



ARBITRATION AND CONCILIATION

Unsuccessful Party Can Invoke Section 9 Post-Award: Supreme Court Resolves Conflicting High Court Views in Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi

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PUBLISHED 29 April 2026

The decision of the Supreme Court in *Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi*¹ marks a significant clarification in the jurisprudence surrounding interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The Court was confronted with a narrow but important question of law, namely whether a party that has failed in arbitral proceedings can nonetheless seek interim measures after the award has been rendered but before it is enforced. This issue had generated conflicting judicial opinions across various High Courts, thereby necessitating authoritative resolution.

At the heart of the controversy lay the interpretation of the phrase “a party” as employed in Section 9. Certain High Courts had adopted a restrictive reading, effectively limiting the availability of post award interim relief to the successful party on the reasoning that such relief is intended to secure the fruits of the arbitral award. The Supreme Court rejected this approach as inconsistent with both the text and the scheme of the statute. It emphasized that the legislature, in defining “party” under Section 2(1)(h), made no distinction between a successful and an unsuccessful party. To read such a limitation into Section 9 would amount to impermissible judicial legislation rather than interpretation.

The Court further situated Section 9 within the broader architecture of the Act. It noted that the provision explicitly permits recourse to interim measures at three stages, before the commencement of arbitration, during its pendency, and after the award but prior to enforcement. This tripartite structure reflects a legislative intent to ensure continuity of protection throughout the dispute resolution process. Importantly, the Indian statute goes beyond the UNCITRAL Model Law by expressly including the post award stage, thereby indicating a deliberate expansion of judicial powers to grant interim relief. The absence of any qualification restricting such relief to the award holder reinforces the conclusion that all parties remain entitled to approach the court.

A central concern addressed by the Court was the potential injustice that would arise if an unsuccessful party were denied access to Section 9. The arbitral award is not necessarily final in practical terms, as it remains subject to challenge under Section 34 and may even be modified in certain circumstances. The Court referred to its recent jurisprudence recognizing that awards may be severed or altered, thereby affecting the ultimate rights of the parties. In such a scenario, denying interim protection could render the challenge proceedings illusory, particularly where there is a risk of dissipation of assets or irreversible prejudice. The law cannot countenance a situation where a party is left without any mechanism to preserve its rights pending judicial review.

Equally significant is the Court’s delineation of the distinct functions performed by Sections 9, 34 and 36 of the Act. While Sections 34 and 36 deal with the validity and enforceability of the arbitral award, Section 9 operates in a different sphere altogether by safeguarding the subject matter of the dispute. The availability of remedies under Sections 34 or 36 does not negate the need for interim protection, as those provisions do not empower the court to secure the underlying assets or rights in dispute. The Court thus rejected the argument that Section 9 should be read in a restrictive manner to preserve the finality of arbitral awards.

In disapproving earlier precedents such as *Dirk India*, the Court identified a fundamental flaw in the assumption that post award interim relief is solely concerned with protecting the fruits of the award. It clarified that the statutory language refers more broadly to securing the subject matter of arbitration or the amount in dispute. This wider formulation cannot be curtailed by judicial interpretation. The Court reiterated the settled principle that where the language of a statute is clear and unambiguous, it must be given its plain meaning, and courts must refrain from introducing limitations that the legislature has consciously omitted.

At the same time, the judgment reflects a balanced approach by recognizing that permitting unsuccessful parties to invoke Section 9 may raise concerns of misuse. To address this, the Court underscored that the grant of interim relief remains discretionary and is governed by established equitable principles, including the existence of a prima facie case, balance of convenience and the likelihood of irreparable harm. It observed that the threshold for granting relief to an unsuccessful party would necessarily be higher and that such relief should be confined to rare and compelling circumstances where denial would result in manifest injustice.

The ruling ultimately affirms a more inclusive and purposive interpretation of Section 9, aligning it with the overarching objective of the Act to facilitate fair and effective dispute resolution. By recognizing that even a losing party may, in appropriate cases, require interim protection, the Court has ensured that the arbitral process remains meaningful and that subsequent judicial remedies are not rendered nugatory. This decision not only resolves the divergence in judicial opinion but also strengthens the integrity of arbitration as a viable alternative to traditional litigation by reinforcing the availability of comprehensive procedural safeguards.

1. 2026 INSC 415 ??

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