
INTERIM (PROVISIONAL) MEASURES IN INTERNATIONAL COMMERCIAL ARBITRATION: A LEGAL STUDY

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ABSTRACT

International commercial arbitration provides an effective mechanism for resolving disputes arising from cross-border commercial transactions. However, the arbitration process may take considerable time before a final award is delivered. During this period, there may be a risk that a party may dispose of assets, destroy evidence, transfer property, or take other actions which may affect the effectiveness of the final arbitral award. Interim or provisional measures are therefore important to preserve the rights and interests of the parties until the dispute is finally decided.

The legal framework relating to interim measures in international commercial arbitration operates through both courts and arbitral tribunals. In India, Sections 9 and 17 of the Arbitration and Conciliation Act, 1996 provide the principal statutory framework for interim protection. Section 9 enables a party to approach the court for interim measures, while Section 17 provides similar powers to the arbitral tribunal. The 2015 amendment strengthened the tribunal's power by making orders under Section 17 enforceable in the same manner as orders of the court. The UNCITRAL Model Law also provides an important international framework for interim measures and recognises the need for effective judicial assistance in arbitration.

The article examines the meaning, importance and different forms of interim measures in international commercial arbitration. It analyses the powers of courts and arbitral tribunals, the relationship between Sections 9 and 17, relevant judicial decisions and the development of emergency arbitration in India. The decision of the Supreme Court in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* is particularly significant because it recognised the enforceability of an emergency arbitrator's order within the Indian arbitration framework. The article also examines practical challenges such as enforcement, jurisdictional issues, delay, interference by courts and the need for effective protection of assets and evidence.

The study concludes that interim measures are an essential part of an

effective arbitration system. A balanced approach between judicial support and arbitral autonomy is necessary to ensure that interim protection does not defeat the objectives of speed, efficiency and party autonomy in international commercial arbitration.

Keywords: Arbitral Tribunal, Emergency Arbitration, International Commercial Arbitration, Interim Measures, Provisional Measures, Section 9, Section 17, UNCITRAL Model Law.

INTRODUCTION

International commercial arbitration is widely used for resolving disputes arising from international business and commercial transactions. Parties belonging to different countries may prefer arbitration because it provides a private and flexible method of dispute resolution. However, arbitration does not always provide an immediate solution. The final arbitral award may take considerable time. During this period, the subject matter of the dispute or the assets of a party may be at risk.

For example, a party may attempt to sell disputed property, transfer money to another jurisdiction, destroy important documents, or interfere with evidence. If such actions are not prevented, the final arbitral award may become difficult or impossible to enforce. Interim measures therefore perform an important protective function in arbitration. An interim measure is a temporary order intended to protect the rights, property, evidence or position of a party until the final resolution of the dispute. Such measures do not normally determine the final rights of the parties. Their purpose is to preserve the effectiveness of the arbitral process and prevent serious harm during the pendency of the proceedings. In India, the Arbitration and Conciliation Act, 1996 provides for interim measures through Sections 9 and 17. Section 9 deals with interim measures by courts, whereas Section 17 deals with interim measures ordered by the arbitral tribunal. Section 9 permits an application before or during arbitral proceedings and, in the circumstances specified by the Act, after the award but before enforcement. Section 17 gives the arbitral tribunal power to grant interim protection during the arbitral proceedings.

The UNCITRAL Model Law on International Commercial Arbitration also recognises interim measures as an important part of the arbitral process. The 2006 amendments introduced a more comprehensive regime dealing with interim measures and preliminary orders. This article examines the legal framework relating to interim or provisional measures in international

commercial arbitration, with particular emphasis on Indian law and the UNCITRAL Model Law. It also considers important judicial decisions and the development of emergency arbitration in India.

MEANING AND IMPORTANCE OF INTERIM MEASURES

An interim measure is a temporary form of protection granted before the final determination of a dispute. It is intended to maintain or restore the existing position, preserve property or evidence, prevent harmful conduct, or secure the effectiveness of the eventual arbitral award. The main purpose of an interim measure is not to finally decide the dispute. Instead, it protects the subject matter of the dispute until the arbitral tribunal can determine the rights and liabilities of the parties.

