



Chamber of Commerce and Industry

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**INTERIM AWARD: INTERIM IN NAME,
FINAL IN EFFECT?**



I. Understanding when an arbitral decision becomes an award and why the distinction matters

An arbitration does not always proceed in a straight line. A dispute may involve several claims, counterclaims and issues. Some may require extensive evidence, while others may be capable of being decided much earlier.

Suppose a tribunal is dealing with three claims. During the proceedings, it finally decides one of them. The other two remain pending. The arbitration therefore continues. But what is the status of the decision already made? Is it simply an interim order? Or is it an interim award, capable of being challenged under Section 34 of

the Arbitration and Conciliation Act, 1996? The answer lies not in when the decision was made, or even what the tribunal chose to call it, but in what the tribunal actually decided.

II. “Interim” does not necessarily mean temporary

The word “interim” naturally suggests something provisional. An interim award, however, is different. Section 2(1)(c) of the Arbitration and Conciliation Act expressly includes an interim award within the definition of an “arbitral award”. Section 31(6) further provides that an arbitral tribunal may make an interim award “on any matter with respect to which it may make a final arbitral award.”

The Supreme Court examined this provision in *Indian Farmers Fertilizer Co-operative Ltd. v. Bhadra Products*. The Court recognized the broad language of Section 31(6), holding that the expression “any matter” can include a point of dispute between the parties that the tribunal is competent to decide. This means that an arbitration does not necessarily have to reach its very end before the tribunal can finally determine

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a particular issue. That is the apparent paradox:
The arbitration can still be interim, while the decision on a particular issue can be final.

III. Arbitration as a book

An arbitration may have several chapters. The final award is the end of the book. An interim award is like finishing one chapter before the rest of the book has been written. The book is not complete. But that does not mean the completed chapter is unfinished.

The same principle applies to arbitration.

A tribunal may finally decide one substantive issue while leaving other issues to be determined later. The important question is therefore not:

“Has the entire arbitration concluded?”

It is:

“Has this particular issue been conclusively decided?”

A simple example

Consider a construction dispute involving three claims:

Claim 1:	Rs. 50 lakhs for unpaid invoices
Claim 2:	Rs. 20 lakhs for additional work.
Claim 3:	Rs. 10 lakhs for delay-related damages

The tribunal determines that the Rs. 50 lakh invoice amount is contractually payable. However, it records that Claims 2 and 3 will require further evidence.

Has the arbitration ended? **No**

Has Claim 1 been finally decided? **Yes**, if the tribunal's determination is intended to be conclusive.

The tribunal can therefore continue hearing Claims 2 and 3 while the decision on Claim 1 may operate as an interim award. This is precisely why “interim” should not be understood as synonymous with “uncertain”.

IV. Why this distinction matter?

Section 34 of the Arbitration Act provides the mechanism for challenging an arbitral award.

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Since an interim award is an arbitral award, it can be challenged under Section 34. But a procedural order passed during the arbitration does not automatically become open to a Section 34 challenge. This distinction prevents arbitration from becoming fragmented.

Imagine if every procedural decision of an arbitral tribunal could immediately be taken to Court.

The arbitration could become:

order → challenge → Court proceedings → return to arbitration → another order → another challenge.

Instead of resolving the dispute efficiently, the parties could spend years litigating about the arbitration itself. The distinction between an interim award and a procedural order therefore serves an important purpose.

V. Why not simply decide everything at once?

If tribunals can issue interim awards, should they? Not necessarily.

There may be cases where determining an issue separately will simplify the remaining arbitration. For example, deciding liability first may substantially narrow the issues that remain for determination. But there may also be cases where splitting the dispute into multiple awards simply adds another layer of procedure. The Supreme Court in *IFFCO v. Bhadra Products* recognized that piecemeal adjudication can sometimes result in additional delay and costs. The existence of the power therefore does not mean that it must always be exercised. The tribunal has to consider whether deciding a particular issue separately will actually advance the arbitration.

VI. Interim measure and interim award are not the same

An interim measure is generally intended to preserve or protect something while the proceedings continue. An interim award adjudicates a matter that the tribunal is empowered to determine finally. Both decisions may occur before the final award, but their legal character is fundamentally different.

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The central issue, therefore, is finality. A decision does not become an interim award merely because it is important. It does not become an interim award merely because it affects the rights of the parties. And it does not cease to be an interim award merely because the arbitration continues.

The critical question is whether the tribunal has finally determined a substantive part of the dispute. This approach also explains why the name given to the decision by the tribunal is not decisive. The Court will look at the substance. In other words:

What a decision does matters more than what it is called.

VII. Interim in timing, final in effect

The apparent contradiction disappears once we understand what “interim” actually describes. It describes when the decision is made. It does not necessarily describe the degree of finality attached to the issue decided. An interim award can therefore:

- be made before the final award;
- determine only one part of the dispute;

- leave other claims and counterclaims pending; and
- nevertheless, be final and binding on the issue it determines.

Arbitration is often described as a single proceeding culminating in one final award. In reality, an arbitration may contain several distinct questions capable of being resolved at different stages. The law permits a tribunal, in appropriate circumstances, to bring finality to one of those questions without waiting for every other question to be answered. That is the purpose of an interim award.

