

***THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
*THE HON'BLE JUSTICE GADI PRAVEEN KUMAR
+ COMMERCIAL COURT APPEAL No.21 OF 2026**

% 24.06.2026

KPB Consumers

...Appellant

vs.

\$ Swmabhan Commerce Private Limited

... Respondent

!Counsel for the Petitioner: Mr.Omer Farooq

^Counsel for Respondent :

<Gist :

>Head Note :

? Cases referred

1 2013 SCC OnLineBom 481

2 COMCA.No.6 of 2023

3 APOT No.269 of 2025

4 (2021) 6 SCC 418

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

COMMERCIAL COURT APPEAL No.21 OF 2026

24th June , 2026

Between:

KPB Consumers

.....Appellant

AND

Swmabhan Commerce Private Limited

.....Respondent

Mr.Omer Farooq, learned counsel appearing for the appellant.

JUDGMENT: *(Per Hon'ble Justice Moushumi Bhattacharya)*

1. The Commercial Court Appeal has been filed under section 37(1)(b) of The Arbitration and Conciliation Act, 1996 ('the A&C Act') assailing the order dated 31.03.2026 passed in Commercial Original Petition No.6 of 2026 by the learned Commercial Court, at Hyderabad. By the impugned order, the Commercial Court dismissed the petition filed by the appellant/petitioner (award-holder) under section 9 of the A&C Act seeking a direction on the respondent (award-debtor) to file an affidavit disclosing its assets under Form No.16A of Appendix E of The Code of Civil Procedure, 1908.

2. We have heard learned counsel appearing for the appellant/award-holder. No one appears for the respondent/award-debtor despite service of notice.

3. Since the respondent is not represented in the present Appeal, it is necessary to place the aspect of service of notice to the respondent in detail.

4. The Court ordered notice to the respondent on 22.04.2026. Pursuant thereto, the appellant issued personal notice to the respondent at the address mentioned in the Agreement between the parties dated 26.04.2023. The same address was also mentioned in the Statement of Defence filed by the respondent in the Arbitration Application No.152 of 2024. The notice was sent through Speed Post Acknowledgment Due on 22.04.2026. The notice was however returned on 25.04.2026 with the endorsement 'addressee left without instructions'.

5. It is relevant that the respondent was also served personal notice to the very same address in the section 9 petition before the Commercial Court. Paragraph 3 of the impugned order passed by the Commercial Court on 31.03.2026 records that the respondent failed to appear before the Court and was set *ex parte* on 02.02.2026.

6. The appellant once again attempted service of personal notice upon the respondent through SPAD on 25.04.2026. These notices were also returned with the endorsements 'addressee left without instructions' and 'no such person at the address'.

7. The appellant thereafter served notice on the respondent *vide* mail dated 23.04.2026 on the email addresses of the respondent (to all seven addresses). The said email addresses were used by the parties to communicate at the time of drawing up of the Contract and the Arbitral proceedings. A list of mails which were sent by the appellant to the respondent is part of the Synopsis filed on behalf of the appellant.

8. In the context of mails, it is relevant to refer to Chapter VII of the Appellate Side Rules of The Telangana High Court Rules relating to 'Service of Notices' and Rule 60(1) thereunder and the same is set out below:

'60.(1) Every notice issued in respect of proceedings in the High Court other than writ petition, appeals against orders made in the exercise of original jurisdiction, petitions for injunction and all cases where notice is to a proposed guardian *ad litem*, shall be sent in the first instance to the address of the respondent given in the memorandum of appeal or petition, as the case may be, by means of registered post, acknowledgements due or by speed post or by an approved courier service or by fax message or by electronic mail service or by such means. An acknowledgment purporting to be signed by the respondent shall be deemed by the court to be sufficient proof of service of such notice...'

9. Therefore, the mail dated 23.04.2026 sent to the respondent is accepted as sufficient service on the respondent. Copies of all other relevant documents in relation to service of notice including personal notice on the respondent are part of the record.

10. Hence, it is clear that the respondent chose not to present its case before the Commercial Court and also remained unrepresented before this Court. Therefore, we proceeded to hear the arguments of counsel for the appellant and decide the Appeal on the basis of the material placed before us and the law relevant to the issue before us.

11. A brief background of the dispute is necessary to be stated before engaging on the statutory position relevant to the issue.

- (i) The appellant is a successful claimant in an arbitration which culminated in an Award dated 30.08.2025 by which the respondent was directed to pay Rs.38,24,887/- along with interest accrued thereon from 05.04.2024 till the date of payment or recovery through the process of Court.

