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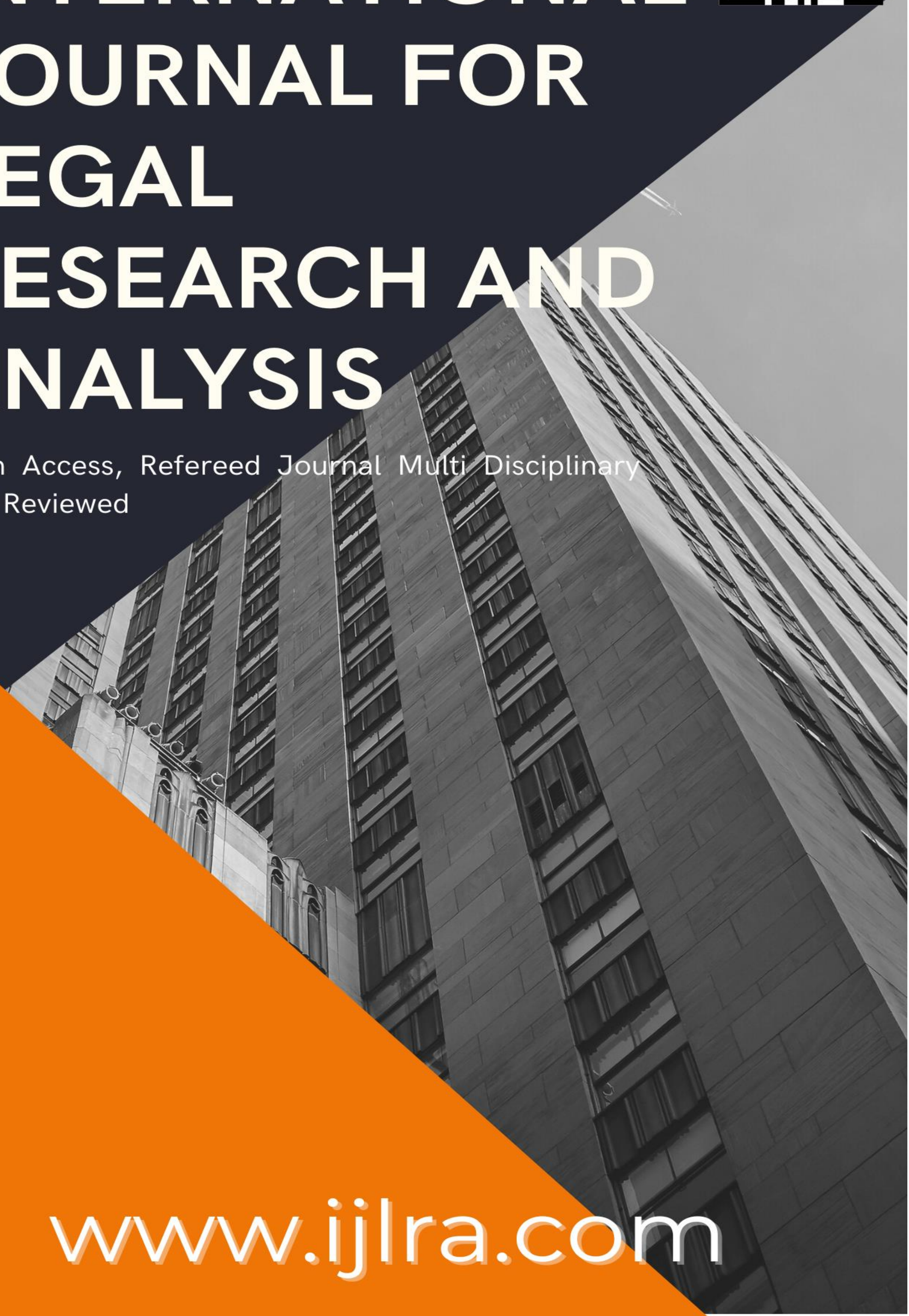

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ISSN: 2582-6433

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INTERIM RELIEFS: POWER PLAY BETWEEN COURTS AND ARBITRAL TRIBUNALS

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LIST OF ABBREVIATIONS

1.	AAA – American Arbitration Association
2.	AAA – ICDR – American Arbitration Association – International Centre for Dispute Resolution
3.	BALCO – Bharat Aluminium and Co. vs. Kaiser Aluminium and Co., (2012) 9 SCC 552
4.	CPC – Code of Civil Procedure
5.	EA – Emergency Arbitrator
6.	ENG – Engineering
7.	FAA – Federal Arbitration Act
8.	HC – High Court
9.	HKIAC- Hong Kong International Arbitration Centre
10.	ICC – International Criminal Court
11.	INT – International
12.	JAMS – Judicial Arbitration and Mediation Services
13.	LCIA – London Court of International Arbitration
14.	LTD – Limited
15.	NCT- National Capital Territory
16.	NHAI – National Highway Authority of India
17.	ORG – Organization
18.	SAIL – Steel Authority of India Limited
19.	SC – Supreme Court
20.	SCC – Supreme Court Cases
21.	SIAC – Singapore International Arbitration Centre
22.	UNCITRAL – United Nations Commission on International Trade Law

CHAPTER 1

INTRODUCTION

1.1 HISTORY AND DEVELOPMENT OF ARBITRATION LAW IN INDIA

The course of arbitration flourished in India since the ending of nineteenth century. Arbitration in India was statutorily recognized as form of dispute resolution primarily when Indian Arbitration Act, 1899 was enacted however, it was restricted to the three presidency towns only i.e. Madras, Bombay and Calcutta. It was further codified in Section 89[1] and Schedule II of the Code of Civil Procedure, 1908, where provisions of arbitration got elongated to different regions of British India to which the Act of 1899 was not extended. The Act of 1899 and the provisions of the Code of Civil Procedure, 1908 were found to be injudicious , more technical and thus, Arbitration Act, 1940 came into existence and repealed the Act of 1899 along with the relevant provisions of the Code of Civil Procedure, 1908. The Act of 1940 was a mirror image ofthe English Arbitration Act, 1934 and was a comprehensive legislation on the topic but it had no provisions to affect enforcement of foreign awards and hence, dealt only with domestic arbitrations. The Act of 1940 was not able to achieve its purpose as its working was far away from satisfactory. Justice D.A. Desai voiced the malaise of the Indian courts and therefore the ineffective working of the 1940 Act in *Guru Nanak Foundation v Rattan Singh*[2], wherein he succinctly stated:

"Interminable, time consuming, complex and expensive Court procedures impelled jurists to search for an alternative Forum, less formal, more effective and speedy for resolution of disputes, avoiding procedural claptrap and this led them to Arbitration Act, 1940. However, the w ay in which the proceedings under the Act are conducted and without exception challenged in Courts, has made Lawyers laugh and legal philosophers weep."

Though, the 1940 Act attracted severe criticism and adverse remarks from the Courts however, no amendments were brought in to enhance the working of the 1940 Act. After the economic liberalization within the year 1991,[3] steps were taken to draw in foreign investment which required an agreeable business environment and simplicity in doing business. For the said reason, Arbitration and Conciliation Act, 1996 came into force and repealed the Act of 1940. Interestingly, the Act of 1996 was supported by UNCITRAL Model Law on International Commercial Arbitration, 1985 and covered both domestic and international arbitration. The major reason for introducing the Act of 1996 was to curb delays in arbitration.

[1] Section 89: Settlement of Disputes Outside Courts
[2] (1981) 4 SCC 634
[3] The Law Commission of India also examined the working of the 1940 Act in its 176th Report; Vide M/sFuerest Day Lawson Ltd v. Jindal Exports Ltd., 2001 (3) SCALED 708(India).

In the working of the 1996 Act, a controversy or an issue arose when the Supreme Court of Indiain the case of *Bhatia International v. Bulk Trading S.A. and Another*[4]**,** held that Part I of the 1996 Act will apply even to arbitrations seated outside India unless it had been expressly or impliedly excluded. In a similar vein, the Supreme Court gave the judgment in *Venture Global Engineeringv Satyam Computer Services Ltd***.**[5] These decisions were widely criticized for adopting a regressive approach. This issue was thereafter, settled in *Bharat Aluminium and Co. v.Kaiser Aluminium and Co*[6]*.,* during which the Supreme Court held that Part I of the Act does not apply to Part II of the Act. As per the judgment in BALCO, the Courts in India couldn't entertain interim applications under Section 9 of the Act in foreign seated arbitrations which were governed by Part II of the Act.

Despite the finest efforts of the legislature to make India a strong hub of arbitration, the 1996 Act suffered from various problems including high costs and an excessive amount of intervention of Courts. Under the 1996 Act, a challenge to an Award under Section 34 would make an Award inexecutable as there was a practice of granting an Automatic Stay on the execution of Award the instant Section 34 was filed. Further, there was no deadline for making an arbitral award due to which, arbitral proceedings continued for years. Another issue with 1996 Act was that a number of the Arbitrators charged exorbitant fee which was against the ethos of the Act of 1996.

Le Roy has defined the term "arbitration" in his book as the application of legal principles to a controversy within the limits previously agreed upon by the disputing parties.[7]

On April 8, 2010, the Ministry of Law and Justice invited suggestions from eminent lawyers, jurists and legal experts of the country regarding the functioning of the Act of 1996. Thereafter, the Arbitration and Conciliation (Amendment) Act, 2015 was passed and various amendments were made within the 1996 Act.

The development of Arbitration is split into 3 phases:

1. Pre-British period
2. Commencement of British Rule
3. Position after the Act of 1996

(1) PRE BRITISH PERIOD:-

The route of arbitration flourished in India considering cease of nineteenth century. Arbitration

[4] (2002) 4 SCC 105
[5] *(2008) 4 SCC 190*
[6] *(2012) 9 SCC 552*,
[7] A.Le Roy Bennett. "International Organizations: Principles and Issues", 3 rd Ed, Prentice Hall, Englewood Cliffs (1991), 99.

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is present in India since the Vedic times. Sage Yajnavalkya seek advice from a few arbitral bodies like puga, kula and sreni they are called Panchayat. As we recognize that in advance additionally there had been many disputes and to clear up those disputes or hassle they visit organization of sensible and wise people of the community who are known as 'PANCHAYAT' and the member had been recognize as 'panchas', the choice taken via them are binding. So, previously the disputes had been solved through "Panchayati Raj system".

(2) COMMENCEMENT OF BRITISH RULE AND ITS DEVELOPMENT:

BENGAL REGULATION, 1772: The current arbitration regulation enacted in India as early as 1772 via way of means of Bengal Regulation of 1772, in the course of the British rule. Arbitration in India became identified as dispute resolution and for the very first time while Indian Arbitration Act, 1899 was enacted. It became constrained to 3 presidency town: Madras, Bombay and Calcutta. BENGAL REGULATION, 1781: For example Bengal regulation 1781 supplied that the judge do endorse and so far as he can without compulsion, succeed upon the parties to submit to arbitration of 1 individual to be collectively agreed upon through the parties. The Bengal Regulation of 1787, 1793 and 1795 added a few procedural modifications via way of means of empowering the courtroom docket to refer suit to arbitration with the consent of partiesand in addition authorizing the court to promote reference of cases now no longer exceeding more than Rs 200 for dispute regarding debts, partnership accounts and breach of contract. The Bengal Regulation of 1802, 1814 and 1833 via way of means of making numerous procedural modifications like Regulation VII of 1827 supplied for settlement of civil disputes.

THE CODE OF CIVIL PROCEDURE ACT 1859: After the establishment of the legislative Council of India in, 1834 after which Code of Civil Procedure Act, 1859 was passed with the object of codifying the manner of civil courts however this code couldn't serve the cause as this code was no longer relevant to the supreme court (crown court under Royal Character).The Codeof 1859 was amended often every now and then and became replaced by passing the Civil Procedural Code, 1877. This code of 1877 and 1879 and the third civil procedure code was enacted in 1882, which changed the preceding code.

INDIAN ARBITRATION ACT 1899:

The Legislative Council enacted the Indian Arbitration Act in the year 1899. It was primarily based on the model of English Act of 1899. This act applied to the instances in which if subject matter submitted to arbitration had been the issue of suit, the suit ought to whether with leave or not, in any other case instituted in presidency town.

THE ARBITRATION ACT OF 1940:

Then on 1st July, 1940 greater precise arbitration act came into force. It was implemented the entire India and this act of 1940 has many disputes, many criticisms and lacked in pretty numerous regions while it came to implementation even though it brought uniformity in regulation throughout the nation. The provision made by the act of 1940 is: The arbitration act of 1940 made provision for protecting the agreement from being vitiated by the mere presence of identical lacuna in it. It made provision for arbitration without court intervention. In case of arbitration with court intervention, in which suit was certainly pending within side the court, all of the involved parties would possibly agree to refer any matter in dispute to arbitration. The act of 1940 did not acquire the preferred goal and the whole process there under turned out to be litigation-oriented. The Law Commission in India in its report dated 9th November,1978 suggested significant amendments in the Arbitration act of 1940.

(3) POSITION AFTER THE ACT OF, 1996:

ARBITRATION AND CONCILIATION ACT, 1996:-

The Arbitration and Conciliation Act, 1996. The act of 1996 consolidated and amended legal guidelines regarding Arbitration. It quantity entire of India but now no longer Jammu and Kashmir. The purpose of the act is to: *An act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign awards as also to outline the regulation pertaining to conciliation*.

The act of 1996 has advantage over 1940 Act. Where there's arbitration agreement, the court is needed to direct the parties to resort to arbitration according to agreement. The ground on which award of arbitrator may be challenged before the court under Act of 1940 had been significantly reduced down. The role of arbitral institution in promoting and organizing arbitration has been identified for the first time in law. The importance of transnational commercial arbitration has been recognized and it's been particularly provided that even when the arbitration is held in India the parties could be free to designate the applicable to the subject of dispute.

1.2 INTRODUCTION TO ARBITRATION

"Discourage litigation, persuade your neighbors' to compromise whenever you can point out to them how the normal winner is often a loser in fees, cost and time. As a peacemaker, the lawyer has a superior opportunity of being a good man".

- Abraham Lincoln[8]

According to Black's Law Dictionary, *"Arbitration in practice is the investigation and*

[8] Dodd, Notes for a Law Lecture"-Home Book of American Quotations, New York," 1967, p.226.

determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties. Compulsory arbitration is that which takes place when the consent of one of the parties is enforced by statutory provision. Voluntary arbitration is that which takes place by mutual and free consent of the parties."[9]

At its core, arbitration is a form of dispute resolution. Arbitration is the private settlement of a dispute by an independent third party. Arbitration may involve the use of a single arbitrator or a tribunal. A tribunal may consist of any number of arbitrators, although some legal systems, for obvious reasons, insist on an odd number to avoid a tie. One and three are the most common numbers for arbitrators. The parties to the dispute cede their authority to decide the dispute to the arbitrator or arbitrators. Arbitration is an alternative to trial (litigation) and is generally just as final and binding (unlike mediation, negotiation, and conciliation, which are not binding).

Arbitration, a type of alternative dispute resolution (ADR), is a method of resolving disputes outside of the courts. The dispute will be resolved by one or more individuals (the 'arbitrators,' 'arbiters,' or 'arbitral tribunal,' who will issue the 'arbitration award.'

Unless all parties agree that the arbitration process and decision are non-binding, an arbitration decision or award is legally binding on both parties and enforceable in court.

