Scope of power to grant interim measures against third parties under the Arbitration and Conciliation Act, 1996

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Cite as: (2011) PL November S-15 Two adjudicatory authorities possess the power to grant interim orders under the Arbitration and Conciliation Act, 1996 (hereinafter, the Act) i.e. the court and the Arbitral Tribunal. The court has been given the power under Section 9 of the Act to pass interim orders in relation to arbitral proceedings. Section 17 of the Act gives the Arbitral Tribunal the power to order interim measures in respect of the subject-matter of the dispute. The power of the court or the Tribunal to grant interim measures in respect of the parties to the arbitral proceedings is a non-issue. The more problematic issue is the power of the said adjudicatory authorities to grant interim measures under the Act in respect of non-signatories to the arbitration agreement. The non-signatories to the arbitration agreement shall hereinafter be referred to as third parties. In that, the power of the Arbitral Tribunal to grant interim measures vis-à-vis non-signatories to the arbitration agreement is relatively less contentious. However, the power to pass an order for interim measures against third parties is a controversial matter. In the absence of any binding decision of the Supreme Court of India on this point, seeking orders from the court against third parties for whatsoever reason is like walking on a tightrope blindfolded. The court may decide one way or the other.

The purpose of this short article is to critically analyse the law on the power of a court to order interim measures to be taken by a third party. The structure of this article is as follows: Part I deals with the less contentious issue of the power of the Arbitral Tribunal to grant interim measures against third parties. Often, the courts and Arbitral Tribunals fail to recognise the distinction between the power of a tribunal to grant interim measures and the power of the court to grant the same. It is for this reason that Part I explicates the power of the Arbitral Tribunal to grant interim measures. Further, one of the prime reasons for the drafters of the Act to give the court the power to order for interim measures is the limited power of the Arbitral Tribunal to grant interim measures. Hence, Part I deals with the power of the Arbitral Tribunal to grant interim measures. In Part II, the law on the power of the court to grant interim measures against third parties is analysed. In Part III, the law as it exists on the power of court to grant interim relief is critically analysed. Part IV concludes.

I. Power of the Arbitral Tribunal to grant interim measures vis-à-vis third parties Section 17 of the Act confers upon the Arbitral Tribunal the power to order a party to take interim measure of protection in respect of the subject-matter of the dispute.1 The expression used in the heading to Section 17 is “interim measure of protection” in contradistinction to “interim measures, etc.” used in the heading to Section 9 of the Act. The terminological divergence is not unintentional but is deliberate. It is meant to express the legislative intent that the power of the Arbitral Tribunal to grant interim relief is limited to granting only interim measures of protection. 2 Thus, an Arbitral Tribunal, for example, is not empowered by the Act to appoint a guardian for a minor or an unsound person. 3 This is the first implicit limitation on the power of the Arbitral Tribunal to grant interim relief. 4

The second, but substantial, limitation on the Tribunal’s power to grant provisional relief pertains to the person to whom such order is addressed. Section 17 accords power to the Tribunal to grant interim relief only against a party to the arbitral proceedings because the term “party” employed therein is defined in Section 2(1)(h) of the Act to mean an arbitration agreement. 5 Thus, the Tribunal cannot, for instance, pass an interim order against a good faith buyer of an immovable property that is the subject-matter of an agreement to sell. 6 The reason for this limitation is that consensus is the keystone to arbitration. The Arbitral Tribunal must act within the confines of the contract and cannot decide disputes affecting third parties when such third parties have not given consent to take part in the arbitral process. 7 A related reasoning is that arbitrators are “creatures of contract” and consequently, arbitrators acquire their jurisdiction from the agreement between the parties to decide on their rights and liabilities. 8 The logical corollary is that the Arbitral Tribunal does not have power to decide on the rights and liabilities of persons who are not parties to the arbitration agreement, whether provisionally or finally. Another compelling reason for this handicap on the Arbitral Tribunal is that arbitration proceedings are by nature private and confidential affairs and only a select few are privy to it. 9 Third parties are usually not entitled to attend the proceedings of the Tribunal. The position being so, an adverse order cannot be passed by the Arbitral Tribunal to the prejudice of a third party.

