

ARBITRATION AND ADMITTED CLAIMS: CAN INTERIM RELIEF SECURE WHAT'S ALREADY OWED?

AN INTERPLAY BETWEEN SECTION 17 OF THE ARBITRATION AND CONCILIATION ACT, 1996
AND ORDER 39 RULE 10 CPC

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In recent years, the scope and enforcement of interim relief granted by arbitral tribunals under Section 17 of the Arbitration and Conciliation Act, 1996, have been a subject of judicial interpretation. The amendment to Section 17 has empowered tribunals to secure disputed amounts, bringing their authority closer to that of courts under the Code of Civil Procedure (CPC). However, questions remain regarding the extent of these powers, particularly in relation to admitted claims and their enforcement. This article examines key judicial pronouncements on the issue, compares the arbitral tribunal's powers with Order 39 Rule 10 of CPC, and analyzes the evolving legal position on securing admitted claims during arbitration proceedings.

As per the judgment delivered by Justice G.R. Swaminathan in the case of *Sundaram Finance Ltd. v. P. Sakthivel*, 2018 (2018 SCC OnLine Mad 3080), while citing the Delhi High Court decision in *Lanco Infratech Ltd. v. Hindustan Construction Company Ltd.*(2016) 234 DLT 175, it was observed that prior to the amendment in Section 17 of the Arbitration and Conciliation Act, 1996, the arbitral tribunal did not have the power to secure the amount in dispute. However, with the amendment, this power has been expressly provided under Section 17(1)(ii)(b) of the Act.

The judgment further clarified that an interim order passed by the arbitral tribunal is enforceable in the same manner as an order of a court under the Code of Civil Procedure (CPC). Justice Swaminathan rightly concluded that whenever the arbitral tribunal passes such an interim order under Section 17, it should be treated similarly to a situation where a district judge receives communication from another court for enforcement under Section 136 of CPC. In such cases, the district judge should immediately forward the order to the Nazir section for implementation. Regarding fees, the remittance must be made in the Nazir section of the district court by the party in whose favor the interim order has been passed.

Justice Swaminathan also clarified that there is no need to file an application in the form of an interlocutory application (I.A.) before the court for enforcement. Instead, upon receiving communication of such an interim order from the arbitral tribunal, the district judge should directly forward it to the Nazir section for implementation. No judicial order is warranted from the district court to execute the interim order. The district court's role is purely ministerial, and it does not have the authority to review or sit in an appeal over the order passed by the arbitral tribunal.

Thereby the requirement of filing an execution petition for enforcing interim orders of an arbitral tribunal has been significantly eased out with the amendment to Section 17 of the Arbitration and Conciliation Act, 1996. Previously, parties seeking enforcement of such orders had to undergo a cumbersome process, often necessitating the filing of an execution petition before a civil court, similar to the enforcement of a decree under the Code of Civil Procedure (CPC). However, with the explicit recognition of an arbitral tribunal's power to grant enforceable interim relief under Section 17(1)(ii)(b), such orders now hold the same weight as a court order. Consequently, there is no longer a need for a separate execution petition, as the district court is now only required to perform a ministerial function by forwarding the order to the Nazir section for implementation.

Justice G.R. Swaminathan, in *Sundaram Finance Ltd. v. P. Sakthivel*, 2018 2018 SCC OnLine Mad 3080, has reinforced this position by holding that an arbitral tribunal's interim order under Section 17 should be treated as an order of a court for enforcement purposes. Thus, when such an order is communicated to the district judge, it must be acted upon immediately, without requiring additional judicial scrutiny. The district court is not expected to sit in appeal over the tribunal's order but only to facilitate its execution, similar to how it processes enforcement requests from another court under Section 136 of CPC. This streamlined mechanism reduces unnecessary litigation, expedites compliance, and strengthens the autonomy of arbitration proceedings by ensuring that interim measures granted by the tribunal are effectively implemented without undue judicial interference.

On the aspect of checks and balances, Justice Swaminathan highlighted that an interim order under Section 17 is appealable under Section 37(2)(b) of the Act. This built-in safeguard eliminates the need for interference from the district court, ensuring that district courts perform only a ministerial function in implementing interim orders passed by the arbitral tribunal under Section 17.

