

Supreme Court Upholds Post-Award Section 9 Relief For An Unsuccessful Party In Rare And Compelling Circumstances

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Introduction

In a recent decision in **National Projects Construction Corporation Ltd. vs. Ishvakoo (India) Pvt. Ltd.** [2026 INSC 828], the Supreme Court of India ("Supreme Court") upheld a direction requiring a party to deposit INR 3.5 crore with the High Court pending adjudication of a challenge under Section 34 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), even though the applicant seeking interim protection under Section 9 had been unsuccessful in the arbitral proceedings. Applying **Home Care Retail Marts Pvt. Ltd. vs. Haresh N. Sanghavi** [2026 SCC OnLine SC 670], the Supreme Court reiterated that an unsuccessful party is not barred from seeking post-award interim protection under Section 9, though such relief is subject to a higher threshold and is available only in rare and compelling cases. On the facts, the Supreme Court held that interim protection was warranted to prevent irreparable prejudice and preserve the efficacy of the pending Section 34 challenge. In this article, we briefly navigate through the facts and findings in the aforesaid decision.

Facts

National Projects Construction Corporation Ltd. ("NPCC") and Ishvakoo (India) Pvt. Ltd. ("Ishvakoo") entered into a Memorandum of Understanding in August 2002 for works relating to bus termini and development of the Taj Trapezium Zone Heritage Corridor at Agra. In December 2002, NPCC advanced INR 3.5 crore to Ishvakoo as mobilisation advance against bank guarantees furnished by Ishvakoo.

Disputes subsequently arose between the parties and arbitration was invoked. During the arbitral proceedings, Ishvakoo approached the High Court under Section 9 of the Arbitration Act seeking restraint against invocation of the bank guarantees. By an order passed in December 2005, the petition was disposed of on the basis that Ishvakoo would keep the bank guarantees alive until adjudication of the disputes and, if a Section 34 challenge was filed, until disposal of such challenge. Correspondingly, NPCC agreed not to invoke the bank guarantees during that period. The order further contemplated that NPCC could invoke the bank guarantees if, after adjudication, it was found entitled to recover an amount from Ishvakoo and the award became enforceable.

Ishvakoo was subsequently unable to keep the bank guarantees alive and NPCC invoked them in or around September 2017. A further petition under Section 9 filed by Ishvakoo before the arbitral award was pronounced was disposed of in November 2017 on the ground that Ishvakoo had failed to keep the bank guarantees alive and, therefore, no fault could be attributed to NPCC for the encashment.

The arbitral tribunal thereafter rendered its award in December 2017 ("**Award**") and dismissed Ishvakoo's claims. Admittedly, NPCC had not filed any counterclaim. Two of the issues before the arbitral tribunal concerned discharge of the bank guarantees and the bank charges incurred for keeping them alive. In the subsequent proceedings, the High Court took the prima facie view that the arbitral tribunal appeared to have proceeded without being conscious of the fact that the bank guarantees had already been encashed and that the issue concerning discharge of the bank guarantees had not been addressed in the changed circumstances.

Ishvakoo challenged the Award under Section 34 of the Arbitration Act. During those proceedings, interim directions were initially issued requiring NPCC to bring back the amount represented by the bank guarantees. Those directions were subsequently set aside by consent in appeal, without prejudice to the rights and contentions of the parties, while leaving open Ishvakoo's liberty to institute a fresh petition under Section 9.

Ishvakoo thereafter filed a fresh Section 9 petition seeking return of the amount of INR 3.5 crore. The High Court, noting amongst other things that NPCC had filed no counterclaim and that there was no finding in the Award that the mobilisation advance had not been utilised, directed NPCC to deposit INR 3.5 crore with the Registry of the High Court. The amount was directed to be invested in an interest-bearing fixed deposit pending disposal of the Section 34 challenge. The Division Bench affirmed the order, following which NPCC approached the Supreme Court.

Submissions

NPCC argued that the power under Section 9 could not be exercised to grant relief which effectively amounted to a final adjudication of rights that remained pending before the Section 34 Court. According to NPCC, a party whose claims had been dismissed in entirety had no award or adjudicated amount in its favour requiring post-award protection. It was further contended that the bank guarantees had already been lawfully encashed, and directing NPCC to bring the amount back would amount to granting a mandatory final relief at an interlocutory stage.

NPCC also submitted that the High Court had undertaken an impermissible merits review of the Award while exercising jurisdiction under Section 9. It contended that the relief granted did not fall within the framework of Section 9(1)(ii)(e) of the Arbitration Act and that the requirements ordinarily governing an order for securing money, including the principles underlying Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908, had not been satisfied.

Ishvakoo, on the other hand, emphasised that NPCC had not filed any counterclaim in the arbitration and that the Award contained no finding that the mobilisation advance had not been utilised. It was also submitted that the question concerning discharge of the bank guarantees had remained unaddressed and that the adverse findings in the Award were themselves under challenge under Section 34. In these circumstances, permitting NPCC to retain the encashed amount pending the Section 34 proceedings was

stated to result in unjust enrichment. Ishvakoo accordingly relied upon the wide powers available to a Court under Section 9 to protect the subject matter of the dispute and balance the equities between the parties.

Moot Question

The principal question before the Supreme Court was whether the High Court was justified in directing NPCC to deposit INR 3.5 crore with its Registry pending disposal of Ishvakoo's challenge to the Award under Section 34 of the Arbitration Act.