This limitation of the Arbitral Tribunal to pass interim (or even final) orders against third parties has been fairly well recognised by the courts. 11 Therefore, this aspect is not controversial (barring certain anomalies) as compared to the issue of the jurisdiction of the court under Section 9 of the Act to pass interim orders in respect of third parties.

II. Power of court to grant interim measures vis-à-vis third parties Apart from the Arbitral Tribunal, even the court has been given the power to grant interim orders. Unlike Section 17, the power of the court under Section 9 is not restricted to ordering interim measures of protection alone. The range of measures that the court could order is provided for in the provision. If so, can a court pass an order asking a third party to take interim measures provided in the said section? The question has been answered both ways by the High Courts. In this part, we shall see the earliest decisions under the Act on the point.
The earliest case under the 1996 Act on this aspect was probably CREF Finance Ltd. v. Puri Construction Ltd.13 On 10-11-1995, CREF Finance Ltd. (hereinafter â€“CREFâ€•) and Puri Construction Ltd. (hereinafter â€“Puriâ€•) entered into a joint venture for jointly conducting business in real estate. Puri already owned 22 acres of property and another 32 acres was to be bought by CREF. As a security for the investment to be made by CREF for buying the said 32 acres, an equitable mortgage was created by Puri on 15011-1995 in respect of the said 22 acres of the property. By 30-7-1997, CREF had invested around Rs 40 crores in the project. On the same day, an agreement was entered into between Puri and CREF, whereby Puri agreed to discharge its liability towards CREF by transferring about 2 lakhs sq ft of property. On 10-3-1998, a development agreement was signed between Puri and Larsen and Toubro (hereinafter â€“L&Tâ€•) to which CREF was an affirming party. The agreement dated 30-7-1997 was made a part of this development agreement.

Disputes arose between CREF and Puri regarding the non-performance of the obligations contained in the agreement dated 30-7-1997. A sole arbitrator was appointed to resolve the dispute. On 13-5-2000, the sole arbitrator, vide an interim order, asked Puri to allot certain property (hereinafter â€“propertyâ€•) to CREF. Consequent thereto, the arbitrator ordered CREF not to interfere with the development by Puri and L&T of certain other property. The Managing Director of Puri, Mohinder Puri agreed to comply with the arbitratorâ€™s order. On 15-7-2000, Mohinder Puri wrote a letter to CREF stating that Puri had allocated the order property to CREF. Further, he also stated that L&T was appointed as the agent of Puri as per a supplementary agreement dated 31012-1999 in respect of certain property under which the order property fell. Mohinder Puri also affirmed that any commitment by Puri or an order in respect of Puri would also bind L&T. On 21-6-2000, L&T, in a reply to a letter by CREF requesting allocation of the order property, stated that Puri had originally agreed to allow L&T to dispose of the order property and therefore L&T would not be in a position to allot the order property to CREF.

Consequently, CREF applied to the Delhi High Court praying for an order of temporary injunction restraining L&T and Puri from disposing of the order property. L&T contended that the appropriate remedy was a suit for temporary injunction under the Code of Civil Procedure, 1908 and not an application for interim relief under Section 9 of the Act. According to L&T, the rationale for this contention was that L&T was not a party to the arbitration clause. Therefore the question before Vikramjit Sen, J. was whether it could validly order L&T to take interim measures in respect of the order property. The Single Judge, after noting that no precedent was available on this issue, held that L&T was not a third party without notice. In fact, in the development agreement that was signed between Puri and L&T to which CREF was an affirming party the agreement dated 30-7-1997 wherein Puri agreed to transfer about two lakhs sq ft of property was made a part of the development agreement. The Court held that L&T was not a total stranger to the commitments made between CREF and Puri in respect of the order property. Hence the Court restrained the respondents, including L&T, under Section 9 of the Act from creating third-party rights in respect of the order property.

