



## **This Fortnight In Arbitration**

**16 August 2021 to 31 August 2021**

***VOLUME I | ISSUE 12***

*By the Editorial team*

---

### **What's Inside**

---

- (1) If the tribunal is constituted, the jurisdiction of the Section 9 court is considerably restricted, but not ousted (Allahabad High Court)
- (2) When can invocation or encashment of unconditional bank guarantee be injuncted? (Delhi High Court)
- (3) No interim relief when no right exists to get an extension of lease (Delhi High Court)
- (4) Section 14 of the Limitation Act applies to a set-aside petition under Section 34 (3) ACA (Calcutta High Court)
- (5) Tribunal's procedural order for costs not appealable; remedy lies before the tribunal itself (Madras High Court)

(1)

**If the tribunal is constituted, the jurisdiction of the Section 9 court is considerably restricted but not ousted (Allahabad High Court)**

---

19 August 2021 | Ramesh Kumar Agarwal v. Naresh Kumar Agarwal and another | FAO 748 of 2021 | Suneet Kumar J | 2021 SCC OnLine All 541

---

Upholding the order of the commercial court that rejected an application under [Section 9 ACA](#), Suneet Kumar J explained the scope of [Section 9 \(3\) ACA](#).

Section 9 (3) provides that “once the arbitral tribunal has been constituted, the Court shall not entertain an application ... unless circumstances exist which may not render the remedy [before the arbitral tribunal] efficacious.”

Kumar J ruled that it is not easy to define the “circumstances”; they have to be pleaded. He also noted that [Section 9 \(3\) ACA](#) uses “entertain”, so instituting an application was not barred. Still, the court could refuse to entertain it in the absence of those circumstances that would make the remedy before the tribunal not efficacious.

Read the judgment [here](#).

**Categories:** [Section 9 ACA](#) | [Interim Measures by Court](#) | [Section 9 \(3\) ACA](#)

(2)

**When an invocation or encashment of unconditional bank guarantee be injuncted? (Delhi High Court)**

---

26 August 2021 | SES Energy Services India Ltd. v. Vedanta Limited and others | OMP (I) (Comm.) 285/2021 | C Hari Shankar | 2021 SCC OnLine Del 4196

---

Refusing an injunction against the invocation of performance bank guarantees, C Hari Shankar J has ruled that:

- (a) The law recognises only three circumstances in which invocation or

encashment of unconditional bank guarantees could be injuncted: (i) egregious fraud; (ii) special equities; (iii) irretrievable injustice. The latter two are interconnected as held by the Supreme Court in *BSES Ltd. v. Fenner India Ltd.*, (2006) 2 SCC 728.

- (b) Fraud *per se* is not sufficient. It must be egregious and must vitiate the entire underlying transaction.
- (c) Fraud is egregious when it erodes the very foundation of the bank guarantee and is definitively established. Therefore, even if the invocation is fraudulent, an injunction cannot be granted unless the bank guarantee itself is vitiated by fraud.

Read the judgment [here](#).

**Categories:** [Section 9 ACA](#) | [Interim Measures by Court](#) | [Egregious Fraud](#) | [Encashment of Bank Guarantees](#) | [Injunction Against Bank Guarantee](#) | [Irretrievable Injury](#) | [Special Equities](#)

(3)

**No interim relief when no right exists to get an extension of the lease (Delhi High Court)**

---

27 August 2021 | Narangs International Hotels Private Limited v. Delhi International Airport Limited | OMP (I) (Comm) 294 of 2021 | Sanjeev Narula J | 2021 SCC Online Del 4197

---

Reiterating the trinity of principles on which an interim order under [Section 9 ACA](#) is made, the petition under [Section 9 ACA](#) was rejected for the following reasons:

- (a) The petitioner did not have a *prima facie* case. It was a lessee of DIAL, handling the airport careering business. The lease was about to expire. It had no enforceable right to get an extension. An extension was negotiated in vain, but that did not mean DIAL could be

compelled to enter into a contract. DIAL was free to choose its vendors.

(b) The contract was determinable within the meaning of [Section 14 \(d\) Specific Relief Act, 1963](#), and could not be specifically enforced. So, under [Section 41 \(e\) SRA](#), an injunction could not be granted.

(c) The petitioner had possession for over four decades, but that does not mean it had a right to occupy the premises or continue as a lessee in perpetuity.

Read the judgment [here](#).

**Categories:** [Section 9 ACA](#) | [Interim Measures by Court](#) | [Determinable Contract](#) | [Termination of Contract](#) | [Prima Facie Case](#)

(4)

#### **Section 14 of the Limitation Act applies to a set-aside petition under Section 34 (3) ACA (Calcutta High Court)**

---

27 August 2021 | Kolkata Municipal Corporation v. Jain Infra Projects Limited | APO 39 of 2021 | Arindam Mukherjee and IP Mukerji JJ | 2021 SCC OnLine Cal 2362

---

An application to set aside an award was filed after three months but within the discretionary thirty-day period. Approximately a year later, the court ordered that it did not have jurisdiction. After some days, the cause papers were returned to the petitioner, who re-presented to the commercial court that same day.

On the first leg of filing after three months but within the 30 days grace period held, there was sufficient cause within the meaning of [Section 34 \(3\) ACA](#).

On the second leg, the period spent before the earlier court, held, [Section 14 LA](#) applied, and time would be excluded since the proceedings in the earlier court were bona fide.

On the third leg, held, the limitation would run from the date the cause papers were handed up and not the order directing the return of the

papers. So, since the petition was filed the same day, there was no delay to be counted.

Read the decision [here](#).

**Categories:** [Application for Setting Aside Arbitral Award](#) | [Limitation](#) | [Limitation for Setting Aside](#) | [Limitation Under Section 34 ACA](#) | [Section 14 Limitation Act](#) | [Section 34 \(3\) ACA](#) | [Section 34 ACA](#)

(5)

#### **Tribunal's procedural order for costs is not appealable. The remedy lies before the tribunal itself (Madras High Court)**

---

27 August 2021 | Bharat Heavy Electricals Ltd. v. ANCL & Co. India Pvt. Ltd. | CMA No. 2447 of 2021 | Abdul Quddhose J | 2021 SCC OnLine Mad 4906

---

The tribunal imposed costs of fifty thousand rupees (presumably) for the delay in filing the statement of defence and ordered that the statement of defence shall not be received until the payment was made. This was challenged in an appeal under [Section 37 ACA](#), dismissing which the court ruled that the remedy was to approach the tribunal under [Section 17 \(1\) \(e\) ACA](#) and seek a waiver of the payment.

Read the judgment [here](#).

**Categories:** [Section 9 ACA](#) | [Interim Measures by Court](#) | [Section 17 ACA](#) | [Interim Measures Ordered by Arbitral Tribunal](#) | [Section 37 ACA](#) | [Appealable Order](#)

National Forum for Research in Arbitration Law is a forum for writing and research. Our Fortnightly Highlights offer a glimpse of the latest developments--cases, legislative, or policy. The material is meticulously analyzed, written, and finalized over two weeks to present to the reader the most accurate gist.

While Biweekly Highlights are written in-house, original contributions analyzing an issue relevant to the understanding or developing arbitration law are welcome either as an article, a blog post, or a case comment. Visit our website [www.nfral.in](http://www.nfral.in) for details.

The Highlights are descriptive and meant for general information for the professional fraternity, students, and academia. For any legal advice on any case, please contact your counsel.