In international commercial arbitration, interim measures become particularly important because the parties, assets and evidence may be located in different countries. A party may therefore require immediate protection in a jurisdiction other than the place where the arbitration is seated. Interim protection may be required in situations involving preservation of assets, protection of evidence, injunctions, security for amounts in dispute, preservation of goods, appointment of a receiver and other protective measures.

The importance of interim measures can be understood through the following purposes:

1. Preservation of Assets

A party may attempt to transfer or dispose of assets during arbitration. An interim order can prevent such conduct and protect the assets until the final award.

2. Preservation of Evidence

Documents, electronic records, physical property or other evidence may be destroyed or altered. Interim measures can preserve such evidence for use during the arbitration.

3. Protection of the Subject Matter of Arbitration

Where the dispute relates to specific goods, property or commercial assets, interim measures may prevent their destruction, transfer or disposal.

4. Prevention of Irreparable Harm

Certain losses cannot be adequately compensated through money. Interim protection may therefore be required to prevent such harm before the final award.

5. Ensuring Effectiveness of the Final Award

The ultimate purpose of interim protection is to ensure that the final arbitral award remains meaningful and capable of being effectively implemented.

LEGAL FRAMEWORK FOR INTERIM MEASURES

Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 is the principal legislation governing arbitration in India. The Act is influenced by the UNCITRAL Model Law and seeks to provide an effective framework for domestic and international arbitration. Sections 9 and 17 are particularly important in relation to interim measures.

Section 9 – Interim Measures by Court

Section 9 enables a party to approach a court for interim protection. The provision allows an application before or during arbitral proceedings and, subject to the statutory framework, after an arbitral award but before its enforcement.¹

The measures that may be granted include:

- preservation, interim custody or sale of goods
- securing the amount in dispute
- detention, preservation or inspection of property
- preservation of evidence
- interim injunction

¹ Arbitration and Conciliation Act, No. 26 of 1996, § 9, India Code (1996).

- appointment of a receiver and any other measure which the court considers just and convenient.

Section 9 is particularly important where immediate protection is required and the arbitral tribunal has not yet been constituted.

In *Sundaram Finance Ltd. v. NEPC India Ltd.*, the Supreme Court recognised that a court can grant interim relief under Section 9 even before the commencement of arbitral proceedings, provided there is a valid arbitration agreement and a genuine intention to pursue arbitration.² This decision is important because it recognises the practical need for urgent protection before an arbitral tribunal is constituted.

Section 17 – Interim Measures by Arbitral Tribunal

Section 17 provides the arbitral tribunal with the power to grant interim measures during arbitral proceedings. The provision covers matters similar to those mentioned under Section 9, including preservation of goods, securing the amount in dispute, inspection and preservation of property, injunctions and appointment of a receiver.³ The 2015 amendment significantly strengthened Section 17 by providing that an order of the arbitral tribunal under Section 17(1) shall be enforceable in the same manner as an order of the court.⁴ This development reduced the earlier difficulty concerning the practical enforcement of tribunal-ordered interim measures. The strengthened Section 17 reflects the principle that arbitral tribunals should have effective powers to protect the subject matter of arbitration without requiring unnecessary intervention from courts.

RELATIONSHIP BETWEEN SECTION 9 AND SECTION 17

Sections 9 and 17 perform similar protective functions, but they operate through different authorities. Section 9 provides judicial assistance, whereas Section 17 gives protective powers to the arbitral tribunal. After the constitution of the arbitral tribunal, the general principle under Section 9(3) is that the court should not entertain an application for interim measures unless circumstances exist which may not render the remedy under Section 17 efficacious.⁵ This

² *Sundaram Finance Ltd. v. NEPC India Ltd.*, (1999) 2 SCC 479.

³ Arbitration and Conciliation Act, No. 26 of 1996, § 17, India Code (1996).

⁴ Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 11, India Code (2016).

⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 9(3), India Code (1996).

provision encourages parties to approach the arbitral tribunal once it has been constituted. It also supports the principle of minimal judicial intervention in arbitration. The two provisions should not be viewed as competing remedies. They operate together to provide effective protection at different stages of the arbitration.

