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Interim relief remains available during the pendency of a foreign award's enforcement petition

Osterreichischer Lloyd Seereederei (Cyprus) Ltd v. Victore Ships Pvt Ltd

Bombay High Court | 2026 SCC OnLine Bom 1868

A key practical concern in the enforcement of foreign awards is whether a foreign award-holder seeking its recognition and enforcement can avail protective measures prior to the award attaining the status of a decree in India? The Bombay High Court recently held that interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 (Act) is available in respect of a foreign award even after filing an enforcement petition under the Act.

The ruling recognises the real risk of asset dissipation in the period between the filing of an enforcement petition and the Court's determination under Section 49, which could ultimately render the foreign award ineffective, unless interim protection remains available.

By affirming the availability of such interim measures, the judgment closes an important enforcement gap and strengthens the enforcement framework of foreign awards in India.

SUMMARY OF FACTS

After achieving a favourable foreign award, Osterreichischer Lloyd Seereederei (Cyprus) Ltd (OLSL) sought its enforcement against the award-debtor, Victore Ships Pvt Ltd (VSPL), under Sections 47 and 48 in Part II of the Act (dealing with foreign awards) and, in parallel, filed a petition under Section 9 (pertaining to the grant of interim measures) seeking the following interim protective measures:

- A deposit of the awarded amount in INR equivalent within 4 weeks.
- An injunction against alienation or creation of third-party rights in VSPL's assets pending such deposit.
- An affidavit disclosing VSPL's assets.

VSPL opposed the Section 9 petition, contending that once an enforcement petition had been filed, the award-holder could no longer invoke Section 9, since enforcement (conversion or treatment of the award as a decree) and execution (taking steps towards realising the decree) of a foreign award form part of a composite proceeding.

OLSL, on the other hand, contended that a foreign award does not automatically attain the status of a decree upon filing of enforcement proceedings, and that until the court is satisfied under Section 49 that the award is enforceable, the Section 9 relief remains available to secure the fruits of the award.

DECISION OF THE COURT

While assessing whether the Section 9 remedy ceases after a petition for enforcement of a foreign award under Part II has been filed, the Court drew a clear distinction between the statutory treatment of domestic awards and foreign awards:

- A domestic award becomes enforceable as if it were a decree under Section 36 of the Act (enforcement of domestic awards) upon expiry of the period to challenge the award under Section 34, failure of such challenge, or refusal of stay therein.
- By contrast, a foreign award becomes enforceable in India only after the Court, acting under Part II, is satisfied that the award is enforceable and consequently deems it to be a decree under Section 49 of the Act.

Therefore, the mere filing of an enforcement petition does not by itself confer decree status on a foreign award and does not terminate the jurisdiction of the Court under Section 9.

The Court also rejected VSPL's argument that a Section 9 relief alongside a pending enforcement petition would create an anomalous overlap of jurisdictions. A petition for enforcement of a foreign award under Part II is, in the first instance, a proceeding for recognition and enforceability. Only after the Court records satisfaction under Section 49 of the Act that the award is enforceable, does the proceeding stand translated into execution without the need for a separate execution petition. Until that stage is reached, there is no statutory basis to infer that interim relief under Section 9 is barred.

Foreign decrees remain enforceable despite FEMA and RBI compliance objections

Peter Beck und Partner Vermögensverwaltung GmbH v. Prakash Industries Ltd

Delhi High Court | Execution Petition No. 87 of 2022

In an important decision for cross-border financing and enforcement strategy, the Delhi High Court held that enforcement of a foreign decree in India is permitted despite allegations of violations of guidelines prescribed under the Foreign Exchange Management Act, 1999 (FEMA). This ruling reinforces India's pro-enforcement approach and limits the ability of judgment debtors to resist execution on technical regulatory grounds.

Drawing a clear distinction between the enforceability of a decree and post-enforcement regulatory compliance, the decision aligns Indian jurisprudence with global principles of comity and certainty in international commerce. Indian entities must recognise that FEMA and RBI compliance obligations continue to apply and may require *post-facto* approvals or structuring adjustments. As such, stakeholders in cross-border transactions should ensure proactive regulatory compliance and documentation at the transaction stage to mitigate post-enforcement risks.

