

**In the High Court at Calcutta
Commercial Appellate Division
Original Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**APOT No.269 of 2025
In
AP (COM) No.726 of 2025
IA NO: GA (COM) 1 of 2025**

**Alok Saraf & Ors.
Vs.
Shyam Sundar Nangalia & Ors.**

For the appellant : Mr. Jishnu Saha, Snr. Adv.
Mr. Shatadru Chakraborty, Snr. Adv.
Mr. Ishan Saha,
Ms. Rishika Goyal,
Ms. Indrani Joardar,
Mr. Satadeep Bhattacharyya,
Mr. Ramendu Agarwal,
Ms. Apoorna Chowdhury,
... Advs.

For the respondent : Mr. S.N. Mitra, Snr. Adv.
Mr. Rudraman Bhattacharyya, Snr. Adv.
Mr. Rajarshi Dutta,
Mr. Saptarshi Banerjee,
Ms. Amrita Panja Moulick,
Mr. D.K. Jain,
Mr. Siddharth Chatterjee,
... Advs.

Heard on : 24.09.2025, 26.11.2025
10.12.2025, 24.12.2025
14.01.2026, 28.01.2026
04.02.2026, 11.02.2026

Hearing concluded on : 11.02.2026

Judgment on : 18.02.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an order dated September 10, 2025, passed by a learned Single Judge of this Court in AP-COM 726 of 2025, an application filed by the appellants under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “1996 Act”). By the impugned order, the learned Single Judge refused to grant ad interim protection as sought by the appellants on the ground that such protection cannot be granted without permitting the respondents to disclose their stand on affidavit “for lack of *prima facie* case and absence of balance of convenience”.
2. The brief backdrop of the case is that the appellants (for short, the “ASA Group”) and the respondents (for short, the “EPI Group”) had entered into certain transactions on the basis of the terms and conditions recorded in the minutes of a meeting held between them on November 15, 2015, and an agreement dated October 11, 2018, signed by the appellant no. 1, Alok Saraf on behalf of the ASA Group, and one Vijay Agarwal, on behalf of the EPI Group.
3. Disputes having arisen between said two Groups relating to such transactions, those were sought to be resolved through arbitration. However, the decision dated March 16, 2021, arrived at by one Sanjay Kumar Seksaria, who acted as Arbitrator, were not acceptable to the parties. The parties thus mutually decided to treat such decision as null

and void and agreed to reach an amicable settlement by referring the matter to mediation by one Mr. Rajeev Ginodia, Advocate.

4. The said mediation culminated in a Memorandum of Settlement dated September 10, 2024, signed by all the parties.
5. Subsequently, on the allegation that the respondents (EPI Group), had violated the terms of the settlement, the appellants put the Settlement Agreement into execution, by treating the same as an award, thereby giving rise to EC (COM) No.9 of 2025. The said execution case, however, was dismissed by a learned Single Judge of this Court by an order dated May 20, 2025, primarily on the premise that, in view of Clause 50 of the Settlement Agreement containing a provision for arbitration, the same cannot be held to be an award and cannot be executed as such.
6. Being aggrieved with the said order, the appellants preferred an appeal, bearing APOT No. 160 of 2025, which was dismissed as not maintainable. The appellants preferred a Special Leave Petition (SLP) against the dismissal of the appeal but later withdrew the same.
7. However, an independent SLP, taken out against the order dismissing the execution case, is pending at the behest of the appellants before the Hon'ble Supreme Court. Notices were issued in respect of the same; however, no interim order has been passed by the Hon'ble Supreme Court.
8. Meanwhile, the appellants took out the present application under Section 9 of the 1996 Act, giving rise to AP (COM) No.736 of 2025, in connection with which the order impugned in the present appeal was passed.
9. Learned senior counsel appearing for the appellants argues that Section 9 of the 1996 Act envisages interim measures to be granted before or during the

arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36 of the 1996 Act. It is contended that the expression "enforced" signifies complete satisfaction of the award and not the mere filing of the execution petition. In support of such submission, learned senior counsel cites a Full Bench decision of the Madras High Court in the matter of *B.M Insulation Private Limited v. Vardeep Petro Chemical Private Limited (Arb Appln No. 374 of 2025 and Arb Appln No.628 of 2025)*, where the said Bench upheld the above proposition and overruled the contrary ratio of a Division Bench of the Madras High Court in *Gopuram Enterprises Ltd, Chennai v. Integrated Finance Company Ltd, Chennai*, reported at 2021 SCC OnLine Mad 16559, relied on by the respondents.

10. While doing so, the Full Bench of the Madras High Court relied on *Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited*, reported at 2013 SCC OnLine Bom 481, a decision of the Bombay High Court, as well as *Hindustan Construction Company Limited and Anr. v. Union of India and Ors.* reported at (2010) 17 SCC 324, a judgment of the Hon'ble Supreme Court. The said judgments are also relied on by the present appellants.

11. In such view of the matter, it is argued that even if the Settlement Agreement is treated as an award as per the contention of the appellants, the learned Single Judge had ample power under Section 9 of the 1996 Act to grant interim protection, since although an execution case was levied, the same was dismissed; thus, the award has not yet been "enforced" by satisfaction.

12. In the alternative, learned senior counsel for the appellants argues that even if it were to be assumed that the Settlement Agreement is not a final award and Clause 50 thereof is treated to be an arbitration agreement, the provisions of Section 9 of the 1996 Act confer power on the learned Single Judge to grant the interim reliefs sought by the appellants.
13. Thus, it is argued that there was no necessity for the appellants to elect either of the two stances - whether the Settlement Agreement is an award or an arbitration agreement.
14. It is thus contended that the appellants are entitled to make out their case in the alternative even if it is ultimately held in the pending SLP against the order dismissing their execution case, bearing SLP (Civil) No. 28905 of 2025, that the Settlement Agreement is not an award, since the Settlement Agreement still remains a binding agreement containing an arbitration clause, which would also allow the appellants to seek recourse to the provisions of Section 9 of the 1996 Act.
15. It is further contended by the appellants that in view of the dismissal of the application for enforcement of the Settlement Agreement as an award, the recourse of approaching the executing court is not available at present to the appellants. Thus, despite having rights on the strength of the Settlement Agreement dated September 10, 2024, the appellants would be left without any remedy.
16. It is contended that the respondents have not objected to the appellants' prayers on merits but have only raised the objection as to maintainability. Hence, even otherwise, the appellants are entitled to get the reliefs as sought before the learned Single Judge.

17. Learned senior counsel appearing for the respondents argues that the Doctrine of Election comes into play, since the appellants cannot approbate and reprobate in the same breath. In their application under Section 9 of the 1996 Act, the appellants have proceeded on the basis that the Settlement Agreement is an award. However, in paragraph Nos. 14 and 15 of the said application, the appellants have pleaded that assuming without admitting that the Settlement Agreement has not matured into an award, the same still remains a binding agreement on the parties containing an arbitration clause. Such dual standards cannot be adopted by the appellants.
18. In such context, the respondents rely on *Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Ors. v. Director General of Civil Aviation and Ors.*, reported at (2011) 5 SCC 435, and *State of Punjab and Ors. v. Dhanjit Singh Sandhu*, reported at (2014) 15 SCC 144.
19. Learned senior counsel for the respondents argues that as per the stand taken by the appellants, the Settlement Agreement is a final award. However, a post-award Section 9 application is not maintainable if an application for enforcement of such an award is made in accordance with Section 36 of the 1996 Act. It is contended that the expression "at any time after the making of the arbitral award but before it is enforced in accordance with Section 36" employed in Section 9 of the 1996 Act is clear and unambiguous. The enforcement of an award has to be in accordance with the Code of Civil Procedure, 1908 (for short, "the CPC"). Once a petition for enforcement for an award is filed, the provisions of Order XXI of the CPC are attracted in terms of Section 36 of the 1996. Therefore, an

application under Section 9 would no longer be maintainable, since the award ought to be treated as 'enforced'.

