

Supreme Court Settles the Debate: Can a Losing Party in Arbitration Seek Interim Protection After the Award?

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The Supreme Court, in *Home Care Retail Marts Private Limited v Haresh N. Sanghavi*, 2026 SCC OnLine SC 670 resolved a long-standing conflict amongst various High Courts on whether a party who lost in arbitral proceedings can apply to a Court for interim reliefs under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) at the post-award stage.

Background

When parties submit their disputes to arbitration, they expect a final and binding resolution. But what happens when one party loses and believes the award is flawed: Can the losing party approach a court for interim protection while it has challenged the Award?

This question had divided courts across India for over a decade creating significant uncertainty.

The Conflict: A Divided Judicial Landscape

The High Courts of Bombay¹, Delhi², Madras³, and Karnataka⁴ took a view that once an arbitral award is passed, only the successful party can seek interim protection from a court under Section 9 of the Arbitration Act. The principal reasoning was straightforward: Section 9 exists to protect the "fruits of the award", and a losing party has no such fruits to protect.

On the contrary, the High Courts of Telangana⁵, Gujarat⁶, and Punjab & Haryana⁷ took a view that any party to an arbitration, including the losing party, could seek interim protection under Section 9, provided there was a genuine need of safeguard while the award was being challenged.

The Supreme Court has put this debate to rest and upheld the view that losing party could also seek interim protections during the challenge to the award.

Analysis by the Supreme Court

The expression "any party"

The Supreme Court held Section 9 of the Arbitration Act allows "a party" to approach the court for interim measures. The Court held that this phrase refers to any party to the arbitration agreement, without

¹ Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited [2013 SCC OnLine Bom 481].

² Nussli Switzerland Limited v. Organising Committee Commonwealth Games, 2010 [2014 SCC OnLine SC 4834]; National Highways Authority of India v. Punjab National Bank and Another [2023 SCC OnLine Del 4810].

³ A. Chidambaram v. S. Rajagopal and Others [OA No. 843 of 2024].

⁴ Smt. Padma Mahadev and Others. v. Sierra Constructions Private Limited [COMAP No. 2 of 2021 dated 22 March 2021]

⁵ Saptarishi Hotels Private Limited and Another v. National Institute of Tourism & Hospitality Management (NITHM) [2019 SCC OnLine TS 1765].

⁶ GAIL (India) Limited v. Latin Rasayani Private Limited [2014 SCC OnLine Guj 14836].

⁷ DLF Home Developers Limited v. Orris Infrastructure Private Limited and Others MANU/PH/0435/2025.

distinguishing between the successful party or unsuccessful party, and must be given its plain and natural meaning.

The Court found that reading “a party” to mean only the successful party would amount to rewriting the statute and no court is empowered to do so. Importantly, other provisions of the Arbitration Act specifically identify which party may invoke them; Section 9 does not. That absence of such restriction is deliberate. The Court specifically drew a contrast to Article 9 of the UNCITRAL Model Law confines interim measures to the stage “before or during arbitral proceedings” as well as Section 18 of the Arbitration Act, 1940, under which the grant of interim measures was expressly confined to the successful party and directed solely towards ensuring enforcement of the award. Under the present Arbitration Act, the legislature imposed no such restriction under Section 9, making its intent manifest.

A stay under Section 36 is not always enough

The Court also rejected the argument that the availability of remedies under Sections 34 and 36 renders Section 9 redundant for an unsuccessful party. It held that Section 36 only prevents enforcement of the award and does not protect the underlying assets or subject matter of the dispute. If, during the pendency of a Section 34 challenge, the successful party dissipates its assets or transfers the property in question, the unsuccessful party would be left with a hollow victory even if the award is eventually set aside. The Court observed that Section 9 fills this gap and is the only provision that allows a court to actively preserve the subject matter of the dispute, regardless of who won the arbitration.

Arbitration does not end with the award

The Court also reiterated that arbitral proceedings do not conclude the moment an award is passed as an award can be challenged, modified, or set aside relying on the ruling of the Constitution Bench in **Gayatri Balasamy v ISG Novasoft Technologies Limited, 2025 SCC OnLine SC 986** that courts have the power not just to uphold or set aside an award, but also to modify it. This broader judicial role over an arbitral award further supports the view that a party, including a losing party, must have access to protective measures during the challenge period. Please find our [Ergo Update dt. 3.5.25 on Gayatri Balasamy](#).

Safeguards against misuse

The Court was conscious that this ruling should not become a tool for a losing party to delay or frustrate the enforcement of a legitimate award. It therefore laid down clear safeguards.

The well-established principles governing grant of interim relief *prima facie* case, balance of convenience, and likelihood of irreparable harm continue to apply. The threshold is set higher for an unsuccessful party and interim relief will be granted only in rare and compelling circumstances.

In effect, the door is open, but it is not a wide-open door.

Conclusion and Implications

The Supreme Court’s view settles the position on an issue on which there were conflicting views amongst the various High Courts. The decision is relevant to a party who lost in an arbitration but has strong grounds to challenge the award on grounds of fraud, or procedural impropriety or patent illegality, as it can now seek protection from the court against dissipation of assets or the subject matter of the dispute while the challenge to the award is pending.

- Ajay Bhargava (Partner); Arvind Ray (Partner) and Apoorva Jain (Senior Associate)



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