) 4 SCC 234.

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The Delhi High Court in *CSRC Research and Design Institute Group Co. Ltd. v Dedicated Freight Corridor Corporation of India Ltd. & Ors.* (“**CSRC Research**”) underlined the importance of Section 17 vis a vis Section 9 of the Arbitration:

*“While exercising power under Section 9, the Court is required to be mindful of the fact that concurrent power is vested in the Arbitral Tribunal, by Section 17. The reliefs which can be granted under Section 17, by the Arbitral Tribunal, are identical to those which can be granted by the Court under Section 9. While, therefore, exercising jurisdiction under Section 9, the Court, even at the pre-arbitration stage, should not usurp the jurisdiction which, otherwise, would vest in the arbitral tribunal, even if it is yet to be constituted. Hence, litigants would be in a position to misuse Section 9 as providing an opportunity to forum shop.”*⁹

Thus, to avoid prejudice to any party subsequent to the constitution of the arbitral tribunal, courts have begun to refrain themselves from making orders under Section 9 of the Arbitration Act unless there is no efficacious remedy.

However, subsequent to the amendments in Section 9 of the Arbitration Act, the court can grant interim measures in the following circumstances:

- Prior to the constitution of the tribunal
- After the award has been made and prior to its enforcement.

A Division Bench of the Kerala High Court observed that when an application is made before a court under Section 9(1) of the Arbitration Act after the award is made but yet to be enforced, the court shall bear in mind that it is a stage where the arbitral tribunal has ceased to function. It further held that, *“In such circumstances, it would not be proper for the court to reject the application merely on the ground that he has got efficacious remedy under Section 17 of the Act. The Court has to adopt a liberal approach in such circumstances. A mere statement by the Court to the effect that the remedy provided under Section 17 of the Act is efficacious, without reference to the circumstances which make it so, is not sufficient to reject an application under Section 9(1) of the Act.”*¹⁰

- In the course of the arbitral proceedings, after the constitution of the tribunal, an interim measure granted by the tribunal may not be efficacious. In granting interim reliefs in such cases, courts assess the relevant facts and circumstances with precision including instances like the lethargic manner of arbitrators in granting interim reliefs in respect of assets rendering the remedy inefficacious.¹¹ Another instance where a remedy under Section 17 of the Arbitration Act was deemed inefficacious was when the constitution of the arbitral tribunal was under challenge.¹² Certain other factors which may render a remedy under Section 17 of the Arbitration Act inefficacious even after the constitution of the tribunal may be temporary unavailability of any one of the arbitrators by reason of illness, travel, etc., when the individual arbitrators are located at far away places and not in a position to assemble immediately,¹³ or when there is an imminent threat of invocation of a bank guarantee or imminent threat of dispossession.¹⁴

9 2020 SCC OnLine 2100, at [22(ii)].

10 M Ashraf v. Kasim VK, 2018 SCC Online Ker 4913.

11 SREI Equipment Finance Limited (Seff) v. Ray Infra Services Private Limited & Anr., 2016 SCC OnLine Cal 6765.

12 Energo Engineering Projects Ltd. v TRF Ltd., 2016 SCC OnLine Del 6560.

13 Arcellor Mittal Nippon Steel India Ltd. v Essar Bulk Terminal Ltd., (2022) 1 SCC 712 (“Arcellor Mittal”).

14 Welspun Enterprises Ltd. v Kasthuri Infra Projects Pvt. Ltd., Order dated 15 July 2024 in OMP (I)(Comm.) 124 124/2023 and IA 19447/2023 (Delhi High Court) (“Welspun”).

Interim Measures in Arbitration

Some courts have been of the view that courts would be required to adopt a strict approach in entertaining such applications under Section 9 of the Arbitration Act, in the course of the arbitral proceedings.¹⁵ However, once the court has applied its mind and entertained an application under Section 9 of the Arbitration Act, the court will adjudicate on it.¹⁶ Nevertheless, the burden is on the party resisting the referral to the arbitral tribunal to demonstrably convince the court that emergent orders on the application under Section 9 of the Arbitration Act are necessary and that the matter cannot await the application of mind by the Arbitral Tribunal.¹⁷

In a recent case before the Delhi High Court, it was disputed as to whether the court before which an application for interim measures is pending, would have to relegate the same to the arbitral tribunal upon its constitution. Upholding the finding of the Single Judge, the Division Bench of the Delhi High Court observed that:

“If the argument ... were to be accepted that the moment an Arbitral Tribunal is constituted, the Court which is seized of a Section 9 application, becomes coram non iudice, would create a serious vacuum as there is no provision for dealing with pending matters. All the powers of the Court to grant interim measures before, during the arbitral proceedings or at any time after the making of the arbitral award but prior to its enforcement in accordance with Section 36 are intact (and, have not been altered by the amendment) as contained in Section 9(1) of the said Act. Furthermore, it is not as if upon the very fact that an Arbitral Tribunal had been constituted, the Court cannot deal with an application under Sub-section (1) of Section 9 of the said Act. Section 9(3) itself provides that the Court can entertain an application under Section 9(1) if it finds that circumstances exist which may not render the remedy provided under Section 17 efficacious... there is no provision under the said Act which, even as a transitory measure, requires the Court to relegate or transfer a pending Section 9(1) application to the Arbitral Tribunal, the moment an Arbitral Tribunal has been constituted.”¹⁸

Thus, to avoid a situation where a party is left without an interim relief in respect of proceedings for interim measures pending before a court which have not been transferred to the tribunal after its constitution, the court may continue with the same and grant appropriate reliefs, where necessary.

As mentioned above, another significant aspect is that of the timelines introduced vide the 2015 Amendment. Section 9(2) of the Arbitration Act provides that:

“Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under Sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.”

¹⁵ See, M Ashraf v. Kasim VK 2018 SCC Online Ker 4913.

¹⁶ Arcellor Mittal, at [91].

¹⁷ Welspun, at [7].

¹⁸ Benara Bearings & Pistons Ltd. v. Mahle Engine Components India Pvt. Ltd., 2017 SCC OnLine Del 7226 at [24, 25].

Interim Measures in Arbitration

The insertion of such a time-bound mechanism aims at regulating of the role of the courts in granting interim measures once the arbitral tribunal has been constituted as it was deemed suitable to empower the tribunal to hear all interim applications, upon its constitution. After all, once the Tribunal is seized of the matter it is most appropriate for the Tribunal to hear all interim applications.¹⁹

B. Interim Reliefs in Case of Foreign-seated Arbitrations

Pursuant to an award being passed, applications under Section 9 of the Arbitration Act may be filed for seeking interim measures against dissipation or alienation of assets in India, even if the place or seat of arbitration is outside India,²⁰ and if it is demonstrated that there is no efficacious remedy available before the arbitral tribunal.²¹ In such cases, the court having jurisdiction over the subject-matter of the arbitral award (assets of the party against which such measures are being sought) may be considered as the appropriate court.²² Subsequently, this principle was said to apply at the pre-award stage as well.²³

C. Reliefs Generally Sought from Courts

A reading of various decisions suggests that parties generally approach courts for securing the amount in dispute and preventing the alienation or dissipation of property, even in foreign-seated arbitrations.²⁴ It can be exercised for the preservation of the subject-matter of the dispute and cannot be extended to directing specific performance of the contract itself.²⁵

19 Law Commission of India, Amendments to the Arbitration and Conciliation Act 1996 (Report No. 246, August 2014) 44: <http://lawcommissionofindia.nic.in/reports/report246.pdf>, accessed 19 December 2017.

20 Arbitration Act, s 2(2) proviso.

21 Ashwani Minda and Ors. v U-shin Ltd. and Ors., 2020 SCC OnLine Del 721.

22 Trammo DMCC v. Nagarjuna Fertilizers and Chemicals Ltd. (2018) 1 AIR Bom R 1; "...'Court' as defined in 'Explanation' to Section 47 which would be the Court having jurisdiction to entertain the Section 9 petition..."

23 Shanghai Electric, at [25] to [27].

24 Medima LLC v Balasore Alloys Ltd., 2021 SCC OnLine Cal 4239.

25 Pink City Expressway Pvt. Ltd. v National Highways Authority of India & Anr., Order dated 15 June 2022 in FAO(OS)(Comm) 158/2022 (Delhi High Court).

The following are indicative of the reliefs generally sought and granted by courts under the Arbitration Act:²⁶

- i. Under Section 9(ii)(b) of the Arbitration Act, parties have sought to protect their financial interests by securing the amount in dispute, courts have directed parties to furnish guarantees.²⁷
- ii. In *Nahar Builders Ltd. v Housing Development and Infrastructure Ltd.*,²⁸ the Bombay High Court dealt with the question of release of security obtained before the arbitration proceedings under Section 9 of the Arbitration Act but sought to be released when the award-debtor's moratorium was initiated. The Bombay High Court held that the security the award-debtor/corporate debtor deposited with the court prior to the arbitration proceedings cannot be termed as the corporate-debtor's property under the Insolvency and Bankruptcy Code, 2016. It held that once monies are deposited with the court, it placed beyond the reach of either party until the court adjudicates on it. However, the Delhi High Court has taken a differing view in *Morgan Securities & Credits Pvt. Ltd.*²⁹ The matter concerned a deposit made by the award-debtor to secure the award pending the challenge proceedings before the Delhi High Court. During such pendency, the award-debtor became insolvent and the question of whether the security deposit it made could be considered its asset arose. The Delhi High Court held that an amount held as security by the court is an asset of the party making that deposit. Thus, if such a party undergoes insolvency before the arbitral award is satisfied, the fate of the security would have to be decided by the National Company Law Tribunal in insolvency proceedings.
- iii. Under Section 9(ii)(c) of the Arbitration Act, courts have allowed parties to take symbolic possession of properties.³⁰ Courts have also appointed a receiver to take possession of property not being the subject matter of the dispute.³¹
- iv. Due to the wide powers available under Section 9(ii)(e) to the courts, they have directed parties to disclose the properties owned by them.³² Courts have found that an order of attachment may be passed against a third-party respondent³³ as well as directing parties to not dispose of their properties.

2. Standards Applicable to the Grant of Interim Reliefs by the Court under Section 9

There are no standards prescribed under the Arbitration Act for grant of interim reliefs by a court under Section 9 of the Arbitration Act. Some courts have sought to apply standards under the Code of Civil Procedure, 1908 (“CPC”) such as Order XXXVIII and Order XXXIX. Courts have held that standards prescribed in the CPC would not be applicable to proceedings under Section 9 of the Arbitration Act and have held that if a party can merely show that it has a good case on merits, it would be likely to succeed.

²⁶ Refer to Annexure III for a list of interim reliefs that may be granted by a court.

²⁷ *Delta Constructions v Narmada Cement* (2002) 1 Mah LJ 684.

²⁸ *Nahar Builders Ltd. v Housing Development and Infrastructure Ltd.*, 2020 SCC OnLine 2522.

²⁹ *Morgan Securities & Credits Pvt. Ltd.*, 2019 SCC OnLine Del 9843.

³⁰ *Karvy Financial Services Ltd v Progressive Construction Ltd* Arbitration Petition No. 1162 of 2014, decided on 24 December 2014.

³¹ *Tata Capital Financial Service v Deccan Chronicle Holdings Ltd* Arbitration Petition No 1321 of 2012, decided on 21 February 2013. See also *Welspun Infratech v. Ashok Khurana* 2014 (2) Arb LR 520 (Bom).

³² *Ibid.*

³³ *Value Advisory Services v ZTE Corporation* (2009) 3 Arb LR 315.

Interim Measures in Arbitration

In these situations, courts have been guided by the principle that denial of the grant of such interim reliefs would lead to injustice to the applicant or that the resultant award would be rendered unenforceable/un-executable if such reliefs are not granted. On the other hand, courts have considered the following criteria for granting interim protection under Section 9 of the Arbitration Act –

- a. The existence of an arbitration clause, and manifest intent of the Section 9 petitioner to invoke the said clause and initiate arbitral proceedings;
- b. The existence of a prima facie case, balance of convenience and irreparable loss, justifying such grant of interim relief to the applicant, and
- c. The existence of emergent necessity, so that, if interim protection is not granted by the court, even before arbitral proceedings are initiated and the chance to approach the arbitral tribunal under Section 17 of the Arbitration Act manifests itself, there is a possibility of the arbitral proceedings being frustrated or rendered futile.³⁴

The degree of the applicability of the provisions of the CPC to proceedings under Section 9 of the Arbitration Act remains unsettled in light of the divergent opinions by various high courts. Further, the Supreme Court in *Arvind Constructions v. Kalinga Mining Corporation and Others*³⁵, despite recognizing that there were divergent decisions by various high courts, left this question open to be considered in an appropriate case. The amendments do not address this lacuna and do not clarify the standards applicable in case of grant of interim reliefs by courts.

From a reading of various decisions, we have distilled two lines of reasoning: an exclusive approach and an inclusive approach. The former line of reasoning suggests that the rigours of every provision in the CPC cannot be put into place to defeat the grant of relief provided under Section 9 of the Arbitration Act. Whereas, the latter line of reasoning considers proceedings under Section 9 of the Arbitration Act to be akin to proceedings under Order XXXVIII Rule 5 and Order XXXIX Rule 1 and 2 of the CPC and consequently the principles contained therein would have to be considered for the grant of interim reliefs.

Courts regulate the grant of temporary injunction in accordance with the procedure laid down in Order XXXVIII and Order XXXIX of the CPC. Order XXXVIII of the CPC pertains to certain reliefs that may be available at any stage of the suit prior to the judgment including arrest of defendant as well as furnishing security, if a court is convinced that defendant intends to delay or obstruct the execution of a decree passed against it by disposing of its property or poses a threat to the property in dispute.

Under Order XXXIX of the CPC, the Court may grant temporary injunctions and interlocutory orders if in any suit it is proved that any property in dispute is in danger of being damaged or alienated by any party to the suit, or wrong-fully sold in execution of a decree, or defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors. Courts in such cases may grant temporary injunction to restrain such act, or give such other order for the purpose of staying and pre-venting the damaging, alienation, sale, removal or disposition of the property provided the party can satisfy the three requirements in relation to:

- (i) Prima facie case (ii) Balance of convenience (iii) Irreparable injury.

³⁴ CSRC Research, at [22(v)].