It is an Alternative Dispute Resolution method that emerged to avoid litigation and resolve disputes quickly and amicably. An amicable agreement does not mean compromises at any price. Arbitration provides an alternative form of dispute resolution by an arbitrator. It includes a selection of the neutral third party who is an expert in the field of arbitration. All parties are bound by the rule and time limits set by the arbitrator within which the dispute will be resolved.

1.3 MEANING AND EMERGENCE: INTERIM RELIEFS

Among the various dispute resolution mechanisms available, arbitration has emerged as the preferred mechanism for the resolution of commercial disputes. One of the reasons for the proliferation of arbitration has been the flexibility afforded to the parties in conducting arbitral proceedings in accordance with the law chosen by them, along with arbitrators of their choice, and at a location and time convenient to the parties, as opposed to court proceedings. Furthermore, because party autonomy is the thumb rule in arbitral proceedings, parties are generally permitted to agree on the procedure governing dispute resolution. The arbitral process is typically accompanied by procedural safeguards such as interlocutory or interim measures that protect parties while proceedings are pending.

[9]Bachawat R S, 'Law of Arbitration and Conciliation', (Nagpur: Wadhwa and Co.: Vol. I, 4th ed. 2011

It has been observed that parties use dilatory tactics to delay proceedings or impair the rights of opposing parties, such as dissipating assets or interfering with the functioning of bodies (in the case of a company in which both parties are stakeholders). In this case, the final relief granted by a tribunal may be rendered nugatory or meaningless unless the arbitral tribunal or court is able to protect the rights of the parties while the arbitral proceedings are pending.

As a result, interim measures may be required to protect a party's rights between the point at which the 'dispute' arose (in certain circumstances even before the commencement of arbitration) and the execution of the award. The parties' requests for interim relief may differ depending on the facts and circumstances of the dispute. In some cases, providing effective interim relief may also entail giving directions to third parties. Arbitral tribunals now have broader powers to grant interim measures as a result of the changes made by the Arbitration and Conciliation Amendment Act, 2015 ("Amendment Act 2015"). In this context, it is vital to understand the nature of interim reliefs that courts and arbitral tribunals can grant, as well as their respective limitations.

Interim measures of protection (also known as interim relief or conservatory measures) are orders granted on a temporary basis to protect a party's rights until a final determination of a dispute is reached.

Interim relief is an important aspect of effective dispute resolution in an increasingly globalised trading environment where evidence and assets can often be easily transferred across borders. Interim relief can take many different forms. A party may wish to maintain the status quo (for example, by permanently restricting the transfer of shares or the exercise of contractual rights), prevent the destruction of evidence, or ensure that any confidentiality obligations are met. Most often, interim relief is intended to prevent the dissipation of assets that are either the subject ofthe dispute or may be relevant to the satisfaction of a future judgment or award.

The use of interim relief in litigation is well understood. Interim relief, however, is no less important in international arbitration. Leading arbitration institutions such as the ICC, LCIA, SIAC, SCC, Swiss Chambers, AAA-ICDR, and HKIAC recognize the importance of timely and effective interim relief. To assist in times of emergency, a number of these institutions will form an arbitral tribunal on a timely basis. Many institutions have recently introduced an emergency arbitrator (EA) facility, in which an arbitrator is appointed solely for the purpose of deciding urgent interim applications in a short timeframe before the main tribunal is formed.

As a result, options for interim relief before an arbitral tribunal exist. However, court-ordered interim relief may still be preferable for many commercial parties. Court-ordered relief has several potential advantages, including the ability to seek ex parte relief and ensure that the reliefbinds third parties when that is required to make it functional (for example, a freezing injunction against accounts held at third party banks).

1.4 STATEMENT OF PROBLEM

In India, the relationship between courts and arbitral tribunals while granting interim reliefs presents a complex landscape characterized by jurisdictional conflicts, overlapping powers, and potential power struggles. Since, both the courts and arbitral tribunals possess the authority to grant interim reliefs which often leads to challenges and delays in the arbitration process. Consequently, this dynamic creates a power play between courts and arbitral tribunals, wherein parties may strategically navigate between these forums to gain tactical advantages or to circumvent unfavorable rulings.

The crux of the issue lies in comprehending and tackling the power dynamics that are present when courts and arbitral tribunals award temporary relief. There are disagreements on whether the forum has the right to get involved in a particular case due to the fine boundaries between the jurisdiction of arbitral tribunals and courts when it comes to awarding temporary relief. This uncertainty makes decision-making more difficult and raises the possibility of contradictory or overlapping directives. Both the courts and arbitral tribunals apply different standards and procedures when considering requests for interim reliefs as laid down in a catena of case laws, yet the forums are always in thought provoking situations. Divergent approaches can create uncertainty for parties which may undermine the efficiency and predictability of the arbitration process. Parties involved in arbitration proceedings may engage in power struggles or employ delay tactics by strategically seeking interim reliefs from either courts or arbitral tribunals. This can disrupt the arbitration process, prolong proceedings, and increase costs for all parties involved.

Enforcing interim relief orders issued by either courts or arbitral tribunals can pose significant challenges, particularly when conflicting orders are passed or when parties resist compliance. Inconsistencies in enforcement mechanisms further exacerbate the problem. Addressing these issues requires a comprehensive understanding of the legal framework governing arbitration and interim reliefs in India, as well as the development of mechanisms to promote cooperation, clarity, and efficiency between courts and arbitral tribunals. By resolving/harmonizing jurisdictional conflicts, standards and procedures, and strengthening enforcement mechanisms, India can enhance the effectiveness of its arbitration regime and provide parties with a reliable and efficient means of resolving disputes.

1.5 RESEARCH QUESTIONS

1) What are the key statutory provisions governing interim reliefs in arbitration proceedings in India and the main jurisdictional conflicts and power struggles between courts and arbitral tribunals regarding the grant of interim reliefs in India, and how do these conflicts impact the efficiency and fairness of the arbitration process?

2) What are the emerging trends, unresolved issues, and areas for further research in the field of interim reliefs in arbitration?

1.6 OBJECTIVES OF THE STUDY

1) To examine and analyse the statutory provisions, case law, and legal principles governing interim reliefs in arbitration in India. Thereby, focusing on their scope, applicability, procedural requirements, and the nature of interim reliefs.
2) To identify instances of jurisdictional conflicts between courts and arbitral tribunals regarding the granting of interim reliefs and analyze the factors contributing to such conflicts.
3) To identify common challenges faced by parties and tribunals in seeking and granting interim reliefs and propose potential remedies or best practices to address these challenges and enhance the efficacy of interim relief mechanisms.

1.7 HYPOTHESIS

Based on the above mentioned objectives, the following hypothesis is formulated:

1) Section 9 and 17 of the A&C Act dealing with interim relief are wide enough to cover under its ambit relief under certain distinct heads.
2) The provision of interim relief under the A&C Act causes delays to the arbitral process.
3) The provisions adopted by foreign jurisdictions are better in their implementation when compared with India.

1.8 RESEARCH METHODOLOGY

The methodology of present research is Doctrinal, therefore based on legal provisions generated by courts and the legislature.

The issues are critically analyzed to bring out findings. Suggestions and conclusions are drawn on the basis of findings. The secondary sources of data are also called Documentary Source of Data Collection was obtained from Libraries and the Internet. These include the Text Books of law as well as the Websites, Articles, specialized Law Reports, Academic Law Journals, Law libraries, etc. Care was also taken in referring legal periodicals in a systematized manner for the purpose of analysis and for better result.

1.9 LITERATURE REVIEW

BOOKS

1. O.P. Malothra, The Law and Practice of Arbitration & Conciliation (2nd edn, LexisNexis Butterworths, New Delhi 2016)

O.P. Malhotra's work provides a comprehensive analysis of arbitration and conciliation in the Indian context. The second edition builds on the foundational legal principles established in the first edition, reflecting significant updates in legislation and judicial interpretations. Malhotra covers procedural and substantive aspects of arbitration, delving into the Arbitration and Conciliation Act, 1996, as amended. Key highlights include detailed discussions on arbitral tribunals, arbitral awards, and enforcement mechanisms, positioning the book as an essential resource for practitioners and scholars interested in Indian arbitration law. The text also addresses contemporary challenges and reforms, offering critical insights into the evolving landscape of arbitration and conciliation in India.

2. Gary Born, International Commercial Arbitration, Chapter 17: Provisional Relief in International Arbitration 2470 (Kluwer International Law 2014)

In Chapter 17 of his seminal work, Gary Born explores the concept of provisional relief in international arbitration, a critical component in maintaining the efficacy and fairness of the arbitral process. Born outlines the legal framework and practical applications of interim measures, emphasizing their role in safeguarding parties' rights and ensuring the enforceability of final awards. This chapter provides a thorough examination of the types and conditions of provisional relief, such as injunctions and security for costs, along with procedural aspects and tribunal powers. Born's analysis extends to the interplay between national courts and arbitral tribunals in granting interim measures, highlighting jurisdictional challenges and enforcement issues. This comprehensive treatment underscores the importance of provisional relief in maintaining the integrity and effectiveness of international arbitration.

3. Mika Savola, Interim Measures and Emergency Arbitrator Proceedings, Croat. Arbit. Yearb. Vol. 23 (2016)

Mika Savola's article in the Croatian Arbitration Yearbook addresses interim measures and the role of emergency arbitrators, an increasingly significant feature in international arbitration. Savola provides an in-depth analysis of the legal basis for interim measures, discussing both statutory provisions and arbitral rules that empower arbitrators to issue such measures. The article examines the practical implications and challenges associated with emergency arbitrator proceedings, including issues of jurisdiction, enforceability, and the criteria for granting interim relief. Savola's work is particularly valuable for its comparative approach, analyzing different arbitral institutions' rules and highlighting best practices. This contribution is crucial for understanding the evolving procedural mechanisms that enhance the flexibility and responsiveness of arbitration in urgent situations.

4. Gary B. Born, International Commercial Arbitration, (Second Edition, 2014)

Gary B. Born's comprehensive treatise on international commercial arbitration is widely regarded as a definitive reference in the field. The second edition consolidates and expands upon the foundational principles covered in the first edition, offering an exhaustive analysis of international arbitration's theoretical and practical dimensions. Born's text covers the entire arbitration process, from the arbitration agreement to the enforcement of awards, incorporating extensive references to case law and arbitral awards. Key themes include the autonomy of the arbitration agreement, the jurisdiction of arbitral tribunals, procedural norms, and the interplay between national courts and arbitration. Born's rigorous approach and extensive documentation make this work indispensable for anyone engaged in the study or practice of international commercial arbitration.

Overall, these works collectively contribute to a robust understanding of arbitration and conciliation, highlighting key legal principles, procedural mechanisms, and contemporary challenges. The integration of national and international perspectives provides a holistic view, essential for navigating the complexities of arbitration in a globalized legal environment.

ARTICLES

1. Hans van Houtte, "Ten Reasons Against a Proposal for Ex Parte Interim Measures of Protection in Arbitration", Arbitration International, Vol. 20, No. 1, 2004

Hans van Houtte's article critically examines the concept of ex parte interim measures in arbitration, providing a thorough analysis of the potential pitfalls associated with their implementation. He presents ten compelling reasons against adopting such measures, emphasizing issues related to fairness, due process, and the risk of abuse. Van Houtte argues that ex parte measures can undermine the fundamental principles of arbitration, such as equality of arms and the right to be heard, by allowing one party to obtain relief without the other party's knowledge or participation. This article serves as a significant contribution to the debate on balancing efficiency and fairness in arbitration proceedings.

2. Martin J. Valasek and Jenna Anne deJong, "Enforceability of Interim Measures and Emergency Arbitrator Decisions", Norton Rose, May 2018

Valasek and deJong's publication addresses the practical concerns surrounding the enforceability of interim measures and decisions made by emergency arbitrators. They provide a detailed overview of the legal framework governing these measures, highlighting the differences in enforceability across various jurisdictions. The authors discuss the New York Convention and its application to interim measures, as well as recent developments in international arbitration rules that aim to enhance the effectiveness of emergency arbitrator decisions. This work is particularly valuable for practitioners seeking to navigate the complexities of enforcing interim measures in a cross-border context.

3. M. Savola, "Interim Measures and Emergency Arbitrator Proceedings", Croat. Arbit. Yearb. Vol. 23 (2016)

M. Savola's article explores the procedural and substantive aspects of interim measures and emergency arbitrator proceedings. He analyzes the criteria for granting interim relief and the procedural safeguards necessary to protect the interests of both parties. Savola also examines the institutional rules of major arbitration bodies, such as the ICC and the LCIA, and how they address interim measures and emergency arbitration. His discussion on the interplay between national courts and arbitral tribunals in the context of interim measures provides a comprehensive understanding of the current landscape and challenges in this area.

4. Vineet Unnikrishnan, Samhita Mehra & Vaidehi Chande, "Interim Application Already Considered by Court? S.9(3) of the Arbitration Act to Not Apply", September 27, 2021

This article by Unnikrishnan, Mehra, and Chande examines a specific provision of the Indian Arbitration and Conciliation Act, namely Section 9(3), which deals with the application of interim measures when similar relief has already been sought in court. The authors analyze recent judicial interpretations of this provision and their implications for arbitration practice in India. They argue that the provision aims to prevent duplicative litigation and ensure efficient dispute resolution. This article is a key resource for understanding the nuances of interim relief in the Indian arbitration framework.

5. Anubhav Pandey, "Overview of N.Y Arbitration Convention", Ipleaders, June 2017

Anubhav Pandey provides a comprehensive overview of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. He highlights the convention's significance in promoting the enforceability of arbitration agreements and awards globally. Pandey discusses the convention's key provisions, including the grounds for refusal of enforcement, and analyzes its impact on international arbitration practice. This overview is essential for understanding the legal foundation that supports the international arbitration system and the enforcement of interim measures under the convention.

6. Sameer Parekh, "Arbitration Procedures and Practice in India: Overview", Thomson Reuters, 2016

Sameer Parekh's work offers an in-depth look at arbitration procedures and practices in India. He covers the entire arbitration process, from the initiation of proceedings to the enforcement of awards. Parekh discusses the legislative framework, including recent amendments to the Arbitration and Conciliation Act, and their implications for practitioners. He also examines the role of Indian courts in supporting and supervising arbitration, with a particular focus on interim measures. This overview is crucial for understanding the procedural context of arbitration in India and the practical challenges faced by arbitrators and parties.

7. Pieter Sanders, "UNCITRAL's Model Law on Conciliation", International Journal of Dispute Settlement, Vol. 12/2002

Pieter Sanders provides an analysis of UNCITRAL's Model Law on Conciliation, discussing its objectives, key provisions, and the rationale behind its adoption. He explores how the Model Law aims to harmonize conciliation procedures and promote their use as an alternative dispute resolution mechanism. Sanders highlights the law's impact on international arbitration, particularly in terms of encouraging parties to consider conciliation before resorting to arbitration. This article is important for understanding the broader context of dispute resolution and the role of conciliation in complementing arbitration processes.

1.10 CHAPTERIZATION

Chapter 1: Introduction

This chapter sets the stage for the dissertation by introducing the concept of arbitration, its evolution in India and its significance in resolving disputes. This chapter gives an idea about the research background, objectives, research questions, significance and research methodology.

Chapter 2: Legislative Framework: Interim Relief in Arbitration

This chapter delves into the conceptual framework of interim measures in arbitration. It will define what interim measures are, the types commonly used, and their scope within the arbitration process. The chapter will explore the purposes these measures serve, such as maintaining the status quo, preventing harm to parties, and ensuring that the final arbitral award is enforceable and meaningful.

