

Section 9 of the Arbitration and Conciliation Act, 1996

Introduction

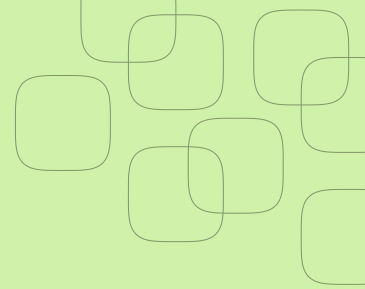
Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) is a crucial provision that allows parties to seek interim relief from courts before, during, or after arbitration proceedings, but before the enforcement of the arbitral award. The provision ensures that the subject matter of the dispute is protected, and the arbitration process is not rendered ineffective due to delays or dilatory tactics. Over the years, Section 9 has been interpreted and applied in various landmark judgments, shaping its scope and application.

Section 9 allows parties to seek interim relief from courts before, during, or after the arbitration proceedings but before the enforcement of the arbitral award. The provision ensures that the subject matter of the dispute is preserved, and the arbitration process remains effective. The Supreme Court, in *Sundaram Finance Ltd. v. NEPC India Ltd.*, emphasized that courts could grant interim measures even before the commencement of arbitration proceedings, highlighting the preventive nature of Section 9.

Interim Measures Under Section 9

The types of interim measures that courts can grant under Section 9 include:

- Preservation, interim custody, or sale of goods that are the subject matter of the arbitration agreement.
- Securing the amount in dispute in the arbitration.
- Detention, preservation, or inspection of any property or thing concerning which any question may arise in the arbitration.
- Interim injunctions or the appointment of a receiver.
- Such other interim measures of protection as may appear to the court to be just and convenient.



In *Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd.*, the Supreme Court clarified that while granting interim measures under Section 9, courts should be guided by the principles governing the grant of interim injunctions under Order XXXIX of the Code of Civil Procedure, 1908.

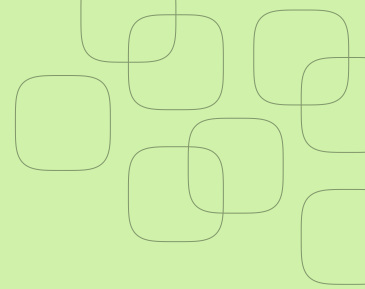
Amendments and Judicial Interpretation

The Arbitration and Conciliation (Amendment) Act, 2015, introduced significant changes to Section 9. Notably, Section 9(2) mandates that if a court grants an interim measure before the commencement of arbitration, the arbitration must begin within 90 days from the date of the court's order or within such further time as the court may determine. This amendment aims to prevent misuse of the provision by ensuring that parties do not unduly delay the initiation of arbitration after obtaining interim relief.

Furthermore, Section 9(3) restricts courts from entertaining applications for interim measures once the arbitral tribunal has been constituted, unless the court finds that circumstances exist which may not render the remedy provided under Section 17 (interim measures by the arbitral tribunal) efficacious. In *Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.*, the Supreme Court elucidated that the term “entertain” in Section 9(3) refers to the court's act of considering the application on merits. Therefore, if an application under Section 9 is filed before the constitution of the tribunal and the court has applied its mind to it, the subsequent constitution of the tribunal does not oust the court's jurisdiction.

Interplay Between Section 9 and Section 17 (Tribunal's Power to Grant Interim Relief)

Before the 2015 amendment, parties frequently approached courts under **Section 9**, even when an arbitral tribunal could grant relief under **Section 17**. The 2015 Amendment Act sought to limit this duplication by ensuring that once a tribunal is formed, it should be the primary authority to grant interim relief.



Bhubaneswar Expressways Pvt. Ltd. v. NHAI (2019): Delhi High Court allowed a Section 9 application after a tribunal was formed because the arbitrator recused himself, making Section 17 relief ineffective.

The Supreme Court, in *Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.* (2021), clarified that courts should refrain from entertaining applications under Section 9 once the tribunal is constituted, unless the tribunal cannot provide an effective remedy.

Halliburton Offshore Services Inc. v. Vedanta Limited (2020): Delhi High Court ruled that injunctions against bank guarantees require proof of fraud or irreparable loss before they can be granted under Section 9.

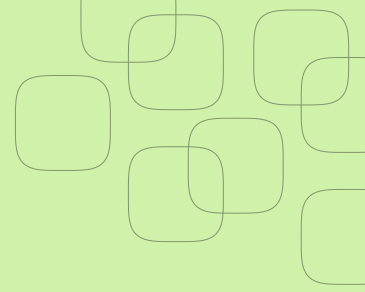
Jurisdictional Aspects of Section 9

Section 2(1)(e) of the Act states that jurisdiction under Section 9 lies with:

- The **High Court** for international commercial arbitrations.
- The **Principal Civil Court of a District** for domestic arbitrations.
 - The “seat” of arbitration denotes the legal jurisdiction or the “juridical seat” for the arbitration proceedings, granting exclusive jurisdiction to courts at that location for matters like interim reliefs or challenges to the award (*Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.*).
 - The “venue” refers to the physical location where arbitration hearings take place, which does not impact the court’s jurisdiction unless the venue is explicitly designated as the seat in the agreement (*Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* (BALCO)).

1. Precedence of Seat Over Exclusive Jurisdiction Clause:

In cases like *Devyani International Ltd. v. Siddhivinayak Builders and Developers* and *BGS SGS SOMA JV v. NHPC Ltd.*, the courts have consistently held that the designation of the seat is akin to an exclusive jurisdiction clause. Therefore, the courts in Bombay (seat) will have jurisdiction over arbitration matters.



2. Party Autonomy and Construction of the Clause:

Courts also examine the intention of the parties and the overall contract language. In *Nitin Kwatra v. Stadhawk Services Pvt. Ltd.*, the Delhi High Court treated the venue (Delhi) as the seat in the absence of clear contrary indicators. However, in your case, since "Bombay" is explicitly designated as the seat, it assumes overriding importance.

Conclusion: Despite the mention of the Delhi High Court in the agreement, the designation of Bombay as the seat confers exclusive jurisdiction to Bombay courts for all matters concerning the arbitration, including applications under Sections 9 and 11. This conclusion aligns with authoritative decisions like *Indus Mobile Distribution Pvt. Ltd.* and *BGS SGS SOMA JV*.

Case Laws Supporting the Answer:

1. ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. (2017)***: Established the seat's overriding jurisdiction.
2. ***BGS SGS SOMA JV v. NHPC Ltd. (2020)***: Reinforced that the seat is akin to an exclusive jurisdiction clause.
3. ***Devyani International Ltd. v. Siddhivinayak Builders and Developers (2017)***: Held that the seat supersedes any contradictory exclusive jurisdiction clause.
4. ***My Preferred Transformation and Hospitality Pvt. Ltd. v. Panchdeep Construction Ltd. (2024)***: Confirmed seat jurisdiction extends to Sections 9 and 11 applications.

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