³⁵ (2007) 6 SCC 798.

A. Exclusive Approach

Order XXXVIII Rule 5 of the CPC provides for certain kinds of reliefs in the nature of grant of security, attachment of property or arrest of the defendant that are akin to the reliefs under Section 9(ii) (b) and (c) of the Arbitration Act.³⁶ These reliefs are granted only if the Court is satisfied that the respondent with an intention to obstruct or delay the execution of a decree is about to:

- i. dispose of the whole or part of its property, or
- ii. remove the whole or any part of its property from the local limits of the civil court having jurisdiction.

Order XXXIX of the CPC provides for temporary injunctions which are akin to the reliefs under Section 9(ii) (d) and (e) of the Arbitration Act. The standards to be shown by an applicant under Order XXXIX in order to successfully secure an injunction are that:

- i. any property in dispute is in danger of being wasted, damaged or alienated by the respondent, or wrongfully sold in execution of a decree, or
- ii. the respondent threatens, or intends, to remove or dispose of its property with a view to defrauding its creditors, or
- iii. the defendant threatens to dispossess the applicant or otherwise cause injury to the applicant in relation to any property in dispute in the suit.

Various High Courts have taken the view that principles/standards contained in Order XXXVIII Rule 5 and Order XXXIX mentioned above need not be strictly applied for the grant of interim measures under Section 9 of the Arbitration Act by a court. Such strict application would defeat the very purpose of having an alternative mechanism of dispute resolution.

- i. The Bombay High Court in *Delta Construction Systems Ltd., Hyderabad v. Narmada Cement Company Ltd, Mumbai*³⁷ (“**Delta Construction**”) held that court would not be bound by the provisions contained in the Order XXXVIII Rule 5 while granting a relief under Section 9 of the Arbitration Act.
- ii. Adverting to *Delta Constructions*, the Bombay High Court in *National Shipping Company of Saudi Arabia v. Sentrans Industries Ltd.*³⁸ (“**National Shipping**”), held that while seeking an order for securing the amount in dispute, the petitioner would not need to satisfy the requirements of Order XXXVIII Rule 5.
 - a. Instead a party applying for interim reliefs would only have to make a clear case regarding the merits of the claim for interim reliefs and establish that the denial of such reliefs would lead to injustice to the applicant.
 - b. Further, the applicant would have to make averments regarding the obstructive conduct of the opposite party or attempts to defeat the award thereby requiring the grant of interim relief.
- iii. Similarly, in *Steel Authority of India v. AMCI Pty Ltd*³⁹ (“**SAIL**”) the Delhi High Court took the view that principles contained in Order XXXVIII Rule 5 would only serve as guiding principles for the exercise of power by the court. A party seeking reliefs under Section 9 of the Arbitration would essentially have to satisfy the court that the furnishing of security was paramount to safeguard its interests.

³⁶ It should be noted that Section 9 of the Arbitration Act does not provide for arrests.

³⁷ 2002 (1) Mh LJ 684.

³⁸ AIR 2004 Bom 136.

³⁹ (2011) 3 Arb LR 502.

Interim Measures in Arbitration

- iv. Interestingly in *Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd.*⁴⁰ (“*Adhunik Steels*”), the apex court was of the opinion that “well known rules” of the CPC would have to be kept in mind while granting interim reliefs under Section 9. Therefore, the principles such as (i) prima facie case, (ii) balance of convenience, and (iii) irreparable injury would have to be kept in mind while granting an injunction. The apex court stopped short of stating that specific standards under Order XXXVIII Rule 5 and Order XXXIX Rule 1 and 2 would apply. However, the *Bombay High Court in Nimbus Communications Limited v. Board of Control for Cricket in India and Another*⁴¹ (“*Nimbus*”) interpreted *Adhunik Steels* to come to the conclusion that standards set out in Order XXXVIII Rule 5 would have to be fulfilled. However, in *Tata Capital Financial Services Ltd. v. Unity Infraprojects Ltd. & Ors*⁴², the Bombay High Court held that the Court will broadly bear in mind the fundamental principles of Order XXXVIII Rule 5 and Order XXXIX Rules 1 and 2, but at the same time, will have the discretion to mould the relief on a case by case basis with a view to secure the ends of justice and preserve the sanctity of the arbitral process. The Bombay High Court, herein, followed the ratio in the Division Bench’s judgment in *Deccan Chronicle Holdings Limited v. L&T Finance Limited*⁴³ that the underlying basis of Order XXXVIII Rule 5 would have to be borne in mind while making relevant orders under Section 9 of the Arbitration Act, however, the rigors of every procedural provision of the CPC cannot be put into place to defeat the grant of relief which would subserve the paramount interests of the justice.
- v. In maintaining an exclusive approach, the Delhi High Court⁴⁴ has continued to recognise that the power of courts to grant interim reliefs under Section 9 of the Arbitration Act is considerably wide, as is apparent from its text. Nevertheless, such power should be exercised in a principled manner, premised on some known guidelines – hence, the reference to Orders XXXVIII and XXXIX of the CPC. It has further clarified that the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles. Further, relying on the Supreme Court’s finding in *Indian Telephone Industries v. Siemens Public Communication*⁴⁵, the Delhi High Court concluded that though there is no textual basis in the Arbitration Act, linking it with provisions of the CPC, nevertheless, the principles underlying exercise of power by courts in the CPC are to be kept in mind, while making orders under Section 9.⁴⁶
- vi. A Division Bench of the Madras High Court chose to take a firmer approach in holding that in a matter pertaining to Section 9 of the Arbitration Act, CPC would have no application; rather a real, imminent danger of removal or disposal of the properties for such an extreme measure is to be proven.⁴⁷
- vii. The Delhi High Court followed its ruling in *SAIL* in a recent judgment and held that the Court is competent to pass an appropriate protection order of interim measure as provided under Section 9 of the Arbitration Act outside the provisions of Order XXXVIII, Rule 5 of the CPC.⁴⁸ Each case under Section 9 of the Arbitration Act has to be considered in its own facts and circumstances and on the principles of equity, fair play and good conscience. The power of the court under Section 9 cannot be restricted to the power conferred CPC though analogous principles may be kept in mind.⁴⁹

40 AIR 2007 SC 2563.

41 2012 (5) Bom CR 114.

42 2015 SCC OnLine Bom 3597.

43 2013 SCC OnLine Bom 1005.

44 See *Ajay Singh v. Kal Airways Private Limited*, 2017 SCC OnLine Del 8934, followed in *Jetpur Somnath Tollways Limited and Ors. v. National Highways Authority of India and Ors*, 2017(4) Arb LR 391(Delhi); *National Highways Authority of India v. Punjab National Bank*, 2017 SCC OnLine Del 11312.

45 (2002) 5 SCC 510.

46 *Supertrack Hotels Pvt. Ltd. v. Friends Motels Pvt. Ltd.* 2017 SCC OnLine Del 11662.

47 *M/s. KGS Constructions Limited v. Karishmaa MEP Services Pvt. Ltd.* (2017) 4 CTC 51 (DB).

48 *Motor & General Finance Ltd. v. Bravo Hotels Pvt. Ltd.* 2018(2) Arb LR 50 (Delhi).

49 *Ibid*; also see, *Reliance Communications v. Bharti Infratel* 2018 II AD (Delhi) 487.

Interim Measures in Arbitration

- viii. A relatively liberal approach was prescribed by the Jammu & Kashmir High Court in dealing with standards for interim reliefs under Section 9 of the Arbitration Act. It observed that the standards laid down in the CPC may not be applicable to the proceedings under Section 9 of the Arbitration Act *stricto sensu* but the underlying principles are applied by the courts to pass interim orders to protect the subject matter of arbitration.⁵⁰ It further observed that the court enjoys wide powers in the matter of grant of interim measures and, “such power entrusted to the Court is not limited, controlled or circumscribed by the provisions of order 39 Rule 5, Order 39 Rule 1 and 2 of the Code of Civil Procedure.”⁵¹
- ix. A Division Bench of the Supreme Court has held that while the basic principles of the CPC cannot be ignored, the court is not bound by its technicalities so as to prevent it from securing the ends of justice when considering an application under Section 9 of the Arbitration Act. It held that the following requirements should be satisfied when granting interim relief under Section 9: (i) a *prima facie* case; (ii) the balance of convenience being in favour of granting the interim relief; and (iii) the applicant approaching the court with reasonable expedition.⁵²

B. Inclusive Approach

The following are indicative of judgments where the courts have taken the view that the principles/standards contained in the CPC under Order XXXVIII Rule 5 and Order XXXIX Rules 1 & 2 would apply to the grant of interim measures under Section 9 of the Arbitration Act.

- i. The Supreme Court in *ITI v Siemens Public Communication*⁵³ (“**ITI**”), held that though there was no mention of applicability of the CPC to arbitral proceedings in the Arbitration Act, the provisions of the CPC could be read in by a court exercising its powers during any proceedings arising out of the Arbitration Act.
- ii. In deference to the decision of the apex court in *ITI*, various High Courts⁵⁴ had found that principles of Order XXXVIII Rule 5 and Order XXXIX Rules 1 and 2 of the CPC would have to be read into when the court exercised its powers under the Arbitration Act to grant interim reliefs.
- iii. The Bombay High Court in *Nimbus* interpreted *Adhunik Steel* to state that the principles contained in Order XXXVIII Rule 5, i.e.
 - a. the conduct of the defendant indicated that it intended to alienate its property or to remove its properties from the jurisdiction of the court; and
 - b. the defendant intended to obstruct or delay the execution of a decree that may be passed against it;
 would have to be kept in mind while determining an application under Section 9(ii)(b) of the Arbitration Act. This approach has also been followed in various decisions subsequent to *Nimbus*.⁵⁵
- iv. Similarly, the Division Bench of the Delhi High Court in *Anantji Gas Service v. Indian Oil Corporation*,⁵⁶ interpreted *Adhunik Steel* and *Arvind Constructions* to conclude that the power granted to the court under Section 9 of the Arbitration Act is akin to Order XXXIX Rules 1 and 2 of CPC.

50 NKG Infrastructure v. Granco Industries 2018 SCC OnLine J&K 335.

51 Ibid.

52 Essar House Private Ltd v Arcelor Mittal Nippon Steel India Ltd. [2022] SC 625.

53 (2002) 5 SCC 510.

54 Om Sakthi Renergies Limited v Megatech Control Limited (2006) 2 Arb LR 186; Goel Associates v. Jivan Bima Rashtriya Avs Samiti 114 (2004) DLT 478.

55 Housing Development and Infrastructure Ltd v Mumbai International Airport Pvt. Ltd., Appeal (L) No. 365 of 2013, Bombay High Court; C V Rao v. Strategic Port Investments KPC Ltd., 2014 Arb LR 9 (Delhi); Acron Developers Pvt. Ltd. v Patel Engineering Ltd., 2014 (1) Arb LR 512 (Bom); Tata Capital Financial Service v Deccan Chronicle Holdings Ltd., Judgment dated 21 February 2013 in Arbitration Petition No 1321 of 2012.

56 2014 SCC OnLine Del 3732.

Interim Measures in Arbitration

Thus, the court has to satisfy itself that the petitioner has established the three cardinal principles, i.e., *prima facie* case, balance of convenience and irreparable loss in case no protection is extended by way of interim measure under Section 9 of the Arbitration Act. The same was reiterated by the Delhi High Court in *V.K. Sood Engineers and Contractors v. Northern Railways*.⁵⁷

- v. The Calcutta High Court in *Star Track Agency Pvt. Ltd v. Efcalon Tie Up Pvt. Ltd.*⁵⁸ noted that it is well-established that the principles for grant of interim order applied by Courts would also apply to proceedings under Section 9 of the Arbitration Act for grant of interim reliefs.
- vi. The High Court of Hyderabad has adopted a relatively strict approach in observing that the Court is under an obligation to act in a fair manner, even while dealing with applications under a special enactment, such as the Arbitration Act, consistent with the procedure being followed by it while disposing of applications under Order XXXIX of CPC.⁵⁹
- vii. The High Court of Delhi has stated that while principles which govern Order XXXIX of CPC also govern the grant of interim relief under Section 9 of the Arbitration Act, an additional consideration would be that the court is also required to satisfy itself that the relief being sought cannot await the constitution of the arbitral tribunal and the invocation of Section 17 of the Arbitration Act.⁶⁰
- viii. The Division Bench of the Supreme Court has also observed that unless and until the conditions mentioned in Order XXXVIII Rule 5 of the CPC are satisfied, an order under Section 9 of the Arbitration Act granting interim reliefs cannot be passed.⁶¹

This approach does strike as an unwarranted inclusion of formalism and technicality to the arbitral process.

- i. Under the Arbitration Act, 1940 (“**1940 Act**”), the grant of interim measures⁶² was limited to only the post-award stage and was granted by courts only if it was satisfied that a party was taking steps to defeat, delay or obstruct an award. Therefore, the standard similar to that in Order XXXVIII or Order XXXIX was already incorporated in the 1940 Act. However, in the corresponding Section 9 of the Arbitration Act, these wordings are absent. Therefore, it may be argued that the intention of the legislature was to depart from the standards prescribed earlier which were similar to Order XXXVIII or Order XXXIX standards.
- ii. It was specifically stated in the 1940 Act that provisions of the CPC would apply to all proceedings before a Court.⁶³ This provision has not been retained in the Arbitration Act; on the contrary Section 19 of the Arbitration Act specifically excludes the applicability of provisions of the CPC. This also suggests that the legislature may have never intended to make standards set out in the CPC under Order XXXVIII or Order XXXIX applicable to proceedings under Section 9 of the Arbitration Act.
- iii. Article 17J of the Model Law as amended in 2006 (“**Amended Model Law**”) provides that a court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration. However, India has not made corresponding amendments to the Arbitration Act to give effect to Article 17J.⁶⁴

57 2017 SCC OnLine Del 9211.

58 AIR 2016 Cal 3267.

59 Mahaveer Infoway Limited v. Tech Mify Info Solutions LLP, 2017 SCC OnLine Hyd 221.

60 Avantha Holdings Ltd. v Vistra ITCL India Ltd., 2020 SCC OnLine Del 1717.

61 Sanghi Industries Ltd v Ravin Cables Ltd and another, AIR 2022 SC 4685.

62 See Annexure I.

63 See Annexure I.

64 India has adopted only the 1985 version of the Model Law and not the amendments to the Model Law carried out in 2006. India being a dualist state would require the enactment of an appropriate legislation to give effect to the Amended Model Law.