Chapter 3: Interim Measures by Arbitral Courts and Tribunals

This chapter examines the role of arbitral courts and tribunals in granting interim measures. It will discuss the procedural aspects, the authority of arbitral tribunals to issue interim measures, and the conditions under which these measures are granted. Comparisons between different arbitration rules regarding interim measures will be made to highlight similarities and differences in approach.

Chapter 4: International Perspective

This chapter provides a comparative analysis of the application and enforcement of interim measures in arbitration across various jurisdictions. It will review the legal frameworks in major arbitration-friendly countries and regions, such as the United States and United Kingdom The chapter will also address international treaties and conventions focusing on how they influence the granting and enforcement of interim measures.

Chapter 5: Comparative Analysis: Interim Measures u/s 9 and 17

This chapter addresses the complex issues and challenges that arise from jurisdictional ambiguities in granting and enforcing interim measures in arbitration. It will explore the conflicts that may occur between national courts and arbitral tribunals, the difficulties in cross-border enforcement, and the potential for overlapping jurisdictions. The chapter will also discuss landmark case laws to illustrate these challenges and how they have been addressed in practice.

Chapter 6: Conclusion and Suggestions

The last chapter concludes the study. On the basis of the information collected conclusions have been drawn. Based on the analysis, the chapter will offer suggestions and recommendations for improving the framework and practice of interim measures in arbitration, aiming to enhance their effectiveness.

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CHAPTER 2

LEGISLATIVE FRARMEWORK: INTERIM RELIEFS IN ARBITRATION

2.1 INTERIM MEASURES IN ABRITRATION – AN OVERVIEW

Concept of Interim measures / reliefs :

Interim reliefs are requested from the courts and arbitral tribunals so that the disputed valueor subject matter of the dispute is not destroyed or alienated before the dispute is settled. Interim measures may be sought from Tribunal under Section 17 of the Arbitration and Conciliation Act,1996.

Typical examples of interim measures include:

- Not to sell the disputed property or assets of a company or business where ownership is disputed;
- Deposit these amounts with a party representative or a tribunal-appointed neutral representative/bank;
- Not to maintain a specific bank account with a disputed amount (provided this does not affect day-to-day operations) or blocking the issue of a specific amount due. This is done by sending a copy of the order to the bank so that the bank can act upon it;
- Not to sell the shares
- Ownership of disputed property or machinery;
- Release of a certain amount of the security already paid for the claim for damages; and
- No invocation of a bank guarantee.

In India, the Arbitration & Conciliation Act, 1996 ("Act"), which was based on the UNCITRAL Model Law on International Commercial Arbitration,[10]provides for interim measures by courts and arbitral tribunals under Sections 91 and 172, respectively.

Section 9 of the Act is broadly based on Model Law Article 9 and provides for the issuance of interim measures by a court. In contrast to the Model Law, Section 9 provides for interim measures of protection not only before the commencement of arbitral proceedings[11] and during the arbitral proceedings, but also after the arbitral award has been rendered (but prior to its enforcement). The Amendment Act 2015 made changes to the provisions on interim reliefs in terms of the types of reliefs available and the time frame for seeking such reliefs

[10] 1985 ("Model Law")

[11] Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479: "...when an application under Section 9 is filed before the commencement of the arbitral proceedings, there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings if, at the time when the application under Section 9 is filed, the proceedings have not commenced under Section 21 of the 1996 Act."

before courts; for example, if an order of interim relief is granted by a court prior to the establishment of the arbitral tribunal, parties must initiate arbitral proceedings within ninety days.

Once the arbitral proceedings have begun, the parties must seek interim relief from the arbitral tribunal. In such a case, a court would generally refuse to hear a petition for interim relief unless the party can demonstrate that the relief granted by an arbitral tribunal is ineffective. After the arbitral tribunal has rendered an award, the successful party may seek interim relief from the courts in order to secure and safeguard the arbitral award's effectiveness prior to its enforcement. In both domestic and international commercial arbitrations, the application would generally haveto be made before a court before the award could be enforced.

Interim measures ordered by an arbitral tribunal, as outlined in Section 17 of the Act, are also largely based on Article 17 of the Model Law. The operation of this provision is ignited only at the request of a party to the arbitral proceedings, and only after the tribunal has been formed. A party may seek interim relief until the tribunal issues its decision. Previously, there was discussion about whether the powers of an arbitral tribunal to grant interim reliefs were narrower than the powers of a court under Section 9 of the Act. However, with the amendments in place,an arbitral tribunal's powers to grant interim reliefs are now equivalent to those of the court under Section 9 of the Act.

2.2 CIRCUMSTANCES UNDER WHICH ONE CAN APPLY FOR INTERIM MEASURES

During the arbitral proceedings, any party to the arbitration agreement may seek interim relief. However, after the arbitral award is made, only the successful party who is entitled to seek the enforcement of the award can apply to the court under Section 9 for protection under Section 9 (ii) of the Act.

This stems from the understanding that the Section 9 scheme presupposes an application for the grant of an interim measure of protection after the making of an arbitral award but before it is enforced for the purpose of securing the property for the benefit of the party seeking enforcement of the award[12]. According to the Bombay High Court (quoted below), an unsuccessful party would not be entitled to compensation in any case because there is no award in its favor that can be enforced:

"If an application is made at the instance of such an unsuccessful party under section 9, there

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

will be no occasion to grant any interim measure which will be in aid of the execution of the arbitral Award as such a party will not be entitled to seek enforcement under section 36[13]." As a result, even if the award is quashed, the party whose claim was rejected by the award cannot seek interim relief under Section 9 of the Act. This is based on the understanding that, under Section 34 of the Act, the court does not act as a court of appeals and does not consider the merits of the dispute.

REQUIREMENTS

- To begin with, there must be an arbitration agreement in place prima facie. Under S. 16, the arbitral tribunal, not the court, has the authority to investigate the legality of the agreement.
- The requested relief should not be beyond the scope of the agreement and should be relevant to the subject matter.
- It should not be done in such a way that it defeats the entire purpose of the arbitration.

According to Kurt Brenn "The objective of arbitration is not compromise but adjudication through the parties are at liberty to comprise." A wise arbitrator would certainly promote such agreement, but as a rule there is no zest, if there is compromise in arbitral awards. While taking a decision in arbitral matter, the arbitrator must consider the fact that the decision imparted by him must be in the interest of principle of natural justice.[14]

2.3 INCREASED USE OF ARBITRAL INTERIM MEASURES

Arbitral tribunal's ability to grant interim measures has been recognized for several decades. It was explicitly scrutinized, for example, in the 1976 version of the UNCITRAL Arbitration Rules, which stated that "the arbitral tribunal may take any interim measures it comes to believe is crucial."

For a long time, however, such power was largely ineffective because the majority of parties preferred to seek interim relief from local courts rather than from arbitral tribunals.

This pattern began to shift in the late 1990s and early 2000s. The tipping point was indicated in the 2012 edition of the Queen Mary University and White & Case International Arbitration Survey, in which survey participants indicated that they expected more demand for interim measures from arbitral tribunals than from courts. The emergence of the emergency arbitrator,

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[13] Wind World (India) Ltd. v. Enercon GmbH and others 2017 SCC OnLine Bom 1147 (para 18)

[14] O.P. Malothra, The law and practice of Arbitration & Conciliation (2nd edn, LexisNexis Butterworths, New Delhi 2016).

a special procedure to grant parties access to interim measures prior to the formation of the arbitral tribunal, is further evidence of the arbitral interim measure's growing popularity and maturity. In 2006, the International Centre for Dispute Resolution (ICDR) was the first to adopt emergency arbitrator provisions, followed by the Stockholm Chamber of Commerce (SCC) and thus the Singapore International Arbitration Centre (SIAC) in 2010, the International Chamber of Commerce (ICC) in 2012, the Hong Kong International Arbitration Centre (HKIAC) in 2013, and finally the London Court of International Arbitration (LCIA) in 2014.

There are many factors that contributed to the increased use of arbitral interim measures, such as:

- The lifting of restrictions in domestic legislation reserving the ability for state courts to order interim measures. Such restrictions were once found in the laws of most countriesin continental Europe, including Austria, Germany, Greece, Italy, Spain, and Switzerland;however, only Italy maintains the restriction at the present time.
- Adoption of rules by major arbitral institutions that support applications for interim measures to arbitrators rather than courts, such as Article 28 of the ICC Arbitration Rulesand Article 25(3) of the LCIA Rules.
- Experience has shown that it is preferable to seek interim measures from arbitral tribunalsrather than courts because arbitrators may already be familiar with the facts of the dispute; have the specialized legal or technical knowledge required to make a decision onthe application; understand the language of the dispute; provide a neutral alternative to potentially hostile courts; and be in a better position to ensure the confidentiality of the proceedings. Furthermore, interim measures directed by an arbitral tribunal may cover multiple jurisdictions, whereas the effectiveness of a writ is limited to the court's jurisdiction. This can also eliminate the need to hire local counsel in multiple jurisdictions.
- UNCITRAL's work, which was incorporated into the 2006 version of the UNCITRAL Model Law on International Commercial Arbitration (Article 17), and thus the 2010 version of the UNCITRAL Arbitration Rules (Article 26). These rules have provided useful guidance to arbitral tribunals on the scope of interim measures and thus the conditions for granting them, as well as to courts in contemplating whether to enforce arbitral interim measures; and to national legislatures when deciding whether to pass legislation requiring courts to enforce arbitral interim measures.

In the absence of applicable legal provisions, arbitrators may find it appropriate to apply standards established in international arbitration practice.

Arbitrators should also consider whether the requested interim measure might violate the law of the jurisdiction where it is expected to be executed or enforced. In such cases, local courts may refuse enforcement. Therefore, arbitrators should explore alternative remedies that comply with the relevant law.[15].

In the past, only national courts had the authority to grant interim reliefs in international arbitration. However, many countries have since amended their arbitration laws to explicitly acknowledge that both courts and arbitrators can issue such measures concurrently. The Arbitration Act of 1996, for instance, aims to reduce court intervention, allowing courts to delegate interim measure authority to arbitrators. Tribunals are also empowered to issue partial awards, endorsed by courts, which remain binding until a final resolution is achieved.

[15] Gary B. Born, International Commercial Arbitration, Second Edition, 2014

CHAPTER 3

INTERIM RELIEFS BY ARBITRAL COURTS AND TRIBUNALS

3.1 INTERIM MEASURES BY COURT

3.1.1 RELEVANT COURT TO APPLY

The 'court,' as defined in Section 2(1)(e) of the Act, could either be a district court or a High Court with 'original jurisdiction,' which would have jurisdiction over the matter. The authority to decide on the subject matter of the arbitration as if it were the same subject as that of a civil suit. In the event of an international commercial arbitration, i.e. arbitration relating to business to a commercial dispute in which only a state's High Court can hear a case involving at least one of non-Indian parties. Under the Act, India will have powers.

The court of the seat of arbitration will have jurisdiction under the Act, following the Supreme Court's decision in *Bharat Aluminum Company v Kaiser Aluminum*[16]. Fixing a seat of arbitration is equivalent to giving the courts of the seat exclusive jurisdiction over any supervisory functions, including powers over interim relief. Needless to say, such a designation of the seat would deprive all other courts[17] of jurisdiction. If an application is made to a court under Part I of the Act regarding the arbitration agreement, Section 42 of the Act will apply to preclude the making of every subsequent Part I application (including those under Section 9 of the Act) to any court other than the one to which the application has been made.

Similarly, if an application for interim relief is made to a court, all subsequent Part I applications must be made to the same court to which an application was made under Section 9 of the Act.[18]

In comparing the powers of the court to grant interim measures under Section 9 of the Act to the powers of the arbitral tribunal under Section 17 of the Act, the addition of the following clause toSection 9 of the Act merits discussion:

"(3) Once the arbitral tribunal has been established, the Court shall not entertain an application under sub-section (1) unless the Court determines that circumstances exist that may render the remedy provided under section 17 ineffective."

As a result, in order to avoid prejudice to any party following the establishment of the arbitral tribunal, courts have begun to refrain from making orders under Section 9 of the Act.

However, as a result of the amendments to Section 9 of the Act, the court can now grant interim measures in the following scenarios:

[16] (2012) 9 SCC 552
[17] Indus Mobile Distribution Private Ltd. v. Datawind Innovations Private & Ors (2017) 7 SCC 678
[18] Manbhupinder Singh Atwal v. Neeraj Kumarpal Shah 2019 GLH (3) 234

 ISSN: 2582-6433

- Prior to the establishment of the tribunal
- After the award has been made but before it is enforced.
- A Division Bench of the Kerala High Court recently observed that when an application is made before a court under Section 9(1) of the Act after the award has been made but has yet to be enforced, the court must keep in mind that the arbitral tribunal has ceased to function.[19]It went on to say that in such cases, the court must consider taking a more liberal approach.
- During the arbitral proceedings, after the formation of the tribunal, when an interim measure granted by the tribunal would be ineffective. In such cases, courts assess the relevant facts and circumstances with precision, including instances such as arbitrators' lethargy in granting interim reliefs in respect of assets, rendering the remedy ineffective. [13]Some courts have argued that courts must take a strict approach when hearing such applications under Section 9 during the course of the arbitral proceedings.[20]

In a recent case before the Delhi High Court, it was argued that the court before which an application for interim measures is pending is required by its constitution to relegate the matter to the arbitral tribunal. To avoid a situation in which a party is left without an interim relief in respect of proceedings for interim measures pending before a court thathave not been transferred to the tribunal after its constitution, the Delhi High Court heldthat the court may continue with the same and grant appropriate reliefs, where necessary. As a result, it was discovered:

"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 judice, 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 anapplication under sub-section (1) of Section 9 of the said Act. Section 9(3) itself providesthat 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

[19] M Ashraf v. Kasim VK 2018 SCC Online Ker 4913
[20] M Ashraf v. Kasim VK 2018 SCC Online Ker 4913

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Tribunal, the moment an Arbitral Tribunal has been constituted."[21]

As previously stated, another significant aspect introduced by the Amendment Act 2015is the timeline. Section 9(2) of the Act states:

"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."

The incorporation of such a time-bound mechanism aims to regulate the role of courts in granting interim measures once the arbitral tribunal has been established, as it was deemed appropriate to empower the tribunal to hear all interim applications upon its establishment.

After all, once the arbitral tribunal has taken jurisdiction of the case, it is mostappropriate for the tribunal to hear all interim applications.[22]

3.1.2 POWER OF A COURT TO ORDER INTERIM MEASURES UNDER SECTION 9

Because of the time lag between the occurrence of the dispute and the passing of the award, interim measures are an important remedy in both domestic and international arbitration. However, in certain circumstances, recourse to the arbitral tribunal to obtain an order of interim relief may be impossible or ineffective due to the arbitral tribunal's establishment or the arbitral tribunal's limited powers. In such cases, the party must apply to the court for an interim measure before or during the arbitral process, or at any time after the arbitral award is made, under Section 9 of the act. However, a person who is not a party to the arbitration agreement cannot seek interim relief from the court. However, following the 2015 amendment, Subsections (2) and (3) were added to Section 9 of the Act, with the intent that the court does not hear an application under Section 9 of the Act after the establishment of the arbitral tribunal. The words "the court shall not entertain" introduced in Section 9 expressly state that the parties have agreed to invoke arbitration and an arbitral tribunal has been established. It is important to note here that the 'doctrine of clean hands,' which means that the person approaching the court's intention shouldbe good and not malafide, plays an important role in securing the protection of interim measures under Section 9 of the act, as Section 9 allows a party to apply for the protection of interim measures, which is a discretionary remedy, and appears to the court to be

[21] Benara Bearings & Pistons Ltd. v. Mahle Engine Components India Pvt. Ltd., 2017 SCC OnLine Del 7226 (para 25, 27)

[22] Law Commission of India, 'Amendments to the Arbitration and Conciliation Act 1996' (Report No. 246, August 2014) 44 accessed 19 December 2017

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just and convenient to do so.

