

Court Granted Interim Reliefs in Arbitrations- Section 9

Introduction

Interim relief in any judicial or quasi-judicial proceeding is an integral part thereof and the parties to the proceedings take recourse to it, if required, in order to meet the ends of justice and to preclude the opposite party from acting prejudicially and frustrate the subject matter of the proceeding. The Arbitration and Conciliation Act, 1996 (The Act) is no exception and Section 9 thereof allows the Court/Arbitral Tribunal to grant the interim relief to the applicant should the need so arise.

Before adverting to the contents and finer nuances of the provision, it would be worthwhile to analyse the structure of the Act to deliberate upon in a better light. The Act is bifurcated in 2 parts - Part I deals with domestic arbitration and Part II deals with international commercial arbitration. Interestingly, Section 9 is contained Part-I and was, hitherto, the subject of intense debate as regards its application upon international commercial arbitrations.

Section 9 - A Generic Overview

It is noteworthy that an arbitration proceeding is dependent upon an agreement between the parties and not akin to other judicial and quasi-judicial proceedings where a matter traces the steps from cradle to the grave before the same forum. As such, when it comes to interim relief in an arbitration proceeding, both the civil court and the arbitral tribunal have their role to play, albeit, in their own respective domains.

The Act accords the right to the parties to apply for interim relief either before, during or after the proceedings on the grounds specified in the provision. Clause (i) of Section 9 provides for the relief for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings. Clause (ii) thereof provides for interim measure of protection and enumerates a list of reliefs which could be granted, like, (a) the preservation, interim custody or sale of any goods which are subject-matter of the arbitration agreement, (b) securing the amount of dispute in the arbitration, (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the arbitration, or as to which, any question may arise therein, (d) interim injunction or the appointment of a receiver.

It is important to note that the list mentioned above is only an inclusive list of the reliefs which can be granted. The Legislature has been conscious that not all circumstances and reliefs could be foreseen and stipulated. Hence, the concerned fora are empowered to grant such other interim reliefs which may deem just and convenient to it in the facts and circumstances of the case.

However, during the arbitral proceeding, courts refrain from entertaining the applications save for exceptional circumstances where it feels that the relief granted by the tribunal may

not be adequate or efficacious. It is noteworthy that before and during the proceeding, either of the parties may apply for interim relief but, after the award has been passed, only the party in whose favour the award has been passed can apply under Section 9, but before the award has been enforced, in order to protect the subject matter of the award.

But, without prejudice to the above, it is worthwhile to note that, unless the circumstances warrant the application thereof, the provisions of Section 9 are usually, and primarily, aimed at protecting the interests of the parties to the dispute before the arbitral tribunal is constituted and, as such, the parties are allowed to approach the Courts for the relief. However, this does not mean downplaying the authority of the Tribunal. Once the Tribunal is constituted, the interim relief which has been granted by the Court is open to be re-evaluated by the Tribunal and, should it decide against it, the Tribunal is empowered to vacate the order to prevent misuse thereof.

Applicability of Section 9 on Part-II proceedings

Given that Section 9 is contained in Part-I of the Act, its applicability on Part-II, which deals with international commercial arbitration, was the subject of many an intense debate till the amendment of 2015. Prior thereto, the power of Indian Courts to grant interim relief in foreign seated arbitrations was unclear owing to the divergent views taken by the Courts. For ex: the Hon'ble Supreme Court, in *Bhatia International vs Bulk Trading S.A.*, (2002) 4 SCC 105, expanded the wingspan and empowered the Indian Courts to grant interim reliefs in foreign seated arbitrations. However, in *Bharat Aluminium Co. vs Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 (BALCO), the Constitution Bench of the Supreme Court overruled *Bhatia International* (supra) and held that Section 9 is not applicable to the foreign seated arbitrations.

This, indeed, exposed the BALCO judgment to criticism and analysis, primarily, because, for the want of applicability of Section 9 on Part-II, the parties would be rendered devoid of an interim relief when it is most required. However, the amendment has settled the issue by allowing Indian Courts to pass interim orders in the international commercial arbitrations.

The Arbitration and Conciliation (Amendment) Ordinance, 2015 incorporated the oft needed amendment in the Act and added a proviso to Section 2(2) of the Act. Prior thereto, as per the provision of Section 2(2), Section 9 was applicable only when the place of arbitration was in India. However, after the proviso, the scope of Section 9, along with Sections 27, 37(1)(a) and 37(3), has been widened and is also made applicable to the international commercial arbitration. This, indeed, is subject to the agreement between the parties and applicable to the place the arbitral award made or to be made wherein is recognized and enforceable under Part II of the Ordinance.

The essentials required to get an interim relief under Section 9

Interim relief in any proceeding whatsoever is intended only for sparing circumstances to meet the ends of justice and arbitration is so exception.

There cannot be any strait-jacket list of circumstances and essentials which can call for the grant of interim relief. It depends upon the facts and circumstances of the case but, mainly,

to prevent irreparable damage to any of the parties to the dispute and to meet the ends of justice. However, for the sake of example, the following could be listed to give a broad idea:

To secure the subject matter of the dispute. For ex: if the subject matter of the dispute is of a perishable nature, the same may be required to be dealt with immediately or else the dispute would be rendered infructuous during the course of the proceeding.

To prevent one party from acting to the prejudice of the other. For ex: if there is reasonable apprehension that one party may tamper with the evidence, it may be enjoined from so to do in order to meet the ends of justice.

A party to the dispute cannot apply for an interim relief as a matter of right. It is an extraordinary power of the forum to be exercised only in extraordinary circumstances so as to be able to do complete justice in the lis presented before it. Hence, the party applying for the interim relief is required to establish that the requisite parameters exist which, if not accommodated by the forum, would render the whole proceeding futile.

Conclusion

Although, granted the statutory force, the applicability of Section 9 is, still, subject to the basic tenet of the law of arbitration i.e. agreement between the parties. The same would be applicable only if it is not excluded by the parties by agreement. Express exclusion is as the name suggests but implied exclusion of Section 9 depends upon the facts and circumstances of the case and would be ascertained by the Courts.

Further, the amendment does not accord a blanket applicability of Section 9 on international commercial arbitrations. There are certain circumstances which impede the same. For ex: Section 9 would not apply to foreign arbitrations if they take place in a country the arbitration awards whereof are not recognized under Indian law.

In addition to the above, the amendment has also left some areas to be desired. While empowering the Indian Courts to pass interim reliefs in international commercial arbitrations, the amendment does not make a provision for the enforcement in India of the interim orders passed by the foreign Courts and Tribunals which would have been a welcome inclusion.

In view of the fact that the legislature has woken up and taken notice, it can be, comfortably, presumed that, not so long in future, we would see the gaps filled up and Indian arbitration law standing its ground on international standards.