C. Applicability of the Specific Relief Act 1963

In a recent judgment of the Delhi High Court, it was held that injunctions that cannot be granted under Section 41 of the Specific Relief Act, 1963 cannot be granted under Section 9 of the Arbitration Act either.⁶⁵

3. Enforceability of an Interim Order Granted by a Court

Interim reliefs granted by a court may be enforced like any other order of court. In case of willful non-compliance / disobedience of the judgment/order, parties may choose to initiate contempt proceedings for civil contempt under Section 2(b) of the Contempt of Courts Act, 1971.⁶⁶ The parties in willful non-compliance may be punished with the maximum punishment as provided in terms of Section 12 of the Contempt of Courts Act, 1971.⁶⁷

⁶⁵ Parsoli Motor Works (P) Ltd. v. BMW India P Ltd. 2018 SCC Online Del 6556.

⁶⁶ MTECH Solutions v. PCLIT Solutions Pvt. Ltd., SCC OnLine Del 2218.

⁶⁷ Terra Manufacturing And Sales v. M/S Alagendiraa Apparels, 2011 SCC OnLine Del 4458.

Interim Measures by an Arbitral Tribunal under Section 17 of the Arbitration Act

1. Reliefs Sought by Parties before Arbitral Tribunals

The power of an arbitral tribunal to grant interim measures is dealt with in Section 17 of the Arbitration Act. Prior to amendment, the Section was quite open—textured in the scope of reliefs that could be provided; it permitted the tribunal to issue any interim measure of protection. However, courts and arbitral tribunals took the view that the scope of the interim measures that may be granted under Section 17 of the Arbitration Act was more limited than that under Section 9 of the Arbitration Act.¹ Consequently, various arbitral tribunals arrived at the incorrect conclusion that they could not pass orders such as a grant of security.

The 2015 Amendment Act has introduced much needed changes with respect to grant of interim reliefs by an arbitral tribunal and has brought clarity on the kind of reliefs that may be granted, bringing them at par with the interim reliefs that may be granted by courts under Section 9 of the Arbitration Act. The following are certain reliefs that may be granted by an arbitral tribunal:

- i. securing the amount in dispute in the arbitration;²
- ii. the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration;³
- iii. interim injunctions and the appointment of a receiver;⁴
- iv. any other interim measure which is just and convenient.

The Supreme Court in *MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.*,⁵ had observed that an arbitral tribunal, under Section 17 of the Arbitration Act, has no jurisdiction to pass interim measures against a third party.⁶ While it is established that the court can implead non-signatories to the arbitration agreement under Section 9 of the Arbitration Act,⁷ the competence of the arbitral tribunal to do so has not been clarified. The Delhi High Court,⁸ and the Madras High Court,⁹ have held that arbitral tribunals cannot implead third – parties and issue interim reliefs against them. On the other hand, there have been instances where the courts have allowed the impleadment of third – parties by the tribunals and issued orders against them.¹⁰

1 Managing Director, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd., (2004) 9 SCC 619.

2 Intertole ICS (Cecons) O & M Company v. NHAI, (2013) ILR 2 Delhi 1018.

3 Ibid.

4 Baker Hughes Singapore Pte v. Shiv-Vani Oil and Gas Exploration, Arbitration Petition No. 1127 of 2014 (Bombay High Court).

5 (2004) 9 SCC 619.

6 Followed in *Wind World (India) Limited and Ors. v. Enercon GmbH and Anr.* 2016 SCC OnLine Bom 1404.

7 *Blue Cost Infrastructure Development Pvt. Ltd. v Blue Coast Hotels Ltd. & Anr.*, 2020 SCC OnLine Del 1897; *M/s Value Advisory Services v. M/s ZTE Corporation & Ors.*, 2009 SCC OnLine Del 1961.

8 *Arupri Logistics (P) Ltd. v. Vilas Gupta*, 2023 SCC OnLine Del 4297.

9 *Abhibus Services India Pvt. Ltd. v Pallavan Transport Consultancies Services*, (2022) 2 Arb LR 514.

10 *IMC Ltd. v. Board of Trustees of Deendayal Port Trust*, (2020) 4 Arb LR 221 (DB); *Amazon COM NV Investment Holdings LLC v. Future Coupons Private Limited*, (2021) 4 Arb LR 67.

2. Standards Applicable to the Grant of Interim Reliefs by the Arbitral Tribunal under Section 17

The jurisprudence in India relating to the standards to be applied by an arbitral tribunal while granting interim reliefs under Section 17 of the Arbitration Act is sparse at best. International authors have suggested that an arbitral tribunal should be guided by arbitral case law, comparative analysis of arbitration rules, and scholarly opinions while granting interim measures.¹¹ The standards applied by national courts while granting interim measures may not have a bearing on arbitral tribunals.¹² Arbitral tribunals have normally required: (a) irreparable harm, (b) urgency, and (c) no prejudgment of the merits of the case.¹³ In some cases tribunals have also considered whether the party has established a prima facie case and that the balance of convenience weighed in favour of the party.¹⁴

As discussed, courts in India have at times shied away from importing principles contained in Order XXXVII Rule 5 and Order XXXIX Rule 1 & 2 to the grant of interim reliefs under Section 9.¹⁵ Considering such principles are not strictly applicable in proceedings before a court, it is arguable that they would not apply to flexible and tailor-made dispute resolution process like arbitration.

That said, in *Intertole ICS (Cecons) O & M Company v. NHAI*¹⁶, the Delhi High Court held that that an arbitral tribunal would have to ascertain whether the petitioner has made out a case as per Order XXXVIII Rule 5, prior to granting an interim relief furnishing security for the amount claimed. However, the interim measures were not granted by the arbitral tribunal solely because the applicant was unable to establish a prima facie case.

In a recent judgment, the Delhi High Court, in observing the similarity between the objects of Sections 9(i)(ii)(b) and 17(i)(ii)(b) of the Arbitration Act with that of Order XXXVIII Rule 5 of the CPC, held that the arbitral tribunal and court, while granting interim reliefs under the said provisions of the Arbitration Act, must be satisfied that it is “necessary” to pass order to secure the amount in dispute.¹⁷

3. Enforceability of an Interim Measure Granted by an Arbitral Tribunal

Despite the arbitral tribunal’s power to issue interim measures, the fact that the Arbitration Act did not provide for a method of enforcing any interim relief granted meant that there were doubts regarding efficacy of the arbitral process in India.¹⁸

11 Ali Yesilirmak, *Provisional Measures in International Commercial Arbitration* (Kluwer Law International) International Arbitration Law Library Series Set (Book 13), pp. 159 – 236 (“Ali Yesilirmak”).

12 Gary B. Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) pp. 2424 – 2563.

13 Ibid.

14 Ibid; Ali Yesilirmak, at pp. 159 – 236.

15 *Delta Construction Systems Ltd., Hyderabad v. M/S Narmada Cement Company Ltd, Mumbai*, (2002) 2 Bom LR 225; *National Shipping Company of Saudi Arabia v. Sentrans Industries Ltd.*, AIR 2004 Bom 136; *Steel Authority of India v AMCI Pty Ltd.*, (2011) 3 Arb LR 502; *Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd.* AIR 2007 SC 2563. See discussion on Exclusive Approach above.

16 *Intertole ICS (Cecons) O & M Company v. NHAI* (2013) ILR 2 Delhi 1018.

17 *Natrip Implementation Society v. IVRCL Limited* 2016 SCC OnLine Del 5023.

18 *M.D. Army Welfare Housing Organisation v. Sumangal Services Pvt. Ltd.*, (2004) 9 SCC 619; *Sri Krishan v. Anand* (2009) 3 Arb LR 447 (Del).

Interim Measures by an Arbitral Tribunal under Section 17 of the Arbitration Act

The Delhi High Court in *Sri Krishan v. Anand*,¹⁹ held that any person failing to comply with the order of the arbitral tribunal under Section 17 of the Arbitration Act would be deemed to be “making any other default” or “guilty of any contempt to the arbitral tribunal during the conduct of the proceedings” under Section 27 (5) of the Arbitration Act, being the only mechanism for enforcing its orders.²⁰ Therefore, such party would be in contempt of court.

It may come as a measure of relief to parties that the Delhi High Court²¹ has held that an order passed by an arbitral tribunal that is subsequently upheld by a court in an appeal filed under Section 37 of the Arbitration Act, would be enforceable as an order of the court.

The amendment to Section 17 of the Arbitration Act,²² has now clarified that an order of the tribunal would be enforceable like an order of the court in case of interim reliefs granted by arbitral tribunals. This applies only to arbitrations that commenced post October²³ 2015 (i.e. the date of commencement of the Amendment Act) since Section 26 of the Amendment Act stipulates that “nothing in the Amended Act, shall apply to ‘arbitral proceedings’ commenced as per Section 21 of the Act, before the commencement of the Amendment Act.”

Besides the statutory recognition of enforceability of interim orders granted by the tribunal, the Supreme Court, in a recent case, rendered non-compliance of an arbitral tribunal’s order or conduct amounting to contempt during the course of the arbitration proceedings, as triable under the Contempt of Courts Act, 1971.²⁴

Article 17H of the Model Law provides that interim reliefs granted by arbitral tribunals shall be recognized as binding. Ordinarily, such interim reliefs would be enforceable upon an application to the competent court, irrespective of the country in which it was issued. However, in the absence of a similar provision in India, interim reliefs (including orders of emergency arbitrators) granted by foreign arbitral tribunals are not directly enforceable in India. A fresh application under Section 9 of the Arbitration Act may be filed, based on the interim relief granted by the foreign arbitral tribunal,²⁵ as explained in the next Section.

19 (2009) 3 Arb LR 447 (Del); *Indiabulls Financial Services v. Jubilee Plots*, Judgment dated 18 August 2009 in OMP Nos 452-453 of 2009 (Delhi High Court).

20 Arbitration Act, s 27(5): “Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.”

21 *BPTP Limited v. CPI India I Limited and Ors.* 2015 (4) Arb LR 410 (Delhi).

22 See Annexure III.

23 See Annexure III.

24 *Alka Chandewar v. Shamshul Ishrar Khan* 2017 SCC OnLine SC 758.

25 *Raffles Design India International Private Limited v. Educomp Professional education Limited*, 2016 SCC Online Del 5521.

Emergency Arbitrator’s Orders/Awards

The Arbitration Act is silent on Emergency Arbitrator’s Orders/Awards (“**EA Order/Award**”) and their enforceability. As regards India-seated arbitrations, in *Amazon.com NV Investment Holdings LLC v Future Retail Ltd. & Ors.*,¹ the Supreme Court held that an EA Order/Award will be considered as an order enforceable under Section 17(1) of the Arbitration Act. Thus, legal recognition for an EA Order/Award in India—seated arbitrations has now been provided by the Supreme Court.

Foreign interim awards, including EA Orders/Awards, are yet to be recognized as enforceable in India. In such cases, parties may file an application under Section 9 of the Arbitration Act, with the EA Order/Award appended as an exhibit, seeking similar reliefs as were granted by the emergency arbitrator. The court undertakes an analysis independent of the findings of the EA Order/Award and has the discretion to grant the same reliefs.²

This position in India is in contrast to the position in Singapore, where a foreign EA Order/Award is considered to be a “foreign award” under the Singapore International Arbitration Act, 1994, (“**IAA**”) and could be enforced in a manner similar to enforcing foreign awards under the IAA.

1 (2022) 1 SCC 209.

2 HSBC PI Holdings (Mauritius) Ltd. v Avitel Post Studios Ltd., Order dated 22 January 2014 in Arbitration Petition 1062 of 2012 (Bombay High Court).

India, U.K. and Singapore: A Comparison

	India	United Kingdom	Singapore
Interim reliefs by arbitral tribunal	<p>Under Section 17(1) of the Arbitration Act, a party may, during the arbitral proceedings, apply to the arbitral tribunal:</p> <ol style="list-style-type: none"> i. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or ii. for an interim measure of protection in respect of any of the following matters, namely: <ol style="list-style-type: none"> a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; b) securing the amount in dispute in the arbitration; c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence; d) interim injunction or the appointment of a receiver; e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the Court has for the purpose of, and in relation to, any proceedings before it. 	<p>Section 38 of the English Arbitration Act, 1996 (“English Act”) lays down the general powers exercisable by the tribunal. The parties are free to agree on the powers exercisable by the arbitral tribunal for the purposes of and in relation to the proceedings.</p> <p>Unless otherwise agreed by the parties the tribunal has the following powers:</p> <ul style="list-style-type: none"> ▪ security for the costs ▪ give directions in relation to any property which forms a part of the proceedings: <ol style="list-style-type: none"> a) inspection, photographing, preservation, custody or detention of the property by the tribunal, an expert or a party, or b) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property. ▪ direct that a party or witness shall be examined on oath or affirmation. ▪ direct a party for the preservation of any evidence in his custody or control. <p>Section 39 of the English Act encapsulates the power of the tribunal to make provisional awards.</p> <p>However, this power can be exercised only on an agreement between the parties that the tribunal can order on a provisional basis any relief which it would have power to grant in a final award. This includes:</p> <ol style="list-style-type: none"> a) an order for the payment of money or the disposition of property, or b) an order to make an interim payment on account of the costs of the arbitration. <p>The final order of the tribunal shall take into account such order.</p> <p>Under Section 48 of the English Act, arbitral tribunals have the same power as the courts to order interim injunctions and specific performance.</p>	<p>Section 28 of the Arbitration Act, 2001 lays down the powers exercisable by the arbitral tribunal which includes the following interim measures:</p> <ol style="list-style-type: none"> a) security for costs; b) discovery of documents and interrogatories; c) giving of evidence by affidavit; d) a party or witness to be examined on oath or affirmation; e) the preservation and interim custody of any evidence; f) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is a part of the proceedings; and g) the preservation, interim custody or sale of any property which forms part of the dispute. <p>The Arbitration Act, 2001 applies to domestic arbitration and to those proceedings where Part II of the International Arbitration Act does not apply.</p> <p>Section 12 of the International Arbitration Act lays down the powers of the arbitral tribunal which entails a number of interim reliefs that can be granted by the arbitral tribunal such as:</p> <ul style="list-style-type: none"> ▪ the preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute ▪ the preservation and interim custody of any evidence for the purposes of the proceedings securing the amount in dispute; ▪ ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and ▪ an interim injunction or any other interim measure. ▪ enforcing any obligation of confidentiality that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other documents, under any written law or rule of law; or under the rules of arbitration agreed to or adopted by the parties.