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**CAN ONE SECURE ASSETS UNDER
SECTION 9 OF THE ARBITRATION AND
CONCILIATION ACT, 1996?**



I. Introduction

Imagine that you are owed Rs. 5 crores. You have a contract. You have documents supporting your claim. There is an arbitration clause, and you have commenced arbitration. You are confident that you have a strong case.

There is, however, one problem. The person who owes you the money owns a valuable property today. Tomorrow, that property could be sold. Other assets could be transferred. Bank accounts could be depleted. By the time the arbitration concludes, the respondent may have very little left.

You may ultimately win the arbitration. But if there is nothing left against which the award can be enforced, what exactly have you won? This is the practical problem that Section 9 of the Arbitration and Conciliation Act, 1996 seeks to address.

II. Winning a case and recovering money are two different things

Arbitration is usually associated with the resolution of a dispute. But for a party who is ultimately successful, resolving the dispute is

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only part of the journey. An arbitral award directing a party to pay Rs. 5 crore is valuable only if the successful party can actually recover that amount. If the respondent's assets have disappeared by then, enforcement can become considerably more difficult.

Section 9 recognizes this reality. It permits a party to approach the Court for interim measures of protection, including measures for “securing the amount in dispute in the arbitration.” The provision can be invoked before or during arbitral proceedings and, in appropriate circumstances, even after an award has been made but before it is enforced. The underlying idea is straightforward:

The law can protect the effectiveness of a future award even before that award comes into existence.

It is somewhat like taking an umbrella with you when the sky is dark. You do not need to prove that it will rain. You need to demonstrate why carrying umbrella is justified.

III. Does Section 9 allow a Claimant to freeze Respondent's assets?

A Section 9 application is not a mechanism for obtaining the final relief at the beginning of an arbitration. Nor is it intended to provide every claimant with automatic security for its claim. The Court exercises a discretionary power. The claimant must demonstrate circumstances that justify intervention and establish why protection is necessary. The Court must also ensure that the relief granted does not effectively prejudice the dispute that remains to be decided by the arbitral tribunal. At the Section 9 stage, the Court is generally not deciding:

“Who has ultimately won the arbitration?”

Instead, the Court is concerned with a different question:

“Is interim protection necessary to ensure that the eventual outcome of the arbitration remains meaningful?”

IV. What if the Respondent has not actually sold its assets?

Suppose a respondent owns only one substantial asset. There are indications that its financial position is deteriorating, or that its assets may be insufficient to satisfy the claimant's eventual

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award. Does the claimant have to wait until the respondent actually sells or transfers the asset before approaching the Court?

Not necessarily. The Supreme Court's decision in *Essar House Pvt. Ltd. v. ArcelorMittal Nippon Steel India Ltd.*¹ is particularly relevant. The Court considered the scope of the power under Section 9 and upheld an order requiring security to be furnished in respect of the amount in dispute. The decision emphasized that the Court's power under Section 9 is broad and must be exercised to secure the ends of justice. Importantly, the Court did not treat proof of an actual attempt to dispose of assets as an inflexible prerequisite in every case.

A claimant should not necessarily have to wait until the assets have disappeared before asking the Court to protect them.

V. The connection with Order XXXVIII Rule 5 of the CPC

Section 9 applications involving security of monetary claims are often considered alongside Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908,² which deals with attachment before judgment. The two provisions address a similar concern: preventing a party from taking steps that could defeat the effectiveness of a future judgment or award. But Section 9 is not simply an application of Order XXXVIII Rule 5 word for word. The Supreme Court in *Essar House*³ recognized the broad nature of the power available under Section 9 and cautioned against allowing procedural requirements to defeat the purpose of interim protection.

This is particularly relevant in commercial disputes, where the financial position of a party may change rapidly and were waiting for an actual transfer or disposal of assets may defeat the very purpose of seeking protection.

VI. What does “securing the amount” mean?

¹ 2022 INSC 957

² Code of Civil Procedure, No. 5 of 1908, Order XXXVIII, Rule 5 (India).

³ Ibid.

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Security does not necessarily mean attaching and taking possession of a particular property. The Court may fashion an appropriate form of protection depending upon the circumstances.

This could include a direction to:

- deposit money;
- furnish a bank guarantee;
- provide other security; or
- take other measures necessary to protect the claimant's interest.

The objective is not to punish the respondent. Nor is it necessarily to deprive the respondent of the use of its property. The objective is to ensure that the claimant does not emerge from a successful arbitration with an award that cannot realistically be enforced. *Section 9 is a shield, not a weapon.*

VII. But what about Respondent's rights?

The other side of the equation cannot be ignored. A claimant may have a strong case, but the dispute has not yet been finally decided. If every monetary claim automatically resulted in the

respondent's assets being frozen, arbitration would become commercially unworkable. The Court therefore has to balance competing interests. This is why the strength of the claimant's case, the circumstances indicating potential prejudice to enforcement, the balance of convenience and the necessity of protection become relevant considerations.

