International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 15-09-2025, Accepted: 14-10-2025, Published: 30-10-2025
Volume 11, Issue 10, 2025, Page No. 161-164

Simplification of section 17 and 31(6) of the A&C Act- Interim award and order

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Abstract
Arbitration is one of the oldest technique followed in India and is emerged in new form for dispute resolution system. Just as in civil procedure code temporary injunction in arbitration process too interim measures are required depending upon the case to case basis. Its not necessary that every time one has to go to court for asking interim relief by the parties and thus increasing the court interference more in the arbitral proceedings. Section 17 speaks of the interim order where the parties can ask the tribunal for passing interim award during the proceedings of the arbitration process. This has also made when there is no existence of arbitral tribunal i.e. when there is an appointment of emergency arbitration. The tribunal has to see that there is a prima facie case, there is balance of convenience and there is an irreparable loss to the party while claiming the interim relief. The tribunal has to use its discretion power and mind before granting the award as it should be in conformity with section 31(6) and should not in deviance with the final award. Section 17 mentions about the areas where the interim award can be asked by the parties and how this should be processed by the tribunal which is mentioned in section 31(6).

Keywords: Interim award, temporary injunction, arbitration-mediation, relief, arbitral tribunal

Introduction

The word Arbitration originates from Latin word "arbitrates" which in English means to be a hearer, or to give judgement, which in turn is related to the Latin word arbiter which means umpire or mediator. This is akin to the first principles of Natural Justice- audi alteram partem which means hear the other side. The concept is not a new terminology in India as we have text which shows about the system adopted for mediation in small villages. The term used in those days are known as "Mukhiyas"- a person who decided the case accordance with the cordial relationship without affecting the relationship of the parties to the dispute.

As time passed and with the invasion of British in India we folded the old system and unfolded the new system which was prevailing in the UK. The British people while they were in India enacted various laws which are in accordance with their system and started following those systems. Now there is court and judicial system for the settlement of the dispute and rarely looked to the concept of mediation or arbitration. Though section 89 of civil procedure contained about the mediation and arbitration but was not enough for the settlement of the dispute. The rules was that one has to follow the civil procedure. With the passage of time a separate enactment of the Arbitration and Conciliation Act was enacted by the parliament in 1889, which was based on English Act. Thereafter the act was reenacted and enforced in the year 1940, but contained many loopholes in the act. The parliament accordingly re-enacted the legislation in the year 1996, this act was based on the guidelines framed by the United Nation Commission on International Trade Law (UNCITRAL) and accordingly we enacted the law which came into force in 1996 onwards.

Though the 1996 act was based on the UNCITRAL model law but some flaws were there and we accordingly amended the act incorporating new sections with the need of the hour and enforced the same. The last amendment that took is in the year 2024 and is in bill form in the parliament.

As the time changed the type of disputes changed and perception of the conflict changed where the parties want to settle the matter in a friendly manner without going to the technicalities as observed by the judiciary system. Hence we amended the A& C Act in 2020 and recently we further amendment the act in 2024 and now this is in form of Bill.

We have enacted enforced the Mediation Act 2023 and is as good as the Arbitration act. This makes the three dispute settlement mechanism a valid one- the Arbitration, The Conciliation and the Mediation Let's have a glimpse of the

Difference between the Arbitration| Mediation and Litigation

Basis	Arbitration	Litigation
Cost	Comparatively the cost of arbitration is less	The cost to the litigant is more if he accepts the litigation
Time	From start to end the time consumption is very less and has to be adhered by the act, rules and laws	The time for litigation is more from start to end it may takes years to resolve the dispute
Confidentiality	Confidentiality is maintained in this techniques	No confidentiality is maintained in this techniques except in the cases that are related to women's
Relationship between the parties	The relationship between the parties to the dispute is in a cordial one no grudges is being done between them	The relationship is not in a cordial mode and sometimes it gets heated up making more complex the situation
Expert person	The arbitrator or mediator or conciliator is always an expert person in the concerned matter	The presiding officer who decides the case may or may not be an expert in the subject matter

Procedure to be followed	The parties themselves make the procedure to be followed throughout the arbitral proceedings	The parties has to compulsorily follow the procedure prescribed in the civil procedure code or the criminal procedure code
System following	There is no particular system to be followed but is purely based on the principles of natural justice	Either inquisitorial system or adversarial system is to be followed. In India it's the adversarial system which is followed

Objectives and composition of the Arbitration and Conciliation Act 1996

Objective
- To ensure that the rules are laid down for both domestic and international arbitration and conciliation
- To ensure that these procedures are adequate
- To reduce the involvement of the court in this procedure
- To save time and money of the parties
- To have the mutual agreement of both the parties