Comparison with Order 39 Rule 10 of CPC

A comparison between the applicability of Order 39 Rule 10 of CPC and the power of an arbitral tribunal to grant an interim award on admitted claims is pertinent. While the Arbitration and Conciliation Act does not explicitly provide for the issuance of an interim order directing the deposit of money for admitted claims, it is reasonable to infer that Section 17(1)(ii)(b), which addresses securing the amount in dispute, grants the arbitral tribunal powers similar to those under Order 39 Rule 10 of CPC. This allows the tribunal to direct the deposit of money with the court in cases where claims have been admitted by the parties.

In *Brand Value Communications Ltd. v. Eskay Video (P) Ltd.*, 2010 SCC OnLine Cal 1888, the Calcutta High Court emphasized that while deciding an application under Section 9, an arbitrator cannot order the deposit of money unless there is prima facie evidence that the opposing party is attempting to transfer assets to defraud creditors or to evade payment of an arbitral award.

Similarly, in *Asad Mueed & Anr. v. Hammad Ahmad & Ors.*, 2023 DHC 001008, the Delhi High Court reiterated that the amended Section 17 embodies the legislative intent to vest the arbitral tribunal with powers similar to those conferred upon a court. This interpretation aligns with precedents set in cases such as *Arcelormittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.*, (2022) 1 SCC 712, *Pacific Development Corpn. Ltd. v. DMRC Ltd.*, 2023 SCC OnLine Del 521, *Energo Engineering Projects Ltd. v. TRF Ltd.*, 2016 SCC OnLine Del 6560, and *Benara Bearings & Pistons Ltd. v. Mahle Engine Components India (P) Ltd.*, 2017 SCC OnLine Del 7226. The judgment emphasized that:

"24. Undisputedly, Section 9 empowers a court to grant an injunction before, during, or even after arbitral proceedings have concluded. However, Section 9(3) mandates that courts should exercise restraint and intervene only where the remedy under Section 17 is inefficacious."

This makes it clear that the powers of the court under Section 9 and the arbitral tribunal under Section 17 are of a similar nature. Once an arbitral tribunal has been duly constituted, courts should not entertain Section 9 applications unless the remedy under Section 17 is ineffective.

This approach not only enhances the enforceability of interim orders but also upholds the integrity and efficiency of arbitration as an effective dispute resolution mechanism.

The Issue of Admitted Claims in Arbitration

The Arbitration and Conciliation Act, 1996 remains silent on the issue of securing payment of admitted claims through an interim award or order by the arbitral tribunal. Unlike courts, which have express powers under Order 39 Rule 10 of CPC to direct the deposit of admitted claims in civil cases, arbitration proceedings do not provide a direct remedy for securing such payments until the final award is delivered.

Despite this absence, the broad language of Section 17(1)(ii)(b) suggests that an arbitral tribunal has the power to secure disputed amounts as an interim measure. Consequently, there is no legal bar preventing an arbitral tribunal from issuing an interim order directing the deposit of money for admitted claims or payment to the opposing party, similar to the powers of courts under Order 39 Rule 10 of CPC.

Recently, several court decisions have addressed the issue of arbitral tribunals securing admitted claims through interim orders under Section 17 of the *Arbitration and Conciliation Act, 1996*. These rulings provide clarity on the extent of an arbitral tribunal's power to direct the deposit of admitted claims as an interim measure.

One such case is *Baker Hughes Singapore Pte v. Shiv-Vani Oil and Gas Exploration Services Ltd.*, 2014 SCC OnLine Bom 1663, where the arbitral tribunal had ordered the securing of undisputed invoices (admitted claims of the claimant) under Section 17. However, the court set aside this order, holding that it was contradictory in nature. Instead, the court directed the respondent to furnish a bank guarantee from a nationalized bank in favor of the Prothonotary and Senior Master of the court for USD 20,000,000. This ruling highlights that while arbitral tribunals possess broad powers under Section 17, such orders must be well-reasoned and non-contradictory in nature to withstand judicial scrutiny.