TYPES OF INTERIM MEASURES

1. Preservation of Assets

Preservation of assets is one of the most important forms of interim protection. A party may fear that the opposing party will transfer, sell or dispose of its assets to avoid the consequences of a future award. The court or tribunal may therefore order appropriate protection of property or assets.

2. Preservation and Inspection of Evidence

Evidence may include documents, electronic records, physical property, samples and other material. If there is a possibility of destruction or alteration, an interim order may be necessary. Preservation of evidence is particularly significant in modern commercial disputes because large amounts of evidence are stored electronically.

3. Interim Injunction

An injunction prevents a party from doing a particular act or, in appropriate circumstances, requires a party to take a particular action. For example, an injunction may prevent the sale or transfer of disputed property. In *Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd.*, the Supreme Court held that ordinary principles governing interim injunctions, including prima facie case, balance of convenience and irreparable injury, remain relevant while courts exercise power under Section 9.⁶

4. Security for the Amount in Dispute

A party may seek protection where there is a concern that the other party may not be able to satisfy the eventual award. An interim measure may therefore be directed towards securing the

⁶ *Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd.*, (2007) 7 SCC 125.

amount in dispute.

5. Preservation of Goods

Where goods are the subject matter of the dispute, the court or tribunal may order their preservation, custody or, where appropriate, sale. This is particularly relevant where goods are perishable or may lose their value during the arbitration.

6. Appointment of Receiver

In appropriate cases, a receiver may be appointed to preserve or manage disputed property until the dispute is finally determined.

7. Security for Costs

In some arbitral proceedings, security for costs may be sought to protect a party against the risk of unrecovered costs. The availability and conditions of such measures may depend upon the applicable law and institutional rules governing the arbitration.

JUDICIAL APPROACH TOWARDS INTERIM MEASURES IN INDIA

Sundaram Finance Ltd. v. NEPC India Ltd.

The Supreme Court's decision in *Sundaram Finance Ltd. v. NEPC India Ltd.* is an important authority on Section 9. The Court held that interim relief could be granted even before commencement of arbitral proceedings where a valid arbitration agreement existed and the applicant demonstrated an intention to pursue arbitration.⁷ The judgment recognised that urgent protection may sometimes be necessary before an arbitral tribunal is constituted.

Firm Ashok Traders v. Gurumukh Das Saluja

In *Firm Ashok Traders v. Gurumukh Das Saluja*, the Supreme Court considered the nature of proceedings under Section 9. The Court explained that the purpose of Section 9 is to protect the right under adjudication before the arbitral tribunal from being frustrated.⁸ The decision demonstrates that Section 9 is connected with the arbitral proceedings and is not intended to

⁷ *Sundaram Finance Ltd. v. NEPC India Ltd.*, (1999) 2 SCC 479.

⁸ *Firm Ashok Traders v. Gurumukh Das Saluja*, (2004) 3 SCC 155.

become an independent substitute for arbitration.

Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd.

In Adhunik Steels, the Supreme Court emphasised that ordinary principles applicable to interim injunctions cannot simply be ignored when exercising powers under Section 9. The court may consider factors such as prima facie case, balance of convenience and irreparable injury.⁹ This approach attempts to balance the need for urgent protection with the requirement that interim orders should be judicially justified.

INTERIM MEASURES UNDER THE UNCITRAL MODEL LAW

The UNCITRAL Model Law provides an internationally recognised framework for arbitration legislation. Chapter IV A, introduced through the 2006 amendments, provides a comprehensive regime relating to interim measures and preliminary orders.¹⁰

Article 17 of the Model Law permits an arbitral tribunal to grant interim measures where necessary to protect the subject matter of the dispute or prevent harm during the proceedings.

The Model Law recognises several forms of interim protection, including:

- maintaining or restoring the status quo;
- preventing present or imminent harm;
- preserving assets; and
- preserving evidence relevant to the dispute.

Article 17 also provides a framework for recognition and enforcement of interim measures. The UNCITRAL framework is important because international arbitration frequently involves parties and assets situated in different jurisdictions. A common legal framework can therefore improve predictability and cooperation between jurisdictions.

⁹ Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd., (2007) 7 SCC 125.

¹⁰ U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on International Commercial Arbitration, ch. IV A (1985, amended 2006).

