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NEWSLETTER

MAY 2026

Unsuccessful Party Entitled to Seek Post-Award Interim Relief Under Section 9

HOME CARE RETAIL MARTS PVT. LTD. V. HARESH N. SANGHAVI

The Supreme Court held that an unsuccessful party in arbitration is not precluded from seeking interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 after the arbitral award. Interpreting the expression “a party” under Section 9, the Court clarified that the provision is not confined to the award-holder and may be invoked by any party to the arbitration agreement, subject to the nature and purpose of the relief sought.

The dispute arose following an arbitral award rendered in favour of the respondent, after which the appellant, despite being the unsuccessful party, sought interim protection under Section 9 pending challenge to the award under Section 34. The respondent opposed the maintainability of such a petition, contending that post-award interim relief is intended only to safeguard the enforcement of the award and, therefore, should be available exclusively to the successful party. The Court examined conflicting High Court decisions on this issue and analysed the statutory framework governing interim measures.



Rejecting a restrictive interpretation, the Supreme Court held that Section 9 serves a broader purpose of preserving the subject matter of the dispute and securing the ends of justice, and is not limited to enforcement-related protection. At the same time, the Court emphasised that when invoked by an unsuccessful party, such relief must be granted with caution, and only upon a higher threshold being satisfied to ensure that the finality and enforceability of the arbitral award are not undermined.

The ruling settles divergent judicial views and clarifies the scope of post-award interim relief, reinforcing both the flexibility of Section 9 and the need to balance it against the principle of arbitral finality.

Legal Representatives Must Challenge Arbitral Award Under Section 34, Not Article 227

V.K. JOHN V. S. MUKANCHAND BOTHRA AND HUF (DIED) REPRESENTED BY LRS.

The Supreme Court held that the appropriate remedy for a legal representative aggrieved by an arbitral award lies under Section 34 of the Arbitration and Conciliation Act, 1996, and not under Article 227 of the Constitution or other supervisory jurisdictions. The Court reaffirmed that the Arbitration Act constitutes a self-contained code, and judicial interference outside the statutory framework is permissible only in exceptional circumstances.

The dispute arose from an agreement for sale of immovable property, which led to arbitral proceedings and an award against parties connected to the estate of the deceased. The appellant, claiming to be a legal representative and asserting independent rights over the property, challenged the award through supervisory jurisdiction rather than invoking Section 34. The High Court rejected this approach, and the matter reached the Supreme Court.

Upholding the High Court's decision, the Supreme Court clarified that legal representatives step into the shoes of the deceased party and are therefore bound by and entitled to challenge the arbitral award within the statutory framework. The Court held that denying them recourse under Section 34 would render them liable under the award without any remedy, which would defeat the object of the Act. At the same time, it emphasised that such challenges must be pursued strictly within the mechanism prescribed under Section 34, and not through collateral or supervisory proceedings.

The ruling reinforces the exclusivity of Section 34 as the primary recourse against arbitral awards and underscores the principle that arbitration law operates as a complete code, ensuring both continuity of proceedings and procedural discipline even in cases involving legal representatives.



Enforcement of Foreign Award Subject to Section 48 Scrutiny; Courts Cannot Reassess Merits

MSA GLOBAL LLC (OMAN) V. ENGINEERING PROJECTS (INDIA) LIMITED

The Delhi High Court held that enforcement of a foreign arbitral award under the Arbitration and Conciliation Act, 1996 is not automatic and must be tested strictly within the limited grounds set out under Section 48. The Court reiterated that it cannot undertake a merits-based review or re-appreciation of evidence, and refusal of enforcement is permissible only where the award is shown to violate the fundamental policy of Indian law or basic notions of justice.

The dispute arose out of a cross-border infrastructure contract involving a Singapore-seated ICC arbitration, in which a partial award was rendered in favour of MSA Global LLC. The award-holder sought enforcement of the foreign award in India, while the judgment-debtor resisted enforcement on grounds including alleged bias of an arbitrator and procedural irregularities. Challenges to the arbitrator's impartiality had already been raised and rejected before the ICC and the Singapore courts, and parallel proceedings had also been initiated across jurisdictions.



Rejecting the objections, the Court held that issues relating to the composition of the tribunal and alleged bias had already been adjudicated by the courts of the seat and could not be reopened at the enforcement stage. It emphasised that enforcement proceedings are not an avenue for a second round of challenge, and that a foreign award must be enforced unless it falls squarely within the narrow exceptions under Section 48. The Court further clarified that mere allegations of unfairness or dissatisfaction with the outcome do not meet the high threshold of “fundamental policy” or “most basic notions of justice.”