In the case of *Uppal Eng. Co. (P) Ltd. v. Cimmco Birla Ltd.*[23], where the petitioner failed to disclose that they had filed an application under Section 17 seeking similar reliefs from the arbitral tribunal, the court held that because the petitioner suppressed material facts, it was as not entitled to relief under Section 9 on this ground alone.

In another case, *S. Raminder Singh v. NCT of Delhi.*[24], the petitioner failed to disclose that he had instituted other legal proceedings (including a civil suit and writ proceedings) for claiming similar reliefs, and that his request for relief in these other proceedings had been denied by the courts where the proceedings were instituted. The court ruled that the Section 9 petition should be dismissed solely on this basis because the petitioner had not approached the court with clean hands..

3.1.3 INTERIM RELIEFS IN CASE OF FOREIGN-SEATED ARBITRATIONS

Pursuant to the issuance of an award, applications under Section 9 of the Act may be filed to seek interim measures against the dissipation or alienation of assets in India, even if the place or seat of arbitration is located outside of India[25]. In such cases, the court with jurisdiction over thesubject matter of the arbitral award (the assets of the party seeking such measures) may be considered the appropriate court.[26]

3.1.4 THE POWER OF THE COURT TO GRANT INTERIM MEASURES WHERE THE PLACE OF ARBITRATION SEATED OUTSIDE INDIA

Section 9 of the act provides the legal framework for both domestic and international commercialarbitration seated in India, though the provisions of Part 1 of the act are now also available for international commercial arbitration seated outside India. The provision gives the court broad authority to order interim measures in the following cases:

i.) The preservation and custody of the goods subject to the arbitration agreement;

ii.) securing the disputed amount;

iii.) preserving moveable or immovable property;

iv.) Gathering evidence that may be required in the arbitration proceedings.

The arbitration and conciliation act seeks to unify and amend the laws governing "domestic arbitration," "international commercial arbitration," and "enforcement of foreign arbitral awards." Part I of the act will apply "where the place of arbitration is in India," and it will bea "domestic arbitration" if all of the parties to a dispute are Indian nationals and the place of

[23] *2005(2)ARBLR404(DELHI)*
[24] 2003(66)DRJ329
[25] Arbitration and Conciliation Act 1996, s 2(2) proviso
[26] Trammo DMCC v. Nagarjuna Fertilizers and Chemicals Ltd. (2018) 1 AIR Bom R 1:

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arbitration is in India.

The definition of "international commercial arbitration," on the other hand, The act's Section 2(1)(f) focuses on two elements: the arbitration must be about a dispute arising out of a legal relationship considered commercial under Indian law, and at least one of the parties to the agreement falls into one of the categories listed in Section 2 (1) sub clauses (f) I to (iv) of the act.

A single Judge of Delhi High Court in the case of *Dominant offset pvt. Ltd v. Adamovske strojirny*[27]**,** *"* held that, even if the place of arbitration is outside India, the provisions of section 9 of the act will apply and the court has jurisdiction to order interim measures of protection. It also held that a plain reading of Sub section (2) of Section 2 is an inclusive definition and that it does not exclude the applicability of Part-1 of the act to those arbitration which are not being held in India. In Summary, the aforementioned interpretation gets support from the provisions of Sub- section 5 of Section 2 which states that part 1 shall apply to all the arbitrations and to all the proceedings relating thereto which would also, in my considered opinion, include an international commercial arbitration."

The extent to which Part I provisions apply to international commercial arbitration held outside India, on the other hand, has been the subject of much debate and criticism.

Following the extent of Part I's applicability to international commercial arbitrations held outsideIndia, this was first recognized in the case of *Bhatia International v. Bulk Trading S.A,* where the Hon'ble Supreme Court held that the provision of Part 1 of the Act would also apply to international commercial arbitrations held outside India.

According to the arbitration agreement, the proceedings for the arbitration were conducted in accordance with the rules of the International Chamber of Commerce, and the seat of arbitration was in Paris. The petitioner in the case filed the petition before an Indian court under Section 9 of the act, seeking interim measures of protection. The respondent's contention that the application under Section 9 of the Act was not maintainable because, according to Section 2(2) of the Arbitration Act, Part I of the Act is only applicable to domestic or Indian-seated arbitration.

The Hon'ble Supreme Court rejected the contention and interpreted Section 2 (2) of the Act to mean that it will apply compulsorily to arbitration proceedings taking place in India, regardless of the parties' agreement, and it will also apply to international commercial arbitrations taking place outside India. Parties sitting outside India will be free to expressly or

[27] 68(1997)DLT157

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implicitly exclude theapplication of Part I provisions by agreement; if they do not, Part I of the Act will apply.

However, in *Bharat Aluminium Company (BALCO) v. Kaiser Aluminium Technical Services Inc,* a Constitutional bench of five judges of the Supreme Court held that Part I of the Act would haveno application to international commercial arbitration held outside India and that no application under Section 9 of the Act for interim measures would be maintainable.

3.1.5 RELIEFS SOUGHT

According to a reading of various decisions, parties generally approach courts to secure the amount in dispute and to prevent the alienation or dissipation of property. The following are examples of common reliefs sought and granted by courts under the Act :

- Pursuant to Section 9(ii)(b) of the Act, a party may seek to protect its financial interests by securing the amount in dispute, including via guarantees provided by the opposing party.[28]
- Courts may allow parties to take symbolic possession of properties [20]under Section 9(ii)(c) of the Act. Courts may also appoint receivers to seize property that is not the subject of the dispute.[29]
- Using the broad powers granted by Section 9(ii)(e) of the Act, courts may order parties to disclose the properties they own, issue attachment orders against third-party respondents[30], and order parties not to dispose off their properties.

Appeals from orders under Section 9

An appeal from an order granting or refusing to grant any such interim measure under Section 9 can be made under Section 37(1) of the Act, which states:

"(1) An appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely: a. refusing to refer the parties to arbitration under section 8; b. granting or refusing to grant any measure under section 9; c. setting aside or refusing to set aside an arbitral award under section 34"

3.1.6 STANDARDS APPLICABLE TO THE GRANT OF INTERIM RELIEFS BY THE COURT

The Act contains no standards for the grant of interim reliefs by a court under Section 9 of the Act. Some courts have suggested to apply the Code of Civil Procedure, 1908 ,Order XXXVIII and Order XXXIX. [24] Courts have ruled that the CPC standards would not apply to

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[28] Delta Constructions v Narmada Cement (2002) 1 Mah LJ
[29] Karvy Financial Services Ltd v Progressive Construction Ltd Arbitration Petition No. 1162 of 2014
[30] Value Advisory Services v ZTE Corporation (2009) 3 Arb LR 315

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proceedings under Section 9 of the Act and that if a party can merely demonstrate that it has a good case on merits, it will be likely to obtain interim relief. In these cases, courts have been guided by the principle that denying such interim reliefs would result in injustice to the applicant or render the resulting award unenforceable/inexecutable if such reliefs were not granted. The extent to which the provisions of the CPC apply to proceedings under Section 9 of the Act remains unclear in light of the divergent opinions of various High Courts (discussed below). Furthermore, despite acknowledging that there were divergent decisions by various High Courts, the Supreme Court in *Arvind Constructions v. Kalinga Mining Corporation and Others*[31] , left this question open to be considered in an appropriate case. The Amendment Act 2015 does not address this gap and remains silent on the standards that may apply when courts grant interim relief under Section 9 of the Act.

We derived two lines of reasoning from a reading of various decisions: an exclusive approach and an inclusive approach. According to the first line of reasoning, the rigors of every provision in the CPC cannot be used to defeat the grant of relief provided by Section 9 of the Act. Thelatter line of reasoning, on the other hand, considers proceedings under Section 9 of the Act is parallel to proceedings under CPC Orders XXXVIII Rule 5 and XXXIX Rules 1 and 2, and thus the principles contained therein must be considered for the grant of interim reliefs. Courts governthe issuance of temporary injunctions in accordance with the procedure outlined in CPC Orders XXXVIII and XXXIX. Order XXXVIII of the CPC refers to certain reliefs that may be availableat any stage of the suit prior to judgment, such as arresting the defendant and providing security, if a court is convinced that the 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.

A court may grant temporary injunctions and interlocutory orders under Order XXXIX of the CPC if it is proven in any suit that any property in dispute is in danger of being damaged or alienated by any party to the suit, or wrongfully 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.

In such cases, the courts may grant a temporary injunction to restrain such act, or issue any other order for the purpose of staying and preventing the damaging, alienation, sale, removal, or disposition of the property, provided the party can satisfy the three requirements in relation to:

1. Prima Facie case

[31] (2007) 6 SCC 798

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2. Balance of Convenience
3. Irreparable Injury

A. EXCLUSIVE APPROACH

Order XXXVIII Rule 5 of the CPC provides for certain types of reliefs similar to Section 9 (ii) (b) and (c) of the Act, such as the grant of security, attachment of property, or arrest of the defendant. These reliefs are only granted if the court is convinced that the respondent intends to obstruct or delay the execution of a decree and is about to:

i. dispose of all or a portion of its property; or
ii. remove all or a portion of its property from the local limits of the civil court with jurisdiction.

Order XXXIX of the CPC provides for temporary injunctions, which are equivalent to thereliefs provided under Sections 9(ii)(d) and (e) of the Act. An applicant must meet the following standards under Order XXXIX in order to successfully obtain an injunction:

i. Any disputed property is in danger of being wasted, damaged, or alienated by the respondent, or is being wrongfully sold in execution of a decree, or
ii. The respondent threatens to remove or dispose of its property in order to defraud its creditors, or
iii. The defendant threatens to evict the applicant or otherwise harm the applicant in connection with any property in dispute in the suit.

Various High Courts have held that the principles/standards outlined in Order XXXVIII Rule 5 and Order XXXIX mentioned above do not have to be strictly followed in order for a court to grant interim measures under Section 9.

Such strict application would defeat the very purpose of having an alternative dispute resolution mechanism.

I. The Bombay High Court in *Delta Construction Systems Ltd., Hyderabad v. M/S Narmada Cement Company Ltd, Mumbai28 (“Delta Construction”)*[32] held that court would not be bound by the provisions contained in the Order XXXVIII Rule5 while granting a relief under Section 9 of the Act.
II. *In National Shipping Company of Saudi Arabia v. Sentrans Industries Ltd.29 ("National Shipping")*[33], the Bombay High Court 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.

[32] (2002) 2 BomLR 225
[33] AIR 2004 Bom 136

a. Instead, a party seeking interim relief would only need to make a clear case on the merits of the claim for interim reliefs and demonstrate that denial of such reliefs would result in injustice to the applicant.
b. In addition, the applicant would have to make allegations about the opposing party's obstructive behaviour or attempts to overturn the award, necessitating the grant of interim relief.

III. Similarly, *in Steel Authority of India v. AMCI Pty Ltd ("SAIL")*[34], the Delhi High Court held that the principles set forth in Order XXXVIII Rule 5 would only serve as guiding principles for the court's exercise of power. A party seeking relief under Section9 would essentially have to convince the court that providing security was necessary to safeguard its interests.

IV. Interestingly, in *Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd.31 ("Adhunik Steels")*[35], the Supreme Court held that "well known rules" of the CPC must be followed when granting interim relief under Section 9. As a result, while granting an injunction,[31] the principles of
a. prima facie case,
b. balance of convenience, and
c. irreparable injury must be considered.

I. The Supreme Court refrained from saying anything that specific standards under Order XXXVIII Rule 5 and Order XXXIX Rules 1 and 2 would apply. However, in *Nimbus Communications Limited v. Board of Control for Cricket in India and Another ("Nimbus")*[36], the Bombay High Court interpreted Adhunik Steels to conclude that standards for granting interim relief under Section 9 would not be completely independent of the principles in the CPC.

II. In *Tata Capital Financial Services Ltd. v. Unity Infraprojects Ltd.*[37], the Bombay High Court held that while the court will broadly consider the fundamental principles ofOrder XXXVIII Rule 5 and Order XXXIX Rules 1 and 2, it will also have the discretion to shape the relief on a case-by-case basis in order to secure the ends of justice and preserve the sanctity of the arbitral process. In this case, the Bombay High Court followed the division bench's decision in *Deccan Chronicle Holdings Limited v. L&T*

[34] (2011) 3 Arb LR 502
[35] AIR 2007 SC 2563
[36] 2016 SCC OnLine Bom 6781
[37] 2015 SCC OnLine Bom 3597

Finance Limited[38] that the underlying basis of Order XXXVIII Rule 5 must be considered when making relevant orders under Section 9, the rigors of every procedural provision of the CPC cannot be used to defeat the grant of relief that would serve the paramount interests of justice.

III. In maintaining an exclusive approach, the Delhi High Court[39] has continued to recognize that the power of courts to grant interim reliefs under Section 9 of the Act is quite broad, as the text of the section indicates. However, such power should be exercised in a principled manner, based on some well-established guidelines – hence the reference to CPC Orders XXXVIII and XXXIX. It has alsostated that the court should not be overly bound by the text of those provisions, but rather should follow the underlying principles. Moreover, relying on the Supreme Court's decision in *Indian Telephone Industries v. Siemens Public Communication*,[40] the Delhi High Court concluded that, while there is no textual basis in the Act linking it to CPC provisions, the principles underlying exercise of power by courts in the CPC must be considered when making orders under Section 9[41].

IV. In a recent judgment, the Delhi High Court followed its ruling in SAIL and held that the Court is competent to pass an appropriate protection order of interim measure as provided under Section 9 of the Act outside of the provisions of Order XXXVIII, Rule 5 of the CPC[42]. Each case under Section 9 of the Act must be considered in light of its own facts and circumstances, as well as the principles of equity, fair play, and good conscience. The power of the Court under Section 9 cannot be limited to the power conferred by the CPC, though analogous principlesmay be considered in mind[43].