The Arbitration Act also draws a distinction between judicial intervention under Section 9 and interim protection available from the arbitral tribunal under Section 17. Once the tribunal has been constituted, Section 9(3) provides that the Court should ordinarily not entertain a Section 9 application if the remedy available under Section 17 is efficacious. Courts are meant to support arbitration, not take over the arbitration.⁴

Section 9 is therefore particularly important where urgent judicial protection is required or where the statutory framework otherwise permits the Court to intervene.

⁴ Arbitration & Conciliation Act, No. 26 of 1996, § 19 (India).

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The real question is not “Can I freeze the asset?”

It is:

“If I win the arbitration, will there still be something left for me to recover?”

That is the question that gives Section 9 its practical significance. The provision does not allow a claimant to win its arbitration before the arbitration has been decided. Nor does it provide automatic security for every monetary claim. Instead, it recognizes a simple commercial reality: ***rights can become meaningless if they cannot ultimately be enforced.***

An arbitral award is not necessarily the end of the dispute. It may be the beginning of the enforcement process. Section 9 exists, in appropriate cases, to ensure that the road from award to recovery is not blocked before the journey even begins.

**REFERRAL IS NOT THE FINAL WORD –
TRIBUNAL CAN DECIDE LIMITATION
EVEN AFTER APPOINTMENT OF
ARBITRATOR UNDER SECTION 11 OF
THE ARBITRATION AND
CONCILITAIION ACT, 1996**



I. Background

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The Allahabad High Court, Lucknow Bench, has clarified an important aspect of the relationship between Sections 11 and 16 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”).

In *Rajendra Prasad Singh v. M/s Arch Construction*⁵, the Division Bench held that an Arbitral Tribunal can examine and decide whether a Section 11(6) application for appointment of an arbitrator was barred by limitation, even where the High Court had already appointed the arbitrator.

The judgment draws a clear line between the limited role of the Court at the referral stage and the Tribunal’s statutory power to rule on its own jurisdiction.

II. Events Leading to the Dispute

The dispute arose from a Partnership Deed executed in 2013. Following a dispute between the partners, the Respondent invoked arbitration on 04/09/2017. However, an application under Section 11(6) seeking appointment of an arbitrator was filed only on 31/05/2023.

The Petitioner contended that the Section 11 application was filed beyond the prescribed period of limitation. Reliance was placed on Article 137 of the Limitation Act, 1963, which provides a three-year limitation period for applications where no specific period is prescribed. Despite this objection, the High Court appointed a Sole Arbitrator on 05/08/2025. The Petitioner thereafter raised the issue of limitation before the Arbitral Tribunal under Section 16 of the Arbitration Act.

III. The Tribunal’s Decision

The Tribunal rejected the jurisdictional objection on 09/10/2025. Its reasoning was that the High Court had already considered the matter while exercising jurisdiction under Section 11. Therefore, according to the Tribunal, it could not revisit the question of limitation. This prompted the Petitioner to approach the Allahabad High Court under Article 226 of the Constitution of India.

IV. Contentions before Hon’ble High Court

⁵ 2026: AHC-LKO:29790-DB

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The Petitioner contended that the Tribunal had incorrectly assumed that the High Court's order under Section 11 had conclusively determined the issue of limitation.

The Petitioner submitted that:

- The High Court's inquiry under Section 11 is limited.
- Questions involving disputed or mixed questions of fact and law should ordinarily be left to the Tribunal.
- Section 16 expressly empowers the Tribunal to rule on its own jurisdiction.
- Limitation of the Section 11 application was therefore a matter that the Tribunal was competent to examine.

The Respondent, on the other hand, maintained that the issue had effectively been settled when the High Court appointed the arbitrator.

V. Court's Analysis

Justice Shekhar B. Saraf and Justice Abdhesh Kumar Chaudhary examined the distinct functions performed under Sections 11 and 16.

The Court described the High Court's role at the referral stage as one of:

“Minimal interference and maximum delegation.”

The Court explained that the expression “examination” under Section 11 does not contemplate an elaborate adjudication of every jurisdictional issue. The referral court primarily examines the existence of the arbitration agreement. It should not become entangled in what the Court described as the “thickets” of disputed and mixed questions of fact, including questions of limitation that may require a detailed examination of evidence.

Section 16, however, serves a different purpose. The Tribunal is specifically empowered to “rule” on its own jurisdiction. The Court explained that a “ruling” involves an adjudication after considering the parties’ evidence and submissions.

The distinction is therefore significant. Section 11 involves a limited examination. Section 16 involves a substantive ruling.

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VI. The Tribunal's Jurisdiction to decide limitation

The High Court held that the Tribunal had erred in declining to adjudicate the limitation objection. The mere fact that the High Court had appointed the arbitrator did not mean that every question concerning the validity or timeliness of the arbitration process had been finally determined.

The Court observed: "The referral court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction."

Thus, the Tribunal was required to hear the parties and determine whether the Section 11 application was within the prescribed period of limitation.