SUMMARY OF FACTS

Peter Beck und Partner Vermögensverwaltung GmbH (Peter Beck) subscribed to foreign currency convertible bonds issued by Prakash Industries Ltd under a subscription agreement governed by English law.

Disputes arose due to the failure of Prakash Industries to pay coupon interest and delays in the conversion of the bonds into equity.

The English Commercial Court passed a judgment directing Prakash Industries to pay the outstanding amounts, including principal, interest, damages, and costs.

Peter Beck initiated execution proceedings before the Delhi High Court under Section 44A of the Code of Civil Procedure (CPC) for the enforcement of the foreign decree in India.

Prakash Industries opposed execution on the ground that the decree violated FEMA and RBI guidelines, particularly with respect to interest and damages exceeding prescribed limits.

DECISION OF THE COURT

At the very outset, the Court held that the United Kingdom is a reciprocating territory and that the foreign decree passed by the English Commercial Court (recognised as a 'Superior Court') is enforceable in India under Section 44A of the CPC.

The Court held that alleged violations of FEMA or RBI guidelines do not render a foreign decree unenforceable under Section 13 of the CPC. FEMA compliance issues are regulatory in nature and may require *post-facto* approval, but they do not affect the validity or enforceability of the decree itself. A Foreign Court cannot be expected to apply Indian statutory provisions such as FEMA unless such issues are specifically raised before it.

Accordingly, the Court allowed execution of the foreign decree, subject to compliance with applicable regulatory requirements where necessary.

Primary agreement determines the arbitral seat in transactions involving multiple contracts

Balaji Steel Trade v. Fludor Benin SA

Supreme Court of India | Arbitration Petition No. 65 of 2023

Providing important clarity for multi-contract commercial structures, where parties often structure arrangements through a principal agreement supported by ancillary or downstream contracts, the Supreme Court has affirmed that the arbitration clause in the principal agreement governs the dispute, unless clearly and unequivocally replaced in subsequent/ancillary contracts.

The ruling underscores that contractual hierarchy matters – the arbitration clause in the principal agreement will continue to bind the parties unless there is a clear novation. Mere coexistence of multiple agreements, or even a shared commercial objective, is insufficient to displace the agreed dispute resolution framework.

For businesses and transactional counsel, the implications are significant: Consistency in dispute resolution clauses across related agreements is essential to avoid jurisdictional conflict. If parties intend to alter the arbitral seat, such intention must be in writing and unambiguous. Further, reliance on group linkages will not substitute for clear drafting or structural linkage.

SUMMARY OF FACTS

The dispute arose out of a Buyer Seller Agreement (BSA) executed between Balaji Steel Trade (Balaji) and Fludor Benin SA (Fludor), under which the parties had expressly agreed that Benin, West Africa, would be the seat of arbitration in case of any dispute.

Pursuant to the BSA, Balaji subsequently entered into ancillary agreements with Fludor's sister concerns to operationalise its commercial obligations. These later agreements contained arbitration clauses providing for India as the seat of arbitration.

Disputes arose between Balaji and Fludor and its sister concerns under the BSA and the ancillary agreements. While Fludor sought initiation of arbitration seated in Benin under the BSA, Balaji sought a composite reference of disputes under the BSA and the ancillary agreements to arbitration in India under the Arbitration and Conciliation Act, 1996 (Act).

Balaji contended that the transaction was composite and interlinked, and relied on the ancillary agreements being later agreements to argue that the arbitration clause providing for an India-seated arbitration should govern the disputes. Balaji also invoked the 'group of companies' doctrine to bind Fludor to the arbitration framework contained in the ancillary agreements.

DECISION OF THE COURT

The Supreme Court rejected Balaji's contentions, holding that the arbitration clause contained in the primary agreement remained determinative.

The subsequent ancillary agreements did not contain any cross-references or express stipulations indicating an intention to override or replace the arbitration clause in the BSA. In the absence of unequivocal intent, it is impermissible to displace the agreed seat of arbitration under the principal contract.

Importantly, the Court also held that the 'group of companies' doctrine cannot be invoked to rewrite contractual arrangements or alter the agreed arbitral seat in the absence of a clear structural linkage.