National Highways Authority of India v. China Coal Construction Group Corpn.14 is perhaps the earliest case under the 1996 Act where the courts decided against the existence of power of a court to grant interim order against a third party. In March 2002, National Highways Authority of India (hereinafter â€“NHAIâ€•) and China Coal Construction Group Corporation (hereinafter â€“CCCâ€•) entered into a contract for the construction of roads. Disputes arose between the parties and they invoked the arbitration clause. A suit was filed by CCC for permanently restraining NHAI from invoking the bank guarantee. An arbitrator was nominated by NHAI in regard to the disputes. Further, an interim order was granted by the Court restraining any attempt by CCC to remove equipment from the site. In view of the constitution of the Arbitral Tribunal, CCC sought the Courtâ€™s leave to withdraw its suit. Pursuant thereto, the Court passed an order on 2501-2005 dismissing the suit. On the same day, the Arbitral Tribunal passed an order restraining CCC from removing equipment from the site. The Tribunalâ€™s order, however, stated that its order would not affect any decision of the Calcutta High Court.

It may be noted that the Tribunalâ€™s order referred to the proceedings in the Calcutta High Court between SREI International Finance Limited (hereinafter â€“SREIâ€•) and CCC. CCC had, through hire purchase, purchased certain equipment, but according to SREI, had defaulted in payment. Hence, SREI had called upon CCC to remove the default or surrender possession of equipments lying on the site. Since NHAI was not a party to these proceedings before the Calcutta High Court but had a contractual right over the equipments lying on the site, it approached the Delhi High Court for an interim relief. After granting an interim measure of protection under Section 9 as pleaded by NHAI, the High Court went on to decide if SREI could be impelled as a party to the petition. Holding in the negative, the Court held: 15. â€œSection 9 of the Act is with reference to arbitral proceedings just as the intervenor cannot be a party in the arbitral proceedings pending between NHAI and China Coal, it has no locus standi in the present proceedings. The interim orders that may be passed under Section 9 or Section 17 are with respect to the parties to the arbitration and in connection with the subject-matter thereof.â€• 15 (emphasis supplied)

The above decisions have been analysed to give instances of the kinds of justifications offered to either confirm or deny the existence of such a power against a third party. In CREF Finance Ltd. v. Puri Construction Ltd. 16, the Judge took the aid of principles like proactive role of court to support the arbitral process, power of the court to grant relief in equity when the situation demands it, etc. In subsequent cases where prayer for interim measures against third parties was accepted or rejected, they have been mostly based on the rationale provided in the above cases.17 Though it might be unjust, at times, to pass order for interim measures against third parties, there might be compelling reasons for courts to have and exercise such a power.

III. A critical appraisal  In this part, the need for recognition of the existence of the power of court to pass interim
measures against third parties is dealt with.

History of the Model Law  The structure of the Arbitration and Conciliation Act, 1996 has been borrowed from the Model Law and the UNCITRAL Conciliation Rules, 1980. Part I of the Act is virtually based on the Model Law. Sections 9 and 17 of the Act address the same subject as that of Articles 9 and 17 of the Model Law.

In a report of one of the working groups of UNCITRAL, it was stated:
The range of interim measures of protection covered by Article 9 is considerably wider than that under Article 1819 due to the different purposes of these two articles. Article 18 deals with the limited power of the Arbitral Tribunal to order any party to take an interim measure of protection in respect of the subject-matter of the dispute and does not deal with enforcement of such orders. Article 9 deals with the compatibility of the great variety of possible measures by courts available in different legal systems, including not only steps by the parties to conserve the subject-matter or to secure evidence but also other measures, possibly required from a third party, and their enforcement. This would, in particular, include pre-award attachments and any similar seizure of assets. (emphasis supplied)

Hence, the intention of the drafters of the Act has been to grant the court the power to order interim measures where the Arbitral Tribunal cannot legally act.