VII. Why did the Writ Court intervene?

Ordinarily, courts exercise considerable restraint when dealing with ongoing arbitral proceedings. The present case, however, was considered exceptional. The High Court found that the Tribunal had declined to exercise a jurisdiction expressly vested in it by Section 16

The Court therefore observed: "The present case is one of the rarest cases warranting interference by writ court.". This is an important aspect of the judgment. The Court did not intervene merely because it disagreed with the Tribunal's approach. It intervened because the Tribunal had effectively abandoned a jurisdiction that the statute expressly conferred upon it.

The Division Bench accordingly quashed the Tribunal's order dated 09/10/2025; Directed the Tribunal to adjudicate the limitation objection under Section 16; Directed that the issue be decided on its merits after hearing both parties; and directed the Tribunal to proceed expeditiously.

The judgment provides useful guidance on the division of responsibilities between the Court and the Arbitral Tribunal. First, a Section 11 order appointing an arbitrator should not automatically be treated as a final adjudication of every jurisdictional issue.

Second, the judgment reinforces the principle of kompetenz-kompetenz. The Tribunal remains empowered to determine its own jurisdiction within the statutory framework.

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Third, the decision highlights the limited nature of judicial intervention at the referral stage. Courts should facilitate the commencement of arbitration rather than undertake detailed adjudication of issues better suited for the Tribunal.

At the same time, the judgment demonstrates that writ jurisdiction remains available in truly exceptional circumstances, particularly where an Arbitral Tribunal refuses to exercise a jurisdiction expressly entrusted to it by statute.

VIII. Conclusion

Rajendra Prasad Singh v. M/s Arch Construction reinforces a simple but important distinction: appointing an arbitrator is not the same as deciding every question that may arise before the Tribunal. The High Court's role under Section 11 is primarily to facilitate the arbitral process. Once constituted, the Tribunal retains the statutory authority to determine its own jurisdiction under Section 16.

**WINNING OR LOSING, RELIEF REMAINS
OPEN – SUPREME COURT ALLOWS
UNSUCCESSFUL PARTIES TO SEEK
POST-AWARD PROTECTION UNDER
SECTION 9**

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I. Introduction

Arbitration does not necessarily close the door on a party merely because it has lost before the arbitral tribunal. In a significant ruling, the Supreme Court has held that even an unsuccessful party in arbitration can invoke Section 9 of the Arbitration and Conciliation Act, 1996 (“*Arbitration Act*”) after an arbitral award has been passed, provided the award has not yet been enforced.

The Bench of Justices Manoj Misra and Manmohan settled conflicting views taken by various High Courts on whether post-award interim protection under Section 9 is available only to a successful party. The Court answered the question in the affirmative: Section 9 does not distinguish between a winning and a losing party.

At the same time, the Court sounded a note of caution. A losing party does not become automatically entitled to interim protection. Courts must exercise “care, caution and circumspection”, and the threshold for granting relief to an unsuccessful party would necessarily be higher.

II. Background of the Dispute

The issue arose from a batch of commercial disputes where arbitral proceedings had culminated in awards against certain parties. Following the awards, the unsuccessful parties challenged them under Section 34 of the Arbitration Act. At the same time, they approached the Court under Section 9, seeking interim protection pending adjudication of their challenges.

The central question was whether a party that had already lost before the arbitral tribunal could still seek interim measures under Section 9, despite having no award in its favor. The controversy was particularly significant because Section 9 permits a party to seek interim measures even after an award has been made, but before the award is enforced. The question was whether the

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expression “a party” could, at this stage, be understood to mean only the successful party.

III. Judicial Journey and Conflicting Views

The Bombay High Court had earlier taken a restrictive view in *Dirk India Pvt. Ltd. v. Maharashtra State Electricity Generation Co. Ltd.*⁶, holding that post-award interim protection was intended to preserve the “fruits of the award” and was therefore available to the successful party.

Following this approach, a Section 9 application filed by an unsuccessful party was rejected. The challenge to that decision under Section 37 was also unsuccessful. Other High Courts, however, had adopted a broader interpretation. The Telangana, Gujarat, and Punjab & Haryana High Courts had recognized that Section 9 does not expressly restrict the remedy to an award-holder. According to this approach, interim protection could remain necessary even for a party challenging an award. The divergence in judicial

opinion eventually brought the question before the Supreme Court.

IV. The Supreme Court’s Analysis

The Supreme Court began with the language of Section 9. The provision refers simply to “a party”. The expression is not qualified by whether that party has succeeded or failed in the arbitration. The Court held that reading such a distinction into the provision would effectively amount to rewriting the statute. The same party is capable of being a “party” before the award, during the challenge proceedings, and after the award. The statutory language does not change merely because the arbitral tribunal has reached a particular conclusion. The Court therefore rejected the argument that post-award Section 9 relief should be reserved exclusively for the successful party.

V. Section 9 has a different purpose

The Court also drew an important distinction between Sections 9, 34 and 36. Section 34 provides a mechanism to challenge an arbitral award. Section 36 deals with enforcement and

⁶ 2013 SCC OnLine Bom 481

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stay of an award. Section 9, on the other hand, serves a protective function. It enables the Court to preserve the subject matter of the dispute or the amount in controversy. Thus, the availability of a Section 34 challenge does not, by itself, eliminate the need for interim protection. This becomes particularly important where an award is under challenge and there is a possibility that the subject matter or assets connected with the dispute may be altered, dissipated or otherwise placed beyond effective protection. The Court observed that denying Section 9 relief solely because a party has lost the arbitration could leave that party without any effective mechanism to protect the subject matter while its challenge is pending.