20. It is submitted that the powers of the executing court are wide enough to grant interim reliefs that a court can grant under Section 9 of the 1996 Act.

21. Learned senior counsel appearing for the respondents contends that the question which falls for determination is whether the expression "enforced", used in Section 9, would mean final enforcement when the fruits of the award are realised by the award holder or it would mean the starting point when an application for enforcement of an award is made. It is submitted that there are divergent views on the issue. The respondents rely on the following judgment in such context:

- i. *Gopuram Enterprises Ltd, Chennai v. Integrated Finance Company Ltd, Chennai*, reported at 2021 SCC OnLine Mad 16559
- ii. *Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited*, reported at 2013 SCC OnLine Bom 481
- iii. *Centrient Pharmaceuticals India Pvt. Ltd. v. Hindustan Antibiotics Ltd* reported at 2019 SCC OnLine BOM 1614

22. On the other hand, the appellants place reliance on the judgments mentioned below:

- i. *Hindustan Construction Company Limited and Anr. v. Union of India and Ors.* reported at (2010) 17 SCC 324
- ii. Judgment dated September 1, 2025 of the Madras High Court in *B.M Insulation Private Limited v. Vardeep Petro Chemical Private Limited*,
- iii. *Judgment of the Madras High Court in Original Application No.284 of 2023*

23. Learned senior counsel for the respondents submits that although the appellants have contended that the respondents (EPI Group) have not transferred the land which housed the tanks of the ASA Group and threaten prevented the ASA Group from using such tanks for the purpose of storing petroleum products of TOTAL and SUPERSPIRIT and the appellants allege that an undertaking was furnished by the respondents' counsel in course of hearing of APOT No. 160 of 2025 to suggest that no precipitative action would be taken until the of the appeal, the order dated June 16, 2025 does not record any such alleged undertaking.
24. Learned senior counsel also make submission on the merits of the matter, contending that although the Board of the respondent no.8-Company was not agreeable to extend TOTAL'S contract beyond August 31, 2025, a request was issued by TOTAL for an extension and confirmation was sought from respondent no.8. Such request was accepted by the Board of the respondent no.8-Company, which approved the extension of the last valid agreement that it had with TOTAL until August 31, 2025, as recorded in an email dated June 2, 2025. TOTAL was also informed that this would be sufficient extension for it to vacate the tanks on or before August 31, 2025.
25. Pursuant thereto, TOTAL has vacated the subject-premises on September 10, 2025, prior of the *ad interim* order passed in the present appeal, which was not brought to the notice of this Court. Thus, it is further submitted that the interim order dated September 24, 2025 granted by this Court, extending protection in respect of the contract between respondent no.8 and TOTAL, ought to be vacated.

26. Insofar as the allegation of the appellants that attempts are being made by the respondent to destroy the appellant's business with SUPERSPIRIT, there is no proof of the same and SUPERSPIRIT is still continuing its business under the agreement with respondent no.8. The respondents, contrary to the allegations made by the appellants, have not sought to permanently jeopardise the business of SUPERSPIRIT.
27. Learned senior counsel for the respondents next argues that the application under Section 9 of the 1996 Act is a second bite of the appellants at the cherry. Prior thereto, EC (COM) No. 9 of 2025 had been filed for execution of the Settlement Agreement, which was construed to be an award by the appellants. The prayers made in the tabular statement filed in connection therewith were similar to the interim prayers now sought. Those were rejected by the order dated May 20, 2025, holding that the execution petition was not maintainable.
28. The aforesaid conduct of the appellants, it is argued, demonstrates that even the appellants understood the powers of the executing court to be wide enough to pass protective, preventive and mandatory interim orders pending eventual and/or final satisfaction of the fruits of the purported award. The reliefs denied by the executing court have been sought now under Section 9 of the 1996 Act, by merely altering the nature of the prayers.
29. Even in the pending SLP against the order dated May 20, 2025, similar ad interim prayers had been made, which, however, were not granted by the Hon'ble Supreme Court.