Against this argument, it might be contended that the wordings of Article 9 are completely different from that of Section 9. 20 But this argument is not sustainable because Article 9, as the drafting history of the Model Law would show, was negatively worded so as to preserve the right of a court to grant interim orders or measures, including even those addressed to non-Signatories to the arbitration agreement. In fact, the inability of the Arbitral Tribunal to pass interim orders against third parties was one of the important reasons for having a provision in the Model Law saving the jurisdiction of the court to grant interim measures, notwithstanding an agreement to arbitrate disputes. It may be noted that unlike most other provisions of Part I of the Act, there is no provision analogous to Section 9 in the Model Law though the subject-matter of both the provisions is the same. The drafters of the 1996 Act seem to have drawn inspiration for this section from Section 41(b) and Schedule II of the Arbitration Act, 1940. Nevertheless, India has retained the same structure as that of the Model Law, including that of the power of the court to grant interim measures in relation to arbitration proceedings.

The structure of Section 9 of the Act  The only rationale supplied in support of the denial of such power has been that no express power for the existence of such power has been granted in Section 9. On the face of it, this argument may sound convincing. Although Section 9 provides that only a party can apply to the court for interim measures, the provision does not say against whom the relief should be addressed. However, there is nothing in Section 9 of the Act, which restricts a court to pass orders under that section against third parties. In fact, under certain provisions of Section 9, a court is authorised to pass orders in respect of parties who are not signatories to the arbitration agreement. For example, the court can, under Section 9, appoint a guardian, or a receiver, who would be third parties to the arbitration agreement.

In Value Advisory Services v. ZTE Corp., 21 Rajiv Sahai Endlaw, J. noted:
14. “â€¦ Under clause (i) [of Section 9] â€¦, the guardian to be appointed may not be such a party [to the arbitration agreement]; similarly the goods under clause (ii)(a) may be or may be required to be in custody of or delivered to or sold to such third parties further orders against such third parties may also be required in connection with such sale; under clause (ii)(b) the amount to be secured may be in the form of money payable or property in hands of such third party the scope cannot/ought not to be restricted to securing possible with orders against parties to arbitration only. Similar examples can be given with respect to other clauses also.â€”

A perusal of cases in which the courts have denied the existence of the power of a court to grant interim orders against third parties would reveal that no justification but for the absence of express provision is given for interpreting Section 9 in a restricted manner.

Power of a civil court  Section 9 provides that the court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it. Thus, the power under Section 9 of a court is equivalent to that of a civil court.

A civil court is not fettered by any provision of law to grant interim relief in respect of a civil suit. A civil court could exercise its powers under Section 151 of the Code of Civil Procedure, 1908 and grant interim relief when justice demands it even where no express power is granted under the said Code to order interim measures.22 There are instances where civil courts have, in the past, made interim orders in respect of non-signatories. SBI v. Economic Trading Co.23 is a classic example where the Court granted an interim injunction restraining non-signatory banks, which were either the guarantor or the beneficiary of a guarantee, from taking action with respect to the guarantee. In this case, State Bank of India, on behalf of a party to a contract, gave a guarantee to an Egyptian bank. When the Egyptian bank wanted to invoke the guarantee, the said party to the contract approached the Court for interim injunction. The Court granted an interim injunction against State Bank of India restraining it from honouring the Egyptian bank’s demand, against the Egyptian bank from insisting State Bank of India from further demanding to encash the bank guarantee, and
against the ultimate beneficiaries of the bank guarantee who instructed the Egyptian bank to demand encashment. 24

It may also be noted that the Delhi High Court has, in a decision25 cited several examples of provisions of the Code of Civil Procedure, 1908/26 where a civil court could pass orders against third parties.

Further, Section 19 of the Specific Relief Act, 1963 deals with situations where relief could be claimed against persons who are not parties to the contract. 26 In such situations, it might be necessary to order interim relief against such third party. In those circumstances, it would result in miscarriage of justice if the court holds that it has no power to issue orders against a third party under Section 9 of the Act.

The role of a court in the arbitral process In CREF Finance Ltd. v Puri Construction Ltd. 28 the Court held, (emphasis supplied) In many cases, it might lead to gross injustice and the petitioner would have been left remediless if the Court unnecessarily refuses to order interim measures of protection.