VI. No Automatic Relief for the Losing Party

While opening the door to unsuccessful parties, the Supreme Court was equally clear that the door is not to be treated as an automatic entitlement to interim relief. The Court recognized that a losing party seeking Section 9 protection after an award has been rendered occupies a different practical position from a party seeking protection before the tribunal has delivered its decision.

Consequently, courts must examine such applications with greater caution.

The applicant would still have to satisfy the established requirements for interim protection, including considerations such as a strong prima facie case, balance of convenience and the possibility of irreparable prejudice.

The Court therefore preserved a balance between two competing concerns: ensuring that a pending challenge remains meaningful, while preventing Section 9 from becoming a device for routinely delaying or undermining enforcement of an arbitral award.

VII. The Verdict

The Supreme Court ultimately settled the conflicting High Court views. It held that any party to an arbitration agreement, including an unsuccessful party, may invoke Section 9 at the post-award stage, so long as the award has not been enforced. The Court specifically disapproved the contrary approach adopted by the Bombay, Delhi, Madras and Karnataka High Courts, while approving the position taken by the Telangana, Gujarat and Punjab & Haryana High Courts. However, the Court added an important

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qualification: courts must exercise care, caution and circumspection when considering a Section 9 application brought by an unsuccessful party.

The judgment reinforces the protective character of Section 9. An arbitral award does not, by itself, transform every dispute surrounding the parties into a closed chapter. An unsuccessful party may still have a legitimate interest in preserving the subject matter while its challenge to the award is being considered. The decision also provides greater certainty to commercial parties. The availability of Section 9 will now depend on the nature and necessity of the protection sought, rather than simply on which side prevailed in the arbitration. At the same time, the higher threshold prescribed for unsuccessful parties ensures that the remedy does not become a routine second bite at the cherry.

The Supreme Court's decision in *Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sangavi*⁷ strikes a careful balance between finality of arbitration and fairness during the challenge process. The message is clear that Section 9 does not ask who won the arbitration. It asks whether

judicial protection is necessary. By refusing to read an additional qualification into the words “a party”, the Court has preserved the statutory remedy while leaving its exercise firmly within judicial discretion.

The ruling is a useful reminder that arbitration is not merely about winning or losing. It is also about ensuring that the subject matter of the dispute remains protected until the legal process has truly run its course. The Supreme Court has kept that protective window open but has made it clear that it is a window for genuine protection, not a route to prolong the dispute.

⁷ 2026 SCC OnLine SC 670

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**IMPLEADMENT OF NON-SIGNATORY
PARTIES IN ARBITRATION**



I. Introduction

Arbitration rests on consent. A party that signs an arbitration agreement submits to the tribunal's jurisdiction. Commercial reality, however, rarely confines itself to signatories. Composite

transactions routinely involve parent companies, affiliates and interlinked contracts. A recurring question therefore arises: can a non-signatory be impleaded into arbitral proceedings? Indian law answers this chiefly through the “group of companies” doctrine, the contours of which have now been authoritatively settled.

II. Analysis

The doctrine entered Indian law through *Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc.*⁸ Joinder of a non-signatory was permitted where a composite transaction and a common intention to bind it were established. Section 2(1)(h) read with Section 7 of the Arbitration and Conciliation Act 1996 was construed to embrace persons claiming “through or under” a signatory.⁹ The doctrine was thereafter applied and expanded in *Cheran*

⁸*Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc* (2013) 1 SCC 641.

⁹Arbitration and Conciliation Act 1996, ss 2(1)(h), 7.

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Properties,¹⁰ *MTNL v Canara Bank*¹¹ and *ONGC v Discovery Enterprises*.¹²

Doubts persisted about the doctrinal foundation. A three-judge Bench referred the question to a Constitution Bench, which decided it in *Cox and Kings Ltd v SAP India Pvt Ltd*.¹³ The five-judge Bench retained the doctrine but recalibrated its basis. Consent does not incorporate, affiliation alone governs. A non-signatory may be bound only where the mutual intention of all parties to bind it is established. The Court identified the relevant indicia: participation in negotiation or performance, commonality of subject matter, the composite nature of the transaction, and the existence of a single economic unit. The tracing of the doctrine to the phrase “claiming through or under” in *Chloro Controls* was held to be erroneous.¹⁴ At the referral stage, the court leaves the question to the tribunal.

Impleadment thus turns on a fact-intensive inquiry. The tribunal, exercising competence under Section 16, determines whether the non-signatory consented. Mere membership of a corporate group does not suffice, and the separate legal personality of each entity is preserved.

III. Conclusion

Cox and Kings settle the law while retaining flexibility. Impleadment of non-signatories remains available, but is now anchored firmly in consent and common intention rather than group structure. Practitioners seeking to implead or resist impleadment of a non-signatory must marshal concrete evidence of participation and shared intention. Structural proximity alone will not carry the point.