- (ii) The respondent did not file any application under section 34 of the A&C Act for setting aside the Award.
- (iii) The appellant filed a petition under section 9 of the A&C Act (COP.No.6 of 2025) before the Commercial Court on 07.01.2026 seeking a direction on the respondent to file an affidavit under Form No.16A of Appendix E of the CPC.
- (iv) The Commercial Court dismissed the appellant's petition on the ground that the arbitral award had become enforceable under section 36 of the A&C Act and that there were no extraordinary circumstances to entertain the post-award petition filed under section 9 of the A&C Act for interim protection.

12. The present Appeal seeks to assail the learned Commercial Court's refusal to grant interim protection to the appellant.

13. Learned counsel appearing for the appellant submits that the relief of disclosure of assets is a step in aid towards enforcement of the arbitral award and the scope of post-award section 9 petition extends to issuance of proper directions towards enforcement of the award. Counsel submits that the

reason given by the Commercial Court for rejecting the petition is contrary to the language of section 9 of the A&C Act. Counsel relies on several decisions to urge that the appellant, as the award-holder, was entitled to seek appropriate relief in the form of declaration of assets before enforcement of the award particularly where the Award has attained finality.

14. We have considered the submissions made by counsel appearing for the appellant in light of the law pronounced by the Supreme Court and the High Courts on the scope of a petition filed under section 9 after making of an arbitral award.

Sections 9 and 36 of The Arbitration and Conciliation Act, 1996

15. Section 9 of the A&C Act provides for interim measures by the Court. The caption of the section includes '*etc.*,' which reinforces the vast bouquet of interim protections available to a party/applicant under that provision. Section 9 authorises a party (to an Arbitration Agreement) to apply to a Court for any of the interim measures under section 9(1)(ii) including any other interim protection as may appear to the Court to be just and convenient (section 9(1)(ii)(e)). The timeframe for making such application is the moot point in the present Appeal.

16. The relevant part of section 9(1) of the A&C Act is set out below:

“9. Interim measures, etc., by Court –

(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) ...

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) to (c) ...

(e) such other interim measure of protection as may appear to the Court to be just and convenient,

and 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.”

17. The language is clear and unambiguous insofar as it indicates the window within which an application may be made under section 9 of the A&C Act. The provision unequivocally declares that a party may apply for interim protection at the post-award stage. The stage is subject to an outer limit as denoted by the words ‘...*but before it is enforced in accordance with section 36...*’. Hence, in plain terms, a party may apply for interim measures under section 9(1) even after making of the arbitral award but before the award is enforced under section 36 of the Act.

18. The window for interim protection under section 9(1) of the Act continues until the award is enforced under section 36 and is not foreclosed by any other provisions in the A&C Act except section 36 which deals with enforcement.

19. Section 36 of the Act deals with 'enforcement' of the arbitral award. Section 36(1) declares that an award shall be enforced in accordance with the provisions of the CPC in the same manner as if it were a decree of the Court on the expiry of the time for making an application for setting aside of the arbitral award under section 34 of the Act. Section 36(2) clarifies the preceding provision by stating that mere filing of an application for setting aside the arbitral award under section 34 shall not, by itself, render the award unenforceable unless the Court grants an order of stay of operation of the award in accordance with section 36(3) on a separate application being made for stay of the award. Section 36(3) empowers the Court to stay an award subject to such conditions as the Court may impose supported by reasons recorded in writing. The first proviso to section 36(3) mandates that the Court shall be guided by the provisions for stay of a money decree under the CPC for stay of an award for payment of money.

20. Section 36(1), (2) and (3), as elucidated above, is primarily concerned with the enforcement momentum continuing unimpeded unless the Award is stayed on certain conditions including payment of the awarded amount or a part thereof. Unconditional stay of awards upon satisfaction of the conditions under the second proviso to section 36(3) of the Act is not relevant for the present discussion.

What is the Cut-off for seeking Interim Measures under section 9 of the A&C – the Award becoming ‘enforceable’ or its actual enforcement?

21. Section 9(1) provides a straightforward answer by the words ‘*before it is enforced*’ as opposed to ‘*the award becomes enforceable*’ (absent in the provision). Hence, from a purely grammatical point of view, the word ‘*enforced*’ would mean completion or culmination of the enforcement proceedings. The finality attached to the word ‘*enforced*’ is unmistakable; there is no further recourse for enforcement of the Award. On the other hand, ‘*enforceable*’ would mean a process in continuum which is devoid either of finality or a conclusive enforcement of the arbitral Award.