Composition of the act
- **Part I:** Domestic arbitration
- **Part II:** Enforcement of foreign arbitral awards
- **Part III:** International and commercial arbitration
- **Part IV:** Supplementary provisions

Part 1 is being divvied into 2 parts, Part 1 and Part 1A. Part 1 consists of 10 chapters consisting- Arbitration- General Provisions, arbitration agreement, composition of arbitral tribunal, jurisdiction, conduct of the proceedings, making of arbitral award and termination of proceedings, recourse against award, finality and enforcement, appeals and miscellaneous respectively consisting of sections 1 to 43.
Part 1A deals with Arbitration council of India, consisting from section 43A to 43M
Part II deals with Foreign award- New York Convention, Geneva Convention, consisting from sections 44 to 60.
Part III deals with Conciliation consisting from sections 61 to 81
Part IV deals with supplementary provisions consisting from sections 82 to 87
There are 8 schedules annexed to this act.

Preamble of the act [1]
"WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985;
AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;
AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;
AND WHEREAS the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;
ANDWHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;
ANDWHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;

Interim award
What is interim award?
Interim award is also known as provisional award or conservatory measure that are temporary in nature in order to protect the rights of the parties to the arbitration and to maintain the status quo until the final award is awarded. It means that it's a temporary relief granted by the tribunal to protect the party from a grave situation and which cannot be undone later wards if the relief were not granted at the moment. When we look into civil procedure code then we can find a similar one but with different terminology. There in the civil procedure code its mentioned as interim order while in arbitration and conciliation act its interim award, both resonance the same thing.
The characteristics of the interim award are as follows:
- It's in temporary in nature
- It's made just to maintain the status quo of the situation
- It will merge with the final order
- Once the final award is made the interim award is ceased to be in existence

Interim award| interim order as is mentioned in the CPC and A& C Act
As per the code of civil procedure code 1908:

Temporary injunction
This is mentioned in Order 39 Rule 1 of the code and is follows as-
Court can issue temporary injunction restraining defendant from committing acts complained of until further orders. This maintains the status quo regarding subject matter to prevent irreparable loss.

Interim measures ordered by the Arbitral Tribunal under the A& C Act
Under the definition part its mentioned that Arbitral award includes interim award [2]
Section 17-
1. A party may, during the arbitral proceedings, apply to the arbitral tribunal
2. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
3. for an interim measure of protection in respect of any of the following matters, namely:
4. the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
5. Securing the amount in dispute in the arbitration;

the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein

and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) Interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.
(2)Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court [3].
If we analysis these two provisions of CPC and A& C then we can get the true sense of section 17 of the arbitration and conciliation act.
O 39 R 1 of the civil procedure code says when an interim order can be granted while section 17 of the Arbitration and Conciliation Act says about the areas where the party can ask for the interim awards or in other words the categories where the parties can go for asking the interim award from the tribunal. This we can see in section 17 clause 1 sub clause a to d. sub clause e says something different from the rest of the clause. Here when we look carefully we can see that nothing is mentioned about the category but the inherent power of the tribunal to pass an award which is not falling in any of the category as mentioned in sub-clause a to d of clause 1 of section 17. Section 17 can be divided into two parts-
Section 17 (a) to (d)
Section 17 (e)

Section 17 (a) to (d)
Here in this section it specifies about the matters where the interim award can be asked for by the parties to the dispute i.e. it's very much specific, an exclusive type, not an inclusive type as is in civil procedure code. The tribunal cannot go beyond the matter than what is mentioned. The tribunal/ arbitrator has to check for three test before passing an interim award under these section

1. Protection of the subject matter of the dispute
2. Passed during the proceedings of arbitration
3. Granted by an arbitral tribunal

When these conditions are meet then the arbitrator/ tribunal will pass the interim award

Section 17(e)
When we read section 17(e) two important words should be given more weightage in this sub clause- e, "measure of protection" and "just and convenient". These two words are in aligning with order 39 rule 1 of the CPC- status quo and restraining defendant from committing acts complained of- these two phrases in same parameters of the section 17 of the A& C Act 1996.
Clause 2 of section 17 says about the requirement for passing such award. When read in harmonious construction with section 36(1) of the A& C Act we can get the true meaning of section 17. While reading the phrase measure of protection then we have seen this as a primary requirement of section 17(a) to (d) as discussed above. The interim award should be in accordance with or should be align with the final award passed by the arbitral tribunal. Both the award should not be separate and not to differ from each other. Here again we have to look to the civil procedure code for the necessary ingredients for passing an interim award.
For passing | awarding any kind of interim relief the following requirements should be meet and the court| Tribunal has to see that these conditions are being fulfilled in order to grant the interim measures.
In the case of Kashinath Sansthan v. Srimad Sudhindra Thirtha Swamy [4] it was stated by the Supreme Court that "In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience". From this case we can get the necessary ingredients for the application of interim relief:

1. There should be a prima facie case in favour the person who is asking for the relief;
2. Irreparable injury is likely to cause to the party;
3. Balance of convenience is laying in the party who is asking for the interim relief.