India, U.K. and Singapore: A Comparison

	India	United Kingdom	Singapore
Interim reliefs by arbitral tribunal			The arbitral tribunal may award any remedy that could have been ordered by the High Court in the case of a civil proceeding.
Enforceability of interim reliefs granted by the tribunal	An interim order passed by the tribunal is deemed to be an order of the court and is enforceable in accordance with the provisions of the CPC. ¹	Such an order passed by the tribunal under Section 39 of the English Act is contingent upon the authority to be conferred by the parties to arbitration. Further, the general powers of the tribunal under Section 38 are not deemed to be orders of the court.	Section 12(6) of the International Arbitration Act provides that the orders made by the arbitral tribunal, with the permission of the General Division of the High Court, shall be enforceable in the same manner as if they are orders made by the court, and where permission is so given, judgment may be entered in terms of the order or direction. Section 28(4) of the Arbitration Act, 2001 lays down that all orders and directions given by the arbitral tribunal shall, by the permission of the court, be enforceable in the same manner as if they were orders made by the court and, where leave is so given, judgment may be entered in terms of the order or direction.
Interim reliefs by the court	Section 9 lays down the interim measures that can be passed by the court before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced, on the application made by a party. The relief includes: i. appointment of a guardian for a minor or person of unsound mind; or ii. an interim measure of protection in respect of any of the following matters, namely: a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; b) securing the amount in dispute in the arbitration;	Under Section 44 of the English, unless an agreement to the contrary exists among the parties, the court can exercise its powers regarding: a) the taking of the evidence of witnesses; b) the preservation of evidence; c) making orders relating to property which forms a part of the proceedings: i. for the inspection, photographing, preservation, custody or detention of the property, or ii. ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property; and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration; d) the sale of any goods the subject of the proceedings; e) the granting of an interim injunction or the appointment of a receiver.	Section 31 of the Arbitration Act, 2001 lays down the power of the court in relation to the arbitral proceedings: ▪ the same power to make orders in respect of any of the matters set out in Section 28 as it has for the purpose of and in relation to an action or matter in the Court; ▪ securing the amount in dispute; ▪ ensuring that any award is not rendered ineffectual by the dissipation of assets by a party; and ▪ an interim injunction or any other interim measure. Section 12A of the International Arbitration Act empowers the High Court to make an order in respect of the following as it has for any of the matters or action in court: ▪ giving of evidence by affidavit; ▪ the preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute; ▪ samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;

¹ Arbitration Act, s 17(2).

India, U.K. and Singapore: A Comparison

	India	United Kingdom	Singapore
Interim reliefs by the court	<p>c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute, or as to which any question may arise therein and for the aforesaid authorising any person to enter upon any land or building or any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or for the purpose of obtaining full information or evidence;</p> <p>d) interim injunction or the appointment of a receiver;</p> <p>e) other interim measure of protection as the court may consider just and convenient,</p> <p>The Court has the same power for making orders under this Section as it has for the purpose of any proceedings before it.</p> <p>Where an interim order is passed before the commencement of arbitral proceedings, the arbitral proceedings should commence within 90 days or such time as the court may determine.</p>	<p>If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make orders necessary for the preservation of assets or evidence. Otherwise, the court should act only on an application of a party made either with the permission of the tribunal or the agreement in writing of the other parties.</p> <p>The leave of the court is required to file an appeal from a decision of the court under this Section.</p>	<ul style="list-style-type: none"> ▪ the preservation and interim custody of any evidence for the purposes of the proceedings; ▪ securing the amount in dispute; ▪ ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; interim injunction or any other interim measure. ▪ enforcing any obligation of confidentiality that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other documents, under any written law or rule of law; or under the rules of arbitration agreed to or adopted by the parties. <p>However, Sub-section (3) of the said Section restricts this power of the High Court if it is of the opinion that the place of arbitration is or likely to be outside Singapore when it is designated or determined makes it inappropriate to make such order.</p> <p>The High Court can make such orders as it thinks fit for the purpose of preservation of evidence or assets in case of urgency. Otherwise, it should act with the permission of arbitral tribunal or agreement of the parties.</p>
Jurisdiction of the court vis-à-vis arbitral tribunal	<p>Once the tribunal has been constituted, the exercise of powers under Section 9 can be only be done where the remedy provided under Section 17 would not be effective.</p>	<p>An action can only be taken by the court, if the authorized body has no power or is unable for the time being to act effectively. An order made otherwise will cease to have effect on an order made by the authorized body or tribunal.</p>	<p>While exercising power under Section 31 of the Arbitration Act, 2001, the court will have regard to the application made before the arbitral tribunal or an order made by it. An order made by the court will cease to have effect on an order being made by the authorized body.</p> <p>Under Section 12A(6) of the International Arbitration Act, the Court shall make an order only if the tribunal or the authorized body has no power or is unable to act effectively.</p>

India, U.K. and Singapore: A Comparison

	India	United Kingdom	Singapore
Grounds for granting interim relief	<p>The grant of interim relief is discretionary and no standards have been laid down in the Arbitration Act for the same.</p>	<p>The national law has not laid down any guidelines which ought to be followed while granting interim relief.</p> <p>The guidelines issued by the Chartered Institute of Arbitrators lay down the following criteria:</p> <ol style="list-style-type: none"> i. <i>prima facie</i> establishment of jurisdiction; ii. <i>prima facie</i> establishment of case on the merits; iii. a risk of harm which is not adequately reparable by an award of damages if the measure is denied; iv. proportionality. <p>Courts have been reluctant to grant interim reliefs if the necessary conditions are not satisfied. For example, a party seeking interim relief is required to establish some concrete basis to infer a real risk of dissipation of the relevant asset and would not succeed merely on the balance of prejudice.²</p> <p>Arbitrators cannot grant interim measures requiring actions by third parties and do not have the power to directly enforce these measures. Further, they cannot impose penalties for non-compliance unless granted a specific power to do so by the arbitration agreement, including the applicable arbitration rules and/or the <i>lex arbitri</i>.</p>	<p>Section 3 of the International Arbitration Act provides that the UNCITRAL Model Law shall have the force of law in Singapore.</p> <p>Article 17A of the UNCITRAL Model law lays down the conditions for granting interim measures. The party requesting interim measure has to satisfy the arbitral tribunal that:</p> <ul style="list-style-type: none"> ▪ Harm not adequately reparable by damages; ▪ Such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; <p>Reasonable possibility that the requesting party will succeed on the merits of the claim.</p> <p>Further, in the context of court-ordered interim measures, Article 17 J provides that, “...A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.”</p> <p>The tribunals and courts in Singapore have adopted the principles laid down in <i>American Cyanamide v. Ethicon</i>³ while dealing with such interim applications:</p> <ul style="list-style-type: none"> ▪ There is a serious issue to be tried ▪ Irreparable harm if denied the relief ▪ The balance of convenience pending trial favours the applicant.⁴

² Gerald Metals SA v. Timis and Ors. 2016 [EWHC] 2327 (Ch).

³ [1975] 2 WLR 316.

⁴ Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd [2013] SGCA 16.

Conclusion

The amendments to the Arbitration Act make it explicit that the purpose of these changes was to bring the powers of the arbitral tribunal under Section 17 of the Arbitration Act on par with that of the Court under Section 9 of the Arbitration Act, and was merely a clarificatory restatement of an implicit legal position.¹

At present, the question of whether the rigours of the CPC particularly in Order XXXVIII and Order XXXIX would have to be applied by a court, while deciding an application under Section 9, is inconclusive.

The Working Group of the UNCITRAL acknowledged that the Model Law was silent in respect of the standards to be adopted by arbitral tribunal, though interim reliefs have far reaching consequences. It noted that arbitral tribunals were given a broad mandate to determine whether a relief was necessary.² It chose to adopt standards that balanced the need for predictability as well as flexibility in the arbitral process. Article 17A of the Amended Model Law³, which adopts a more pragmatic approach than what has been preferred by Indian courts, states that a party would have to establish that:

- i. it would suffer irreparable harm if the interim measure sought for was not granted; and
- ii. there was a reasonable possibility that it would succeed on merits.

It is relevant to note that these principles have been distilled from the collective experience of various arbitrators and arbitration experts. Moreover, from the perspective of international arbitrations the adoption of such standards would lead to uniformity in the treatment of applications for interim reliefs, which is also an important objective of arbitration.

1 Lanco Infratech Ltd. v. Hindustan Construction Company Ltd. (2016) 234 DLT 175.

2 United Nations Commission on International Trade Law Working Group II (Arbitration and Conciliation) Thirty-sixth session New York, 4–8 March 2002.

3 See Annexure II.

Annexure I

Schedule II of the Arbitration Act, 1940

The Second Schedule (See Section 41)

Powers of Court

- a. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.
- b. Securing the amount in difference in the reference.
- c. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.
- d. Interim injunctions or the appointment of a receiver.
- e. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

Annexure II

Relevant Provisions of the Model Law

Article 17 A. Conditions for Granting Interim Measures

1. The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that: (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
2. With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Article 17 J: Court-ordered Interim Measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

Annexure III

Relevant Provisions of the Arbitration Act and the Code

SN	Provision Relevant	Extract
The Code Of Civil Procedure, 1908		
1	Order 38 Rule 5	<p>5. Where defendant may be called upon to furnish security for production of property:</p> <ol style="list-style-type: none"> Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, <ol style="list-style-type: none"> is about to dispose of the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security. The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof. The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified. 1 [(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.]
2	Order 39 Rule 1	<p>Cases in which temporary injunction may be granted.</p> <ol style="list-style-type: none"> Where in any suit it is proved by affidavit or otherwise: <ol style="list-style-type: none"> that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or that the defendant threatens, or intends, to remove or dispose of his property with a view to 3 [defrauding] his creditors, that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, <p>the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 5 [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.</p>
The Arbitration Act, 1940		
3	Section 18	<p>Power of Court to pass interim orders:</p> <ol style="list-style-type: none"> Notwithstanding anything contained in Section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary. Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

Annexure III: Relevant Provisions of the Arbitration Act and the Code: Conclusion

SN	Provision Relevant	Extract
4	Section 41	<p>Procedure and powers of Court: Subject to the provisions of this Act and of rules made there under:</p> <p>a) the provisions of the Code of Civil Procedure, 1908, (5 of 1908) shall apply to all proceedings before the Court, and to all appeals, under this Act, and</p> <p>b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court: Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.</p>

The Arbitration and Conciliation Act, 1996

5	Section 9	<p>9. Interim measures, etc., by Court:</p> <p>1. A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court:</p> <ol style="list-style-type: none"> i. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or ii. for an interim measure of protection in respect of any of the following matters, namely: <ol style="list-style-type: none"> a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; b) securing the amount in dispute in the arbitration; c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence; d) interim injunction or the appointment of a receiver; e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it. <p>2. Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under Sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.</p> <p>3. Once the arbitral tribunal has been constituted, the Court shall not entertain an application under Sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.</p>
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Annexure III: Relevant Provisions of the Arbitration Act and the Code: Conclusion

SN	Provision Relevant	Extract
6	Section 17	<p>17. Interim measures ordered by arbitral tribunal:</p> <ol style="list-style-type: none"> 1. A party may, during the arbitral proceedings, apply to the arbitral tribunal: <ol style="list-style-type: none"> i. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or ii. for an interim measure of protection in respect of any of the following matters, namely: <ol style="list-style-type: none"> a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; b) securing the amount in dispute in the arbitration; c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence; d) interim injunction or the appointment of a receiver; e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it. 2. Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this Section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.
7	Section 19	<p>Determination of rules of procedure:</p> <ol style="list-style-type: none"> 1. The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872). 2. Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings. 3. Failing any agreement referred to in Sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate. 4. The power of the arbitral tribunal under Sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

The Arbitration and Conciliation (Amendment) Act, 2015

8	Section 26	<p>Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.</p>
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Annexure IV

Table of Cases

SN	Judgment	Extracts	Para Nos.
1	Abhibus Services India Pvt. Ltd. v. Pallavan Transport Consultancies Services, (2022) 2 Arb LR 514.	“As concluded earlier in the judgment, the scope and the ambit of Section 17 are to be understood within the contours of its explicit language. After the amendment, the role of the referral courts at the threshold stage has been limited to prima facie consideration and in such consideration any doubt arises then, simply relegate as the doctrine goes “when in doubt do refer”. In order to avoid flooding of applications before the Courts under Section 9, amendment to Section 17 became necessary in keeping with the UNCITRAL Model Law and adopting the rule of priority in favour of the Arbitration. But it does not automatically follow that arbitral Tribunal can also exercise the residual or inherent power exclusively vest in the Courts. Therefore, it is to be held that even after widening of the scope of Section 17, the Tribunal cannot said to be vested with the power of impleadment of third party/non-signatory.”	128
2	Acron Developers Pvt. Ltd. v. Patel Engineering Ltd. 2014 (1) Arb LR 512 (Bom).	“The Court should be satisfied that the plaintiff has prima facie case. It is also held that merely having just and valid claim or prima-facie case, will not entitle the plaintiff the order of attachment before judgment unless he also establishes that the defendant is attempting to remove or dispose of his assets with an intention of defeating the decree that may be passed.”	6
3	Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd. AIR 2007 SC 2563.	“we feel that it would not be correct to say that the power under Section 9 of the Act is totally independent of the well-known principles governing the grant of an interim injunction that generally govern the courts in this connection. So viewed, we have necessarily to see whether the High Court was justified in refusing the interim injunction on the facts and in the circumstances of the case”	5
4	Ajay Singh v. Kal Airways Private Limited, 2017 SCC OnLine Del 8934.	<p>“The first question which the court addresses is the one adverted to by the appellant, that principles underlying Order 38, Rule 5 CPC have to be kept in mind, while making an interim order, in a given case, directing security by one party. Indian Telephone Industries v. Siemens Public Communication (2002) 5 SCC 510 is an authority of the Supreme Court, which tells the courts that though there is no textual basis in the Arbitration Act, linking it with provisions of the CPC, nevertheless, the principles underlying exercise of power by courts-in the CPC-are to be kept in mind, while making orders under Section 9...”</p> <p>“Though apparently, there seem to be two divergent strands of thought, in judicial thinking, this court is of the opinion that the matter is one of the weight to be given to the materials on record, a fact dependent exercise, rather than of principle. That Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines – therefore, the analogy of Orders 38 and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles.”</p>	24, 25, 27
5	Amazon COM NV Investment Holdings LLC v. Future Coupons Private Limited, (2021) 4 Arb LR 67.	“The Emergency Arbitrator has applied the well settled law laid down by the Supreme Court on the Group of Companies doctrine in Chloro Controls (supra), Cheran Properties (supra) and MTNL (supra) to the present case. All the tests laid down by the Supreme Court are satisfied in the present case and the Emergency Arbitrator has given nine reasons for applying the Group of Companies doctrine which are detailed in para 139 of the interim order. This Court is in complete agreement with the findings of the Emergency Arbitrator based on the well settled law laid down by the Supreme Court”	167