In Goyal Mg Gases (P) Ltd. v. Air Liquide Deutschland GmbH, a Single Judge Bench of the Delhi High Court held:

3. of the view that where there is commonality of interest between parties to arbitration agreement and some others, who are actively engaged in frustrating the legal rights of a party to the arbitration agreement, the interim measures under Section 9 of the Act may cover even non-parties to the agreement with a view to ensure complete justice between the parties.

The purpose of Section 9 is to support the arbitral process and prevent serious prejudice to one of the parties or even an interested third party30 even before the dispute is resolved finally by the Arbitral Tribunal. The petitioner would have been left remediless because the petitioner can neither approach the arbitrator for an interim measure against a third party (because the tribunal, being a of contract, cannot pass any order against a third party) nor the court if the court unreasonably refuses to order interim measures of protection. 31

Multiplicity of proceedings One of the contentions by L&T in CREF Finance Ltd. v Puri Construction Ltd. 32 against the prayer for interim relief against L&T under Section 9 of the 1996 Act was since it was, a third party thereby disempowering the court from ordering interim measures to be taken by it, the appropriate remedy was filing of a civil suit praying for relief. If this contention is accepted, it would unnecessarily lead to multiplicity of proceedings. A further argument could be made against L&T’s argument. As stated above, the power of a court under Section 9 is equivalent to that of a civil court. Hence, the court under Section 9 can do all it could have ordinarily done in a civil suit, including pass interim orders against third parties.

In Mohd. Ishaq Bhat v. Tariq Ahmad Sofi, the question before the Jammu and Kashmir High Court was whether a third party had the right to be impleaded as a party to a petition under Section 9 of the 1996 Act. Although the Court acknowledged that a third party to an arbitration agreement cannot apply to the court for interim relief under Section 9 of the 1996, the Court held that such inability does not restrict a third party from seeking the court’s leave for impleading itself as a party to the proceedings. However, the Court held that such third party should be interested in the subject-matter of the petition under Section 9 and would be such that it would be materially affected by the order of the court. The Court reasoned that disallowing such third party from having a say in the court in such a situation might lead to injustice and that such a person could assist the court in arriving at a just conclusion. The Court held that if the third party is not allowed to implead itself as a party to the proceedings, it may lead to multiplicity of proceedings and would consequently be contrary to public policy.34 The Court also held:

A person having vital interest in the subject-matter of arbitration agreement cannot be asked to watch the proceedings from the fence and leave the arena for the parties to the arbitration agreement to cut swords, when the victim of the outcome of the dispute is none else but the person pushed to the fence.

IV. Conclusion The courts have, in the past, issued interim orders under Section 9 even against third parties. Examples are National Highway Authority of India v. Elsamex-TWS-SNC Joint Venture and Niko Resources Ltd. v. Union of India. Courts denying the existence of the power to issue interim orders against third parties have based their justifications on the absence of any express statement of the existence of such a power under Section 9. For the reasons above, it would be erroneous to deny the existence of such power. Nevertheless, there might be cases in which justice would demand the court not to exercise that power. In such cases, courts ought to base their reasons on law and not on illusory considerations.

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Naravane available at http://lexarbitri.blogspot.com/2010/07/against-whom-can-remedy-under-section-9.html last accessed 7-2-2011. Thanks to Ms Jasmine Joseph, Assistant Professor, National University of Juridical Sciences, Kolkata, for her critical comments on the draft of this article.

- Section 17 provides:
  17. Interim measures ordered by Arbitral Tribunal.â€“(1) Unless otherwise agreed by the parties, the Arbitral Tribunal may, at the request of a party, order a party to take any interim measure of protection as the Arbitral Tribunal may consider necessary in respect of the subject-matter of the dispute. (2) The Arbitral Tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

- For a long time, commentators on arbitration have maintained the distinction between different categories of interim relief such as protective or conservatory measures, provisional or interim measures, etc. Though these terms have been used synonymously, they seem to have specific meanings. For instance, the term âœœprotective or conservatory measuresâœ• refer to those measures that are meant to protect or preserve the subject-matter of the dispute. See, Gary B. Born, International Commercial Arbitration, Vol. III (Wolters Kluwer 2009) 1944-55.