V. A Division Bench of the Madras High Court took a firmer stance, holding that in a case involving Section 9 of the Act, CPC would not apply; rather, a real, imminent danger of removal or disposal of the properties for such an extreme measure must be proven.[44]

VI. In dealing with standards for interim reliefs under Section 9 of the Act, the Jammuand Kashmir High Court took a relatively liberal approach. It was observed that while the CPC standards may not be strictly applicable to proceedings under Section 9 of the Act,

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[38] 2013 SCC OnLine Bom 1005
[39] See Ajay Singh v. Kal Airways Private Limited, 2017 SCC OnLine Del 8934, followed in Jetpur Somnath Tollways Limited and Ors. v. Respondent: 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
[40] (2002) 5 SCC 510
[41] Supertrack Hotels Pvt. Ltd. v. Friends Motels Pvt. Ltd., 2017 SCC OnLine Del 11662
[42] Motor & General Finance Ltd. v. Bravo Hotels Pvt. Ltd. 2018(2) Arb LR 50 (Delhi)
[43] Reliance Communications v. Bharti Infratel 2018 II AD (Delhi) 487.
[44] M/s. KGS Constructions Limited v. Karishmaa MEP Services Pvt. Ltd., (2017) 4 CTC 51 (DB)

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the underlying principles are used by the courts to issue interim orders to protect the subject matter of arbitration[45]. It went on to say that the court has broad powers in granting interim measures and that "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."

i. INCLUSIVE APPROACH

The following are examples of judgments in which the courts held that the principles/standards set out in the CPC under Order XXXVIII Rule 5 and Order XXXIX Rules 1 & 2 applied to the grant of interim measures under Section 9 of the Act.

ii. In *ITI v Siemens Public Communication* ("ITI")[46], the Supreme Court held that,while the Act made no mention of the CPC's applicability to arbitral proceedings, the provisions of the CPC could be read in by a court exercising its powers duringany proceedings arising under the Act.

iii. In deference to the Supreme Court's decision in ITI, various High Courts[47] determined that when the court exercised its powers under the Act to grant interim reliefs, the principles of Order XXXVIII Rule 5 and Order XXXIX Rules 1 and 2 of the CPC would have been read into.

iv. In Nimbus, the Bombay High Court interpreted Adhunik Steel to mean that the principles enshrined in Order XXXVIII Rule 5, i.e.

   a. the defendant's conduct indicated that it intended to alienate its property or remove its properties from the court's jurisdiction; and

   b. the defendant's conduct indicated that it intended to alienate its property or remove its properties from the court's jurisdiction; and This approach has also been used in several decisions made after Nimbus.[48]

v. Similarly, in *Anantji Gas Service v. Indian Oil Corporation*[49], the Division Benchof the Delhi High Court interpreted *Adhunik Steel and Arvind Constructions* to conclude that the power granted to the court under Section 9 of the Act is parallel to Order XXXIX Rules 1 and 2 of the CPC. Thus, the court must be satisfied that the petitioner has

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

46 (2002) 5 SCC 510

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

48 Housing Development and Infrastructure Ltd v Mumbai International Airport Pvt. Ltd. Appeal (L) No. 365 of 2013 in Arbitration Petition (L) No. 902 of 2013 (judgment dated 28 November 2013 of the Bombay High Court); C V Rao v Strategic Port Investments KPC Ltd., 2014 Arb LR 9 (Delhi); Acron Developers Pvt. Ltd. v Patel

49 2014 SCC OnLine Del 3732

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established the three cardinal principles, namely, prima facie case, the balance of convenience, and irreparable loss if no interim relief is granted under Section 9 of the Act. The Delhi High Court reiterated this in *V.K.Sood Engineers and Contractors v. Northern Railways.*[50]

vi. In *Star Track Agency Pvt. Ltd.49 v. Efcalon Tie Up Pvt. Ltd.*[51], the Calcutta High Court stated that it is well established that the principles for granting interim orders applied by courts would also apply to proceedings under Section 9 of the Act for grant of interim reliefs.

vii. The High Court of Hyderabad has considered a relatively strict approach in observing that the court is required to act fairly even when dealing with applications under a special enactment, such as the Act, consistent with the procedure it follows when dealing with applications under Order XXXIX of the CPC.[52]

viii. The Andhra Pradesh High Court[53] bench of Justices Ninala Jayasurya and Nayapathy Vijay on 3rd January, 2025 observed that 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 of the 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.

ix. This approach appears to introduce unwarranted formalism and technicality into the arbitralprocess.

x. Under the Arbitration Act of 1940 ("1940 Act"), courts granted interim measures only at the post-award stage if they were satisfied that a party was attempting to defeat, delay, or obstruct an award. As a result, the 1940 Act already included a standard similar to that in Order XXXVIII or Order XXXIX. However, these provisions are missing from Section 9 of the Act. As a result, it could be argued that the legislature's intention was to depart from the earlier standards, which were similar to Order XXXVIII or Order XXXIX standards.

xi. The 1940 Act specifically stated that the provisions of the CPC would apply to all court proceedings. This provision was not retained in the Act; in fact, Section 19 of the Act expressly excludes the applicability of CPC provisions. This also suggests that the

[50] 2017 SCC OnLine Del 9211
[51] AIR 2016 Cal 3267
[52] Mahaveer Infoway Limited v. Tech Mify Info Solutions LLP, 2017 SCC OnLine Hyd 221
[53] Tuf Metallurgical Private Limited Vs. Bst Hk Limited and Others ICOMAA. No.2 of 2024

legislature may not have intended to make CPC standards set out in Orders XXXVIII or XXXIX applicable to proceedings under Section 9 of the Act.

xii. Article 17 J of the Model Law, as amended in 2006 ("Amended Model Law"), states that a court shall exercise such power in accordance with its own procedures, taking into account the unique characteristics of international arbitration. However, India has not amended the Act in order to give effect to Article 17 J[54]. As a result, while granting interim relief, the court's current sentiments may need to be re-evaluated.

3.1.7 ENFORCEABILITY OF AN INTERIM ORDER GRANTED BY A COURT

Interim relief granted by a court may be enforced in the same way as any other court order. In the event of wilful non-compliance/disobedience with the judgment/order, parties may choose to initiate civil contempt proceedings under Section 2 (b) of the Contempt of Courts Act, 1971[55]. Parties who wilfully fail to comply may be punished to the maximum extent permitted by Section 12 of the Contempt of Courts Act, 1971.[56]

The Delhi High Court on 6th March, 2025 [57] passed an judgments in which the courts held that the power to issue interim orders under section 9 of Arbitration and conciliation Act not confined solely to orders which can be passed under Order XXXIX Rule 1 & 2. A bench comprising of Justice Vibhu Bakhru and Justice Tejas Karia held that the the court would be guided by the principles underlying the Code. Clearly, such orders would also extend to granting the relief, if such relief is admissible on admitted facts.

The Bombay High court bench of Justice Somasekhar Sundaresan [58]on 01.04.2025 observed that a measure taken under Section 9 of the Arbitration Act ought not to conflict with special protective provisions in ameliorative legislation such as the Rent Act and thus, tenants occupying premises which fall under development agreement cannot be evicted under section 9 of Arbitration Act.

The Bombay High Court [59]single bench of Justice Somasekhar Sundaresan on 17th March, 2025 held that the mere invocation of Section 9 and Section 11 of the Arbitration and Conciliation Act, 1996 does not amount to parallel proceedings. Further, the High Court noted that Section 9 is intended to provide interim relief to safeguard the subject matter of arbitration. The court

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

[55] Mtech Solutions v. Pclit Solutions Pvt. Ltd, CCP No.132/2007 in OMP No.320/2007

[56] Terra Manufacturing and Sales v. M/S Alagendiraa Apparels, CONT. CAS (C) No 920/2009

[57] M/S GTL INFRASTRUCTURE LTD versus S.C WADHWA AND SONS (HUF) FAO (COMM) 68/2025

[58] Ambit Urbanspace Versus Poddar Apartment Co-operative Housing Society Limited & Ors Commercial Arbitration Petition (L) No.38696/2024

[59] Fab Tech Works & Constructions Pvt. Ltd. vs Savvology Games Pvt. Ltd. & Ors. (Commercial Arbitration Application No. 419 Of 2024 and Related Matters)

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categorically held that Section 9 is meant to grant temporary interim protection in aid of the arbitral tribunal conducting proceedings. Non- compliance with the agreed commitment to refer disputes to arbitration is the basis of filing a Section 11 Application."

The Delhi High Court bench[60] of Justice Neena Bansal Krishna on 27th Decemeber, 2024 has held that the plaintiffs are not barred from availing the remedy under Section 9 of the Arbitration and Conciliation Act, 1996 even against individual(s)/entities who are not party to the Family Settlement out of which the dispute arose.

1.1 INTERIM MEASURES BY ARBITRAL TRIBUNALS

3.2.1 RELIEFS SOUGHT

Section 17 of the Act embodies the power of an arbitral tribunal to grant interim measures. Prior to the Amendment Act of 2015, the section was quite broad in terms of the types of reliefs that could be granted; it allowed the tribunal to issue any interim measure of protection. However, courts and arbitral tribunals ruled that the scope of interim measures available under Section 17 was more limited than under Section 9[61].

As a result, various arbitral tribunals declined to issue interim orders such as security grants.

The Amendment Act 2015 made much-needed changes to the grant of interim reliefs by an arbitral tribunal, bringing them on par with the interim reliefs granted by courts under Section 9 of the Act.[62]

An arbitral tribunal may grant the following reliefs:

i.) securing the amount in dispute in arbitration;[63]

ii.) the detention, preservation, or inspection of any property or thing the subject of the arbitration dispute;

iii.) interim injunctions and the appointment of a receiver;[64]

iv.) any other interim measure that would just be and convenient.

However, as the Supreme Court ruled in *MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.63,*[65] an arbitral tribunal has no jurisdiction to issue interim measures against a third party under Section 17 of the Act.

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[60] Mr. Pawan Gupta & Anr. vs. Miton Credentia Trusteeship Services Limited & Ors. CS(COMM) 1213/2024, I.A. 49931/2024 (for interim injunction)

[61] Areeb Rolling Mills (P) Ltd v. NKGSB Cooperative Bank Ltd (2013) 2 Mah LJ 424; Managing Director, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd., (2004) 9 SCC 619

[62] Shakti International v. Excel 2017 SCC OnLine Bom 321; Raymond Limited v. Akshaypat Singhania, 2019 SCC OnLine Bom 227

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

[64] Baker Hughes Singapore Pte v. Shiv-Vani Oil and Gas Exploration Arbitration Petition No. 1127 OF 2014 (Bombay High Court)

[65] 2004) 9 SCC 619

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Appeals from orders under Section 17

An appeal from a decision granting or refusing permission to Any such interim measure granted under Section 17 can be made under Section 37(2) of the Act, which states:

"An appeal shall also lie to a Court from an order granting of the arbitral tribunal —a.) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; orb)ranting or refusing to grant an interim measure under section 17."

3.2.2 POWER OF AN ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES UNDER SECTION 17

Section 17 of the act empowers the arbitral tribunal to grant interim relief to the contracting parties in arbitrations held in India. Prior to the 2015 amendment Act (the 2015 amendment), the types of interim reliefs that the arbitral tribunal could grant were not illustrated; it was simply stated that the arbitral tribunal could order a party to take any interim measure of protection that the arbitral tribunal deemed necessary in relation to the subject matter of the Dispute.

In *Gulmali Amrullah Babul v. Shabbir Salebhai Mahimwala*, it was held that the party seeking enforcement of the order made under Section 17 would then file a Section 9 petition for the samereliefs based on the arbitral tribunal's order. Thus, a proceeding under section 9 is not an arbitral tribunal's enforcement proceedings. This is not to say that an arbitral tribunal's decision cannot be enforced in any way; the court can take the same stance under section 9 proceedings. However, the 2015 amendment ensures that the arbitral tribunal's powers under Section 17 are aligned with the powers of the court under Section 9 of the act, and the tribunal is empowered to grant all measures that can be granted by the court under Section 9(1) of the act.

As a result, subsection (3) of Section 9 has been added, which states that once an arbitral tribunalhas been formed, a court shall not entertain an application for interim measures, which may render the remedy under Section 17 ineffective. The 2015 amendment provided that the arbitral tribunal under Section 17 could grant interim measures not only during the arbitral proceedings, but also at any time after the award was made but before it was enforced. However, the words "atany time after the making of the arbitral award but before it is enforced" were removed by the 2019 amendment (2019 amendment act) of the act because they were inconsistent with Section 32 of the Arbitration Act, which stated that the mandate of the arbitral tribunal is terminated when the arbitral proceedings are terminated. An order issued by the arbitral tribunal under Section 17 of the act granting or refusing to grant an interim measure may be appealed under Section 37(2)(b) of the act. However, no second appeal is permitted, but the parties may still seek special leave to appeal from the Supreme Court under Article

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136 of the Indian Constitution.

However, following the 2015 amendment, the powers vested under section 17 cannot supersede the legislative intent of section 9, and the courts have made it clear that an arbitral tribunal cannot make all the orders that a court can normally make, as discussed in the case *of Pradeep K.N. v. The Station House Officer,* where "an arbitral tribunal ordered repossession of a vehicle as an interim measure under section 17 of the act, the court held that the arbitral tribunal's decision was invalid. Giving an arbitral tribunal the power of a civil court to issue an interim order does not give the arbitral tribunal the power of enforcement."

3.2.3 STANDARDS APPLICABLE TO THE GRANT OF INTERIM RELIEFS BY ARBITRAL TRIBUNALS

While granting interim measures[66], international authors have suggested that an arbitral tribunal should be guided by arbitral case law, comparative analysis of arbitration rules, and scholarly opinions. The National court's standards for granting interim measures would have no bearing onarbitral tribunals[67]. Arbitral tribunals have traditionally required (a) irreparable harm; (b) urgency; and (c) no prejudgment of the case's merits. In some cases, tribunals considered whether the party had established a prima facie case and whether the balance of convenience favoured the party.

As previously stated, courts in India have occasionally refrained from applying principles from Order XXXVII Rule 5 and Order XXXIX Rules 1 and 2 to the grant of interim relief under Section 9[68] . When such principles are not necessarily applicable in court proceedings, it is impossible for them to apply to a flexible and tailored dispute resolution process like arbitration.[69]

However, *in Intertole ICS (Cecons) O &M Company v. NHAI,*[70] the Delhi High Court held that before granting interim relief and providing security for the amount claimed, an arbitral tribunal must determine whether the petitioner has made out a case under Order XXXVIII Rule 5. However, the arbitral tribunal refused to grant interim measures solely because the applicant failed to establish a prima facie case.

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66 Ali Yesilirmak, Provisional Measures in International Commercial Arbitration, International Arbitration Law Library Series Set (Book 13) (Kluwer Law International) 159 - 236

67 Gary B. Born, International Commercial Arbitration (2nd edn, Kluwer Law International 2014) 2424 - 2563

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

69 Shabnam Dhillon v. Zee Entertainment Enterprises Ltd. and Ors. (2019) 176 DRJ 429

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

The Bombay High Court recently observed in *Yusuf Khan v. Prajita Developers Pvt. Ltd. and Ors.*[71] that the principles laid down in Nimbus would equally apply to the arbitral tribunal, whileexercising powers under Section 17 and more specifically Section 17(1)(ii)(b) of the Act, i.e., theprinciples laid down in the CPC for the grant of interlocutory remedies must furnish a guide to while determining an application under Section 17 of the Act.

In a recent ruling, the Delhi High Court held that, because the objects of Sections 9(1)(ii)(b) and 17(1)(ii)(b) of the Act are similar to those of Order XXXVIII Rule 5 of the CPC, the arbitral tribunal and court, while granting interim reliefs under the said provisions of the Act, must be satisfied that it is "necessary" to pass order to secure the amount in dispute.[72]

In the case of *M.D., Army Welfare Housing Organisation v. Sumangal Services Pvt. Ltd.*, [70]it washeld "An arbitral tribunal is not a court of law. Its orders are not judicial orders. Its functions are not judicial functions. It cannot exercise its power ex debito justitiae. The jurisdiction of the arbitrator being confined to the four-corners of the agreement, he can only pass such an order which may be subject matter of reference.". It was further held, "In absence of an agreement to the contrary, in terms of the provisions of Arbitration Act, 1940 an arbitrator can pass only an interim award or a final award. Such awards are enforceable in law. The award of an arbitrator whether interim or final are capable of being made a rule of court, decree prepared and drawn up in terms thereof and put to execution." The Hon'ble Supreme Court further clarified in this judgment that an arbitral tribunal, under Section 17 of the Act, has no jurisdiction to pass interim measures against a third party.