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
6	Arcellor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd., (2022) 1 SCC 712.	<p>“Even after an Arbitral Tribunal is constituted, there may be myriads of reasons why the Arbitral Tribunal may not be an efficacious alternative to Section 9(1). This could even be by reason of temporary unavailability of any one of the arbitrators of an Arbitral Tribunal by reason of illness, travel, etc.”</p> <p>“When an application has already been taken up for consideration and is in the process of consideration or has already been considered, the question of examining whether remedy under Section 17 is efficacious or not would not arise. The requirement to conduct the exercise arises only when the application is being entertained and/or taken up for consideration. As observed above, there could be numerous reasons which render the remedy under Section 17 inefficacious. To cite an example, the different arbitrators constituting an Arbitral Tribunal could be located at far away places and not in a position to assemble immediately. In such a case, an application for urgent interim relief may have to be entertained by the Court under Section 9(1).”</p>	87, 91
7	Arupri Logistics (P) Ltd. v. Vilas Gupta, 2023 SCC OnLine Del 4297.	<p>“What needs to be emphasised is that an AT cannot arrogate to itself powers which are neither conferred by the statute or the rules which govern the arbitration nor can it take recourse to inherent powers, which as has been found hereinabove, are acknowledged to inhere in courts and judicial authorities only. The AT, cannot, therefore, expropriate for itself powers which are vested solely in judicial institutions. It remains bound by the provisions of the statutes which prevail and which in this case undisputedly is the Act. In the absence of a power of impleadment having been conferred upon the AT in terms thereof, it would have no authority or jurisdiction to join or implead parties to the proceedings. The Court has already found that the power to implead cannot be sustained or traced to Sections 16 or 17 or 19 of the Act. In fact, the Act incorporates no provision which could be even remotely considered as being liable to be read as being the repository of the power of the AT to implead.”</p>	93
8	Arvind Constructions v. Kalinga Mining Corporation and Others, (2007) 6 SCC 798.	<p>“Suffice it to say that on the basis of the submissions made in this case, we are not inclined to answer that question finally. But, we may indicate that we are prima facie inclined to the view that exercise of power under Section 9 of the Act must be based on well recognized principles governing the grant of interim injunctions and other orders of interim protection or the appointment of a receiver.”</p>	4
9	Ashwani Minda and Ors. v. U-shin Ltd. and Ors., 2020 SCC OnLine Del 721.	<p>“We are unable to accept Mr. Singh’s contention. The primary purpose of Part I of the Act (which inter alia includes Section 2, 9 and 17) is to govern India-seated arbitrations. The reference in Section 9(3) to Section 17 alone, cannot therefore be dispositive of the question as to whether the same principle applies where the arbitration is seated outside India. In our view, the absence of a specific reference to foreign-seated arbitrations in Section 9(3) ought not to be construed as a widening of the Section 9 power, to cover cases where the arbitral tribunal has been constituted, and is capable of granting efficacious relief.</p> <p>Such an interpretation would not just extend the scope of Section 9, but would amount to the provision being available in the Indian courts in connection with foreign-seated arbitrations, but not in connection with India-seated arbitrations. We therefore hold that, although an application under Section 9 is maintainable in connection with a foreign-seated arbitration, an application thereunder would not lie after the constitution of the arbitral tribunal, unless the applicant demonstrates that it does not have an efficacious remedy before the tribunal. (We are not required in the facts of the present case to decide whether the availability of a remedy before an emergency arbitrator, or the seat court, would also dissuade the Indian court from granting relief under Section 9.)”</p>	36

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
10	Avantha Holdings Ltd. v. Vistra ITCL India Ltd., 2020 SCC OnLine Del 1717.	“That said, the mere satisfaction of these criteria does not, ipso facto, make out a case for ordering interim measures under Section 9. Additionally, the Court is also required to satisfy itself that the relief, being sought under Section 9, cannot await the constitution of the arbitral tribunal, or the appointment of the arbitrator, and the invocation, before such arbitrator or arbitral tribunal, of Section 17. Emergent necessity, of ordering interim measures is, therefore, an additional sine qua non, to be satisfied before the Court proceeds to grant relief under Section 9 of the 1996 Act. While passing orders under Section 9, therefore, the Court is required to satisfy itself that (i) the applicant, before it, manifestly intends to initiate arbitral proceedings, (ii) the criteria for grant of interim injunction, which apply to Order 39 of the CPC, stands satisfied, and (iii) circumstances also exist, which renders the requirement of ordering interim measures an emergent necessity, which cannot await a Section 17 proceeding, before the arbitrator, or arbitral tribunal. In assessing whether such an emergent necessity exists, or not, the Court would, essentially, have to satisfy itself that failure to order interim measures, under Section 9, would frustrate, or would render the recourse, to arbitration – which is yet to take place – a futility.”	46
11	Baker Hughes Singapore Pte v. Shiv-Vani Oil and Gas Exploration, Arbitration Petition No. 1127 of 2014 (Bombay High Court).	“Considering the direction given by the Delhi High Court in the order dated 19th July 2018 and more particularly paragraph 12 thereof, the Chamber summons is allowed in terms of prayer clause (a) which reads thus: “(a) this Hon’ble Court be pleased to direct the office of the Prothonotary and Sr. Master to release the amount received pursuant to the encashment of the Bank Guarantee along with the accumulated interest thereon, and currently lying deposited with the Indian Overseas Bank bearing account No.00140400000-3342 in consonance with the order of (i) this Hon’ble Court dated November 11, 2014; (ii) the Hon’ble Supreme Court dated March 16, 2015; and (iii) the Hon’ble Delhi High Court dated July 19, 2018.”	5
12	Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552.	“It must be pointed out that the law of the seat or place where the arbitration is held, is normally the law to govern that arbitration. The territorial link between the place of arbitration and the law governing that arbitration is well established in the international instruments, namely, the New York Convention of 1958 and the UNCITRAL Model Law of 1985. It is true that the terms “seat” and “place” are often used interchangeably. In Redfern and Hunter on International Arbitration [Blackaby, Partasides, Redfern and Hunter (Eds.), Redfern and Hunter on International Arbitration (5th Edn., Oxford University Press, Oxford/New York 2009).] (Para 3.51), the seat theory is defined thus: “The concept that an arbitration is governed by the law of the place in which it is held, which is the ‘seat’ (or ‘forum’ or locus arbitri) of the arbitration, is well established in both the theory and practice of international arbitration.”	76
13	Benara Bearings & Pistons Ltd. v. Mahle Engine Components India Pvt. Ltd., 2017 SCC OnLine Del 7226.	“We may also note that if the argument of the appellant were to be accepted that the moment an Arbitral Tribunal is constituted, the Court which is seized of a Section 9 application, becomes coram non iudice, would create a serious vacuum as there is no provision for dealing with pending matters. All the powers of the Court to grant interim measures before, during the arbitral proceedings or at any time after the making of the arbitral award but prior to its enforcement in accordance with Section 36 are intact (and, have not been altered by the amendment) as contained in Section 9(1) of the said Act. Furthermore, it is not as if upon the very fact that an Arbitral Tribunal had been constituted, the Court cannot deal with an application under Sub-section (1) of Section 9 of the said Act. Section 9(3) itself provides that the Court can entertain an application under Section 9(1) if it finds that circumstances exist which may not render the remedy provided under Section 17 efficacious. We may also note that there is no provision under the said Act which, even as a transitory measure, requires the Court to relegate or transfer a pending Section 9(1) application to the Arbitral Tribunal, the moment an Arbitral Tribunal has been constituted.”	24, 25

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
14	BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 234.	<p>“Equally incorrect is the finding in Antrix Corpn. Ltd. [Antrix Corpn. Ltd. v. Devas Multimedia (P) Ltd., 2018 SCC OnLine Del 9338] that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one court exclusively. This is why the Section begins with a non obstante clause, and then goes on to state “...where with respect to an arbitration agreement any application under this part has been made in a court...” It is obvious that the application made under this part to a court must be a court which has jurisdiction to decide such application. The subsequent holdings of this court, that where a seat is designated in an agreement, the courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the court where the seat is located, and that court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless.</p> <p>Also, where it is found on the facts of a particular case that either no “seat” is designated by agreement, or the so-called “seat” is only a convenient “venue”, then there may be several courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the “seat” of arbitration, and before such “seat” may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a court in which a part of the cause of action arises would then be the exclusive court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.”</p>	59
15	Blue Cost Infrastructure Development Pvt. Ltd. v. Blue Coast Hotels Ltd. & Anr., 2020 SCC OnLine Del 1897.	<p>“Reading of Section 9 of the Act as well as the judgments in Value Advisory (supra) and Gatx India (supra) makes it clear that the scope of power of a Court under Section 9 of the Act is not limited to parties to an Arbitration Agreement and the Court can issue interim directions even against a third party. The distinction between the powers under Section 9 of the Act and Section 17 of the Act has a clear rationale. An Arbitrator is a creature of the contract between the parties and therefore cannot venture outside the contract to issue directions to parties who are non-parties to the Arbitration Agreement. This limitation is not applicable to a Court exercising power under Section 9 of the Act.”</p>	27
16	BPTP Limited v. CPI India I Limited and Ors. 2015 (4) Arb LR 410 (Delhi).	<p>“It is plain that the scheme of Section 37 of the Act is that an order denying or granting relief under Section 17 of the Act could be challenged by way of an appeal. While Section 17 itself may not result in an order enforceable by a Court, once that order is tested and is affirmed in an appeal under Section 37 of the Act, the order of the appellate Court should prevail. Such interpretation would ensure that the exercise of getting the AT to pass interim orders under Section 17 is not rendered futile. The statutory remedy under Section 17 cannot be allowed to be frustrated if the alternate dispute resolution mechanism of arbitration has to be effective and efficacious. In Sri. Krishan v. Anand (supra) a submission to the said effect was noted but not examined and considered by the Court. In any event it is seen that in Sri. Krishan the Court was not considering a challenge to an order passed by the AT under Section 17 of the Act simultaneous with an application under Section 9 of the Act.</p> <p>Consequently, this Court is satisfied that as a result of the dismissal of the appeal filed by BPTP, the order passed by the AT on 5th January 2015 has merged with the order passed by the Court in appeal and the order passed in appeal is enforceable. It will be open for CPI to take appropriate steps in accordance with law for its enforcement.”</p>	100, 101

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SN	Judgment	Extracts	Para Nos.
17	CRSC Research and Design Institute Group Co. Ltd. v. Dedicated Freight Corridor Corporation of India Ltd. and Others, 2020 SCC OnLine.	<p>“While exercising power under Section 9, the Court is required to be mindful of the fact that concurrent power is vested in the Arbitral Tribunal, by Section 17. The reliefs which can be granted under Section 17, by the Arbitral Tribunal, are identical to those which can be granted by the Court under Section 9. While, therefore, exercising jurisdiction under Section 9, the Court, even at the pre-arbitration stage, should not usurp the jurisdiction which, otherwise, would vest in the arbitral tribunal, even if it is yet to be constituted. Hence, litigants would be in a position to misuse Section 9 as providing an opportunity to forum shop. [...] As a result, the criteria, which are required to be satisfied, before interim protection can be granted under Section 9 are:</p> <ol style="list-style-type: none"> the existence of an arbitration clause, and manifest intent, of the Section 9 petitioner, to invoke the said clause, and initiate arbitral proceedings, the existence of a prima facie case, balance of convenience and irreparable loss, justifying such grant of interim relief to the applicant, and the existence of emergent necessity, so that, if interim protection is not granted by the Court, even before arbitral proceedings are initiated and the chance to approach the arbitral Tribunal under Section 17 manifests itself, there is a possibility of the arbitral proceedings being frustrated or rendered futile.” 	22
18	C V Rao v. Strategic Port Investments KPC Ltd., 2014 (4) Arb LR 9 (Delhi High Court).	<p>“An order restraining the opposite party from dealing with his properties being drastic in nature, grant of such relief has necessarily to be based on the principles governing Order 38 Rule 5 CPC and before passing such an order the Court has to ensure that a specific case is made out that the party against whom such an order is proposed to be made is attempting to remove or dispose of the assets with the intention of defeating the decree/award that may be passed.”</p>	6
19	Deccan Chronicle Holdings Limited v. L&T Finance Limited, 2013 SCC OnLine Bom 1005.	<p>“The principle is that when the Court decides a petition under Section 9, the principles which have been laid down in the Code of Civil Procedure, 1908 for the grant of interlocutory reliefs furnish a guide to the Court. Similarly in an application for attachment, the underlying basis of Order XXXVIII Rule 5 would have to be borne in mind. At the same time it needs to be noted that the rigors of every procedural provision of the CPC cannot be put into place to defeat the grant of relief which would subserve the paramount interests of the justice. The object of preserving the efficacy of arbitration as an effective form of dispute resolution must be duly fulfilled. This would necessarily mean that in deciding an application under Section 9, the Court would while bearing in mind the fundamental principles underlying the provisions of the CPC, at the same time, have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process.”</p>	10
20	Delta Construction Systems Ltd. Hyderabad v. Narmada Cement, Company Ltd., Mumbai, 2002 (1) Mh LJ 684.	<p>“The power of the court to secure the amount in dispute under arbitration is not hedged by the predicates as set out in Order 38. All that the court must be satisfied is that an interim measure is required. In other words, the party coming to the court must show that if it is not ‘secured, the Award which it may obtain cannot be enforced on account of acts of a party pending arbitral process. Therefore, the court would not to be bound by the requirement of Order 38 Rule 5.”</p>	3
21	Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited, 2013 (7) Bom. C.R 493.	<p>“Contextually, therefore, the scheme of Section 9 postulates an application for the grant of an interim measure of protection after the making of an arbitral award and before it is enforced for the benefit of the party which seeks enforcement of the award. An interim measure of protection within the meaning of Section 9(ii) is intended to protect through the measure, the fruits of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings cannot obviously have an arbitral award enforced in accordance with Section 36.</p>	14, 15