22. Section 36(1) and (2) of the Act declares that an Award becomes enforceable upon expiry of the limitation of three months + thirty days for seeking recourse under section 34 of the Act. Thus, the award becomes enforceable as soon as the timeframe under section 34(3) expires.

Even otherwise, construing 'enforced' as 'enforceable' in section 9 of the A&C Act would result in an unintended Statutory Deviation.

23. There are several justifications for the above caption.

24. The first of these is the time gap between the stage at which the award becomes 'enforceable' and when the award-holder actually seeks enforcement thereof. As stated above, the award becomes enforceable upon the failure of a party to seek setting aside thereof within the stipulated timeframe under section 34(3) of the Act. The award may also become enforceable after dismissal of an application for condonation of delay in applying to set aside of the award. Further, the award may become enforceable upon the Arbitral Tribunal making a correction to or interpreting the award under section 33(1) and (2) or making an additional award under section 33(5) and (6) subject to the timeframes stipulated thereunder and subject to

the agreement arrived at by the parties *dehors* the framework of section 33.

25. Notably, section 33 does not stipulate a maximum outer limit within which the Arbitral Tribunal must correct/interpret the award or pass an additional award. The Arbitral Tribunal has the discretion to extend that timeframe.

26. Notwithstanding Article 136 of The Limitation Act, 1963, which prescribes a limitation of twelve years for execution of any decree, it is relevant that section 36 of the A&C Act which deals with enforcement of the arbitral award does not, under (1) or (2), provide for a timeline within which an award-holder should apply for enforcement of an award. Section 36 simply declares that the award may become enforceable i.e., capable of enforcement upon expiry of the time for filing an application for setting aside of the award and where the operation of the award has not been stayed under section 36(2). Section 36(2) amplifies the declaration by clarifying that an application for setting aside an award under section 34 shall not render the award unenforceable unless the Court grants order of stay of operation of the award under section 36(3).

27. The absence of any prescribed limitation for enforcement means that the award-holder remains vulnerable in the interregnum, that is, after the award becomes enforceable and before the party files for execution/enforcement of the award. The vulnerability stems from any acts on the part of the award-debtor to frustrate the award by depleting the value of the award-debtor's assets, or alienating the assets altogether, to the ultimate prejudice of the award-holder. This vulnerability remains even after a stay is granted under section 36(3) by reason of the indeterminate length of time during which stay orders remain operative.

28. The A&C Act does not contain any provision limiting the duration of the order directing stay of the arbitral award. The only protection which the award-holder can possibly get during the subsistence of the stay is some sort of discretionary relief in terms of security furnished by the award-debtor. In short, the Act does not protect the award-holder during the period of stay including in cases where the award-debtor deals with the assets/subject matter of the award so as to reduce the award to a paper decree. Therefore, the objective of the Act would be set at naught if the award-holder is left without a legal recourse

against such acts of the award-debtor despite having an award in its favour.

29. This anomaly would be incongruous to the legislative intent of section 36 itself. A bare reading of the section leaves no doubt that grant of stay of an arbitral award is not automatic or granted in the usual course. Section 36(2) and (3) manifests a clear resistance to stay an arbitral award where the award has become enforceable. The statutory mandate requiring the Court to record reasons in writing for granting an order of stay makes this intent evident; that stay is not the norm but an exception.

The proviso to Section 36(3) further enjoins the Court, in cases where the award directs payment of money, to be guided by the principles under Order XLI Rule 1(5) of the Code of Civil Procedure, 1908. The said provision empowers the Court to insist upon security being furnished by a judgment-debtor who seeks stay of a money decree. Thus, the statutory scheme makes it clear that the grant of stay is conditional and subject to safeguards designed to protect the interest of the award-holder.

30. Thus, the overt intention of the Act to protect the award-holder cannot be negated or diluted by permitting the award-debtor to deal with the award while disabling the

award-holder from seeking protections which are otherwise available in such circumstances.

31. Notably, Order XXI of the CPC, which governs execution of decrees, does not envisage any interim protections. Order XXI of the CPC does not contain any provision for interim relief in favour of the award-holder during execution despite setting out a comprehensive procedure for execution of a decree. In other words, the statutory protection afforded to a party, in a post-award situation under the A&C Act, is absent in the CPC.