30. It is argued that in order to have an adjudication on the disputes between the parties, the respondents had caused a notice to be issued on August 2, 2025, proposing the name of a former Judge of the Hon'ble Supreme Court as arbitrator, in response to which the appellants, by a letter dated August 4, 2025, had agreed to the reference of the disputes to arbitration, and proposed the name of a former Chief Justice of the High Courts of Madras and Meghalaya. There was no consensus between the parties as to the scope of reference. While the respondents have filed an application under Section 11 of the 1996 Act seeking the appointment of an arbitrator, the appellants opposed the same by filing an affidavit. It is argued by the respondents that in terms of Section 9(2) of the 1996 Act, arbitral proceedings must be commenced within a period of 90 days from the date of an order of interim measure passed by the Court under Section 9(1) or within such further time as the Court may determine. In the present case, however, although an ad interim order was passed by this Court in the present appeal on September 24, 2025, the appellants are opposing the Section 11 application to ensure that the said ad interim order is continued. Thus, the invocation of Section 9 of the 1996 Act at the behest of the appellants, it is urged, is not in consonance with law.

31. Upon hearing learned counsel for the parties, it transpires that the bone of contention in the present matter is whether the learned Single Judge was justified in refusing the *ad interim* order on the grounds as specified in the impugned order.

32. The first question which falls for consideration is the scope of operation of Section 9 of the 1996 Act post-arbitral award. The consequential question

which arises therefrom is whether the learned Single Judge was justified in refusing to grant interim protection under Section 9, *inter alia* by invoking the Doctrine of Election upon observing that it is clear that the petitioner initially had run a case that the Memorandum of Settlement dated September 10, 2024 is an award under the provision of the 1996 Act which has become executable as a decree, for which the petitioner had filed execution application and, on being aggrieved by the order dated May 20, 2025 dismissing the execution application, the petitioners had preferred an appeal. It was further observed that the petitioners (present appellants), without withdrawing the appeal, are now accepting the contention of the respondents and the finding of the co-ordinate Bench that the Memorandum of Settlement is an agreement which has dispute resolution mechanism in the form of an Arbitration Clause. The learned Single Judge held that since the respondents have invoked such arbitration agreement, the petitioners have filed the Section 9 application for interim protection.

33. The said questions are dealt with below:

Scope of of Section 9 post-award

34. Section 9 (1) of the 1996 Act commences with the following words:

“ 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...”

35. The moot question revolves around the meaning of the expression “enforced”, as used in the Section. The respondents rely on a Division Bench

judgment of the Madras High Court in *Gopuram Enterprises (supra)*¹ where it was held that however wide the powers conferred on a court under Section 9 of the 1996 Act may be seen to be, such powers may not extend to issuing orders for discovering the assets of an award debtor. Order XXI of the CPC, that provides for execution, carries the necessary provisions for such purpose and section 9 of the 1996 Act cannot be enlarged to incorporate the wide authority that an executing court has to aid the award holder, who metamorphoses as a decree holder by the legal fiction contained in Section 36(1) of the 1996 Act, to seek or obtain orders of such nature or of arrest or detention of the award debtor or the sequestration of its assets and properties. It was further held that the quality of orders that can be passed under Section 9 of the Act are substantially different from the quality of orders that may be passed in course of execution. While the emphasis in Section 9 is to the subject-matter of the arbitration and may even, charitably, be seen to cover the subject-matter of the award, orders in the nature of discovering assets of the deemed judgment debtor or requiring him to file an affidavit of assets and the like may not be seen within the ambit of the authority available under Section 9 of the Act of 1996. The Act of 1996, it was held, covers all things pertaining to arbitration and operates between the commencement of the arbitral proceedings within the meaning of Section 21 of the Act of 1996 and the conclusion of all matters pertaining to the arbitration before Section 36 of the Act kicks in, so to say, and renders the award enforceable.