- But for the power to appoint a guardian for a minor or an unsound person, the range of interim measures available to a court under Section 9 and an Arbitral Tribunal are virtually the same.

- Apart from the linguistic differences, this view is also affirmed by the fact that the wordings of Section 17 are virtually the same as that of the analogous provision in the UNCITRAL Model Law on International Commercial Arbitration (hereinafter âœœthe Model Lawâœ•). Article 17 of the Model Law, as it existed till 2006, read: Unless otherwise agreed by the parties, the Arbitral Tribunal may, at the request of a party, order any party to take such interim measure of protection as the Arbitral Tribunal may consider necessary in respect of the subject-matter of the dispute. The Arbitral Tribunal may require any party to provide appropriate security in connection with such measure. (emphasis supplied) The provisions pertaining to interim measures by the Arbitral Tribunal was substantially modified in 2006 and the expression âœœinterim measures of protectionâœ• was changed as âœœinterim measuresâœ•. The latest version of the Model Law is available at http://www.uncticral.org/pdf/english/texts/ arbitration/ml-arb/07-86998_Ebok.pdf last accessed 7-2-2011.

- It may also be noted that the expression used in Section 17 is âœœat the request of a partyâœ• meaning thereby that interim relief is to be given by the Tribunal at the instance of a party to the arbitration agreement alone and not at the instance of any other person.

- See however, Cadre Estate (P) Ltd. v. Salochna Goyal, WP (C) No. 2782 of 2010 decided on 5-10-2010 (Del) available at http://indiankanoon.org/doc/1750473/ last accessed 2-2-2011 where the arbitrator passed an interim order against a third party ordering it to not deal with the property till further orders. It is inconceivable that the arbitrator could clothe himself with jurisdiction that was not his to possessâœ•he could not have acquired jurisdiction against a party which was not a party to the arbitration agreement.

- Section 7 of the Act defines arbitration agreement to mean, an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. (emphasis supplied)


- See, Emmott v. Michael Wilson & Partners Ltd., (2008) EWCA Civ 184 : (2008) 2 All ER (Comm) 193 (CA) available at http://www.bailii.org/ew/cases/EWCA/Civ/2008/184.rtf last accessed 1-2-2011 where the English Court of Appeal has comprehensively surveyed several decisions on the point and has reiterated the principle that arbitration is a private affair and the participants of the arbitral process are subject to the obligation of confidentiality.

- See for example, First International Line S.A. Panama v. Chokhani International Ltd., (2003) 3 ALR 225 (Mad) also available at http://indiankanoon.org/doc/703305/ last accessed 7Ó2-2011 where the appellant wanted to be impleaded as a party to the arbitration proceedings between two other parties. There was an arbitration agreement subsisting between the other two parties and the appellant was not a party thereto. The Division Bench of the Madras High Court held that the appellant was a stranger to the arbitration agreement and hence it had no right to participate in the arbitration proceedings between the other two parties.


- Supra, n. 7. Also see, National Highway Authority of India v. Youone Maharia, IA No. 3806 of 2008 in OMP No. 452 of 2005 decided on 107Ó2009; National Highways Authority of India v. China Coal Construction Group Corpn., AIR 2006 Del 134 : (2006) 1 ALR 265 (Del), where the Delhi High Court gave the option to an applicant, a third party, to approach either the court or the Arbitral Tribunal to vacate a status quo order when the applicant could not have participated in the arbitral process owing to lack of arbitration agreement.

- (2000) 3 ALR 331 (Del).


- bid, 145, para 15.