¹⁰*Cheran Properties Ltd v Kasturi and Sons Ltd* (2018) 16 SCC 413.

¹¹*Mahanagar Telephone Nigam Ltd v Canara Bank* (2020) 12 SCC 767.

¹²*ONGC Ltd v Discovery Enterprises Pvt Ltd* (2022) 8 SCC 42.

¹³*Cox and Kings Ltd v SAP India Pvt Ltd* (2024) 1 SCC 1 (also reported as 2023 SCC OnLine SC 1634).

¹⁴*ibid* [168].

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**ENFORCEMENT OF FOREIGN
ARBITRAL AWARDS IN INDIA**

I. Introduction

India is a party to the New York Convention 1958. Part II of the Arbitration and Conciliation Act 1996 governs the recognition and enforcement of foreign awards falling within it. The statutory scheme is pro-enforcement in design. A foreign award, once found enforceable, is deemed a decree of the court and may be executed as such.

II. Analysis

The award-holder applies to the competent High Court under Section 47, producing the original (or duly authenticated) award and the arbitration agreement.¹⁵ Enforcement may be refused only on the narrow grounds enumerated in Section 48,

¹⁵Arbitration and Conciliation Act 1996, s 47.

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which track Article V of the Convention: incapacity, an invalid agreement, want of proper notice, excess of jurisdiction, irregular composition of the tribunal, and an award not yet binding.¹⁶ Section 48(2) adds non-arbitrability and conflict with the public policy of India.

Public policy has been the principal battleground. In *Renusagar Power Co Ltd v General Electric Co*, the Court construed the ground narrowly: enforcement is refused only for a breach of the fundamental policy of Indian law, the interests of India, or justice and morality.¹⁷ The wider “patent illegality” test was briefly imported into Section 48 by *Phulchand Exports*, but that view was overruled in *Shri Lal Mahal Ltd v Progetto Grano Spa*, which restored *Renusagar* and held that Section 48 permits no review on the merits.¹⁸ The 2015 Amendment codified this position; Explanation 2 to Section 48(2)(b) expressly bars a merits review.¹⁹

Vijay Karia v Prysmian Cavi E Sistemi SRL crystallised the pro-enforcement bias.²⁰ A rectifiable breach of FEMA was held not to offend the fundamental policy of Indian law, and the public policy defence was confined to exceptional cases that shock the conscience of the court. *Gemini Bay* confirmed that a foreign award may bind non-signatories and that the burden of resisting enforcement lies on the objector.²¹ Where no Section 48 ground is made out, the award becomes enforceable under Section 49 as a decree.

III. Conclusion

Indian courts now read Section 48 restrictively. The enforcement court's role is supervisory, not appellate. Subject only to limited public policy safeguards, foreign awards are enforced with minimal interference, a stance that aligns Indian

¹⁶*ibid* s 48(1).

¹⁷*Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644.

¹⁸*Shri Lal Mahal Ltd v Progetto Grano Spa* (2014) 2 SCC 433.

¹⁹Arbitration and Conciliation Act 1996, s 48(2)(b), Explanation 2 (inserted by the 2015 Amendment).

²⁰*Vijay Karia v Prysmian Cavi E Sistemi SRL* (2020) 11 SCC 1.

²¹*Gemini Bay Transcription Pvt Ltd v Integrated Sales Service Ltd* (2022) 1 SCC 753.

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practice with prevailing international norms and reinforces India's credentials as an arbitration-friendly jurisdiction.



I. Introduction

Here's a cautionary tale for anyone tempted to fire off a quick reply on a family WhatsApp group without thinking it through. The Delhi High Court in *Vinay Mawandia v. Bimal Mawandia & Anr*²² has just shut down a bid to set aside an arbitral award, essentially because the man challenging it had, years earlier, replied "Noted thanks" when the award landed in a group chat and then went on to actually negotiate its implementation.

Justice Harish Vaidyanathan Shankar was hearing a dispute between brothers from the Mawandia family, who had run a business together before things soured over how to split certain family and company properties. They tried to sort it out through a Memorandum of

**DELHI HIGH COURT RULES WHATSAPP
ACKNOWLEDGMENT OF ARBITRAL
AWARD BARS BELATED CHALLENGE**

²² 2026 SCC OnLine Del 5097

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Understanding in 2019, that didn't hold up, and in 2021 they agreed to take the matter to arbitration instead. A three-member tribunal eventually passed an interim award, laying out how the properties were to be divided, gift deeds to be executed, transfer documents drawn up, bank no-objection certificates obtained, and so on.

II. Implications and Arguments

The award was shared in a WhatsApp group set up specifically for the dispute. Vinay Mawandia, one of the brothers, saw it and replied with those two words. What followed wasn't silence, he stayed engaged, discussing how the deeds should be drafted and raising his own conditions on the transfers. It was only around three years later, once his brothers moved to enforce the award through execution proceedings, that Vinay turned around and challenged it in court under Section 34 of the Arbitration and Conciliation Act. His argument was that he'd only ever seen an unsigned version on WhatsApp, and only learned there was a signed copy once he was served with the execution petition. He also pointed out that the award touched property belonging to a relative who

wasn't even a party to the arbitration, and that just two of the three arbitrators had actually signed it.