It is also worth noting that all orders issued under Section 17 of the Act are only appealable under Section 37 of the Act. Though it was previously unclear, the Amendment Act of 2015 clarified that any order issued by an arbitral tribunal under Section 17 shall be deemed to be an order of the court for all purposes and shall be enforced in the same manner as if it were an order of the court.

As a result, the power struggle between courts and arbitral tribunals persists in India. The recent amendments, on the other hand, sought to clarify the scope of powers granted to courts and arbitral tribunals under Sections 9 and 17 of the Act, respectively.

3.2.4 ENFORCEABILITY OF AN INTERIM MEASURE GRANTED BY ARBITRAL TRIBUNALS

Despite the arbitral tribunal's power to issue interim measures, the lack of a method for

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[71] Arbitration Petition No. 1012 of 2018

[72] Natrip Implementation Society v. IVRCL Limited 2016 SCC OnLine Del 5023; Shailendra Bhadauria and Ors. v. Matrix Partners India and Ors. 2019 (1) ABR 788

enforcingany interim relief granted in the Act raised concerns about the efficacy of the arbitral process in India.[73] In *Sri Krishan v. Anand, Ltd*[74] the Delhi High Court held that any person failing to comply with the arbitral tribunal's order under Section 17 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 Act, which is the only mechanism for enforcing its orders. As a result, that party would be in contempt of court.

It may come as a relief to parties that the Delhi High Court[75] has ruled that an order issued by an arbitral tribunal that is later upheld by a court in an appeal filed under Section 37 of the Act is enforceable as a court order. In the case of interim relief granted by arbitral tribunals, the amendment to Section 17 of the Act clarifies that an order of the tribunal is now enforceable like a court order.

The Telangana High Court on 27.02.2025[76] vide a bench of comprising Justice Moushumi Bhattacharya and Justice B.R. Madhusudhan Rao has held that the 2015 amendment to the Arbitration and Conciliation Act grants a bouquet of protections to a party during the course of arbitral proceedings. It clarified that section 9 (3) restricts a party from seeking interim protection before a Court, once a tribunal has been constituted. After the amendment, once the Tribunal has been constituted, the parties can avail of the protection under section 17 by applying to the Tribunal. The court further held that the revitalized section 17(1) and (2), post-amendment, casts a weighty burden on the party to persuade the Court to hold on to the Section 9 petition despite formation of the Arbitral Tribunal. The burden of making out a case for the Court to hear the matter, even after constitution of the Arbitral Tribunal, rests on the party who resists being relegated to arbitration. The party seeking to put the breaks on arbitration, at least for a limited period of time, must discharge the onus of proving the existence of factors which would render the relief under section 17(1) inadequate or inefficacious.

[73] 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)
[74] (2009) 3 Arb LR 447 (Del
[75] BPTP Limited v. CPI India I Limited and Ors. 2015 (4) Arb LR 410 (Delhi)
[76] M/s. Corvine Chemicals and Pharmaceuticals Private Limited vs. Srinivasulu Kanday - COMCA.No.40 of 2024

CHAPTER 4

INTERNATIONAL PERSPECTTIVE

"*Clipping of arbitral wings is against the basic ethos of the 1996 Act. Allowing free flight to arbitration is the very raison d'etre of the reforms that the UNCITRAL arbitral model sought to introduce. The 1996 Act, founded as it is on the UNCITRAL model, is pervaded by the same philosophy.*" - Justice C Hari Shankar

4.1 POSITION IN ENGLAND

In the United Kingdom, interim reliefs in arbitration are governed by the Arbitration Act 1996. Arbitral tribunals have the power to grant interim reliefs to preserve the status quo, prevent harm, or maintain the effectiveness of the arbitration process. These interim reliefs can be similar to those available in court proceedings, such as injunctions or orders for the preservation of evidence.

The Arbitration Act 1996 empowers arbitral tribunals to grant interim reliefs, including injunctions, orders for the preservation of assets or evidence, and orders to prevent parties from taking certain actions during the arbitration proceedings.

Interim reliefs in arbitration aim to provide temporary relief pending the final resolution of the dispute. They are designed to maintain the status quo, prevent irreparable harm, or facilitate the fair conduct of the arbitration proceedings.

The principles governing the grant of interim reliefs in arbitration are similar to those applicable in court proceedings. The arbitral tribunal must consider factors such as the likelihood of success on the merits, the balance of convenience, and the potential harm to the parties if the interim relief is not granted.

Interim reliefs granted by arbitral tribunals are enforceable through the courts in the same manner as court orders. The courts have the power to grant interim relief in support of arbitration proceedings and to enforce interim reliefs issued by arbitral tribunals.

Arbitration proceedings in the UK are generally confidential, and interim reliefs are no exception. Parties can request confidentiality orders to prevent disclosure of sensitive information related to interim reliefs.

Costs and Fees: Parties involved in arbitration proceedings are typically responsible for their own costs, including the costs associated with seeking interim reliefs. However, the arbitral tribunal has the discretion to apportion costs as it sees fit, taking into account the circumstances of the case.

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Overall, the Arbitration Act 1996 provides a flexible framework for the grant of interim reliefs in arbitration proceedings in the UK, allowing parties to seek effective relief to protect their rights pending the final resolution of the dispute.[77]

In *Coppie-Levalin SA/NV vs Ken-Ren Chemicals and Fertilizers Ltd*[78], which was chosen preceding the establishment of the English Arbitration Act 1996, a qualification was drawn between three gatherings of measures that include the court in arbitration; the first being simply procedural advances which an arbitral tribunal can't structure or can't authorize (eg. giving summons), the second being intended to keep up with the state of affairs the allowing of interlocutory orders) and the third being intended to guarantee the award has its expected reasonable impact by giving a method for authorization on the off chance that the award isn't deliberately consented to. It was brought up that the three gatherings involve contrasting levels of infringement on the tribunal's undertaking of concluding the benefits of' the question and that the degree of such interruption ought to "condition to a significant degree" the court's methodology. Notwithstanding the progressions made by the Arbitration Act 1996, the differentiation stays substantial".

The English Courts might intercede while arbitration procedures are forthcoming and its powers to do as such. They incorporate ability to broaden time limits for beginning the arbitral procedures and for making the award, ability to delegate mediators, to choose debates about the authority's purview and to decide points of regulation. The court additionally has ability to eliminate a mediator and to choose a substitution. The court may likewise make different orders during the reference, and these are additionally analysed.

Under S. 9 of the English Act, a stay should be conceded except if the court is fulfilled that the arbitration understanding is "invalid and void, defective, or unequipped for being performed". The court likewise has an intrinsic purview to concede a stay in specific conditions like stay procedures acquired break of a consent to choose questions by arbitration. Conjuring this power taking into account the legal jurisdiction is seldom essential. The innate purview might be proper however where there is no arbitration understanding inside the significance of S. 6 of the Arbitration Act 1996 or where the arbitration condition isn't promptly successful or for some other explanation the Application misses the mark regarding the necessities for a stay under the Arbitration

[77] Per Lord Mustill in *Coppee-Lavalin SA/NV* v. *Ken-Ren Chemicals and Fertilizers Ltd. (in Liquidiation)* (1994) 2 All E.R. 449 at 466 HL.
[78] (1994) 170 N.R. 203 (HL)

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Act 1996.

A stay in view of the inborn locale may likewise be fitting where there are two litigants to the court procedures, one of whom isn't involved with the arbitration arrangement however guarantees through or under the other respondent by ethicalness of an agreement of office.[79] This addresses an especially troublesome issue comparable to arbitration arrangements. It most often emerges with regards to gatherings of organizations, where for instance one in the gathering has marked an agreement containing an arbitration provision or Group Company has played out the agreement.

Under the English Law there is no prerequisite that the reference to arbitration more likely than not been begun. For sure, the way that the debate can't quickly be alluded to arbitration, in light of the fact that the matter is to be alluded to arbitration solely after the weariness of other question goal techniques won't keep the court from requesting a stay.[80]

4.2 POSITION IN THE USA

Lately, a significant number of the main arbitral establishments have revised their standards to make arbitration more receptive to clients' requirements. A key advancement has been the presentation of crisis mediator systems, which empower gatherings to get pressing alleviation before the considerable tribunal is shaped. For good explanation, these new instruments are getting critical consideration from gatherings and referees. In any case, have implementation instruments stayed up with these turns of events?

Crisis judge techniques

A significant thought for some, parties is the capacity to get prompt interval alleviation once a debate emerges to either to save the norm or keep the opposite side from proceeding with the break being referred to forthcoming last goal of the question. In the arbitration setting, there are various roads for getting in-between time alleviation.

Courts in many purviews hold leftover position to allow interval measures on the side of arbitration. Clearly, a portion of the advantages of arbitration - like privacy and effectiveness - might be lost in the event that a party is compelled to seek after interval help in open court. A few gatherings in this way really like to look for break measures inside the arbitral interaction.

[79] *Roussel-Uclaf v. CD. Searle C5 Co. Ltd and G. D. Searle &* Co. [1978] 1 Lloyd's Rep. 225

[80] Arbitration Act 1996, s.9(2) which followed the decision in *Channel Tunnel Group Ltd and Olhers v. Balfour Beatty Construction Ltd and Others* [19931 1 Lloyd's 1 Rep. 291, HL.

A tribunal once selected additionally will for the most part have wide abilities, likened to those of a court, to allow in-between time alleviation.

The trouble that can emerge is that in certain occasions the arrangement of the considerable tribunal can require months, especially assuming one party is obstructive or raises difficulties to the selected authorities.

Accordingly, many driving arbitral organizations have presented crisis referee strategies which look to close that hole by permitting parties, in circumstances of crisis, to get critical arbitral alleviation before the meaningful tribunal is framed. Under crisis referee methodology, a sole authority is delegated by the arbitral foundation on an assisted premise to decide applications for in-between time help that can hardly hang tight for the arrangement of the meaningful tribunal. Arbitral establishments that have taken on crisis referee systems incorporate the ICC, ICDR, SIAC, SCC, and LCIA.

By and large, the pertinent arbitral principles give that choices of crisis judges are interim-binding, in that they can later be differed or suspended by the considerable tribunal once framed. In certain cases, such interval measures might terminate naturally after a specific timeframe.

Contingent upon the pertinent arbitral principles as well as regulation, a crisis mediator (or potentially arbitral tribunal) may allow in-between time alleviation in various ways, as a primer request, a procedural request, a heading, or an interval or incomplete award. The ICC, for instance, expects that a crisis mediator choices appear as a request, along these lines staying away from the ICC's "examination" process for awards, which would postpone the issuance of the crisis choice. On the other hand, the SCC and ICDR rules license a choice as either a request or an award.

In spite of the interest and appearing interest for such help, there are a few inquiries over the enforceability of judge in-between time measures. Key inquiries emerge from the actual idea of the help; that it is in-between time restricting and, on account of crisis judge choices, is made by somebody other than the meaningful tribunal. The type of the help can likewise have an influence especially where judge break alleviation is as a request rather an award.

4.3 RELEVANT REQUIREMENT COMPONENTS

In global business arbitration, the key requirement systems are the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the relevant homegrown arbitration regulations, a significant number of which depend on the UNCITRAL Model Law on International Commercial Arbitration (the Model Law).

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The New York Convention is quiet on the subject of referee interval awards and orders. By all accounts, the show applies just to "awards", consequently apparently barring authority orders, in-between time etc. Besides, there is no meaning of "award", however certainty is viewed as a fundamental quality of an award in numerous wards — not least in light of the fact that the show gives that a party might oppose requirement of an award on grounds that it isn't yet "restricting". Thusly, this brings up issues over the enforceability of orders and awards that are just interim-binding.

Not at all like the New York Convention, the first Model Law really does explicitly address interval alleviation, in that it enables a tribunal to arrange break measures. Anyway it doesn't address the requirement of such measures, rather leaving it open to public courts the decision about whether to give help with that respect. The Model Law was refreshed in 2006 to address, in addition to other things, the enforceability of mediator interval measures. The changed Model Law engages tribunals to allow in-between time alleviation in both the type of an award as well as in "another structure", and gives that such measures will be restricting and enforceable as some other award. Save that, whenever made as a starter request, albeit restricting on the gatherings such a request won't be dependent upon requirement by a court (and doesn't comprise an award).

The corrected Model Law offers some supportive lucidity. Be that as it may, it doesn't impeccably determine all issues. Initially, it neglects to characterize "arbitral tribunal", which leaves open whether or not a crisis referee falls outside the definition. All the more significantly, the 2006 corrections have not been broadly embraced. North of 100 purviews executed homegrown arbitration regulations in light of a rendition of the Model Law, yet not exactly 50% of those have embraced the 2006 corrections. Among those that have are Australia, Belgium, the Canadian territory of Ontario, the province of Florida, New Zealand, and a few Latin American nations. Add to that, various homegrown arbitration regulations, remembering those for a portion of the main seats of arbitration (England, France, the United States), are not in light of the Model Law by any stretch of the imagination. In reality, hardly any homegrown arbitration regulations address the enforceability of crisis judge help[81].

Without a trace of express arrangements, (for example, those took on in Hong Kong and Singapore), it depends on the homegrown courts to decide if a crisis referee choice, be it in the structure or an award or a request, is enforceable.

[81] Martin J. Valasek and Jenna Anne deJong, Enforceability of interim measures and emergency arbitrator decisions, Norton Rose, May 2018

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The courts' way to deal with referee in-between time measures

The methodology taken by homegrown courts to this question has fluctuated across locales. In certain, courts have found that where authority interval measures at last discard specific issues, they are enforceable as awards. In the United States, for instance, authority in-between time measures have been held to be enforceable as an award gave the decision containing the break measure at long last and most certainly discards a self-contained issue[82].

A few courts that follow this approach will take a gander at the substance of the action, and not its structure, implementing both referee request and awards.

Whether or not break alleviation conceded by a crisis judge is enforceable in a similar design as interval help requested by the meaningful tribunal, likewise stays a live issue. Again accepting the United States to act as an illustration of the great water mark; by and large US courts have applied similar way to deal with crisis authority choices as to break measures gave by the considerable arbitral tribunal.

There are empowering signs that different purviews are going with the same pattern and adopting a pro-enforcement strategy to authority interval help. A choice of a crisis judge designated under the SCC rules was upheld by the courts of Ukraine with regards to an investor-state question under the Energy Charter Treaty).

Yet, not all wards are going in a similar course. The Swiss Federal Tribunal, for instance, has portrayed it as "risky" to regard in-between time measures as an award.

Furthermore, obviously, not all break measures will "at long last" resolve some piece of a question. That leaves implementation of such measures questionable even in any case pro-enforcement wards.

The greater issue for clients, notwithstanding, is that in numerous purviews there have been no or too hardly any court choices to dependably foresee how crisis authority choices will be dealt with.

Whenever UNCITRAL took up the drafting of what turned into the 1976 UNCITRAL Arbitration Rules, it hastened what was maybe the main supported conversation of arbitral break measures in a global discussion. These measures were perceived to be brief requests guiding involved with make defensive or studio strides on the side of an arbitration, for example, by saving merchandise, resources or proof. Designates at last remembered Article 26 for the 1976 Rules, which not just specified that a party didn't postpone its arbitration understanding by looking for in-between time measures from a court yet additionally

[82] Island Creek Coal Sales Company v City of Gainesville Florida (1985), 729 F2d 1046, U.S.C.A., 6th Circuit

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comprehensively approved tribunals themselves to give those break measures. This was an earth shattering advance for a worldwide body to take since, by and large, public regulation not inconsistently denied authorities the ability to arrange interval measures'.[2] However, even Professor Pieter Sanders, who aided draft the 1976 Rules, viewed the arrangement as having just humble effect at that point. As he composed not long after the Rules were taken on, '[t]he question of in-between time measures just once in a while introduces itself in an arbitration' and, even with the new UNCITRAL Rules, arbitral break measures wouldn't 'exist where the material public (procedural) regulation accommodates the elite purview of the Courts'. Consistent with Professor Sanders' evaluation, gatherings' plan of action to these measures filled just step by step in resulting years[83].