- (2000) 3 ALR 331 (Del).

accessed 3-2-2011 and Ajay Mahkija v. Dollarmine Exports (P) Ltd., OMP No. 472 of 2009 decided on 19-8-2009 available at http://www.indiankanoon.org/doc/21862/ last accessed 3-2-2011. Cases in which courts have denied the existence of such power are: National Highways Authority of India v. China Coal Construction Group Corpn. supra, n. 14; Arch Hi-Rise (P) Ltd. v. Yatin Bhimani, (2006) 4 CHN 204; Impex Trading Gmbh v. Anunay Fab. Ltd., (2008) 1 ALR 50 (Del); Kanta Vashist v. Ashwani Kumar, FAQ (OS) 184 of 2008 decided on 16-5-2008; National Agricultural Co-operative Marketing Federation of India Ltd. v. Earthtech Enterprises Ltd., OMP No. 558 of 2007 decided on 23-4-2009; National Highway Authority of India v. Youone Maharia, available at http://indiankanoon.org/doc/703305/ last accessed 10-2-2011. In Mikuni Corpn. v. Ucal Fuel Systems Ltd., (2008) 1 ALR 503 (Del), the Court while recognising that an interim order under Section 9 could lie against a third party, it also held that no such order could lie if the person against whom the prayer is sought is in no way connected to the agreement in relation to which an interim order is sought. In Muthoot Leasing and Finance Ltd. v. N.P. Asiya, Arb. Appeal No. 35 of 2009 decided on 7-2-2011 available at http://indiankanoon.org/doc/1873768/ last accessed 16-2-2011, a property was attached by the court in the exercise of its power under Section 9 of the Act. However, the property was sold prior to the attachment. In this circumstance, the existing owner of the property filed a petition under Order 21 Rule 58 of the Code of Civil Procedure, 1908 and Section 9 of the Act praying for the removal of attachment. The Court held that it had the power to remove the attachment as there were justifiable reasons to do so, notwithstanding that the petitioner had not claimed any relief under Section 9 of the Act. It may also be noted, as stated above, that only a party to the agreement could apply to a court for interim measures under Section 9 of the Act.

- The original Article 17 of the Model Law, 1985 was Article 18 at that time of drafting.
- Article 9 of the Model Law reads:

**9. Arbitration agreement and interim measures by court.â€”It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.**

- OMP No. 65 of 2008 decided on 15-7-2009 (Del).
- AIR 1975 Cal 145.
- Value Advisory Services v. ZTE Corpn., OMP No. 65 of 2008 decided on 15-9-2009 (Del).
- The provisions cited were Sections 47, 60 and Rules 46 and 46A-F of Order 21, Rules 6 to 11ÓA of Order 38 of the Code of Civil Procedure, 1908.
- Section 19 of the Specific Relief Act, 1963 states:

**19. Relief against parties and persons claiming under them by subsequent title.â€”Except as otherwise provided by this Chapter, specific performance of a contract may be enforced againstâ€”**

(a) either party thereto;
(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
(e) when the promoters of a company have before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

- (2000) 3 ALR 331 (Del), 338, para 15.
- See, Cadre Estate (P) Ltd. v. Salochna Goyal, supra, n. 6, where the Delhi High Court refused to pass an interim order against a third party to the contract. The petitionerâ€™s complaint was that one of the respondents had entered into an agreement to sell with her. However, the said respondent disposed of the property even before the sale was concluded. Therefore, the petitioner approached the court to restrain the said respondent and the subsequent transferee from alienating or disposing of the property. The Court held that there was no agreement between the petitioner and the subsequent transferees and dismissed the application under Section 9 for interim injunction. Ultimately, the arbitrator passed an interim order under Section 17 of the Act, which he was not actually empowered to do.
- (2000) 3 ALR 331 (Del).
- While this case does not deal with the power of a court to grant interim measures against a third party, the decision clearly recognises that third parties might have an interest in applications under Section 9 of the Act and where the interests of third parties are not recognised in proceedings under Section 9 for the reason that such third party was not a party to the arbitration agreement, it might lead to injustice to the third party. In cases where interests of third parties might be substantially affected in applications under Section 9, courts could, suo motu, issue notice to third parties, hear them and then grant interim measures.

(2001) 3 ALR 196 (Del). In this case, the Court restrained one of the parties and its subsidiary, a third party, from dealing with the subject-matter of the dispute.