¹ ***Gopuram Enterprises Ltd, Chennai v. Integrated Finance Company Ltd, Chennai, reported at 2021 SCC OnLine Mad 16559***

36. However, the proposition laid down in the said judgment was doubted at least by two Single-Judge Benches of the Madras High Court itself. In Original Application No. 284 of 2023, as well as in *Eros International Media Ltd v. Reels Entertainment Pvt. Ltd.*, reported at 2025 SCC OnLine Mad 9341, the view expressed in *Gopuram Enterprises (supra)*² was questioned. Again, a learned Single Judge of the Madras High Court, in the case of *B.M Insulation Private Limited (supra)*³, expressed its doubts over the view taken in *Gopuram Enterprises (supra)* and referred the matter to a Larger Bench.
37. Such reference was answered by a three-Judge Bench of the Madras High Court on January 21, 2026 by holding the proposition laid down in *Gopuram Enterprises (supra)* to be bad in law, and coming to the conclusion that the word “enforced” under Section 9 of the 1996 Act cannot be read down as “enforceable” and that the word “enforced” denotes a completed act. Thus, the phrase “before it is enforced”, it was held, signifies “until the complete satisfaction of the award”.
38. While doing so, the three-Judge Bench of the Madras High Court placed reliance on *Hindustan Construction (supra)*⁴, where the Hon’ble Supreme Court had relied on a Division Bench judgment of the Bombay High Court in *Dirk India Private Limited (supra)*⁵, where the Bombay High Court had held that when an interim measure of protection is

² *Gopuram Enterprises Ltd, Chennai v. Integrated Finance Company Ltd, Chennai*, reported at 2021 SCC OnLine Mad 16559

³ *B.M Insulation Private Limited v. Vardeep Petro Chemical Private Limited (Arb Appln No. 374 of 2025)*

⁴ *Hindustan Construction Company Limited and Anr. v. Union of India and Ors.* reported at (2010) 17 SCC 324

⁵ *Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited*, reported at 2013 SCC OnLine Bom 481

sought under Section 9 after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruits of the proceedings until the eventual enforcement of the award. Here again, it was held, the measure of protection is a step in aid of enforcement intended to ensure that enforcement of the award results in a realisable claim, and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement.

39. A contrary view was taken by learned Single Judge of the Bombay High Court in *Centrient Pharmaceuticals (supra)*⁶, observing that once the award has become enforceable, the only remedy available to the award creditor was to execute the award, and a recourse to Section 9 of the Act was not available.
40. With utmost respect, we cannot but agree with the view taken by the Division Bench of the Bombay High Court in *Dirk India Private Limited (supra)*⁷, as well as the three-Judge Bench of the Madras High Court in *B.M Insulation Private Limited (supra)*⁸. The reasons for so observing are discussed hereinbelow:
41. The Legislature, in its wisdom, specifically used the expression “is enforced”, in section 9(1) of the 1996 Act, instead of “becomes enforceable”, or “filing of an enforcement application”. Thus, when the

⁶ *Centrient Pharmaceuticals India Pvt. Ltd. v. Hindustan Antibiotics Ltd reported at 2019 SCC OnLine BOM 1614*

⁷ *Dirk India Private Limited v. Maharashtra State Electricity Generation Company Limited, reported at 2013 SCC OnLine Bom 481*

⁸ *B.M Insulation Private Limited v. Vardeep Petro Chemical Private Limited (Arb Appln No. 374 of 2025*

intention of the Legislature is evident on a plain reading of the Section, there is no scope or necessity of unnecessarily reading down the expression “enforced” to “enforceable”. Moreover, such reading down would create irreconcilable uncertainties which could not be the purpose of enactment of the Act.