None of that moved the Court. What stood out to the judge wasn't the technical gaps in the award, but how Vinay had actually behaved after he received it -negotiating, suggesting edits, raising conditions, all without a word of protest. If he genuinely had concerns about missing signatures or an unsigned copy, the Court noted, he had two years to ask the tribunal for a proper copy or raise the issue, and never did. That made the objections look less like genuine grievances and more like a fallback position, dusted off only once enforcement became real. The Court also pointed out that a party can't accept the upside of a settlement for years and then turn around and reject it once it's inconvenient and in any case, the thirty-day outer limit on condoning delay under Section 34(3) left no room to even entertain a petition filed this late, particularly one that didn't even ask for condonation.

III. Conclusion

The bigger takeaway here is that courts are increasingly willing to look at how people

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actually conduct themselves over WhatsApp and other messaging platforms, not just whether a formal, signed document was couriered to their doorstep. A quick acknowledgment followed by real engagement on the substance can be enough to start the limitation clock running, and enough, later, to stop a party from disowning an award it once seemed perfectly happy to work with.



I. The Promise of AI in Arbitration

Artificial intelligence is moving from the margins of legal practice into the architecture of dispute resolution. In arbitration, its immediate value lies not in replacing arbitrators, but in making the process faster and more manageable. AI can assist with document review, legal research, transcription, translation, case management and predictive analysis. Processing large volumes of material can be valuable in complex disputes,

**ARBITRATION IN THE AGE OF AI:
EFFICIENCY WITHOUT LOSING HUMAN
JUDGMENT**

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where efficiency is a principal attraction of arbitration.²³

India's courts have shown openness to technology. In *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd. and Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, the Supreme Court recognized the legal significance of electronic communications in arbitration.²⁴ Similarly, acceptance of electronic communication in the appointment process demonstrates that arbitration law can accommodate change.²⁵ The question is where its boundaries should lie.

II. The Confidentiality Dilemma

AI's usefulness is inseparable from its dependence on data. Arbitration, however, is built around confidentiality and often involves sensitive commercial information. Feeding such material into public or inadequately secured AI systems can create risks of data leakage, privacy breaches and loss of procedural confidence.²⁶

The challenge becomes sharper when AI is used for predictive analysis. Such systems depend upon reliable historical data, yet arbitral awards are often unpublished or available only in anonymised or summarised form. A limited data pool may therefore produce incomplete or distorted predictions. AI can identify patterns, but a pattern is not necessarily a legal principle and not a substitute for evidence and argument.

III. The Human Arbitrator must remain Accountable

The most important boundary concerns decision-making. AI may summarise pleadings, organise authorities or identify inconsistencies, but an arbitrator cannot outsource judgment. The SVAMC Guidelines on the Use of AI in Arbitration emphasize that arbitrators must independently analyse the facts, law and

²³ Akash Gupta, Arushi Bajpai & Samanvi Narang, *Setting the Boundaries for the Use of AI in Indian Arbitration*, 2025 Eng. Proc. 107, 39 (2025).

²⁴ *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.*, (2009) 2 SCC 134 (India); *Trimex Int'l FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 3 SCC 1 (India)

²⁵ *Ibid.*

²⁶ Silicon Valley Arbitration & Mediation Center, *Guidelines on the Use of Artificial Intelligence in Arbitration*, Guideline 6 (1st ed. 2024).

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evidence and cannot delegate their adjudicative function to AI.²⁷

This principle also addresses algorithmic and automation bias. AI systems learn from historical information and may reproduce assumptions embedded within that information. More subtly, a human decision-maker may accept an apparently authoritative AI-generated conclusion without sufficiently questioning it. The result could be an award that is efficient but substantively flawed.

IV. Towards a Practical Regulatory Framework

India presently has no arbitration-specific statutory framework governing AI use. Emerging international approaches provide useful models. The EU AI Act treats certain AI systems used in the administration of justice and alternative dispute resolution as high-risk and emphasizes transparency, reliability, risk management and human oversight.²⁸ The SCC AI Guide similarly stresses confidentiality, integrity, quality and

non-delegation.

India need not choose innovation over safeguards. A practical framework could require disclosure of material AI use, prohibit delegation of substantive adjudication, protect confidential information, maintain auditable records where AI materially influences proceedings, and encourage audits. AI literacy should also become part of professional training for arbitrators and counsel.

The future of arbitration is therefore unlikely to be human versus machine. The useful model is human judgment augmented by technology. AI can make arbitration quicker, more accessible and efficient; but legitimacy still depends on someone being accountable for the decision. The machine may assist the arbitrator, but it cannot inherit the arbitrator's responsibility.