32. Therefore, it is inconceivable that a party would be deprived of its statutory right to approach the Court under section 9 of the A&C Act after making of an award particularly where similar recourse is not available before the executing Court at the stage of enforcement of the award. It hence follows that the award-holder cannot be left remediless in terms of safeguarding the award from potential acts of depletion and waste. The avowed object of the A&C Act is to protect and give effect to arbitral awards rather than to create impediments for its enforcement.

Section 36 of the A&C Act is not in derogation of the Remedy available to the Party under section 9(1) of the A&C Act.

33. This would be evident from section 36(1), (2) and (3) read with the provisos thereto. The language of section 9(1) makes it abundantly clear that interim protection is available even post-award until the award is enforced. Thus, the reason given by the Commercial Court in the impugned order that section 9 would not be available to a party once the award becomes enforceable, is without any statutory basis. Furthermore, the observation of the Commercial Court that a party must show 'exceptional circumstances' in order to seek interim protection under section 9, after the award becomes enforceable, is also not reflected in any of the provisions of the A&C Act.

Section 9 of the A&C Act is a Step in Aid in Enforcement of the Award.

34. Section 9 of the A&C Act was consciously enacted for interim protection even after making of the award and till its enforcement. Curtailing the window for grant of interim reliefs to the stage when the Award becomes 'enforceable' would be an unnatural cut back of the efficacy of section 9 and would be

strikingly impermissible since the words in section 9 are clear and unambiguous. The presumption of reasonableness of a provision is settled; a provision cannot be interpreted in a manner so as to result in patent absurdity.

35. Moreover, section 9 of the A&C Act would be at odds with section 36 if such a dilution of the former is permitted. It would not be entirely out of place to mention that section 9 closes the loop between the stage when an award is made and when it is entirely enforced by enabling the award-holder to protect the corpus of the award. In essence, it is a step in aid of enforcement of the Award under section 36 of the A&C Act. Section 9 proceeding at the post-award stage is to ensure that enforcement of the award results in a realizable claim and the award is not rendered illusory: *Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited*¹.

36. In essence, section 9 cannot be read down or whittled down to the detriment of the award-holder.

¹2013 SCC OnLineBom 481

Section 9 of the A&C Act mirrors section 17 of the A&C Act and Order XXXIX Rules 1 and 2 of the CPC.

37. The power to grant interim measures to the party is not unprecedented in the scheme of the 1996 Act.

38. Section 17(1) of the A&C Act empowers the Arbitral Tribunal to grant interim measures of protection to the party during pendency of the arbitral proceedings. The procedural jurisprudence in relation to grant of interim protection can be traced to Order XXXIX Rules 1 and 2 of the CPC which contemplates temporary injunctions and interlocutory orders. The Court's power to grant temporary injunctions during pendency of a suit and restraining the opposite party from wasting, damaging or alienating the property in derogation of the plaintiff's right forms the foundation of Order XXXIX Rules 1 and 2. The power is to be exercised until disposal of the suit or until further orders.

39. Order XXXIX Rule 2(2) further authorises the Court to put the defendant on terms including furnishing of security. The obvious need for interim relief during pendency of a suit or an arbitration is part of the statutory/procedural jurisprudence of

the country and cannot be seen as a favour to be sought for or granted as a one-off measure.

40. Section 9(1) of the A&C Act derives its character from Order XXXVIII Rule 5 of the CPC wherein the Court is empowered to pass an order of restraint against the defendant or ask the defendant to furnish a security if the Court is satisfied that the defendant is about to dispose of or remove the property from the local limits of the jurisdictional Court. Order XXXVIII Rule 6 further empowers the Court to make an order for attachment of the property where the defendant fails to show cause as to why the defendant does not have to furnish security.

41. It is hence clear that the Court is authorised under the fundamental procedural law of this country to pass appropriate directions on the defendant/respondent where there is an immediate or perceived risk to the subject property being alienated or diminished in value. Section 9 of the A&C Act is no stranger to that jurisprudence and is firmly-embedded in the existing procedural laws.

The Impugned Order falls foul of the A&C Act

42. The Commercial Court dismissed the appellant's petition on the ground that the appellant/award-holder failed to show any 'exceptional circumstances' for invoking section 9 of the A&C Act at the post-award stage. The Commercial Court found that the award dated 30.08.2025 had become enforceable and that the appellant had not shown any reasons for not proceeding for execution under section 36 of the A&C Act.

43. None of the above reasons are consonant with the scheme of the A&C Act or the plain scope of section 9 of the Act. Section 9 does not require an award-holder to show exceptional circumstances for grant of interim relief. Section 9 does not state that the remedies available 'pre' and 'during' the arbitration/award should be transformed to a different standard at the post-award stage.

