

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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# **“WHETHER THE REFERRAL COURT CAN PROVIDE FOR INTERIM RELIEF IF THE ARBITRAL TRIBUNAL HAS ALREADY BEEN INSTITUTED.”**

AUTHORED BY - AJEET GHOSHI & AYUSHI YADAV

## **Introduction-**

Interim relief in arbitration proceedings based on protecting rights of parties. Arbitration is the most emerging mechanism for resolving disputes. Countries like India follow the principle of minimal interference in court. There are parties that choose the place and venue according to comfort. Arbitrations mostly keep people from court because there are many hurdles; in the arbitration, the parties' rights are protected, and somewhere there, the court provides interim relief to the suffering party. The arbitral process is normally accompanied by certain procedural safeguards, such as interlocutory or interim measures that safeguard parties during the pendency of the proceedings. The nature of interim relief sought by the parties may vary based on the facts and circumstances of the dispute. In certain situations, the effective provision of interim relief may involve directions to third parties also. With the changes introduced by various amendments to the Arbitration and Conciliation Act, 1996<sup>1</sup> and wider powers vested with arbitral tribunals, interim reliefs are made easy and accessible to parties to secure the ultimate arbitral award. In this backdrop, it is of paramount importance to understand the nature of interim reliefs that can be granted by courts and arbitral tribunals and their respective limitations.

In **Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.** the Supreme court gave observation on arbitration proceedings. When the arbitrator is appointed correctly there parties address the issue with arbitration which in section 16 of the arbitration and conciliation act which deal with arbitration of jurisdiction. parties cannot bypass filing writ petitions in high court under article 226 or article 227, there is ruling based on the principle of minimal court intervention to maintain respect of autonomy of the arbitration process.

Section 9 of the Arbitration Act 1996<sup>2</sup> deals with interim relief by the court, and section 17<sup>3</sup> deals with the arbitral tribunal having similar power. After the 2015 amendment, there were some restrictions on the intervention of the court after the tribunal constitution whenever the tribunal

provided a remedy that was not effective. Section 9(3) of the Arbitration and Conciliation Act<sup>4</sup> restriction on the court till Section 17 is not sufficient to fulfill the remedy.

This matter draws the line between judicial intervention and arbitral autonomy, resulting in practical potency. Through the various judgments, the court interpreted these sections various times. The Supreme Court and high courts have given an explanation of Section 9(3) the courts have given clarity on when a court may or may not grant interim relief after the constitution of a tribunal. After the interpretation of courts, that legal position is limited, but in the rare condition, the court can take a step where the tribunal's remedy is inefficacious. Granting relief by the court after the arbitral tribunal has been constituted depends on the circumstances.

### **- Statutory Framework**

#### **Section 9 – Interim measures by courts**

In the Arbitration and Conciliation Act, 1996, section 9<sup>5</sup> deals with granting interim relief by the court. That relief is granted by the court either before, during, or after the arbitral tribunal is constituted. Section 9 is not a limited-scope court; it not only limits relief but also widens its scope to granting relief for the parties and acknowledges the situation of the issue.

Section 9 Not only for limited types of relief through this section does the court use the broad power in emergency situations. There are the following measures available:

- The court may order to protect, preserve, and safeguard or maintain the property that is the subject of dispute.
- Under this section the court can order the respondent to deposit the payment or security because if the award is in favor of the claimant, they will not suffer.
- Court may issue the injunction –
- Prohibitory injunctions, which the court may issue, cease a party from doing something.
- Mandatory injunctions through this court may issue the order for a party to do some specific action.
- These injunctions prevent the misuse of the property. These orders work like a safeguard.
- The court can appoint the receiver for the neutral management of property or assets. Receiver control only during arbitration proceedings.

*“In the case of Firm Ashok Traders v. Gurumukh Das Salja<sup>6</sup>, the Supreme Court gave an*

*explanation on Section 9 of the Arbitration and Conciliation Act 1996. The court said that Section 9 only gives relief, not substantive rights, by the court. In the power of the court, supportive in nature and given support of arbitration, it is kept in mind.” “The supreme court in the case **Adhnik Steel Ltd. v. Orissa Manganese & Minerals Pvt. Ltd.**<sup>7</sup> observed that Section 9 does not have the autonomous power. It must follow the rule that has been established for granting injunction and interim relief by the court.”*

### **Section 9 (3)—Restriction on courts' power after tribunal constitution**

In the section 9<sup>8</sup> talks about the interim relief grant by the court in case of before, during and after the arbitral proceeding.

The 2015 amendment inserted section 9(3)<sup>9</sup>, which put the restriction on court power; the court cannot grant the relief that has been constituted in arbitral proceedings that aim to reduce the intervention of the court in arbitration disputes.

The 2015 amendment also proposes drawing in section 17 to ensure the grant of relief by the arbitral tribunal is the same as that in section 9 by the court. the power of granting relief provided through the 2015 amendment.

Parties should go for such interim relief in an arbitral tribunal when it has been constituted.

Section 9(3) is based on the principle of minimal interference of the court, which is enshrined in Section 5<sup>10</sup> of this act.

Section 9(3) does not fully prohibit intervention of the court. In this section there are two assertions where the scope of the court can intervene even if an arbitral tribunal has been constituted.

- *The first one is Court can entertain, which is mentioned under subsection (1) of section 9.*
- *The second one is the court can grant interim relief under Section 9 when Section 17 (arbitral tribunal) interim relief would be pointless and inefficacious.*

Therefore, an arbitrator has been appointed for the application of urgent interim relief under Section 9 of the act, where the court does not lose the authority to hear the case. court does not become coram non iudice. Section 9

(3) inserts the main purpose of less intervention of court proceedings and promotes the arbitration mechanism.