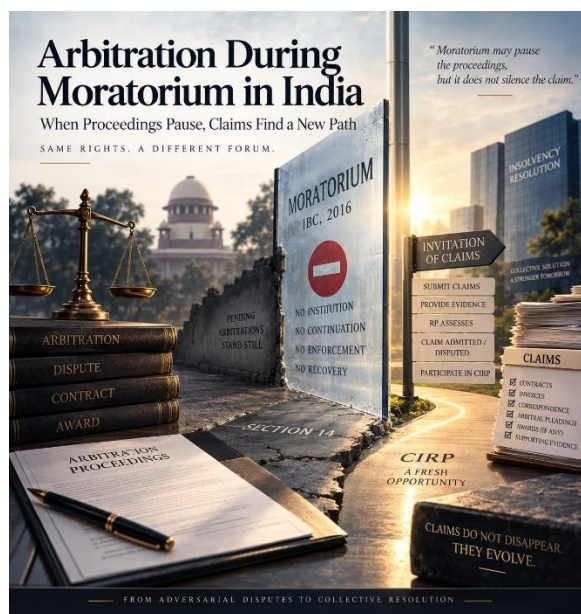
²⁷ Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024, arts. 6, 14 & Annex III, 2024 O.J. (L 1689) (EU).

²⁸ Stockholm Chamber of Commerce Arbitration Institute, Guide to the Use of Artificial Intelligence in Cases Administered Under the SCC Rules (Oct. 16, 2024).

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ARBITRATION DURING MORATORIUM:
WHERE CLAIMS MOVE WHEN
PROCEEDINGS STOP



I. Introduction

The Insolvency and Bankruptcy Code, 2016 (“IBC”) and the Arbitration and Conciliation Act, 1996 (“Arbitration Act”) often intersect in the same dispute. Arbitration resolves a bilateral dispute; insolvency seeks collective resolution of the corporate debtor’s liabilities. Once the National Company Law Tribunal (“NCLT”) admits an insolvency application, Section 14 imposes a moratorium, creating a boundary for arbitral proceedings.²⁹

II. When Moratorium begins and its effect on Arbitration

Section 14(1)(a) prohibits institution or continuation of proceedings against the corporate debtor, expressly including proceedings before an arbitration panel. In *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd.*, the Supreme Court held that an arbitration instituted after the moratorium is imposed is “non est in law.”³⁰ A creditor therefore cannot circumvent

²⁹ Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 14(1)(a), 238 (India).

³⁰ *Alchemist Asset Reconstruction Co. v. Hotel Gaudavan Pvt. Ltd.*, (2018) 16 SCC 94 (India).

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insolvency by commencing arbitration after admission of the insolvency petition.

The position affects pending arbitrations. In *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*, the Supreme Court held that proceedings under Section 34 of the Arbitration Act could be covered by Section 14 where they amount to proceedings against the corporate debtor.³¹ The moratorium protects the collective insolvency process from individual enforcement.

There have, however, been fact-sensitive decisions permitting limited continuation where the proceeding benefits the corporate debtor or merely determines a claim without permitting recovery during the moratorium. The governing consideration remains whether continuation defeats the protective purpose of Section 14.

III. Invitation of Claims: The Critical Transition

³¹ 31 P. Mohanraj v. Shah Bros. Ispat Pvt. Ltd., (2021) 6 SCC 258 (India).

³² Insolvency and Bankruptcy Code, No. 31 of 2016, § 15 (India); Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reg. 6 (India).

After CIRP begins, the Interim Resolution Professional (“IRP”) makes a public announcement inviting creditors to submit proof of their claims.³² The purpose is to bring creditors into the process and enable the IRP/RP to identify liabilities.³³

A creditor with an arbitral claim should submit its claim to the IRP/RP in the prescribed form, supported by contracts, invoices, correspondence, pleadings, arbitral orders, awards, and evidence. A disputed claim or one previously pursued in arbitration remains relevant to CIRP. The RP must assess the claim on available material and determine the amount admitted.

Timing is crucial. Regulation 12 permits a creditor who misses the initial deadline to submit its claim with proof up to the date of issue of the request for resolution plans or ninety days from the insolvency commencement date, whichever is later; reasons must be given where filing extends

³³ Id. §§ 18(1)(b), 25(2)(h); Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reg. 13 (India).



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beyond ninety days.³⁴ Claims received thereafter may require directions from the Adjudicating Authority.

IV. The Claim Moves, it does not Disappear

The result is a shift in forum and purpose: arbitration determines the dispute, while CIRP processes the creditor's claim collectively. In *K.S. Oils Ltd. v. State Trading Corp. of India Ltd.*, the NCLAT recognized that pending arbitration could not proceed during moratorium, while leaving the parties free to file their claims and counterclaims before the Resolution Professional.³⁵

The practical lesson is simple for creditors. Moratorium does not extinguish an arbitral claim; it changes how that claim must be pursued. Creditors must promptly transition from the arbitral forum to the claims process, preserve evidence, and ensure the claim is lodged. In insolvency, the question is no longer

only whether a creditor has a right but how that right is captured within the collective process.

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Note from the editorial: Credits to all the members for encouraging and offering suggestions for this bulletin. Thank you for making this possible. Though the issue is being circulated in September 2026, we have covered recent developments from previous months.

Committee Members for Bulletin:

³⁴ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reg. 12(1) (as amended Sept. 18, 2023) (India).

³⁵ *K.S. Oils Ltd. v. State Trade Corp. of India Ltd. & Anr.*, Company Appeal (AT) (Insolvency) No. 284 of 2017 (NCLAT Jan. 30, 2018) (India).



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