ARBITRATION & DISPUTE RESOLUTION

Post-Award Relief under Section 9: Higher Threshold, *Not a Bar* for Parties Without an Award in Their Favour

AUTHORED BY

Tanishka Khatana
Senior Associate

Raees Sohail
Trainee Associate

Recently, the Hon'ble Supreme Court in *Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi*, 2026 SCC OnLine SC 670, settled a long-standing divergence among the High Courts concerning the scope of Section 9 of the Arbitration and Conciliation Act, 1996 ("**Act**") at the post-award stage. The question before the Hon'ble Supreme Court was whether a party that has been unsuccessful in arbitral proceedings, and has no enforceable award in its favour, can nevertheless seek interim measures under Section 9 of the Act after the award has been rendered.

By its judgment dated 24.04.2026, a Bench comprising Manoj Misra and Manmohan, JJ., held that the expression "a party", as defined under Section 2(h) of the Arbitration and Conciliation Act, 1996, refers to a party to the arbitration agreement. Significantly, Section 9 also opens with the words "A party may", permitting such party to approach the Court for interim measures before or during arbitral proceedings, or after the making of the arbitral award but before its enforcement in accordance with Section 36. The question before the Court, therefore, was whether the expression "a party" could, at the post-award stage, be understood differently depending upon the outcome of the arbitral proceedings.

The Hon'ble Court held that the meaning of the expression cannot vary depending upon the outcome of the arbitral proceedings and accordingly held that the contrary line of decisions of the Hon'ble High Courts of Bombay, Delhi, Madras and Karnataka did not lay down the correct law.

The Hon'ble Court clarified that while an unsuccessful party may invoke Section 9 at the post-award stage, interim relief is not available as a matter of course. The grant of such relief is subject to a higher threshold and is confined to rare and compelling circumstances, with Courts required to exercise care, caution and circumspection while balancing the maintainability of the application against the established principles governing the grant of relief, namely – prima facie case, balance of convenience and irreparable harm.

Case Overview

Facts

The judgment was rendered in a batch of Civil Appeals arising out of SLP (C) Nos. 29972 of 2015, 26876 of 2014 and 11139 of 2020. In the lead matter, the appeal arose from a judgment of the Hon'ble Bombay High Court, which had dismissed appeals under Section 37 of the Act by relying upon its earlier decision in *Dirk India Pvt. Ltd. v. Maharashtra State Electricity Generation Co. Ltd.*, 2013 SCC OnLine Bom 481 ("***Dirk India***"). The controversy arose against the backdrop of divergent judicial opinions on whether an unsuccessful party could maintain a Section 9 petition after an arbitral award had been rendered.

The Hon'ble High Courts of Bombay, Delhi, Madras and Karnataka had taken the view that an unsuccessful party could not maintain a Section 9 petition at the post-award stage. This view was expressed in, *inter alia*, *Dirk India*, *Nussli Switzerland Ltd. v. Organizing Committee Commonwealth Games, 2010*, 2014 SCC OnLine Del 4834, *National Highways Authority of India v. Punjab National Bank*, 2023 SCC OnLine Del 4810, *A. Chidambaram v. S. Rajagopal*, OA No. 843 of 2024 and *Smt. Padma Mahadev v. Sierra Constructions Pvt. Ltd.*, COMAP No. 2 of 2021. Conversely, the Hon'ble High Courts of Telangana, Gujarat and Punjab & Haryana had held that a Section 9 petition by an "unsuccessful party" was maintainable even after the conclusion of arbitral proceedings. This view was reflected in *Saptarishi Hotels Pvt. Ltd. v. NITHM*, 2019 SCC OnLine TS 1765, *GAIL (India) Ltd. v. Latin Rasayani Pvt. Ltd.*, 2014 SCC OnLine Guj 14836 and *DLF Home Developers Ltd. v. Orris Infrastructure Pvt. Ltd.*, FAO-CARB-51-2024.