Additionally, Balaji had earlier unsuccessfully challenged the Benin-seated arbitration through an anti-arbitration injunction before the Delhi High Court, and was therefore estopped from re-agitating the same issues.

Commercial wisdom of CoC remains subject to limited judicial review for legal errors

Lamba Exports Pvt Ltd v. Dhir Global Industries Pvt Ltd

Supreme Court of India | MA No. 1256 of 2025 in SLP (Civil) No. 12264 of 2024

The Supreme Court recently articulated a nuanced position on the scope of judicial interference over the decisions of the Committee of Creditors (CoC) under the Insolvency and Bankruptcy Code, 2016 (Code). While reaffirming that Courts do not sit in appeal over business decisions of the CoC, the decision provided an important clarification that this primacy of the CoC's commercial wisdom does not confer blanket immunity in cases of statutory illegality or jurisdictional errors.

The ruling embraces two parallel propositions: Courts cannot be called upon to assess the financial attractiveness of the financial decisions or substitute their own view for the business decision, and that the realm of non-justiciability is not absolute. This observation delineates the boundary between permissible and impermissible judicial intervention – any challenge to outcomes in the Corporate Insolvency Resolution Process (CIRP) must be anchored in clear legal infirmities rather than competing commercial preferences, reinforcing the need for timely and structured participation within the insolvency process itself.

SUMMARY OF FACTS

Lamba Exports Pvt Ltd (Lamba) had filed a suit for specific performance of an agreement to purchase a property from Dhir Global Industries Pvt Ltd (Dhir).

While the suit was pending, Lamba's plea for interim relief was dismissed by the Punjab and Haryana High Court as the subject property was under a mortgage, and the transaction was dependent on the lender bank approving a One-Time Settlement (OTS) to clear the charge. Lamba thereafter unsuccessfully challenged this order before the Supreme Court (Order).

Parallelly, Dhir was undergoing CIRP during which it entered into an OTS with its lender, and the CoC approved withdrawal of CIRP under Section 12A, resulting in the closure of the insolvency process.

Lamba thereafter sought recall of the Order, contending that these developments had not been disclosed before the Supreme Court. Additionally, it relied on its communication to the Resolution Professional (RP), indicating its higher financial proposal in relation to the debt resolution.

DECISION OF THE COURT

The Supreme Court dismissed the recall application, observing that developments arising from the insolvency process, including the OTS and withdrawal of CIRP, were part of a separate statutory framework and could not be used to reopen concluded proceedings arising from a civil dispute.

On the insolvency aspects, the Court reaffirmed that decisions such as accepting a settlement and withdrawing CIRP fall within the commercial domain of the CoC, which exercises its collective judgment based on business considerations. Courts cannot compare competing financial offers or assess the availability of a better deal.

At the same time, the Court expressly recognised that the CoC's commercial wisdom is not absolute, and that judicial review remains available where a challenge is based on statutory illegality or jurisdictional error in the insolvency process.

However, as no such legally sustainable challenge was made in the present case, and Lamba was effectively seeking a reassessment of commercial decisions, the withdrawal did not warrant interference.

Contractually barred pre-award and *pendente lite* interest cannot be granted as 'compensation'

Union of India v. Larsen & Toubro Ltd

Supreme Court of India | 2026 SCC OnLine SC 203

The Supreme Court has held that an arbitral tribunal cannot award pre-award or *pendente lite* interest even under the guise of 'compensation' where the contract expressly bars payment of such interest. The decision reinforces that party autonomy is paramount and arbitral tribunals cannot circumvent contractual prohibitions by recharacterising interest as compensation or damages.

From a practical standpoint, this decision underscores the importance of careful drafting and negotiation of interest clauses, particularly in long-duration projects where payment delays are common. Agreeing to broad 'no interest' clauses can materially impact the contractors' recovery prospects.

To better balance risk allocation, especially for infrastructure, EPC, and government contracting, where standard form agreements frequently contain wide interest-bar clauses, stakeholders may consider revisiting standard contract templates and assessing the commercial impact of interest-bar provisions.

SUMMARY OF FACTS

The Union of India (UOI) entered into a turnkey contract with Larsen & Toubro Ltd (L&T) for the modernisation of a railway workshop, with a stipulated completion period that was subsequently extended multiple times.