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SN	Judgment	Extracts	Para Nos.
21		<p>The object and purpose of an interim measure after the passing of the arbitral award but before it is enforced is to secure the property, goods or amount for the benefit of the party which seeks enforcement.”</p> <p>“The Court which exercises jurisdiction under Section 34 is not a court of first appeal under the provisions of the Code of Civil Procedure. An appellate court to which recourse is taken against a decree of the trial Court has powers which are co-extensive with those of the trial Court... The object and purpose of Section 9 is to provide an interim measure that would protect the subject-matter of the arbitral proceedings whether before or during the continuance of the arbitral proceedings and even thereafter upon conclusion of the proceedings until the award is enforced. Once the award has been made and a claim has been rejected as in the present case, even a successful challenge to the award under Section 34 does not result an order decreeing the claim. In this view of the matter, there could be no occasion to take recourse to Section 9. Enforcement for the purpose of Section 36 as a decree of the Court is at the behest of a person who seeks to enforce the award.”</p>	
22	Energco Engineering Projects Ltd. v. TRF Ltd., 2016 SCC OnLine Del 6560.	<p>“In our view, the Learned Single Bench patently erred in holding “there is no impediment or situation where the remedy under Section 17 of the Act is not efficacious”. The Learned Single Bench failed to appreciate that the pendency of a Special Leave Petition in which the constitution of the Arbitral Tribunal was under challenge, was in itself, a circumstance which rendered the remedy of the parties under Section 17 uncertain and not efficacious.”</p>	30
23	Essar House Private Ltd v. Arcelor Mittal Nippon Steel India Ltd., [2022] SC 625.	<p>“In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of the CPC. At the same time, the power Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC.</p> <p>While it is true that the power under Section 9 of the Arbitration Act should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in the CPC, the technicalities of CPC cannot prevent the Court from securing the ends of justice. It is well settled that procedural safeguards, meant to advance the cause of justice cannot be interpreted in such manner, as would defeat justice.”</p>	39, 40
24	Gerald Metals SA v. Timis and Ors., 2016 [EWHC] 2327 (Ch).	<p>“The relevant legal test, is not simply one of balancing prejudice; there is a threshold which an applicant needs to surmount of providing some concrete basis to infer a real risk of dissipation of the relevant asset. In this case I do not consider that that threshold has been surmounted. In my view, what is said in that regard amounts to no more than speculation”</p>	18
25	Goel Associates v. Jivan Bima Rashtriya Avas Samiti, 114 (2004) DLT 478.	<p>“We have carefully analysed the judgment of the learned Single Judge which is impugned before us. What has been stated in the judgment is that in the given circumstances, the relief of attachment cannot be granted. No doubt that the provisions like Order 38 Rule 5, Code of Civil Procedure are not contained in the Arbitration and Conciliation Act but its principles are to be applicable as such. However, one cannot lose sight of that the provisions of Code of Civil Procedure would be the guiding principles as has been held by Supreme Court in ITI Ltd. v. Siemens Public Communications Network Ltd., (2002) 5 SCC 510. It was held that for want of specific exclusion of Code of Civil Procedure in the Act of 1996, if cannot be inferred that Code was not applicable but that would mean that the provisions of Code have to be read into as it is when the Court exercises its powers as prescribed in the Act of 1996. The procedural aspect provided in the Code about which the Act of 1996 is silent, needless to say, when the Court exercises its substantive power under the Act of 1996 shall be applicable but the guiding factor for exercise of power by the Court under Section 9(ii)(b) has to be whether such order deserves to be passed for justice to the cause.</p>	2

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SN	Judgment	Extracts	Para Nos.
25		The learned Single Judge has relied upon the provisions of Order 38 Rule 5 Code of Civil Procedure to exercise his discretion for the purposes of exercising power under Section 9(ii)(b) as to whether that was a fit case for grant of an Order of attachment or not. Therefore, it can't be said that the impugned order suffers from infirmity merely because the learned Single Judge has stated in one sentence that the provisions of Order 38 of the Code of Civil Procedure must be kept in view while disposing of such application."	
26	Housing Development and Infrastructure Ltd v. Mumbai International Airport Pvt. Ltd. Appeal (L) No. 365 of 2013 (Bombay High Court).	"An application under Section 9 of the Arbitration Act requires the Applicant Petitioner to make out a strong prima-facie case and also to show that the balance of convenience is in its favour, and that it would suffer irreparable loss and injury if the reliefs it seeks were to be refused. The same principles that govern courts in the matter of grant of interim relief apply proprio vigore to petitions under Section 9 of the Arbitration Act"	6
27	HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd., Order dated 22 January 2014 in Arbitration Petition 1062 of 2012.	"In so far as judgment of this court in case of Jindal Drugs (supra) relied upon by Mr. Rohatgi, learned senior counsel that unless petitioner files an application for enforcement of foreign award in this court, respondents cannot challenge the validity of such award is concerned, in my view, since present application filed under Section 9 of the Arbitration Act by the petitioner is not for enforcement of the interim award or jurisdictional award rendered by the arbitral tribunal but the petitioner seeks interim measures against the respondents, independently, parties by agreement having excluded the applicability of part I of the arbitration Act except Section 9, the petitioner is thus entitled to invoke Section 9 for interim measures. In my view petitioner has not bypassed any mandatory conditions of enforceability required by Section 48 of the Act. Reliance placed on the judgment of this Court in case of Jindal Drugs (supra) is thus misplaced."	89
28	IMC Ltd. v. Board of Trustees of Deendayal Port Trust, (2020) 4 Arb LR 221 (DB).	"In view of the aforesaid judgments of the Hon'ble Supreme Court and Division Bench of this Court, we are not in agreement with the submission made by Shri S.N. Soparkar, learned Senior Counsel for the appellant, that the learned Arbitral Tribunal has no jurisdiction to examine the issue by lifting the corporate veil and further, on facts, no case is also made out to examine the claim of alter ego by lifting the corporate veil. Whether a case is made out for impleading a third party by applying the doctrine of lifting of corporate veil, is a matter which is to be examined having regard to facts of each case and keeping in mind the concept of group Companies. In the case on hand, it is not in dispute that initially, response to the RFQ is made by the appellant-Company, RFP is issued to the appellant-Company, bid documents are submitted by the appellant-Company and only thereafter, pursuant to the terms in the RFP, 2nd respondent-SPV is registered by the appellant so as to execute the project. We have already held above that various clauses in the Concession Agreement also create rights and obligations not only against parties to the agreement but also against the appellant-Company, which is a holding Company of the 2nd respondent-SPV. Even on facts, it cannot be said that the appellant-Company is a third party, has nothing to do with the disputes which have arisen between the 1st and 2nd respondents and has no obligations to the contract. In any event, the learned Arbitral Tribunal itself has opined that the findings recorded are prima-facie and it is always open to contest the proceedings by participating before it. Even after impleadment, if the appellant disputes jurisdiction of the learned Arbitral Tribunal, all its objections are left open to be raised and considered at the appropriate stage."	48
29	Indus Mobile Distribution Private Ltd. v. Datawind Innovations Private & Ors., (2017) 7 SCC 678.	"It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. [...] Having regard to the above, it is clear that Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai."	20

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SN	Judgment	Extracts	Para Nos.
30	Indiabulls Financial Services v. Jubilee Plots, Judgment dated 18 August 2009 in OMP Nos 452-453 of 2009 (Delhi High Court).	<p>“4. Today vide orders passed in Shri Krishan v. Anand OMP 597/2008 it has been held that the orders of the arbitral tribunal under Section 17 of the Act are enforceable under Section 27(5) of the Act and that party which has elected to apply for the relief under Section 17 of the Act is thereafter not entitled to seek the same relief from the court under Section 9 of the Act. It is not deemed expedient to repeat the detailed reasoning in this order.</p> <p>5. Suffice it is to state that since the orders already obtained by the petitioner from the arbitral tribunal under Section 17 of the Act are enforceable, these petitions are not maintainable.”</p>	4, 5
31	Intertole ICS (Cecons) O & M Company v. NHAI (2013) ILR 2 Delhi 1018.	“Where even the Court exercising power under Section 9 of the Act has to be guided by the principles of the CPC then afortiori an interim order by a Tribunal requiring furnishing of security for the monetary amount of claim by one party had to satisfy the requirement of Order XXXVIII Rule 5 CPC”	8
32	ITI v. Siemens Public Communication (2002) 5 SCC 510.	“It is true in the present Act application of the Code is not specifically provided for but what is to be noted is : Is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a civil court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable.”	6
33	Jetpur Somnath Tollways Limited and Ors. v. Respondent: National Highways Authority of India and Ors, 2017(4) Arb LR 391(Delhi).	“Under Section 9 of the Act, Court has the power to pass orders as appear to the court to be just and convenient to prevent ends of Justice from being defeated.”	102
34	KGS Constructions Limited v. Karishmaa MEP Services Pvt. Ltd., Rep., (2017) 4 CTC 51 (DB).	<p>“The conclusion reached by the learned Single Judge is that in a matter pertaining to Section 9 of the said Act, the provision of Code of Civil Procedure, 1908 would have no application.”</p> <p>“To the aforesaid extent, we tend to agree with what the learned Single Judge states, as there must be a real, imminent danger of removal or disposal of the properties for such an extreme measure to be taken against the party. This would naturally require necessary pleadings as to the facts.”</p>	3, 6
35	Karvy Financial Services Ltd v. Progressive Construction Ltd., Judgment dated 24 December 2014 in Arbitration Petition No. 1162 of 2014 (Bombay High Court).	<p>“On 4th September, 2014, this Court passed an ad-interim order directing the Court Receiver to take symbolic possession of the properties mortgaged to the Petitioner with an option to the Respondents to use the said properties as agents of Court Receiver upon payment of royalty.</p> <p>The Division Bench of this Court in Dirk India Pvt. Ltd. (supra) has in paragraph 12 of its decision observed as under:</p> <p>“.....An interim measure of protection within the meaning of Section 9(ii) is to protect through the measure, the fruits of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings cannot obviously have an arbitral award enforced in accordance with Section 36. The object and purpose of an interim measure after the passing of the arbitral award but before it is enforced is to secure the property, goods or amount for the benefit of the party which seeks enforcement”</p>	5, 18

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SN	Judgment	Extracts	Para Nos.
36	Lanco Infratech Ltd. v. Hindustan Construction Company Ltd., (2016) 234 DLT 175.	“It will straightway be seen that while under the unamended Section 17 of the Act, there was no specific power for the AT to order interim measures to secure the amount in dispute, that power has been expressly provided under the amended Section 17(1)(ii)(b) of the Act. The other important change is in Section 17(2) which states that the interim order passed by the AT would be enforceable as if it were an order of a Court under the CPC. This makes it explicit that the purpose of these changes was to bring the powers of the AT under Section 17 of the Act on par with that of the Court under Section 9 of the Act. In the amended forms both Section 9 and Section 17 read alike. This is therefore a significant change and not one, as contended by counsel for HCCL, one that is clarificatory of an implicit legal position. This distinction is necessary to be kept in mind because both parties here do not dispute that the application filed by HCCL before the AT was governed by Section 17 of the Act as it stood prior to its amendment. It is also significant that the decisions cited by both parties seek to interpret Section 17 as it stood prior to its amendment.”	14
37	Mahaveer Infoway Limited v. Tech Mify Info Solutions LLP, 2017 SCC OnLine Hyd 221.	“In the absence of any guiding principles under the Arbitration Act, the Court has to necessarily fall back upon the provisions of Order XXXIX CPC which apply to every application filed for grant of temporary injunctions and interlocutory orders. This must be so, for, the Court which is conferred with the jurisdiction to grant an order of injunction under Section 9 of the Arbitration Act, is also the Court which is governed by the provisions of the CPC. Merely because the Court has derived the power to grant an injunction from an additional source under a special enactment, such as the Arbitration Act, it nevertheless cannot ignore the principles underlying the provisions of Order XXXIX CPC. Rule 3 of Order XXXIX CPC embodies principles of natural justice. Proviso to the said provision is an exception to the Rule. This being so, the Court is under obligation to act in a fair manner, even while dealing with applications under a special enactment, such as the Arbitration Act, consistent with the procedure being followed by it while disposing of applications under Order XXXIX CPC. It would be paradoxical if the same court while considering grant of similar reliefs applies varying standards of procedure depending upon the enactment under which it exercises its powers. Viewed in this manner, we have no hesitation to hold that even if the proviso to Rule 3 of Order XXXIX CPC does not per se apply, the analogous procedure must be followed by the Court, dealing with an application for injunction under Section 9 of the Arbitration Act. This point is accordingly answered in the affirmative.”	9
38	Maldives Airports Co Ltd and another v. GMR Malé International Airport Pte Ltd., [2013] SGCA 16.	“The test that we applied to determine whether the Injunction should be granted or upheld was the well-known one laid down by Lord Diplock in <i>American Cyanamid Co Ltd v Ethicon Ltd</i> [1975] AC 396, which is as follows: <ul style="list-style-type: none"> ▪ There is a serious issue to be tried ▪ Irreparable harm if denied the relief ▪ The balance of convenience pending trial favours the applicant.” 	53
39	Managing Director, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd., (2004) 9 SCC 619.	“A bare perusal of the aforementioned provisions would clearly show that even under Section 17 of the 1996 Act the power of the arbitrator is a limited one. He cannot issue any direction which would go beyond the reference or the arbitration agreement. Furthermore, an award of the arbitrator under the 1996 Act is not required to be made a rule of court; the same is enforceable on its own force. Even under Section 17 of the 1996 Act, an interim order must relate to the protection of the subject-matter of dispute and the order may be addressed only to a party to the arbitration. It cannot be addressed to other parties. Even under Section 17 of the 1996 Act, no power is conferred upon the Arbitral Tribunal to enforce its order nor does it provide for judicial enforcement thereof.”	58