The rationale underlying the *Dirk India Pvt. Ltd* line was that post-award interim measures under Section 9 were intended to protect the "fruits of arbitration" until the award could be enforced. Since a

Court exercising jurisdiction under Section 34 was understood to have the power only to uphold or set aside an award, a party whose claims had been rejected was considered to have no "fruits" capable of being protected through Section 9. The appellants contended that this reasoning rested on an overly rigid distinction between a "successful" and an "unsuccessful" party, particularly in light of the Court's subsequent decision in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, 2025 SCC OnLine SC 986. In *Gayatri Balasamy* (supra), the Hon'ble Court recognised that an arbitral award may, in appropriate circumstances, be modified by severing its invalid portion from the valid portion. This, the appellants contended, undermined the premise that the outcome of an arbitration necessarily places the parties into two distinct categories of those who possess "fruits of the award" and those who do not.

The Respondents, on the other hand, contended that after an award had been rendered, only the successful party could demonstrate a *prima facie* entitlement to interim protection. According to them, a party against whom the award had been rendered was required to challenge the award under Section 34 and, if necessary, seek a stay under Section 36. It was argued that permitting recourse to Section 9 would allow such a party to circumvent the safeguards prescribed under Section 36(3), while also opening the door to multiplicity of proceedings and undermining the finality and expeditious resolution of arbitral disputes - objectives that are antithetical to the statutory scheme of minimal judicial intervention. Reliance was also placed upon *Hindustan Construction Co. Ltd. v. Union of India*, (2020) 17 SCC 324, which had referred to *Dirk India* with approval.

Issue

The substantial question of law before the Hon'ble Supreme Court was whether a petition under Section 9 of the Act, filed at the post-award stage by a party that has lost in the arbitral proceedings and has no enforceable award in its favour, is maintainable in law.

Analysis

The Hon'ble Apex Court held that a party to an arbitration agreement may invoke Section 9 at the post-award stage, notwithstanding the outcome of the arbitral proceedings. The Court's reasoning proceeded primarily from the text and scheme of Section 9.

At the outset, the Court examined the expression "a party" appearing at the commencement of Section 9. Section 2(1)(h) of the Arbitration and Conciliation Act, 1996 defines "party" as a party to an arbitration agreement, without drawing any distinction between parties based on the outcome of the arbitral proceedings. Section 9, in turn, opens with the words “A party may” and expressly permits an application for interim measures before or during arbitral proceedings, or after the making of the arbitral award but before its enforcement under Section 36. The Court observed that to construe the same expression differently at the post-award stage—so as to restrict it only to a party in whose favour the award has been made—would amount to introducing a qualification that finds no place in the statutory language. Such an interpretation would effectively give the expression “a party” a broader meaning before the award and a narrower meaning after it.

The Court then examined the legislative scheme of Section 9 and its departure from the UNCITRAL Model Law. While Article 9 of the UNCITRAL Model Law contemplates court-ordered interim measures “before or during” arbitral proceedings, Section 9 of the Indian Act expressly extends the availability of interim measures to the period after an award has been made but before its enforcement. The Court considered this to be a conscious legislative expansion of the remedy. Significantly, while introducing this additional post-award stage, Parliament did not restrict the category of parties entitled to invoke Section 9. Relying, *inter alia*, upon *Sundaram Finance Ltd. v. NEPC India Ltd.*, (1999) 2 SCC 479, the Court therefore considered the absence of any such qualification significant.

The Court further distinguished the respective functions of Sections 9, 34 and 36. While Section 34 provides the remedy for challenging an arbitral award and Section 36 concerns its enforcement and stay, Section 9 is directed towards protecting the subject matter of the arbitration or the amount in dispute. The availability of a remedy under Sections 34 or 36, therefore, does not necessarily provide the same form of protection contemplated under Section 9. The Court observed that denying a party recourse to Section 9 merely because it does not have an enforceable award in its favour could leave the subject matter of the dispute without protection during the pendency of the challenge, even where the award has been stayed and may ultimately be set aside.