Disputes arose between the parties due to delays in execution and non-payment of certain contractual dues, including claims relating to price variation, financing charges, and final bill payments.

The disputes were referred to arbitration in terms of the contract, and the arbitral tribunal passed an award granting monetary claims along with interest in favour of L&T.

UOI challenged the award under Sections 34 and 37 of the Arbitration and Conciliation Act (Act), primarily contending that the contract expressly prohibited payment of interest.

The Commercial Court and the High Court rejected the challenge and upheld the arbitral award, leading to an appeal before the Supreme Court.

DECISION OF THE COURT

The Supreme Court held that the contractual clause prohibiting payment of interest on amounts payable under the contract is clear, unambiguous, and binding on the parties as well as the arbitral tribunal. Pre-award or *pendente lite* interest cannot be awarded against an express contractual bar, as Section 31(7) (award of interest by the arbitral tribunal) of the Act is subject to the agreement between the parties.

Importantly, the Court rejected the argument that such an interest could be awarded in the guise of compensation, holding that such an approach would defeat the contractual prohibition agreed between the parties.

In the clause expressly prohibiting payment of interest on earnest money, security deposit, or amounts payable to the contractor under the contract, the expression '*amounts payable to the contractor under the contract*' is of wide amplitude and cannot be read restrictively.

However, the grant of post-award interest was allowed as it flows as a matter of law under Section 31(7)(b) of the Act. The Court merely modified the rate of post-award interest from 12% to 8%.

‘Faultless parties’ can seek a fresh appointment after the erstwhile arbitrator’s mandate has been refused extension

Nalin Vallabhbhai Patel v. Atharva Realtors

Bombay High Court | 2026 SCC OnLine Bom 2359

The Bombay High Court, while recognising that termination of mandate does not automatically preclude a fresh reference, has provided important clarity on the consequences flowing from a refusal to extend an arbitral tribunal’s mandate under Section 29A of the Arbitration and Conciliation Act, 1996 (Act). The judgment rightly anchors this determination in the conduct of the parties.

Distinguishing a ‘faultless party’ and a ‘party at fault’, the judgment ensures that the rigour of Section 29A of the Act (timeline for completion of arbitration proceedings) is not diluted, while ensuring that delays beyond its control should not prejudice a party which has diligently proceeded in the arbitration. For stakeholders, the decision serves as a caution that diligent participation in arbitral proceedings is critical, as lapses may foreclose the ability to revive claims through a fresh reference.

SUMMARY OF FACTS

Under a deed of assignment of development rights between Nalin Vallabhbhai Patel and Atharva Realtors, disputes had arisen and were referred to arbitration.

Initially, the arbitral tribunal had passed an interim order. However, thereafter, no further effective steps were taken in the arbitral proceedings for a considerable period.

Nalin subsequently sought extension of the tribunal’s mandate under Section 29A of the Act, which was rejected for failure to demonstrate sufficient cause and abandonment of proceedings.

Thereafter, contending that the dispute had a continuing cause of action, Nalin issued fresh arbitration notices and sought the appointment of a new arbitrator.

DECISION OF THE COURT

Addressing the issue of whether an arbitrator can be appointed when the plea to extend the mandate of the erstwhile arbitrator under Section 29A of the Act has been expressly refused, the Court drew a clear distinction between termination of the arbitrator’s mandate and termination of arbitral proceedings, placing reliance on the Supreme Court’s decision in *Rohan Builders*:[1]

- In the termination of the arbitrator’s mandate under Sections 14, 15, and 29A, a fresh reference is permissible.
- In the termination of arbitral proceedings under Section 32, a fresh reference is not permissible.

The Court further emphasised the critical distinction between a ‘faultless party’ and a ‘party at fault’ (where the refusal is on account of the applicant’s own conduct), holding that this determination is central to deciding whether a fresh reference is permissible.

The Court observed that Nalin had abandoned the earlier arbitration and was at fault. As such, the arbitral proceedings were treated as having come to an end, and accordingly, his application to appoint a fresh arbitral tribunal was dismissed.

[1] Rohan Builders (India) Pvt Ltd v. Berger Paints India Ltd, 2024 SCC OnLine SC 2494

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