ROLE OF COURTS IN INTERNATIONAL COMMERCIAL ARBITRATION

Courts have an important supporting role in arbitration. Although arbitration is based on party autonomy, arbitral tribunals may not always possess the same coercive powers as national courts. For example, a tribunal may need judicial assistance for the protection of assets, enforcement of orders or obtaining evidence from third parties. The role of courts should therefore be understood as supportive rather than substitutive. The objective is to ensure that judicial intervention does not unnecessarily delay the arbitration while also ensuring that parties receive effective protection where arbitral powers are insufficient. The UNCITRAL framework similarly recognises the importance of court assistance in supporting arbitral proceedings.¹¹

EMERGENCY ARBITRATION

Emergency arbitration is an important development in the field of interim measures. An emergency arbitrator is appointed to provide urgent relief before the constitution of the regular arbitral tribunal. This mechanism is particularly useful where waiting for the constitution of the tribunal may cause serious or irreparable harm. Emergency arbitration is generally governed by institutional arbitration rules rather than by a single uniform international statute. Several arbitral institutions provide procedures allowing parties to seek urgent relief from an emergency arbitrator.

In India, the Supreme Court's decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* is particularly significant. The dispute involved an emergency arbitrator appointed under the Singapore International Arbitration Centre Rules. The Supreme Court considered whether an emergency arbitrator's award could fall within the framework of Section 17 of the Arbitration and Conciliation Act, 1996.¹² The Supreme Court held that an emergency arbitrator's order under the applicable institutional rules could be treated as an order under Section 17(1), and enforcement could be sought under Section 17(2).¹³ The judgment is important because it recognised the practical significance of emergency arbitration in India and strengthened the enforceability of emergency relief in an arbitration involving Indian parties

¹¹ Id.

¹² *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209.

¹³ Id.

and assets.

INTERNATIONAL COMMERCIAL ARBITRATION AND CROSSBORDER INTERIM RELIEF

International arbitration creates additional difficulties because the assets, parties and evidence may be located in different jurisdictions. For example, an arbitral tribunal seated in India may need to protect assets situated outside India. Similarly, an arbitration seated in another country may involve assets located in India.

This creates questions relating to:

- the jurisdiction of courts;
- the law applicable to interim measures;
- recognition and enforcement of interim orders;
- territorial limits of judicial powers;
- emergency arbitration;
- protection of assets situated in another jurisdiction; and
- coordination between courts and arbitral tribunals.

The effectiveness of an interim measure therefore depends not only on the order itself but also on whether the relevant jurisdiction provides a mechanism for recognising and enforcing that order.

CONTEMPORARY CHALLENGES

The legal framework has developed considerably; several practical challenges continue to exist.

1. Enforcement Across Jurisdictions

An interim order issued in one jurisdiction may need to be enforced in another jurisdiction.

Differences between national laws can create difficulties in recognition and enforcement.

2. Conflict Between Courts and Tribunals

Excessive judicial intervention may affect arbitral autonomy. At the same time, complete exclusion of courts may create difficulties where coercive judicial powers are necessary. A proper balance between judicial assistance and arbitral independence is therefore necessary.

3. Delay in Obtaining Urgent Relief

The effectiveness of interim measures depends upon speed. If an urgent application takes considerable time to decide, the purpose of the measure may be defeated.

4. Risk of Dissipation of Assets

In international disputes, assets may be transferred across borders quickly. This creates practical difficulties in securing assets before they are moved beyond the reach of enforcement authorities.

5. Emergency Arbitration and Legislative Clarity

The recognition of emergency arbitration through judicial decisions has been significant. However, clearer statutory recognition could improve certainty regarding the status and enforcement of emergency arbitrator orders.

6. Protection of Evidence

The increasing use of digital evidence creates new challenges. Electronic records can be altered, deleted or transferred rapidly. Effective interim measures must therefore respond to technological developments.

7. Balance Between Urgency and Fair Hearing

Interim relief may sometimes be granted in urgent circumstances. However, the affected party should also receive a fair opportunity to present its case. The need for urgent protection must therefore be balanced with procedural fairness.