The Court also found that the foundational premise of the *Dirk India* line of cases could no longer be sustained. Those decisions proceeded on the understanding that a Court exercising jurisdiction under Section 34 could only uphold or set aside an arbitral award, and consequently that post-award interim measures under Section 9 were intended only to preserve the “fruits of arbitration” pending enforcement. However, in light of the Constitution Bench judgment in *Gayatri Balasamy v. ISG Novasoft*

Technologies Ltd., 2025 SCC OnLine SC 986, the Court noted that an award may, in appropriate circumstances, be modified, including by severing an invalid portion from a valid portion. The possibility of such modification undermines a rigid distinction between a party possessing the "fruits of the award" and one possessing none. The Court further noted that where an award is set aside, the parties may recommence arbitration, with Section 43(4) preserving the limitation position in the manner contemplated by the statute. In this context, the Court also rejected the attempt to confine Section 9 to the protection of the "fruits of arbitration".

It emphasised that Section 9(1)(ii) uses the broader expressions *"subject matter of arbitration"* and "amount in dispute". These expressions, according to the Hon'ble Court, cannot be narrowed to mean only an enforceable claim arising from an award in favour of one party. The Court contrasted the present statutory framework with Section 18 of the Arbitration Act, 1940, which had expressly confined interim measures to the successful party for the purpose of ensuring enforcement of the award. The absence of any comparable restriction in the 1996 Act was therefore significant. The Court nevertheless recognised that permitting a party without an award in its favour to approach the Court under Section 9 does not mean that interim relief follows as a matter of course.

The ordinary principles governing interim relief namely, the existence of a *prima facie* case, balance of convenience and likelihood of irreparable harm, continue to apply. More importantly, the Court expressly held that the threshold for granting interim relief would be higher in such cases. It observed that, in rare and compelling circumstances, interim protection may nevertheless be necessary to prevent irreparable prejudice and preserve the efficacy of the challenge proceedings.

Finally, the Court addressed the concern that a wider interpretation of Section 9 could result in its misuse or lead to multiplicity of proceedings. It held that such concerns could not justify reading a limitation into an otherwise clear statutory provision. The Court also clarified that *Hindustan Construction Co. Ltd. v. Union of India*, (2020) 17 SCC 324, did not decide the specific question of whether a party without an award in its favour could maintain a Section 9 application post-award, and therefore its reference to *Dirk India* could not be treated as binding precedent on that issue. The Hon'ble Court accordingly held that the judgments denying such access to Section 9 did not lay down good law, while emphasising that Courts must exercise "care, caution and circumspection" when considering such applications.

The Hon'ble Supreme Court held that an unsuccessful party may invoke Section 9 post-award, but interim relief is not automatic and remains subject to the principles of *prima facie* case, balance of convenience, irreparable injury, and reasonable expedition, as laid down in *Essar House Pvt. Ltd. v. Arcellor Mittal Nippon Steel India Ltd.*, (2022) 20 SCC 178. The threshold is higher where the applicant is an unsuccessful party, and relief should be granted only in rare and compelling circumstances.

Conclusion

The ruling resolves the divergence among the High Courts concerning the maintainability of post-award Section 9 applications by unsuccessful parties. The judgment establishes that access to Section 9 at the post-award stage is not dependent upon the outcome of the arbitration; what is material for maintainability is whether the applicant is a party to the arbitration agreement.

At the same time, the judgment does not place an unsuccessful party on the same footing as an award-holder for obtaining interim relief. The Hon'ble Court has prescribed a higher threshold and confined such relief to rare and compelling circumstances. The settled requirements of *prima facie* case, balance of convenience, irreparable injury and reasonable expedition continue to govern the Court's discretion.

The decision therefore clarifies that Section 9 is not a remedy reserved exclusively for the award-holder. Its availability to an unsuccessful party, however, does not create an automatic entitlement to interim protection. The judgment preserves the right to approach the Court while maintaining safeguards against the misuse of post-award interim relief.