## **Legal Position in India-**

In the case of Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd. the Supreme Court of India observed-

*“that Section 9 of interim relief came into force when Section 17 became ineffective. The Supreme Court held that when an arbitral tribunal does not provide urgent relief due to some illness, is not able to take a quick decision in an emergency situation, or there is some bias by the competent authority.*

*The Supreme Court clarified that section 9's relevancy does not end only to minimize the intervention of the court and establish a balance between the court and the arbitral tribunal. In the case of Arcelor Mittal Nippon Steel India LTM v. Essar Bulk Terminal, the honorable Supreme Court gave an explanation of the word “ENTERTAIN”<sup>11</sup> and said it does not simply mean to receive the paperwork; judges should seriously apply their minds to the merits. This explanation relates to section 9(3): when the tribunal is constituted while the court is still reviewing, the court gives the decision. The court also observed two core objectives of section 9(3) of the Arbitration and Conciliation Act: the first one is efficiency, and the second one is speed.”*

*“In the case of **Jaya Industries v. Mother Dairy Calcutta and another**<sup>12</sup> The High Court of Calcutta relied on the judgment of the Supreme Court in the case of **Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.** The High Court of Calcutta held the policy-based interpretative approach in the case of Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd. The High Court stated it was not to “rewind the clock”; it was to preclude the multiple hearings when the same subject matter was claimed.*

Through this judgement, the Calcutta High Court set up the good example of preventing parties to the multiple case hearings; this is under the policy-based interpretative approach of Section 9(3).”

### **Section 17 – Interim Relief by Arbitral Tribunal**

Section 17<sup>13</sup> particularly deals with the grant of interim relief by the arbitral tribunal during arbitration. that measure in urgent situations when not going to the court. After the 2015 amendment section expanded the power and enforceability of arbitral tribunal, same as court.

Arbitral tribunals have a power like a court. It is also given the direction for preservation, custody, or sale of goods. It can deposit the security amount. Arbitral tribunals enjoy the same power as courts, like the appointment of a receiver, granting interim injunctions, etc.

### **Relation between section 9 and section 17**

When an arbitral tribunal has been constituted, there is an application not entertained by the court through section 9 when section 17 is not able to grant interim relief effectively. In that situation, parties can approach the court under section 9.

- *In the case of **Sundaram Finance Ltd. v. NEPC India Ltd**<sup>14</sup> The supreme court observed that for protecting the subject matter of arbitration interim relief is essential. Initially it is discussed in section 9 but the arbitral tribunal grants the interim relief in section 17.*
- *“Case of **Alka Chandewar v. Shamshul Ishrar Khan**<sup>15</sup> The Supreme court through the judgement fixed the compliance of section 17. There will be any party denying or not compliance with order issued by the arbitral tribunal, if does not obey the order, the court will punish him. The Supreme Court gave the enforceability of section 17.”*

### **India, the U.K., and Singapore: A Comparison**

- **India** – when it has been constituted of an arbitral tribunal, the court cannot grant interim relief by the court under section 9 of the Arbitration and Conciliation Act if section 14 is ineffectual; in this situation, the court has the power to take measures.
- **U.K.**—In the United Kingdom, the court is the last resort for granting relief when the other body is ineffective in playing the role. There is a decision of the court temporarily. The tribunal can issue its own subsequent order.
- **Singapore**—While exercising power under Section 31 of the Arbitration Act, 2001<sup>16</sup>, the court will have regard to the application made before the arbitral tribunal or an order made by it. An order made by the court will cease to have effect on an order being made by the authorized body. Under Section 12A(6) of the International Arbitration Act<sup>17</sup>, the Court shall make an order only if the tribunal or the authorized body has no power or is unable to act effectively.<sup>18</sup>

In the case of **Ashwani minda & m/s jay ushin limited**

**v. m/s U-shin limited & m/s minebea mitsumi** the delhi high court observed while that section 9 of the arbitration and conciliation act, applicable on outside india seated arbitration but section 9 not applicable when has been arbitration constituted. Section 9 will effect in case when the section is not capable of granting relief effectively.

### **Conclusion-**

When arbitration constitutes there is no back power to the court to grant interim relief. tribunal have power to grant interim measure but court can not completely shut if tribunal not grant interim relief effectively or not capable to take measure in this condition court play the main role even arbitration constitute.

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<sup>1</sup> Act no.20 of 1996.

<sup>2</sup> Sec 9 of the arbitration and conciliation act, 1996

<sup>3</sup> Sec 17 of the arbitration and conciliation act, 1996

<sup>4</sup> Sec 9(3) of the arbitration and conciliation act, 1996

<sup>5</sup> Sec 9, the arbitration and conciliation act, 1996

<sup>6</sup> Firm Ashok Traders and Another, Etc. v. Gurumukh Das Saluja and Others, AIR 2004 (2) SC 155

<sup>7</sup> Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125

<sup>8</sup> Sec 9, the arbitration and conciliation act 1996

<sup>9</sup> Sec 9(3), the arbitration and conciliation, (amendment) act, 2015

<sup>10</sup> Sec 5, the arbitration and conciliation act 1996

<sup>11</sup> Black's Law Dictionary

<sup>12</sup> Jaya industries v. mother dairy calcuta & anr ap 85 of 2023

<sup>13</sup> Sec 17, the arbitration and conciliation act 1996

<sup>14</sup> Sundaram finance ltd. v. Npec india ltd, (1999) 2 scc 479

<sup>15</sup> Alka chandewar v. shamshul ishrar khan, (2017), 16 scc 119

<sup>16</sup> Sec 31, ARBITRATION ACT 2001

<sup>17</sup> Sec 12A (6), International arbitration act, 1994



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