The ruling reinforces India's pro-enforcement stance in international arbitration and underscores the limited scope of judicial interference at the stage of recognition and enforcement of foreign awards.

IBC Cannot Be Used as a Substitute for Execution of Money Decrees

ANJANI TECHNOPLAST LTD. V. SHUBH GAUTAM

The Supreme Court held that insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 cannot be invoked as a substitute for execution of a money decree or as a coercive recovery mechanism. While a decree may, in principle, give rise to a fresh cause of action under Section 7, the Court clarified that such invocation must not amount to misuse of the insolvency process, which is intended for resolution of genuine financial distress.

The dispute arose from loans advanced by the respondent to the appellant, which led to a civil suit and a decree passed by the Delhi High Court for recovery of dues. Instead of pursuing execution proceedings, the respondent initiated insolvency proceedings under Section 7 of the IBC. The National Company Law Tribunal (NCLT) dismissed the petition, observing that the appellant company was solvent and that the proceedings were in the nature of recovery. However, the NCLAT reversed this finding and admitted the application, relying on the principle that a decree could constitute a financial debt.



Setting aside the NCLAT's order, the Supreme Court restored the NCLT's decision and held that the IBC framework cannot be used to enforce disputed or decretal claims, particularly where the corporate debtor is solvent and the quantum of debt is contested. The Court emphasised that insolvency proceedings have far-reaching consequences and must not be employed as a pressure tactic for individual recovery. It further clarified that where an effective remedy of execution is available, recourse to insolvency would amount to abuse of process.

The ruling reinforces the distinction between insolvency resolution and debt recovery, and cautions creditors against using the IBC as a substitute for civil enforcement mechanisms.

NCLT Need Only Assess Existence of Plausible Pre-Existing Dispute, Not Its Merits

GLS FILMS INDUSTRIES PRIVATE LIMITED V. CHEMICAL SUPPLIERS INDIA PRIVATE LIMITED

The Supreme Court held that while considering an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority is only required to examine whether a plausible pre-existing dispute exists, and not whether such dispute would ultimately succeed on merits. The Court reiterated that the threshold is limited to identifying a real dispute that is not spurious, hypothetical, or illusory, and cautioned against conducting a detailed adjudication akin to a trial.

The dispute arose from a claim by the operational creditor for unpaid dues towards supply of chemical materials. Prior to the issuance of the demand notice under Section 8, the corporate debtor had raised concerns regarding defective supplies and discrepancies in accounts, supported by contemporaneous correspondence. The National Company Law Tribunal (NCLT) dismissed the Section 9 application on the ground that a genuine pre-existing dispute existed. However, the NCLAT reversed this finding and admitted the insolvency application.



Setting aside the NCLAT's decision, the Supreme Court restored the NCLT's order, holding that the appellate authority had erred in effectively undertaking a merits-based evaluation of the dispute. The Court emphasised that once a plausible dispute is established, the insolvency process cannot be invoked, as the IBC is not intended to be a substitute for dispute resolution or debt enforcement in contested cases.

The ruling reinforces the limited scope of inquiry under Section 9 and strengthens the safeguard against misuse of insolvency proceedings in cases involving bona fide disputes.

Promotion Policies to Address Stagnation Must Be Applied Uniformly

SMT. KAVITA CHATURVEDI V. STATE OF UTTAR PRADESH

The Allahabad High Court held that a government policy formulated to remove stagnation in service must be applied uniformly to all similarly situated employees, and selective denial of such benefits would amount to arbitrary discrimination in violation of Article 14 of the Constitution.

The dispute arose from claims of telephone operators working under the Board of Revenue, who sought promotion to the post of Lower Division Assistant in terms of a Government Order dated 6 September 1988. The policy had been introduced to address stagnation in cadres where no promotional avenues existed, and had already been extended to certain similarly placed employees. However, the petitioners were denied the same benefit without any cogent justification.

Allowing the petition, the High Court held that once a policy benefit has been extended to a class of employees, denying the same to others in identical circumstances is impermissible. The Court further clarified that absence of explicit statutory rules governing such promotion cannot be used as a ground to defeat the object of a policy aimed at alleviating stagnation, particularly where vacancies exist and the policy has been previously implemented.

The ruling reinforces the principle of equality in service jurisprudence and underscores that administrative discretion must align with constitutional guarantees, especially where policies are designed to ensure fair career progression.



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