The amended Model Law that UNCITRAL at last declared in 2006 remembers a rambling new Article 17 for in-between time measures, of which subsections 17H and 17I lay out an express right and component to authorize arbitral interval measures in the public courts of any pertinent locale. Article 17H expects that an arbitral break measure, regardless of how styled (as an award, a request or a choice) 'will be perceived as restricting and . . . authorized upon application to the skilled court, regardless of the country where it was given', dependent upon specific restricted justification for non-authorization set out in Article 17I. These incorporate the grounds previously settled for non-authorization of awards on the benefits under Model Law Article 36 (which determines, thus, from Article V of the New York Convention), in addition to a couple of grounds significant just to interval measures, for example, that a party has not satisfied a tribunal prerequisite to post security for the in-between time measure[84].

To check the effect of the Model Law's advancement in-between time measures requirement, one should put subsections H and I in the bigger setting of the whole new Article 17, including 11 subsections that mirror a sensational change in understanding with respect to the significance of interval measures in worldwide arbitration. Startlingly, what UNCITRAL sent off as a generally thin task to accommodate transnational implementation of arbitral break measures developed into a lot more extensive regulative endeavor, at last incorporating new arrangements in Article 17 that (1) characterize the admissible classes of arbitral interval measures, (2) lay out the circumstances on which tribunals might concede them, and (3) specify various other procedural issues with respect to their issuance, including the chance of a resulting award of harms to an impacted party assuming the tribunal later verifies that

[83] M. Savola, Interim Measures and Emergency Arbitrator Proceedings, Croat. Arbit. Yearb. Vol. 23 (2016).
[84] Model Law (2006), Article 17I(1)(a)(ii)

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the in-between time measures shouldn't have been allowed[85].

The United States keeps on being at the very front of the authorization development. For instance, in *CE International Resources Holdings LLC v. SA Minerals Ltd*[86], a government locale court in New York City affirmed its well established statute that 'an award of impermanent impartial alleviation was detachable from the benefits of the arbitration' and was hence fit for sure fire acknowledgment and requirement. Albeit the area court didn't explicitly allude to the New York Convention (or its legal execution, under the Federal Arbitration Act) as the reason for its ability to uphold the in-between time award, the case included unfamiliar gatherings and presumably comprised a 'non-homegrown award' falling inside US courts' broad use of the New York Convention. A few comparative choices have been given in different US cases lately.

Curiously, the conversation for this situation didn't spin only around the conclusion of the arbitral request yet additionally tended to the sort of impermanent help conceded by the referee - an issue that isn't really frequently tended to yet may have significant functional ramifications (see 'Useful contemplations for implementation of arbitral in-between time measures', underneath). For this situation, the sole judge, situated in New York, had given an interval choice accommodating an award requesting the posting of prejudgment security or, in default of that, urging the respondent from moving any resources, any place found. The respondent contended that the sort of interval alleviation allowed by the mediator was not accessible under the law of the seat of arbitration and that the judge accordingly surpassed his powers, clearly dismissing the law and breaking public arrangement. Albeit the region court recognized that the help awarded could never have been accessible from a New York court, it didn't observe that the sole referee surpassed his powers by conceding the alleviation. The court depended on the gatherings' consent to determine their question under the International Center for Dispute Resolution arbitration rules of the American Arbitration Association, which permitted the referee to go to 'whatever in-between time lengths [he] considers significant, including injunctive alleviation and measures for the assurance or preservation of property'. The region court additionally reasoned that '[n]othing about authorizing a request delivered as per the techniques to which the gatherings concurred insults either New York regulation or New York public strategy'.

Other precedent-based regulation purviews have perceived the enforceability of arbitral interval measures lately. For instance, in 2015, the Singapore Court of Appeal affirmed that

85 id., Article 17, A to G
86 2013 BCSC 1804

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awards requesting in-between time alleviation are 'last' with respect to the issue they mediate (i.e., whether or not the mentioned help is justified) and can consequently be authorized under the Singapore Arbitration Act. For this situation, the 'interval alleviation' in question was strange: an arbitral request convincing one party to agree with an earlier choice by a debate settlement board, comprised under the 1999 FIDIC Red Book, which requested the party to pay a measure of cash to the next party.

Courts in specific common regulation purviews likewise seem to have pursued this direction. For instance, in 2014, the business court in Kinshasa is accounted for to have acknowledged the authorization of an International Chamber of Commerce crisis referee choice that had allowed an enemy of suit directive against one of the gatherings, denying it from initiating specific court activities in the DRC. Although the court clearly noticed that the New York Convention had not yet gone into force in the DRC, it is accounted for to have by the by depended on nearby regulation to acknowledge the implementation of the crisis mediator choice.

CHAPTER 5

COMPARITIVE ANALYSIS: INTERIM MEASURES UNDER SECTION 9 AND SECTION 17

5.1 NATURE OF JURISDICTION

Sections 9 and 17 of the Arbitration and Conciliation Act of 1996 contain identical provisions forthe grant of interim injunctions. The provisions are almost identically worded, and the only distinction made by the act is the stage of its applicability and invocation. Whereas section 9 can be invoked before a civil court even if arbitration proceedings have not yet begun (but with the intention of starting them soon), section 17 allows the Arbitral Tribunal to issue injunctions during or immediately after the conclusion of the proceedings. This clear dichotomy of employing two separate provisions prior to and following the Constitution of the arbitral tribunal also alludes to distinct and separate causes of action or factual circumstances for claiming such reliefs. When a cause of action for seeking relief under section 9 arises at the pre-reference stage,and relief under section 9 is sought, the case can be continued, or the litigant can be asked to seek such relief after the arbitral tribunal is formed. However, if a cause of action for seeking interim relief under section 9 exists during the pre-reference period, failure to invoke the said provision until and after the Constitution of the arbitral tribunal shall have a material bearing on the tribunal's exercise of discretion in the absence of any de novo cause of action. The principle of continuous cause of action throughout will be a useful disqualifier for the party seeking injunction.

In such circumstances, the application under section 17 must clearly and convincingly establish aggravation of circumstances causing real and imminent dissipation of the subject matter of arbitration or change in situation justifying failure to invoke section 9 jurisdiction, in the absence of which the exercise of discretion by tribunal must be more cautious and stringent, not only because remedy of injunction is always equitable but also because it has the ultimate consequence, for one party to gain mileage over the other, resulting in coercion and malicious intent, thereby impeding equal and fair access to justice. Another limiting factor in the arbitral tribunal's exercise of discretion in granting injunctions is the breadth of jurisdiction available under sections 9 and 17. First off, an arbitral tribunal is not a civil court of original jurisdiction, and its jurisdiction will be narrower than that of a civil court hearing a suit in its original jurisdiction.

Second, an application under section 9 is instituted before a civil court of ordinary jurisdiction, which has broad powers to pass any order, such as under Section 151 of the Code of Civil Procedure or Ex Debito Justice, whereas if section 17 is invoked before an arbitral tribunal

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whose jurisdiction is hedged by contractual clauses, the tribunal does not have any inherent powers to grant any prayer, relief, or orders EX DEBITO JUSTICE unless the relief sought falls within the scope of the tribunal's jurisdiction. Another self-limiting principle derived from the provisions of the Arbitration and Conciliation Act of 1996 is the arbitral tribunal's inability to execute its own orders. The three limiting factors of the availability of a cause of action, the arbitral tribunal being a creature of contract, and the lack of machinery for the arbitral tribunal to execute its own order vastly define and alters the nature of relief that can be sought under the twoprovisions. Thus, in my opinion, the breadth of section 9 is more expansive and inclusive in nature than the arbitral tribunal's jurisdiction under section 17, despite their identical wording.

When compared to section 17, the judgment of the Delhi High Court in the case of *Shin Satellite Public Company Limited vs Jane Studios Ltd*[87] affirms the broader and more expansive scope of section 9. Despite this, Act 3 of 2016 amended Section 17 with retrospective effect from October23, 2015. That the amendment has brought section 17 on par with section 9 in terms of the natureof relief that can be granted, the manner in which discretion is exercised, and the factors to be considered when granting relief under section 17 is still limited intrinsically by various provisions of the Arbitration and Conciliation Act, 1996, and common law principles.

A useful reference can be made to certain authorities and pronouncements as under: The judgment of Honorable Supreme Court of India in the case of *Md, Army Welfare Housing Oragnisation Versus Sumangal Services Ltd*[88] held:

42."An arbitrator in a situation of this nature had no jurisdiction to pass the interim orderunder the Arbitration Act, 1940 in absence of any specific agreement in relation thereto. The learned arbitrator by an interim order could not have placed the parties in a situation which would travel beyond the subject of disputes and differences referred to for arbitration. As no claim and counter-claim had been filed before the arbitrator, the arbitrator was not even aware of the nature of claims of the parties. He neither found any prima facie case nor balance of convenience for passing the said interim order. Furthermore, an arbitrator is bound by the terms of reference.

43.An Arbitral Tribunal is not a court of law. Its orders are not judicial orders. Its functions are not judicial functions. It cannot exercise its power ex debito justitiae. The jurisdiction of the arbitrator being confined to the four corners of the agreement, he can only pass such an order which may be the subject-matter of reference.

[87] 2008 153 DLT 604
[88] (1999) 2 SCC 479

58. 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 1996Act, 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. The saidinterim order of the learned arbitrator, therefore, being coram non judice was wholly without jurisdiction and, thus, was a nullity.

The final limiting factor in the arbitral tribunal's discretion in granting prayers under sections 9 and 17 is expressed in the language of section 36 of the Arbitration and Conciliation Act, 1996. Section 36 provides for the enforcement of arbitral awards rather than the enforcement of interimmeasures. As a result, the act's scheme has placed constraints on the arbitral tribunal's exercise ofdiscretion, defining the scope and limits of its jurisdiction. As a result, simply relying on the language of Section 17 of the Act does not mean that the relief sought is within the scope of the provision and capable of being granted as a civil court under Section 9 could have granted.

Thus, the central question of whether relief granted is capable of being enforced or monitored by the court or tribunal, and if not, whether the tribunal can or should grant such relief, was finally addressed by the Law Commission's 246th Report.

This extract is taken from *Alka Chandewar v. Shamshul Ishrar Khan*[89], the Commission, in its Report, had this to say: “Powers of Tribunal to order interim measures”

46. Under Section 17, the Arbitral Tribunal has the power to order interim measures of protection, unless the parties have excluded such power by agreement. Section 17 is an important provision, which is crucial to the working of the arbitration system, since it ensures that even for the purposes of interim measures, the parties can approach the Arbitral Tribunal rather than await orders from a court. The efficacy of Section 17 is however, seriously compromised given the lack of any suitable statutory mechanism for the enforcement of such interim orders of the Arbitral Tribunal.

47. *In Sundaram Finance Ltd. v. NEPC India Ltd. [Sundaram Finance Ltd. v. NEPC India Ltd.,]*[90]*, the Supreme Court observed that though Section 17 gives the Arbitral Tribunal the*

[89] (2017) 16 SCC 119 : 2017 SCC ONLINE SC 758
[90] (1999) 2 SCC 479

power to pass orders, the same cannot be enforced as orders of a court and it is for this reason only that Section 9 gives the court power to pass interim orders during the arbitration proceedings. Subsequently, in Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. [Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.][91] the Court had held that under Section 17 of the Act no power is conferred onthe Arbitral Tribunal to enforce its order nor does it provide for judicial enforcement thereof.

48. *In the face of such categorical judicial opinion, the Delhi High Court attempted to find a suitable legislative basis for enforcing the orders of the Arbitral Tribunal under Section 17 in Sri Krishan v. Anand[92] [followed in Indiabulls Financial Services Ltd. v. Jubilee Plots & Housing (P) Ltd. [Indiabulls Financial Services Ltd. v. Jubilee Plots & Housing (P) Ltd.,][93]. The Delhi High Court held that any person failing to comply with the order of the Arbitral Tribunal under Section 17 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 Act. The remedy of the aggrieved party would then be to apply to the Arbitral Tribunal for making a representation to the court to mete out appropriate punishment. Once such a representation is received by the court from the Arbitral Tribunal, the court would be competent to deal with such party in default as if it is in contempt of an order of the court i.e. either under the provisions of the Contempt of Courts Act or under the provisions of Order 39 Rule 2- A of the Code of Civil Procedure,1908.*

49. *The Commission believes that while it is important to provide teeth to the interim orders of the Arbitral Tribunal as well as to provide for their enforcement, the judgment of the Delhi High Court in Sri Krishan v. Anand is not a complete solution. The Commission has, therefore, recommended amendments to Section 17 of the Act which would give teeth to the orders of the Arbitral Tribunal and the same would be statutorily enforceable in the same manner as the orders of a court. In this respect, the views of the Commission are consistent with (though do not go as far as) the 2006 amendments to Article 17 of the Uncitral Model Law." (emphasis supplied)*

Honourable Supreme Court in *Alka Chandewar v. Shamshul Ishrar Khan*[94] held:

"that Pursuant to this 246th Report, sub-section (2) to Section 17 was added by the 2015 Amendment Act, so that the cumbersome procedure of an Arbitral Tribunal having to apply every time to the High Court for contempt of its orders would no longer be necessary. Such

[91] (2004) 9 SCC 619
[92] 2009 SCC OnLine Del 2472
[93] 2009 SCC OnLine Del 2458
[94] (2017) 16 SCC 119 : 2017 SCC ONLINE SC 758 : (2018) 2 SCC (CIV) 718

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orders would now be deemed to be orders of the court for all purposes and would be enforced under the Civil Procedure Code, 1908 in the same manner as if they were orders of the court. Thus, we do not find Shri Rana Mukherjee's submission to be of any substance in view of the fact that Section 17(2) was enacted for the purpose of providing a "complete solution" to the problem."

5.1 NATURE OF REMEDY: MANNER OF EXERCISE OF JURISDICTION

Sections 9 and 17 include a drastic remedy of securing the amount in dispute, among other provisions. Section 17 (1) ii [b] is prone to abuse, as examples abound of unscrupulous litigants releasing bloated and dubious claims by obtaining orders of attachment, for out-of-court settlements, under the threat of attachment, bank guarantees, and deposit pending proceedings. That claimant always alleges, alienation of property or waste of assets by respondents to defeat the fruits of award, and in doing so, the parties act on whims and probabilities devoid of any realistic apprehension or act, to assume or infer such. The question frequently arises before the tribunal when a harsh, burdensome, and grave order of submission of unconditional bank guarantees deposits of the amount sought to be made on a speculative basis by either of the parties is brought for decision, even before the claims are adjudicated by leading evidence.

The courts are frequently asked to render an opinion on a prima facie case, and in doing so, the parties ask the tribunal to do what the parties are required to do after passing an arbitral award in filing an execution application in civil court under Section 36 of the act. This overlapping of section 17 (1) ii b by Section 36 is an implied limitation on the nature of the power to be exercised, which calls for extreme care and caution in exercising discretion to prevent orders passed from being rendered null and void by furtherance of the mischief that it seeks to cure.