Findings

(i) Post-Award Section 9 Relief By An Unsuccessful Party

At the outset, the Supreme Court observed that the maintainability of a post-award petition under Section 9 by an unsuccessful party was no longer *res integra*. In ***Home Care Retail Marts Pvt. Ltd. vs. Haresh N. Sanghavi*** [2026 SCC OnLine SC 670], the Supreme Court had held that the expression "a party" in Section 9 refers to any party to the arbitration agreement and that access to interim protection cannot depend solely upon whether the applicant succeeded or failed in the arbitration.

The Supreme Court noted that ***Home Care Retail Marts*** recognised situations where an unsuccessful party may require interim protection during the pendency of a Section 34 challenge, including cases in which pre-existing protection concerning a bank guarantee would otherwise cease upon the making of an award. At the same time, ***Home Care Retail Marts*** sounded a clear note of caution that the threshold for granting Section 9 relief to an unsuccessful party is higher. Such relief is to be granted only in rare and compelling cases where it is necessary to prevent irreparable prejudice and preserve the efficacy of the challenge proceedings.

(ii) Principles Governing Exercise Of Power Under Section 9

The Supreme Court then referred to ***Essar House Private Limited vs. Arcelor Mittal Nippon Steel India Limited*** [(2022) 20 SCC 178], which recognises the wide power of a Court under Section 9 to secure the amount in dispute and to grant such other interim protection as may appear just and convenient. However, the discretion must be exercised judiciously and with due regard to whether the applicant has established a good *prima facie* case, whether the balance of convenience favours interim protection and whether the applicant has approached the Court with reasonable expedition.

The Supreme Court further reiterated that a Court exercising jurisdiction under Section 9 is guided by the principles ordinarily governing interim relief but is not rigidly confined by the text of every procedural provision in the Code of Civil Procedure, 1908. The exercise must ultimately promote the efficacy of arbitration as a form of dispute resolution. In ***Adhunik Steels Ltd. vs. Orissa Manganese and Minerals (P) Ltd.*** [(2007) 7 SCC 125], the Supreme Court had similarly held that the familiar requirements governing interim injunctions, including *prima facie* case, balance of convenience,

irreparable injury and the concept of what is just and convenient, are not alien to the exercise of power under Section 9.

(iii) Higher Threshold Satisfied On The Facts

Applying the above principles, the Supreme Court held that Ishvakoo had satisfied the higher threshold required for post-award relief. A significant factor was the order passed by the High Court in December 2005, under which invocation of the bank guarantees was contemplated if, after adjudication, NPCC was found entitled to recover an amount from Ishvakoo. However, NPCC had admittedly filed no counterclaim in the arbitration.

The Supreme Court also noted that the arbitral tribunal appeared to have been unaware, while dealing with the relevant issues, that the bank guarantees had already been encashed before the Award. The pending Section 34 proceedings were concerned, amongst other things, with whether the Award contained any finding that Ishvakoo had failed to utilise the mobilisation advance. While the High Court had recorded certain prima facie observations in this regard, the Supreme Court emphasised that these questions would ultimately have to be decided independently in the Section 34 proceedings.

The earlier order of November 2017, which had declined relief when Ishvakoo failed to keep the bank guarantees alive, was also held not to bar the subsequent post-award Section 9 proceedings. The Supreme Court considered the later application in the distinct context arising after the Award, including the question whether continued retention of the encashed amount by NPCC, despite the absence of a counterclaim or a finding concerning non-utilisation of the mobilisation advance, would prima facie result in unjust enrichment and run contrary to the arrangement recorded in the December 2005 order.

Importantly, the relief granted by the High Court did not direct immediate payment of the amount to Ishvakoo. Instead, NPCC was required to deposit INR 3.5 crore with the Registry, where the amount would remain invested in an interest-bearing fixed deposit until the Section 34 challenge was decided. The Supreme Court held that this arrangement appropriately balanced the equities, prevented irreparable prejudice and preserved the efficacy of the challenge proceedings. It also noted that Ishvakoo had approached the Court with reasonable expedition and that the High Court's exercise of discretion could not be characterised as arbitrary.

Accordingly, the Supreme Court dismissed the appeal and granted NPCC four weeks to deposit INR 3.5 crore with the Registry of the High Court, to be retained in a fixed deposit on an auto-renewal basis until disposal of the Section 34 proceedings. The Supreme Court expressly clarified that the observations made in the Section 9 proceedings were confined to the question of interim protection and would not influence adjudication of the Section 34 challenge on its own merits.

Conclusion

The decision is significant in demonstrating the practical application of the principle recognised in ***Home Care Retail Marts Pvt. Ltd. vs. Haresh N. Sanghavi*** [2026 SCC OnLine SC 670]. An unsuccessful party is not, merely by reason of having lost before the arbitral tribunal, disentitled from invoking Section 9 after the award. However, maintainability and entitlement to relief remain distinct questions. The unsuccessful party must cross a higher threshold and establish a rare and compelling case for protection.

The judgment also underscores that post-award Section 9 jurisdiction is protective rather than adjudicatory. A Court may fashion interim measures necessary to preserve the subject matter and efficacy of a pending Section 34 challenge, but such relief must remain anchored in the established requirements of a prima facie case, balance of convenience, irreparable prejudice and a judicious exercise of discretion.

On the particular facts, the absence of any counterclaim by NPCC, the terms of the earlier order governing invocation of the bank guarantees, the unresolved questions surrounding entitlement to the encashed amount and the decision to secure the money in Court rather than release it to either party collectively justified interim protection. The decision should therefore be understood as reinforcing the exceptional and fact-sensitive nature of post-award Section 9 relief for an unsuccessful party, rather than as permitting routine reopening of the consequences of an arbitral award at the interim stage.

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