44. Further, as stated above, and at the cost of repetition, section 36 is not in derogation to section 9, i.e., section 36 does not contain any embargo on a party/award-holder to seek interim protection under section 9 even after the award becomes enforceable - but before the award is enforced. In requiring the appellant to show exceptional circumstances, the Commercial

Court placed an additional weight on section 9, post-award, as opposed to the 'pre' and 'during' period, which is not contemplated in the said provision.

45. Therefore, the reason given by the Commercial Court for rejecting the petition was bereft of any statutory basis.

46. The issue of post-award interim relief was considered by a Division Bench of this Court in *Mytrah Energy (India) Private Limited v. Seimens Gamesa Renewable Power Pvt. Ltd.*² where the Division Bench categorically held that section 9 authorises a Court to grant interlocutory protection even after making of an arbitral award. The Division Bench relied on *Dirk India Private Limited* where the Division Bench of the Bombay High Court held that the measure of protection contemplated under section 9 extends after making of an arbitral award and is intended to safeguard the fruits of the proceedings until the enforcement of the Award. A Division Bench of the Calcutta High Court in *Alok Saraf v. Shyam Sundar Nangalia*³ relied on the language of section 9 of the Act and held that the remedy under section 9 can be invoked even after making of the arbitral award until the award is enforced. The Court made a distinction between the

²COMCA.No.6 of 2023

³ APOT No.269 of 2025

award becoming enforceable and the award being enforced. In *Rahul S. Shah v. Jinendra Kumar Gandhi*⁴, the Supreme Court held that a defendant may be required to disclose his assets on board before settlement of issues in a suit for payment of money.

Conclusion

47. The award-holder is the appellant, before us. The respondent, award-debtor, failed to apply for setting aside of the award within the prescribed time. Hence, the award became enforceable after expiry of three months (the additional 30 days would not apply since the respondent did not make an application under section 34 at all). However, the fact that the award became enforceable would not be an impediment for the appellant to file an application under section 9 for interim measures since the A&C Act authorises the party to make an application even after making of the award. The Act does not bar an application for interim measures in the interregnum, i.e., of the award becoming unenforceable and the Award being finally enforced.

48. Even otherwise, the petition filed by the appellant under section 9 was premised on the respondent making an attempt to

⁴(2021) 6 SCC 418

alienate the assets and flee the jurisdiction of the Court. The appellant accordingly filed a petition within the framework of Form No.16A of Appendix E of the CPC for disclosing the particulars of the respondents assets in accordance with the statutory format. The petition was completely in keeping with section 36 of the A&C Act which lays down that the Award shall be enforced in accordance with the provisions of the CPC in the same manner as if it were a decree of the Court (section 36(1)).

49. The effect of the petition was not punitive or immediately prejudicial to the respondent in terms of seeking any restraint on the respondent. The effect of the petition was only to direct the respondent to disclose its assets so that the appellant could take appropriate measures to restrain any future alienation enabling the appellant to decide the future course of action.

50. Thus, the petition was only a step in aid of enforcing the Award and not a step *de hors* the A&C Act. We have discussed the fundamental difference between an arbitral award becoming enforceable and finally being enforced through the procedure envisaged in Order XXI of the CPC. The potential time gap between the award 'becoming enforceable' and 'being enforced' cannot relegate an award-holder to a state of perpetual

uncertainty as to whether the fruits of the award will ever be realised.

51. Section 9 of the A&C Act is an enabling standalone provision which can be invoked by a party, independent of whether the party has filed for execution of the award. The approach adopted by the Commercial Court in drawing a distinction between the '*pre*' and '*during*' and the post-award scenario amounts to an unnatural interpretation of the section. Such an interpretation denudes the post-award remedy under section 9 of its efficacy which is clearly not intended by the Legislature. The requirement of a party to demonstrate exceptional circumstances for obtaining interim protection at the post-award stage is thus an erroneous construction of section 9(1) of the A&C Act; the provision does not envisage such an approach.

52. Therefore, we are unable to accept the reasons stated in the impugned order. The impugned order dated 31.03.2026, rejecting the appellant's petition filed under section 9(1) of the A&C Act, is hereby set aside.

53. COMCA.No.21 of 2026, along with connected applications, is accordingly allowed in terms of the above. Miscellaneous applications pending, if any, shall stand closed.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

Date: 24.06.2026
Note: L.R. be marked.
B/o. BMS/TJMR