The General principles for grant of injunction have been most succinctly laid down by HonourableSupreme Court in the case *of Gujarat bottling Co Ltd vs Coca-Cola*[95] wherein the court held in Para 43 and 47 as under:

"*43. The grant of an interlocutory injunction during the pendency of legal proceedings isa matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests —*

a. whether the plaintiff has a prima facie case;

b. whether the balance of convenience is in favor of the plaintiff; and

c. whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

95 (1995) 5 SCC 545

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The decision whether or not to grant an interlocutory injunction has to be taken at a timewhen the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable inthe action if the uncertainty were resolved in his favor at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See: *Wander Ltd. v. Antox India (P) Ltd.15, (SCC at pp. 731-32.*] In order to protect thedefendant while granting an interlocutory injunction in his favor the court can require theplaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favor at the trial."

Two well-known cases that take opposing positions on the granting and non-granting of interim measures of protection in arbitration are those of the Delhi High Court in the case *of INTERTOLL ICS CECONS O&M PVT LTD VERSUS NHAI*[96] wherein the court held that a direction to deposit for the purpose of securing the amount cannot be granted because it amounts to pre-judging the issue and proceeds on the assumption that NHAI will completely succeed in counterclaims.

On the other hand Bombay High Court in the reported judgment *between Baker Huges Singapore Pte versus Shiv-Vani Oil and Gas Exploration Services*[97] directed the provision of security, but given that all assets are encumbered and there are no deposits with banks, the award will be a paper decree. Paragraph 62 of the aforementioned judgment distinguishes the same on facts for the Delhi High Court's view and granted such drastic relief at the interim stage.

The Honourable Supreme Court in the latest Reported Judgment in *SBI V Ericsson India PLtd* [98]has finally clarified the law by interpreting the applicability of Section 17, where the court very clearly set aside Order Passed by Tribunal granting Injunction of selling the properties

[96] *2013 (197) DLT 473*
[97] [2015] 1 BomCR 377
[98] reported in (2018) 16 SCC 617

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pending Arbitration without Compliance of Order 38 Rule 5, but the same was adjudged as illegal because it affected third parties and not parties to arbitration. As aresult, orders in rem are being limited without strict adherence to Order 38 Rule 5 of the Code of Civil Procedure.

5.2 ARCELOR MITTAL NIPPON STEEL V ESSAR BULK TERMINAL

The Supreme Court of India recently delineated the scope of Section 9(3) of the Arbitration and Conciliation Act, 1996, ("Act") and its interaction with Section 17 of the Act in Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.[99] ("Arcelor"). Section 9 deals with interim measures issued by a Court, while Section 17 gives an arbitral tribunal the same authority to issue interim measures. Section 9(3), added by an amendment to the Act in 2015, states that once an arbitral tribunal has been established, the Court will not entertain an application for interim relief under Section 9(1) unless the Court finds the existence of circumstances that may render the remedy provided under Section 17 ineffective.

Following the 2015 Amendment, some courts held that, under section 9(3), they could no longer entertain or decide a pending section 9 application if an arbitral tribunal was formed in the meantime. The Supreme Court addressed two issues in Arcelor. First, whether a Court has the authority to entertain an application under Section 9(1) once an arbitral tribunal has been established, and if so, what does the term "entertain" mean in Section 9(3)? Second, whether a Court is required to consider the effectiveness of the remedy under Section 17 before issuing an order under Section 9(1) once an arbitral tribunal has been established.

An examination of the factual matrix is required to appreciate the Supreme Court's ruling. The parties' disagreement stemmed from a cargo handling agreement. The Appellant served arbitration notice on November 22, 2020, but the Respondent did not respond. The Appellant filed a proceeding for the appointment of an arbitral tribunal under Section 11 of the Act. The Appellant filed an application under Section 9 of the Act on 15.01.2021, and the Respondent filed one on 16.03.2021. The commercial court heard and reserved for orders both of these Section 9 applications on 07.06.2021.

The Section 11 proceeding was terminated on July 9, 2021, and an arbitral tribunal was appointed. On July 16, 2021, the appellant filed an application to refer both Section 9 applications (which had already been heard and reserved for orders) to the arbitral tribunal. This application was rejected. The Appellant challenged this dismissal in the Gujarat High Court under Article 227 of the Indian Constitution. On August 17, 2021, this challenge was

[99][2021 SCC OnLine SC 718]

also dismissed. The Gujarat High Court ruled that the commercial court hearing the Section 9 applications could decide whether the remedy under Section 17 was effective, and directed the commercial court to issue appropriate orders. This decision was appealed/challenged to the Supreme Court.

The Appellant contended that Section 9(3) limits the Court's ability to proceed with an application under Section 9 once an arbitral tribunal has been established.

The underlying rationale of Section 9(3), which limits judicial intervention, was also emphasized, citing Supreme Court decisions in *Amazon.com NV Investment Holdings LLC v. Future Retail Limited.*[100]

The Respondent pointed out that once an arbitral tribunal is established, Section 9(3) does not preclude a Court from exercising its jurisdiction under Section 9(1). Respondent argued that the term "entertain" means "take into consideration," and that an application is entertained when the Court thinks it. Respondent argued that because the Section 9 applications in this case were fully heard and entertained, the restriction under Section 9(3) would not apply.

The Supreme Court considered a series of decisions to define the scope of Section 9(3), and in particular the term "entertain." First, the Supreme Court held that the term "entertain" means "consider by applying one's mind to the issues raised," and that the test to be applied is "whether the process of consideration has begun, and/or whether the Court has applied its mind to some extent prior to the formation of the arbitral tribunal."

The bar under section 9(3) would clearly apply if the application under section 9 was filed after the formation of the arbitral tribunal. If an application under Section 9 was filed prior to the formation of the arbitral tribunal, but the court did not apply its mind to the facts in issue and 'entertained' it in this sense, the court could not proceed with adjudication once the arbitral tribunal was formed, unless the remedy under Section 17 was shown to be ineffective.

The Supreme Court, on the other hand, stated unequivocally that the bar under Section 9(3) would not apply once an application had been entertained, as was the case in the present case, where thehearing had concluded and judgment had been reserved by the commercial court.

Even if an application under section 9 was granted prior to the formation of an arbitral tribunal, acourt could use its discretion to direct the parties to approach the arbitral tribunal, while providing some limited interim protection if necessary.

When an arbitral tribunal was in place prior to the hearing of a section 9 application, the Supreme Court held that it was necessary to consider whether the remedy available under

[100] [2021 SCC Online SC 557].

ISSN: 2582-6433

Section 17 was effective. It was observed that there could be a number of situations in which the remedy provided by section 17 would be ineffective. For example, if the members of the tribunal were unavailable or in remote locations, or if the tribunal could not convene immediately, the remedy under section 17 would be ineffective, whereas the interim measure sought under section9 would usually be of an urgent nature.

However, if an application had already been taken up for consideration and was in the process ofbeing considered, or had already been considered, prior to the formation of an arbitral tribunal, the question of whether or not the remedy under Section 17 was efficacious would not arise.

Arcelor Mittal Nippon Steel v Essar Bulk Terminal is a nuanced decision that takes into account various fact situations that may arise when a section 9 application is filed. It provides much-needed clarity on the scope of Section 9(3) and is likely to avoid unnecessary confusion regarding the appropriate forum to seek interim measures. However, this decision firmly establishes the role of courts in granting urgent interim measures, both before and after the formation of the arbitral tribunal. The mere formation of an arbitral tribunal may no longer be enough for a court to dismiss an application for interim measures. It remains to be seen whether Indian courts exercise their jurisdiction under Section 9 with caution, and whether this decision limits the role of arbitral tribunals in granting interim measures.

This Supreme Court decision provides welcome clarification on the scope of Sections 9 and 17 of the Act, as well as the interplay between the two. The decision clearly defines the scope of theCourt's powers under Section 9(3), a question that had not yet reached the Supreme Court. Whileemphasizing the full scope of the Arbitral Tribunal's powers under Section 17, the judgment ensures that parties are not forced to re-argue an advanced dispute simply because they appointan arbitrator while the dispute is pending. At the same time, the judgment retains the Court's discretion to refer an application under Section 9 to the then-constituted Arbitral Tribunal, evenif the matter has been settled.

At the same time, the Court retains the discretion to refer an application under Section 9 to the then-constituted Arbitral Tribunal, even if the matter has been 'entertained' by it. The judgment also serves as a useful reference for situations in which an Arbitral Tribunal's remedy may be deemed ineffective, given that the Arbitral Tribunal's powers have been brought at par with the Court's.

By balancing the interests of the parties with the legislative intent of the Act, the judgment advances the cause of quicker dispute resolution while reaffirming the Arbitral Tribunal's power to grant interim relief on the same grounds as the Court.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

6.1 CONCLUSION

The power play between courts and arbitral tribunals concerning interim reliefs in India is a complex and dynamic interplay shaped by legal principles, statutory provisions, and judicial precedents. Courts typically have the authority to grant interim reliefs before and during arbitration proceedings, especially when the arbitral tribunal is not constituted or when urgent relief is needed. However, once the arbitral tribunal is constituted, it gains jurisdiction over the dispute and can also grant interim reliefs.

Courts often provide support to arbitral proceedings by assisting in the enforcement of interim orders issued by arbitral tribunals. They may also intervene to ensure that arbitral tribunals act within their jurisdiction or to set aside or enforce arbitral awards. While courts have the power to intervene in arbitral proceedings, they must exercise this power judiciously, respecting the autonomy of arbitral tribunals and the principles of minimal judicial interference in arbitration. The efficient and expeditious resolution of disputes is a fundamental objective of arbitration. Therefore, both courts and arbitral tribunals should strive to avoid unnecessary delays in granting interim reliefs and resolving disputes. There is a need for harmonization and clarity in the legal framework governing interim reliefs in arbitration, ensuring consistency and predictability in the approach taken by courts and arbitral tribunals.

Parties involved in arbitration proceedings, as well as legal practitioners and arbitrators, should be aware of the respective powers and limitations of courts and arbitral tribunals regarding interim reliefs. Capacity building efforts can help improve understanding and application of the relevant legal principles.

In conclusion, the power play between courts and arbitral tribunals regarding interim reliefs in India underscores the need for a balanced approach that promotes the efficiency of arbitration while safeguarding the rights of parties and ensuring access to justice. Clear legal frameworks, judicial restraint, and effective coordination between courts and arbitral tribunals are essential to achieving this balance.

6.2 SUGGESTIONS

Navigating the power dynamics between courts and arbitral tribunals concerning interim reliefs in India requires careful consideration and balanced approaches. Here are some suggestions to address the challenges and promote effective resolution:

Clarity in Legal Framework: Enhance clarity in the legal framework governing interim reliefs in arbitration. This includes clearly defining the respective powers and limitations of courts and arbitral tribunals, as well as outlining the criteria for seeking interim reliefs.

Harmonization of Laws: Ensure consistency and harmonization between the Arbitration and Conciliation Act, 1996, and other relevant laws concerning interim reliefs. This will help avoid conflicts and confusion in the application of legal principles.

Promotion of Arbitration-Friendly Environment: Encourage an arbitration-friendly environment by promoting the use of arbitration for dispute resolution. This includes raising awareness about the benefits of arbitration, providing incentives for parties to choose arbitration, and fostering a culture that respects arbitral awards.

Specialized Training and Capacity Building: Provide specialized training and capacity building programs for judges, lawyers, and arbitrators on issues related to interim reliefs in arbitration. This will help improve understanding and application of relevant legal principles and promote consistency in decision-making.

Efficient Case Management: Implement measures to ensure efficient case management in both courts and arbitral tribunals. This includes setting timelines for the resolution of interim relief applications, streamlining procedural requirements, and utilizing technology to expedite proceedings.

Promotion of Mediation and Settlement: Encourage parties to explore mediation and settlement as alternatives to arbitration and litigation. This can help reduce the need for interim reliefs and expedite the resolution of disputes in a cost-effective manner.

Monitoring and Evaluation Mechanisms: Establish monitoring and evaluation mechanisms to assess the effectiveness of interim reliefs granted by both courts and arbitral tribunals. This will help identify areas for improvement and ensure accountability in the administration of justice.

Public Awareness Campaigns: Conduct public awareness campaigns to educate stakeholders about the role of courts and arbitral tribunals in granting interim reliefs and the procedures involved. This will empower parties to make informed decisions and contribute to the overall efficiency of the dispute resolution process.

By implementing these suggestions, India can navigate the power play between courts and arbitral tribunals concerning interim reliefs more effectively, promoting efficient dispute resolution and ensuring access to justice for all parties involved.

6.3 TESTING THE HYPOTHESIS

1. In India the present Law governing interim relief under section 9 and 17 of the Arbitration

and Conciliation Act 1996 is wide enough and covers a wide range of reliefs which are available to a party under the garb of interim reliefs. The various provisions within the above-mentioned sections cater to the need of the party when it comes to interim measures and reliefs. The relief given by the section in the form of injunction, monetary relief, appointment of reciever cover almost all the facets of interim relief. Hence the researcher accepts the first hypothesis that is section 9 and 17 of the A&C Act dealing with interim relief are wide enough to cover under its ambit relief under certain distinct heads. The provision for interim relief before the arbitrator and before the court in cases where the arbitrator is yet to be appointed finds it mention in the UNICTRAL model law on Arbitration. India in its Act has taken cue from the model law but is still unable to implement it in its true essence. Whereas foreign jurisdictions such as the United States and England have carefully adopted the Law as enshrined under the Model Law and tailor made the same according to the needs of their society so that better and effective implementation of the law governing interim relief could be made and formulated.

2. It is said that procedure is the hand maiden of justice but what if the procedural aspects delay the actual adjudication of the dispute. The current arbitration regime in India is a long-drawn process despite the provisions outlaying a timeline for adjudication of disputes. There is a given time period of an year and a half to decide the matter between the parties with subsequent extension available under Section 29A of the Act. But with the provision for interim relief being available to a party under section 9 and 17 it causes severe delays and latches in the adjudication of the dispute which may be attributed to certain factors such as overburdening of the Judiciary, the conduct of the parties, reluctance towards Arbitration etc. therefore at the stage if interim relief before the court the proceedings go on for long before an arbitrator could be actually appointed to adjudicate upon the subject matter of the dispute whereas under an application moved by a party before the arbitrator under section 17, the proceedings and arguments on it consummate a lot of time thereby delaying the passing of the award. Hence the hypothesis of the Researcher that is " the provision of interim relief under the A&C Act cases delays to the Arbitral Process stands accepted in the affirmative. While England has the same enactment year as of India in terms of their Arbitration Act, England has been able to strive ahead in terms of privacy, efficacy, confidential and broadening of limits to reach the ultimate disposal of disputes. While in the USA since most of the arbitration taking place is institutional they gave recourse to crisis judge techniques which in essence take far less time and are effective in reaching out to a decision when interim relief is concerned. Also at times a crisis reagree technique is adopted wherein a different person is appointed to settle the matter related to interim relief while the main dispute is being adjudicated by another person. This in turn

leads to faster resolution of dispute by not hampering the adjudicatory process.

3. Therefore the researcher accepts the second hypothesis that is The provisions adopted by foreign jurisdictions are better in their implementation when compared with India. As the process for granting of interim relief is faster in foreign jurisdictions as compared to India where at times seeking interim relief becomes more like a mini trial which leads to prolonging of settlement of dispute and rendering of award. Hence the hypothesis is accepted.

ISSN: 2582-6433

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