Similarly, in *Augmont Gold Private Limited v. One97 Communications Ltd.*, 2021 SCC OnLine Del 4484, the court upheld an interim order under Section 17, wherein the arbitral tribunal directed that admitted claims be secured through a deposit with the court registrar based on prima facie findings. Initially, the tribunal had ordered the deposit to be made directly to the claimant. However, recognizing the potential conflict between interim and final remedies, the court modified the order, ensuring that the deposit was made with the court registrar instead of the claimant, thus striking a balance between the interests of both parties.

Another significant case is *Handicraft and Handlooms Exports Corporation of India v. SMC Comtrade Limited*, 2023 SCC OnLine Del 3981, where the arbitral tribunal, under Section 17, directed one party to secure a sum of ₹5 crore in the form of a Fixed Deposit Receipt (FDR) in favor of the opposing party until the final award was passed. While hearing the challenge to this order, the court reiterated that its jurisdiction over interim orders under Section 17 is limited and confined. It upheld the arbitral tribunal's order, emphasizing that the tribunal had properly balanced equities between the parties and provided a well-reasoned decision.

These judgments collectively reinforce the principle that arbitral tribunals have broad but structured powers under Section 17 of the Arbitration Act to secure admitted claims through interim measures akin to Order 39 Rule 10 of the CPC. However, such orders must be reasoned, non-contradictory, and equitable.

Potential Conflict: Interim vs. Final Remedy

A fundamental legal principle is that an interim remedy should not grant the final relief sought, a position consistently upheld by several Supreme Court judgments. In arbitration, when a claimant seeks a monetary award and the respondent admits part of the claim while raising counterclaims, an arbitral tribunal's direction to deposit or pay the admitted amount may be perceived as preempting the final relief. This is because the admitted amount itself often constitutes a significant portion of the final remedy sought, alongside interest, damages, and other claims.

However, an analysis of court decisions on Section 17 indicates a clear trend: while securing admitted claims through interim orders is permitted, courts have generally sought to balance interests by ensuring that such orders do not unduly prejudice either party until the final award is rendered. As seen in the cases discussed earlier, courts have either modified or upheld such orders, depending on whether they align with the principle of non-interference in arbitral proceedings and maintain equity between the parties.

Furthermore, such orders under Section 17 help save time and resources for both parties by securing admitted claims early in the arbitration process. This reduces the unnecessary prolongation of disputes over amounts that are not contested, thereby allowing parties to focus on the actual contentious issues.

That said, there remains no express legal provision or judicial precedent prohibiting an arbitral tribunal from issuing an interim order under Section 17 to secure admitted claims, particularly when viewed in the context of Order 39 Rule 10 of the CPC. This evolving judicial approach reinforces that while arbitral tribunals do possess broad powers to secure admitted claims, the manner of execution must be carefully structured to avoid prematurely granting final relief.

Conclusion

It is, therefore, reasonable to conclude that an interim order passed by the arbitral tribunal under Section 17 is enforceable in the same manner as a court order. Thereby the arbitral tribunal has the power under Section 17(1)(ii)(b) to secure disputed amounts, which can be interpreted to include admitted claims. The interplay between Section 17 of the Arbitration and Conciliation Act, 1996, and Order 39 Rule 10 of the CPC highlights the evolving judicial approach to securing admitted claims in arbitration. The amendment to Section 17 has significantly strengthened the arbitral tribunal's authority, allowing it to issue enforceable interim orders akin to court-ordered relief under the CPC. This ensures that admitted claims can be secured early, reducing unnecessary delays and safeguarding the claimant's interests while maintaining procedural fairness.

Judicial precedents affirm that while tribunals can direct the deposit of admitted claims, such orders must be carefully structured to avoid preempting final relief. Courts have largely upheld these interim measures while ensuring that they do not unfairly prejudice either party before the final award. The jurisprudence surrounding this issue demonstrates an ongoing effort to strike a balance between procedural fairness and arbitration efficiency.

Since the core intent of arbitration is to provide an effective, time-bound dispute resolution mechanism, allowing interim measures on admitted claims aligns with this objective. However, the absence of an explicit statutory provision continues to leave room for interpretation. Future judicial decisions and potential legislative amendments may provide further clarity on the precise scope and limitations of an arbitral tribunal's power in this context. Until then, the guiding principle remains that interim relief should facilitate arbitration, protect the legitimate claims of the claimant, and not undermine its purpose by resembling a final remedy.