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SN	Judgment	Extracts	Para Nos.
40	M Ashraf v. Kasim VK, 2018 SCC Online Ker 4913.	<p>“At the second stage, that is, during arbitral proceedings, the Court shall adopt a strict approach in entertaining an application under Section 9(1) of the Act. The party who approaches the Court at that stage with an application under Section 9(1) of the Act shall be required by the Court to satisfy the court regarding the existence of circumstances which would render the remedy provided to him under Section 17 not efficacious. He shall plead the circumstances which may render that remedy not efficacious. He should be able to convince the Court why he could not approach the Arbitral Tribunal and obtain interim relief under Section 17(1) of the Act.</p> <p>In such circumstances, when urgent relief is required, especially by a party who is successful in the arbitral proceedings, remedy under Section 17 of the Act may not be efficacious because the Arbitral Tribunal may not be then actually functioning. It may also be possible that the Arbitrator is not readily available. When an application under Section 9(1) of the Act is made by a party after the passing of the award but before it is enforced, the Court has to consider all these circumstances. Of course, the party who approaches the Court has to enlighten the Court with regard to such or similar circumstances.”</p>	11, 12
41	Medima LLC v. Balasore Alloys Ltd., 2021 SCC OnLine Cal 4239.	<p>“Based on the above discussion, this court is of the view that the present application for interim protection under Section 9 of the Act, in respect of the Award of the London-seated arbitration, is maintainable and the petitioner Medima is hence entitled to seek interim measures against Balasore, the respondent award-debtor.”</p>	27
42	Morgan Securities & Credits Pvt. Ltd., 2019 SCC OnLine Del 9843.	<p>“10. The Court finds that the above submission overlooks the fact that the amount of Rs. 20 crores which was obtained as a result of encashing the bank guarantee was kept with the Registrar General not as the asset of the bank but as an asset of VIL itself. As on the date of such encashment i.e. 16 August, 2018 it remained as an asset of VIL, for only then it could be offered as a security to protect the interests of the present Appellant in the arbitration proceedings. It was not yet the asset of the Appellant as well. This is because the outcome of the petition i.e. OMP 665/2013 filed by VIL was not yet known on 16 August, 2018.</p> <p>11. To that extent, the learned Single Judge was right in concluding that as on the date of passing of the impugned order i.e. 7 February, 2019 with the insolvency proceedings having already commenced, the moratorium in terms of Section 14 of the IBC would be in place. How the said amount of Rs. 20 crores together with interest accrued thereon should be dealt with would, therefore, be subject to the orders passed by the NCLT in such insolvency proceedings.”</p>	10, 11
43	Motor & General Finance Ltd. v. Bravo Hotels Pvt. Ltd. 2018 (2) ArbLR 50 (Delhi).	<p>“The Court is competent to pass an appropriate protection order of interim measure as provided under Section 9(ii)(b) outside the provisions of Order 38, Rule 5 of the Code of Civil Procedure. Each case under Section 9(ii)(b) of the Act of 1996 has to be considered in its own facts and circumstances and on the principles of equity, fair play and good conscience. The power of the Court under Section 9(ii)(b) cannot be restricted to the power conferred on the Court under Civil Procedure Code though analogous principles may be kept in mind.”</p>	15
44	MTECH Solutions v. PCLIT Solutions Pvt. Ltd, SCC OnLine Del 2218.	<p>“It is my opinion that in the present case, two interpretations are possible as to the action of the respondent and one of these interpretations clearly raises doubts as to any deliberation on the respondent’s part to act in contempt of this court’s orders. As has been mentioned above, I believe that circumstances compelled the respondent to terminate the agreement with the petitioner. Further, the petitioner voluntarily wanted the connection to be provided by the American company TSI and the respondent was not responsible for the same. Further still, the injunction only restrains respondent’s interference with the petitioner’s calling process.</p>	28, 29

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SN	Judgment	Extracts	Para Nos.
		Willful disobedience by a party of the orders of a judicial authority causes damage to the dignity of those orders and consequently, to that of the judicial authority that has propounded them. In such cases it is available to the court adjudging such an act to pass appropriate orders in order to discipline the contemnor. Obviously, the dignity and discipline of the court and its orders has to be maintained in cases of willful and intentional disobedience. However, in a case like the present one, where there is more than one possible interpretation of the alleged violating act, it would not be proper for the court to declare contempt by a party.”	
45	Nahar Builders Ltd. v. Housing Development and Infrastructure Ltd., 2020 SCC OnLine 2522.	<p>“7. The opposition from HDIL is that since there is a moratorium that has come in to play in view of the insolvency proceedings under the Insolvency & Bankruptcy Code, 2016, the amount of Rs. 8 crores deposited in this Court is ‘the property of HDIL’ within the meaning of Section 14 of the IBC. That submission does not commend itself. Once an amount is deposited in this Court, it is placed beyond the reach of either party without permission of the Court. It is, therefore, not ‘the property’ of either party pending an adjudication as to entitlement by the Court. Once the Arbitrator held that it was Nahar Builders that was entitled to this amount, and that award became enforceable as a decree of this court, then no question remained of the amount being claimed by HDIL. In another manner of speaking, from the time the deposit was made until the time withdrawal is ordered, that amount is not the property of either party to the dispute.</p> <p>8. It is true that an execution against HDIL is presently stayed but this is not an application for execution, nor is it, within the meaning of Section 14(1)(d), an application for ‘the recovery of any property by an owner or lessor where such property is occupied by or is in the possession of corporate debtor’. To read only the words ‘recovery of any property’ as Ms. Patil does, but not to read the rest of clause (d) is materially incorrect.</p> <p>9. The provisions regarding a moratorium cannot possibly apply to such cash deposits made in this Court. As Mr. Dwarkadas for Nahar Builders put it, money has no colour. Once it is deposited in Court no party can automatically claim any right to it without an adjudication by a Court. There is no dispute that there is an unchallenged and unsatisfied award in favour of Nahar Builders against HDIL. There is also no dispute that an amount of Rs. 8 crores is available with this Court.”</p>	7, 8, 9
46	National Shipping Company of Saudi Arabia v. Sentrans Industries Ltd. AIR 2004 Bom 136.	“The provisions of Order 38, Rule 5, CPC cannot be read into the said provision as it is nor can power of the Court in passing an order of interim measure under Section 9(ii) (b) be made subject to the stringent provision of Order 38, Rule 5. The power of the Court in passing the protection order to secure the amount in dispute in the Arbitration before or during Arbitral proceedings or at any time of making of the Arbitral amount but before it is enforced cannot be restricted by importing the provisions set out in Order 38 of C.P.C. but has to be exercised ex debito justitiae and in the interest of justice.”	5
47	Natrip Implementation Society v. IVRCL Limited 2016 SCC OnLine Del 5023.	“In order for the court to exercise its powers under Order XXXVIII Rule 5 of the CPC, it is necessary that twin conditions be satisfied. First, that the plaintiff establishes a reasonably strong prima facie case for succeeding in the suit; and second, that the court is prima facie satisfied that the defendant is acting in a manner so as to defeat the realisation of the decree that ultimately may be passed. The object of Sections 9(1)(ii)(b) and 17(1)(ii)(b) of the Act is similar to the object of order XXXVIII Rule 5 of the CPC. The Arbitral Tribunal while exercising powers under Section 17(1)(ii)(b) of the Act or the Court while exercising power under Section 9(1)(ii)(b) of the Act must be satisfied that it is necessary to pass order to secure the amount in dispute. Such orders cannot be passed mechanically. Further, the object of the order would be to prevent the party against whom the claim has been made from dispersing its assets or from acting in a manner to so as to frustrate the award that may be passed.”	20

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SN	Judgment	Extracts	Para Nos.
48	Nimbus Communications Limited v. Board of Control for Cricket in India and Another 2012 (5) Bom CR 114.	“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.”	5
49	NKG Infrastructure v. Granco Industries 2018 SCC OnLine J&K 335.	<p>“Apparently there are no standards prescribed under the Act for grant of interim relief by the Court under Section 9 of the Act. The Court while considering an application under Section 9 of the Act would invariably apply the standards laid down in Order 39 and order 38 of the Code of Civil Procedure. The standards laid down in the Code of Civil Procedure for regulating the grant of interim relief may not be applicable to the proceedings under Section 9 of the Act stricto sensu but the underlying principles are applied by the Courts to pass interim orders to protect the subject matter of arbitration.”</p> <p>“The Court under Section 9 of the Act enjoys wide powers in the matter of grant of interim measures and such power entrusted to the Court is not limited, controlled or circumscribed by the provisions of order 39 Rule 5, Order 39 Rule 1 and 2 of the Code of Civil Procedure.”</p>	9, 14
50	National Highways Authority of India v. Punjab National Bank, 2017 SCC OnLine Del 11312.	“On the question of exercise of power under Section 9 of the A&C Act, we have already referred to Clauses 37.3.1 of the Concessionaire Agreement which is an express and mandatory provision when said agreement is terminated on account of concessionaire fault. We have also referred to Clauses 3.2 and 4.2 of the tripartite Escrow Agreement which refers to termination payment. To accept the plea of NHA that Section 9 of the A&C Act cannot be invoked, would negate and obliterate the aforesaid Clauses and their effect. In the aforesaid circumstances the ratio of decision of the Division Bench of this Court in Value Source Mercantile Limited v. Span Mechnotronix Limited (2014) 143 DRJ 505, is apposite, if not definite and conclusive. Referring to Section 9 of the A&C Act, this decision emphasized that the said provision uses the expression ‘interim measure of protection’ as distinct from the expression ‘temporary injunction’ used in Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908. Interim injunction is one of the measures or orders prescribed in Clause (d) to Section 9(ii) of the A&C Act, albeit a party to the arbitration agreement is entitled to apply for and seek ‘interim measure of protection’. Clause (e) to Section 9(ii) is a residuary power of the court to issue or direct other “interim measures of protection”. Thus, the court has the power to issue or direct other interim measures of protection as may appear to the court to be just and convenient. Section 9 encompass the power of making orders as the Civil Court has for the purpose of, and in relation to any proceedings before it. This decision refers to Rule 10 of Order XXXIX of the aforesaid Code which empowers the Court to direct to deposit payment of the admitted amount. Therefore the court exercising power under Section 9 of the A&C Act has the same power as that of a civil court during pendency of the suit.”	37
51	Om Sakthi Renergies Limited v. Megatech Control Limited, (2006) 2 Arb LR 186 (Madras HC).	“It is true that the provisions like Order 38 Rule 5 or Order 39 Rules 1 and 2 of the Code of Civil Procedure are not contained in the Arbitration and Conciliation Act, 1996 but its principles will be applicable as has been held by the Supreme Court in M/s. ITI Ltd., Vs. M/s. Siemens Public Communications Network Ltd.”	6

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
52	Parsoli Motor Works (P) Ltd. v. BMW India P Ltd., 2018 SCC Online Del 6556.	“...power to grant injunctive relief, under Section 9 of the 1996 Act, has to abide by the provisions of the Specific Relief Act. Injunction which cannot be granted under Section 41 of the Specific Relief Act, cannot be granted under Section 9 of the 1996 Act, either. Neither can relief be granted, under Section 9, as would amount to specific enforcement of a contract which, by nature, is determinable, in view of Section 41 of the Specific Relief Act...Such relief [under Section 9] can be granted only if the three pre-requisites, governing grant of injunctive relief, i.e. existence of a prima facie case, balance of convenience being in favour of the claimant and possibility of irreparable loss that would ensue to the claimant were such relief not granted, stand fully satisfied. Even in cases where a contract is being sought to be terminated, in violation of the terms thereof, if it appears that the party who suffers as a result of such termination could be adequately compensated in terms of money at the stage of final adjudication of the dispute, no injunctive relief, under Section 9 of the 1996 Act, would be granted”	36
53	Pink City Expressway Pvt. Ltd. v. National Highways Authority of India & Anr., Order dated 15 June 2022 in FAO(OS)(Comm) 158/2022 (Delhi High Court).	“Law on the scope of interference in a Section 9 petition is no longer res integra. The learned Single Judge has held that the prayer made by the Appellant in the Section 9 petition cannot be granted as that would amount to extending the contract contrary to the decision dated 29.04.2022. It is well-settled that powers under Section 9 can only be exercised for preservation of the subject matter of the dispute till the decision of the Arbitral Tribunal and cannot be extended to directing specific performance of the contract itself. The learned Single Judge has in this context relied on the judgment of the Division Bench in C.V. Rao (supra) and in our view rightly so. Reliance was also placed on the judgment of another Division Bench in DLF Ltd. (supra). We find no infirmity in the prima facie view that directing the Respondent to extend the contract for a further period, beyond 14 months extension granted, would amount to granting specific relief of the contract and is beyond the scope of the powers of the Court under Section 9 of the Act.”	19
54	Raffles Design India International Private Limited v. Educomp Professional education Limited, 2016 SCC Online Del 5521.	“ In the circumstances, the emergency award passed by the Arbitral Tribunal cannot be enforced under the Act and the only method for enforcing the same would be for the petitioner to file a suit. “However, in my view, a party seeking interim measures cannot be precluded from doing so only for the reason that it had obtained a similar order from an arbitral tribunal. Needless to state that the question whether the interim orders should be granted under Section 9 of the Act or not would have to be considered by the Courts independent of the orders passed by the arbitral tribunal. Recourse to Section 9 of the Act is not available for the purpose of enforcing the orders of the arbitral tribunal; but that does not mean that the Court cannot independently apply its mind and grant interim relief in cases where it is warranted.”	104, 105
55	Reliance Communications v. Bharti Infratel, 2018 II AD (Delhi) 487.	“Moreover, in Steel Authority of India Ltd. v. AMCI PTY Ltd. 2011 VII AD (Delhi) 644, wherein it was held as under: “44. We also hold without hesitation that the Court is competent to pass an appropriate protection order of interim measure as provided under Section 9(ii) (b) outside the provisions of Order 38, Rule 5 of the Code of Civil Procedure. Each case under Section 9(ii)(b) of the Act of 1996 has to be considered in its own facts and circumstances and on the principles of equity, fair play and good conscience. The power of the Court under Section 9(ii)(b) cannot be restricted to the power conferred on the Court under Civil Procedure Code though analogous principles may be kept in mind.”	22