Along with the above three primary requirement the supreme court also in the case of Mandati Ranganna v. T. Ramachandra [5] has held that along with the three primary principles for granting the temporary relief the court has to look into the fourth point also that is the conduct of the parties. In nut shell we can say that the court has to consider the following before granting the interim relief to the party- prima facie case, irreparable injury, balance of convenience and conduct of the party/ies.
When these conditions are being fulfilled the Arbitral Tribunal/ court can grant the interim relief as prayed by the party/ies to the dispute. These are principles are applied as much as in the arbitral proceedings also. This is mentioned section 17(1) (e) not directly but indirectly. Here the principles read the law not in words but in spirit applies. The rules of harmonious construction should be applied over here to get the true meaning of what this section says about.

Availability of the interim award
When we read both the civil procedure code and the arbitration and conciliation act we can see that in both the situation there should be a pending dispute before the tribunal or court respectively. This means that the arbitral proceedings should have been initiated and there is an existence of arbitral tribunal and the matter is before the tribunal for disposal of the matter. The final award is not being declared by the tribunal and the matter is pending. In order to apply this particular section i.e. section 17 there should be an existence of arbitral tribunal/ arbitrator and the proceeding must be initiated before tribunal/ him.

However there is one situation where the existence of the tribunal/ arbitrator is not in full-fledged one. Here we are dealing with the emergency arbitrator where the parties is not formally appointing the arbitrator but out of emergency the parties appoint an arbitrator and the emergency arbitrator gives the award for the relief of the parties. This is to be considered as interim order and is valid in the eyes of law. Though in India we have not fully adopted the principle of forming emergency arbitrator but in principle various high courts of India has accepted the concept of appointment of emergency arbitrator. The law commission of India in its 246th report has stated about this but not put in the act.

Section 31(6) of the A&C Act 1996

Section 31(6) says about the passing of interim award

"The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award".

Section 36 clause 6 is akin to section 17 of the act as it states that the arbitral tribunal can pass an interim award during the process of arbitration which should be in consonance with the final arbitral award passed. There should be no deviation between the interim award and final award. Here the arbitrator/ tribunal has to look into the matter with farsightedness so that the interim award that is being passed by the arbitrator now, is in accordance with the final award that is going to made on a future date.

Here the arbitrator/ tribunal has to use its mind as to what would be the outcome of a particular matter and how the proceedings will go *et al*. it means that the arbitrator/ tribunal has to think one step ahead than the parties and has to foresee the outcome of the subject matter in dispute and then make the interim award which in turn should be in accordance with the final award. This can be achieved only experience and knowledge on the subject matter.

In Prem Chnadra Agrawal vs U P Financial Corporation [6] the Supreme Court has stated that once the final order is made then all the interim order related to the same matter will be merged into the final order. This shows that whatever the interim order is being made it should be in there in the final award that is passed by the tribunal/ arbitrator. And the entire interim award that is made the tribunal/ arbitrator would be merged into the final award.

The only difference between section 17 and 31(6) is the wordings used in these section under sec. 17 it uses the word interim order while under 31(6) it uses the word award both should be taken in the same meaning applying the principles of harmonious construction.

On a conjoint analysis of the both the section17 and 31(6) we can frame these principles

1. Protection of the subject matter of the dispute;
2. Passed during the proceedings of arbitration ;
3. Granted by an arbitral tribunal;
4. There should be a prima facie case in favour the person who is asking for the relief;
5. Irreparable injury is likely to cause to the party;
6. Balance of convenience is laying in the party who is asking for the interim relief;
7. Interim award should merge with the final award;
8. The interim award should not be in deviance with the final award;

The arbitrator/ tribunal should use its mind to foresee the matter and decide accordingly.

Reference

1. Arbitration and Conciliation Act 1996
2. Arbitration and Conciliation Act 1996, Section 2(1)(c)
3. Arbitration and Conciliation Act 1996, section 17
4. AIR 2010 SC 296, Civil Appeal No 7966-67/2009
5. AIR 2008 SC 2291
6. Civil appeal no 2769/2009