

Courts' power to grant interim measures operates only in emergency. The tribunal's jurisdiction is pre-eminent (Delhi High Court in an ad-interim observation)

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Published on 21 September 2020

Nirbhay Pratap Singh v. Sumitomo Electric Industries Ltd & another

Court: Delhi High Court | **Case Number:** OMP (I) (COMM) 275/2020 | **Bench:** C Hari Shankar J | **Date:** 11 September 2020 | **Available at:** Delhi High Court's website (http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=148288&yr=2020)

Though in an *ad-interim* order, Justice C Hari Shankar of the Delhi High Court has reiterated his view that the jurisdiction of the arbitral tribunal under Section 17 of the Arbitration and Conciliation Act, 1996 ("ACA") has primacy in matters of interim relief over the jurisdiction of the court under Section 9 ACA.

He observed as follows:

- (a) Section 9 ACA is not intended to operate as an alternative to Section 17 ACA.
- (b) The pre-eminence of the jurisdiction of the arbitral institution to deal with arbitrable disputes permeates the 1996 Act, and interference by courts is required, statutorily, to be reduced to a minimum.
- (c) Section 9, therefore, operates only as an emergency provision to provide interim protection—as opposed to interim relief—where, but for such protection, the corpus of the arbitration might vanish, or the arbitral proceedings frustrated even before they commence.

These observations should be seen along with Hari Shankar J's decision in *Avantha Holdings Ltd. v. Vistra ITCL India Limited*, (OMP (I) COMM 177 of 2020), pronounced on 14 August 2020. Among a host of other things, Hari Shankar J had concluded that while exercising jurisdiction under Section 9 ACA, the court cannot usurp the jurisdiction vested in the arbitral tribunal (even at a pre-arbitration stage when the tribunal was yet to be constituted).

He also rejected (in a final way) Nirbhay Singh's prayer for a direction to Sumitomo to file an affidavit supplying details of their properties. He said that this prayer could not be granted under Section 9 ACA. Read our update on *Avantha Holdings* [here](#).