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
56	Sanghi Industries Ltd v. Ravin Cables Ltd and another, AIR 2022 SC 4685.	“The order(s) which may be passed by the Commercial Court in an application Under Section 9 of the Arbitration Act, 1996 is basically and mainly by way of interim measure. It may be true that in a given case if all the conditions of Order XXXVIII Rule 5 of the Code of Civil Procedure are satisfied and the Commercial Court is satisfied on the conduct of opposite/opponent party that the opponent party is trying to sell its properties to defeat the award that may be passed and/or any other conduct on the part of the opposite/opponent party which may tantamount to any attempt on the part of the opponent/opposite party to defeat the award that may be passed in the arbitral proceedings, the Commercial Court may pass an appropriate order including the restrain order and/or any other appropriate order to secure the interest of the parties. However, unless and until the conditions mentioned in Order XXXVIII Rule 5 of the Code of Civil Procedure are satisfied such an order could not have been passed by the Commercial Court which has been passed by the Commercial Court in the present case, which has been affirmed by the High Court.”	4.1
57	Shanghai Electric Group Co. Ltd. v. Reliance Infrastructure Ltd., 2022 SCC OnLine Del 2112.	“From the above discussion and analysis of the caselaw it emerges that the emergency award/foreign interim orders cannot be enforced directly. In the present case, the arbitration is based on UNCITRAL Law, which permits parties to approach the Courts for interim relief – which means courts other than those of Singapore. SEGCL cannot approach the seat court (in this case, Singapore), as there is no provision for execution of an interim order passed by a foreign court under the Code of Civil Procedure (which contemplates for execution of foreign decrees under Section 13 read with Section 44A). In fact, any meaningful provisional reliefs such as attachment of RELIANCE’s assets and properties, including bank guarantees and directions to third-parties could only be granted by a court of competent jurisdiction in India, and not by the Arbitral Tribunal or a foreign court, since there is no provision corresponding to Section 17 for enforcement of interim orders.”	80
58	Shanghai Electric Group Co. Ltd. v. Reliance Infrastructure Ltd., 2024 SCC OnLine Del 1606.	“Although in Trammo DMCC, the Section 9 application was filed post-award, its ratio would still be applicable even to a petition that has been filed seeking interim reliefs at the pre-award stage.” We are in complete agreement with the view taken by the learned single judge that the situs of the asset would be the determinative factor for maintain a petition under Section 9 of the Arbitration Act.”	25, 27
59	Sri Krishan v. Anand, (2009) 3 Arb LR 447 (Del).	“However, Section 27(5) was not noticed in Sundaram Finance Ltd or in Sumangal Services Pvt. Ltd. (supra). Perhaps, because it is hedged in the heading/title of Section 27. However, the said heading/title cannot limit or narrow the otherwise wide amplitude of Sub-section (5) thereof. The default, contempt mentioned therein cannot be limited to that only in appearance of witnesses before the arbitral tribunal. To do so, would be to render the words “any other default” and “guilty of any contempt” therein otiose. It may be highlighted that under Section 37(2)(b) of the Act the order of the arbitral tribunal under Section 17 of the Act granting or refusing to grant an interim measure is appealable before the court. The same also disclose the legislative intent of the same being in the exercise of the judicial functions.”	14
60	SREI Equipment Finance Limited (Sefl) v. Ray Infra Services Private Limited & Anr., 2016 SCC OnLine Cal 6765.	“The hearing before the Arbitral Tribunal may have been concluded. Proceedings are, however, still pending before the Arbitral Tribunal. It may have been possible to make an application before the Arbitral Tribunal. However, considering the lethargic manner in which the learned Arbitrator has been proceeding the remedy of the Appellant under Section 17 of the Arbitration and Conciliation Act, 1996 does not appear to be efficacious. The amendments being recent, complicated issues of law may also arise with regard to the applicability of the amended provisions to pending arbitral proceedings.”	7

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
61	Steel Authority of India Ltd. v. AMCI PTY Ltd., (2011) 3 Arb LR 502 (Delhi High Court).	“In proceedings under Section 9 of the Act, at the highest what could be said is that the provisions of Order 38 Rule 5 CPC would serve as the guiding principle for the Court to exercise its discretion while dealing with a petition requiring the respondent to furnish security for the amount in dispute. Since the letter of the law per se is not applicable, the requirements set out in Order 38 Rule 5 CPC need not strictly be satisfied, and so long as the ingredients of the said provision are generally present, the Court would not be unjustified in exercising its jurisdiction to require the respondent to furnish security. The bottom line, in my view, is that the Court should be satisfied that the furnishing of security by the respondent is essential to safeguard the interests of the petitioner.”	5
62	Supertrack Hotels Pvt. Ltd. v. Friends Motels Pvt. Ltd., 2017 SCC OnLine Del 11662.	“We are therefore of the opinion that while exercising the powers under Section 9 of the Act, the Court can certainly be guided by the principles of Order XV-A and Order XXXIX Rule 10 of CPC. The same view was expressed by another Division Bench of this Court in the case of Value Source Mercantile Ltd. (supra).”	19
63	Tata Capital Financial Service v. Deccan Chronicle Holdings Ltd., judgment dated 21 February 2013 in Arbitration Petition No. 1321 of 2012 (Bombay High Court).	“The principle is that when the Court decides a petition under Section 9, the principles which have been laid down in the Code of Civil Procedure, 1908 for the grant of interlocutory reliefs furnish a guide to the Court. Similarly, in an application for attachment, the underlying basis of Order XXXVIII Rule 5 would have to be borne in mind. At the same time, it needs to be noted that the rigors of every procedural provision of the CPC cannot be put into place to defeat the grant of relief which would subserve the paramount interests of the justice.”	3
64	Tata Capital Financial Services Ltd. v. Unity Infra projects Ltd. and Ors. 2015 SCC OnLine Bom 3597.	“It is settled law that the principles laid down in the Code of Civil Procedure, 1908 for grant for interlocutory reliefs as well as the underlying basis of Order 38 Rule 5 furnish a guide to the Court whenever similar reliefs are sought under Section 9 of the Act. At the same time, Courts must bear in mind the object of preserving the efficacy of arbitration as an effective form of dispute resolution behind a provision such as Section 9 of the Act. In other words, whilst deciding an application under Section 9 for reliefs in the nature of an attachment before judgment or an injunction, the Court will broadly bear in mind the fundamental principles of Order 38 Rule 5 and Order 39 Rules 1 and 2, but at the same time, will have the discretion to mould the relief on a case by case basis with a view to secure the ends of justice and preserve the sanctity of the arbitral process.”	8
65	Terra Manufacturing and Sales v. M/S Alagendiraa Apparels, 2011 SCC OnLine Del 4458.	“Arguments of the respondent in present case, challenging the multiple orders of court to furnish security, held to be without any merit, and he’s guilty of contempt – punishable under Sections 12 & 15 of the Contempt of Court Act, 1971.”	12
66	Trammo DMCC v. Nagarjuna Fertilizers and Chemicals Ltd., (2018) 1 AIR Bom R 1.	“Now the question remains is ‘whether Section 2(1)(e)(ii) when it defines “court” to mean the High Court having jurisdiction to decide the question forming the subject matter of the arbitration would create any impediment preventing the petitioner to invoke Section 9 before this Court. In my opinion, a cumulative reading of the amended provisions would not create such a hurdle for the petitioner to invoke the jurisdiction of this Court and maintain this petition. The reason being that Section 2 the definition clause begins with the words “In this Part, unless the context otherwise requires-”. The definition of “Court” as contained in Section 2(1)(e)(ii), in the present context would create an incongruity to enforce the provisions Section 9 of the Act as made applicable by the 2015 Amendment Act. This inasmuch as the petitioner would be prevented to seek interim measures in enforcing the money award, when the money is lying within the territorial jurisdiction of the Courts only for the reason that it is not the subject matter of arbitration. This is opposed to the plain and clear intention of the legislature as incorporated by the 2015 Amendment Act as noted above.”	19

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
		It cannot be conceived that on the one hand the legislature permits a party holding a foreign award to invoke Section 9 of the Act and further permit invoking of the provisions of Sections 47 to 49 of the Act to enforce the foreign awards, and for that matter to approach the appropriate court having jurisdiction to decide the question forming the subject matter of arbitral award, as if the same had been the subject matter of the suit as the explanation to Section 47 would provide. However, on the other hand at the same time, when it comes to adopting proceedings under Section 9 to secure the sums awarded being the money to secure the award is available within the jurisdiction of the Court, it would render the Court lacking such jurisdiction by application of Section 2(1) (e)(ii). This is surely not the intention of the legislature.”	
67	Value Advisory Services v. ZTE Corporation, 2009 SCC OnLine Del 1961.	“The proceedings in a court, as distinct from those before an arbitrator, are also between parties to an agreement/transaction only. Still, the practice of issuing interim orders/directions qua third parties exists; not only in execution proceeding, provisions wherefor exists in Sections 47, 60 and Order 21 Rules 46 and 46A to F but also in pre-decretal stage, as provided for in Order 38 Rules 6 to 11A of CPC. It is difficult to fathom and there is no indication whatsoever of it in the Act, that the legislature while empowering the court under Section 9 to grant interim measures has restricted the power aforesaid of the court in any manner. On the contrary, Section 9 provides that the court for the purposes of Section 9 “shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it”. The conclusion is thus inescapable that if the court, in relation to proceedings before it could have made an order against/qua third parties, similar order can be made under Section 9 as well, subject to the discussion below.”	15
68	V.K. Sood Engineers and Contractors v. Northern Railways, 2017 SCC OnLine Del 9211.	“The principles for grant of injunction order under Section 9 of the Act are well known. The Division Bench of this High Court in the case of Anantji Gas Service v. Indian Oil Corporation, 2014 SCC OnLine Del 3732 held as follows:- “10. The law is well settled that the power granted to the Civil Court under Section 9 of the Act is akin to Order 39 Rules 1 & 2 of CPC, 1908 and therefore the court has to satisfy itself that the petitioner has established the three cardinal principles of prima facie case, balance of convenience and irreparable loss in case no protection is extended by way of interim measure under Section 9 of the Act. Vide Adhunik Steels Ltd. v. Orissa Mangenese and Minerals Pvt. Ltd., (2007) 7 SCC 125 and Arvind Constructions Co. (P) Ltd. v. Kalinga Mining Corporation (2007) 6 SCC 798.”	17
69	Welspun Enterprises Ltd. v. Kasthuri Infra Projects Pvt. Ltd., Order dated 15 July 2024 in OMP (I) (Comm.) 124 124/2023 and IA 19447/2023 (Delhi High Court)	“In my considered opinion, once an Arbitral Tribunal is in place, ordinarily a Court should refrain from dealing with the matter even for the purposes of passing interlocutory orders unless the order is demonstrably one which cannot await the application of mind by the learned Arbitral Tribunal. One may, for example, take a case in which there is an imminent threat of invocation of Bank Guarantee or a case in which there is an imminent threat of dispossession. If party is able to convince the Court that by the time the application is taken up by 5. In my considered opinion, once an Arbitral Tribunal is in place, ordinarily a Court should refrain from dealing with the matter even for the purposes of passing interlocutory orders unless the order is demonstrably one which cannot await the application of mind by the learned Arbitral Tribunal. One may, for example, take a case in which there is an imminent threat of invocation of Bank Guarantee or a case in which there is an imminent threat of dispossession. If party is able to convince the Court that by the time the application is taken up by the Arbitral Tribunal, the prejudice that may result would be irreparable, it may be justified for the Court to take up the matter even when the Arbitral Tribunal is in seisin of the disputes.	5, 7

Annexure IV: Table of Cases: Conclusion

SN	Judgment	Extracts	Para Nos.
		It may be possible to argue that this Court has already “entertained” the present petition before the arbitral tribunal came to be constituted and, therefore, the proscription against grant of interim relief contained in Section 9(3) would not apply. Even so, it would be for the respondent, who resists the present application being referred for adjudication to the Arbitral Tribunal, to demonstrably convince the Court that emergent orders on the application are necessary and that the matter cannot await the application of mind by the Arbitral Tribunal.”	
70	Welspun Infratech v. Ashok Khurana 2014 (2) Arb LR 520 (Bom).	“This court in my view has ample power under Section 9 of the Arbitration and Conciliation Act, 1996 to grant interim measures even in respect of the properties which are not subject matter of the dispute in arbitration. While deciding the application under Section 9, court has to bear in mind the fundamental principles underlying the provisions of Code of Civil Procedure and at the same time has discretion to mould the relief in the appropriate cases to secure ends of justice and to preserve sanctity of the arbitral process”	3
71	Wind World (India) Ltd. v. Enercon GmbH and others. 2017 SCC OnLine Bom 1147.	“As rightly observed by the Division Bench, even if a petition under Section 34 filed by an unsuccessful party is allowed, at highest, the impugned Award can be set aside. The Court dealing with a petition under Section 34 is not capable of granting any further relief to the party which challenges the Award. If an application is made at the instance of such an unsuccessful party under Section 9, there will not be any occasion to grant any interim measure which will be in the aid of the execution of the arbitral Award as such a party will not be entitled to seek enforcement under Section 36. We, therefore, find no reason whatsoever to take a different view from the one which is taken by the Division Bench in the case of Dirk India Private Limited (supra). We are respectfully bound by the said decision. We do not agree with the submissions made by the learned Senior Counsel for the appellant that law laid down in paragraphs 13 and 14 cannot be read as a ratio decidendi.”	18

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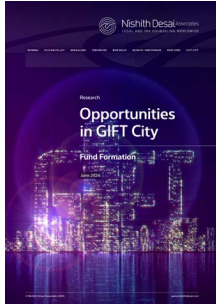
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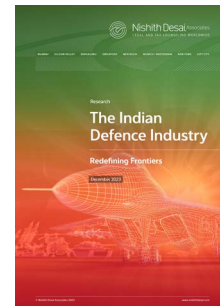
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