CRITICAL ANALYSIS

The Indian legal framework demonstrates a movement towards strengthening the powers of arbitral tribunals and reducing unnecessary dependence on courts. The development from the earlier Section 17 regime to the post-2015 framework is particularly important. Earlier, tribunal-ordered interim measures faced difficulties concerning direct enforcement. The amended Section 17 introduced enforceability through Section 17(2), thereby strengthening the effectiveness of arbitral protection. At the same time, Section 9 continues to provide important judicial support. This is particularly significant where the arbitral tribunal has not yet been constituted or where the tribunal's remedy may not be sufficiently effective.

The principle emerging from the judicial decisions is that interim measures should protect the arbitration rather than replace the arbitration itself. The decision in *Sundaram Finance* demonstrates the need for urgent pre-arbitration protection, while *Adhunik Steels* emphasises the application of established principles governing interim injunctions. The development of emergency arbitration, particularly after *Amazon.com v. Future Retail*, represents another important stage in the evolution of Indian arbitration law. The decision shows the ability of Indian courts to interpret existing statutory provisions in the context of modern institutional arbitration. The increasing international nature of commercial disputes requires greater clarity concerning cross-border enforcement. An interim measure is useful only when it can practically protect the relevant asset, evidence or right.

SUGGESTIONS

The law relating to interim measures in international commercial arbitration should be made clearer and more specific. Clear provisions regarding the powers of courts and arbitral tribunals can reduce confusion and help parties understand the procedure for obtaining interim protection. There is also a need for better enforcement of interim measures in cross-border disputes. Since the parties, assets and evidence may be located in different countries, cooperation between courts and arbitral institutions should be strengthened to ensure that interim orders are recognised and made effective across jurisdictions. The procedure for granting interim measures should be made faster because the purpose of such measures is to provide immediate protection. Unnecessary procedural delays may defeat the very purpose of interim relief. Courts and arbitral tribunals should therefore adopt simple and speedy procedures, particularly in urgent cases. Arbitral institutions should also strengthen their

mechanisms for emergency arbitration and urgent interim relief. Proper institutional rules and trained arbitrators can help parties obtain timely protection before the main arbitral tribunal is constituted. Special attention should be given to the protection of electronic evidence. Modern commercial disputes frequently involve emails, electronic documents and digital records. Interim measures should therefore be used to prevent the destruction, alteration or loss of important digital evidence. Courts should provide necessary assistance while avoiding unnecessary interference in arbitral proceedings. A proper balance should be maintained between judicial support and the independence of arbitration. This will help make arbitration more efficient and effective. procedural fairness should be maintained while granting interim measures. Parties should normally be given a reasonable opportunity to present their case. However, where immediate action is necessary to prevent serious harm, urgent relief may be granted with suitable safeguards to protect the rights of the affected party.

CONCLUSION

Interim or provisional measures are an essential part of an effective international commercial arbitration system. Arbitration may take time before reaching a final award, and during this period the subject matter of the dispute, assets or evidence may be exposed to serious risk. Interim measures provide temporary protection and ensure that the final arbitral process remains effective. The Arbitration and Conciliation Act, 1996 provides an important framework through Sections 9 and 17. Section 9 enables courts to grant interim protection, while Section 17 gives similar powers to arbitral tribunals. The 2015 amendment strengthened the tribunal's powers by providing an enforcement mechanism for orders passed under Section 17. The statutory framework therefore attempts to balance judicial support with arbitral autonomy. The decisions in *Sundaram Finance Ltd. v. NEPC India Ltd.*, *Firm Ashok Traders v. Gurumukh Das Saluja* and *Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd.* have contributed significantly to the understanding of interim measures under Indian arbitration law. The decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* further demonstrates the importance of emergency arbitration and the ability of Indian arbitration law to respond to developments in international commercial practice.

The UNCITRAL Model Law provides a broader international framework for interim measures and encourages harmonisation of arbitration laws across jurisdictions. However, cross-border enforcement, judicial intervention, emergency relief, asset dissipation and preservation of

electronic evidence continue to create practical challenges. The effectiveness of international commercial arbitration ultimately depends not only upon the final award but also upon the ability of the legal system to protect the parties during the arbitration. A balanced system, combining effective interim protection, limited and supportive judicial intervention, strong arbitral powers and efficient cross-border enforcement, is therefore necessary for maintaining the effectiveness and credibility of international commercial arbitration.