42. As per Section 36(1) of the 1996 Act, where the time for making an application to set aside the arbitral award under Section 34 has expired, such award shall be enforced. To complement the same, Section 34(3) stipulates that an application for setting aside may not be made after 3 months have elapsed from the date on which the party making the application had received the arbitral award, or if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal.
43. The proviso to Section 34(3) stipulates that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of 3 months, it may entertain the application within a further period of 30 days, but not thereafter.
44. Thus, as per Section 34(3), three different possibilities arise in respect of the date when the time for making an application under Section 34 expires. The first is when no application for setting aside the award is made at all, nor any application for condonation of delay and/or request under Section 33 is filed, in which case, the time for enforcement of the award is triggered under Section 36(1) immediately after the expiry of 3 months from the date on which the award debtor receives the arbitral award.

45. Secondly, if an application for setting aside the award is made under Section 34 with an application for condonation of the delay in making the same, the time limit for filing the Section 34 application is extended to a maximum period of 3 months + 30 days. In such case, however, the award holder has to await the final adjudication of the condonation application to know when the award became enforceable, since, although the Section 34 application has to be made within the outer limit of 3 months + 30 days, the condonation application may be disposed of subsequent thereto. Suppose a Section 34 application is made (with a prayer for condonation) within 3 months + 30 days, say about 4 months, and the condonation application is allowed another month thereafter, taking the total delay in adjudication to 5 months, the enforceability of the award gets notionally stalled till the said period. Worse still, if the condonation application and, consequentially, the Section 34 application is ultimately dismissed after 5 months, the award holder gets to know only then that the enforceability had started 2 months back, that is, after expiry of 3 months from the award, as there would then be no challenge under Section 34 to the award.
46. The third possibility is when a request is made under Section 33, in which case the time limit after which Section 36(1) is triggered becomes indefinite, since there is no specific time limit mandated in the statute for disposal of such a request.
47. It is true that sub-section (2) of section 33 stipulates 30 days from the receipt of the request and sub-section (3) provides 30 days from the date of the arbitral award, respectively in case of a request and a *suo*

motu correction, as the outer limit of such correction being effected. Again, sub-section (4) of Section 33 permits one of the parties, within 30 days from the receipt of the arbitral award, to make a request for an additional arbitral award as to claims presented but omitted from the award. In such case, the additional arbitral award may be made within 60 days from the receipt of such request.

48. Crucially, however, sub-section (6) of Section 33 provides that the arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional award under sub-section (2) or sub-section (5).
49. Thus, a question arises as to what will then be construed as the date when the right to enforce the arbitral award is triggered.
50. The different possible timelines for enforceability even to “kick in” would then render indefinite the time till which Section 9 jurisdiction would continue.
51. Hence, with utmost respect, the interpretation lent by the learned Single Judge of the Bombay High Court in *Centrient Pharmaceuticals (supra)*⁹, is contrary to the scheme of the 1996 Act, as the term “enforced”, if construed as, “becomes enforceable”, the notional date till when Section 9 jurisdiction can be exercised will become totally uncertain.
52. Another important aspect of the matter is that the remedies provided under Section 9 are not available to the court enforcing the award. As

⁹ *Centrient Pharmaceuticals India Pvt. Ltd. v. Hindustan Antibiotics Ltd reported at 2019 SCC OnLine BOM 1614*

per Section 36, the provisions of the CPC governing execution of a decree shall be applicable to the enforcement of an award, in the same manner as if it were a decree of the court. A mere glance at order XXI of the CPC, which deals with execution, indicates that the executing court, as such, does not have any specific powers to grant *ad interim* reliefs in aid of the final execution.

53. Although Section 36 (2) of the 1996 Act itself contemplates stay of the award, the same operates only to the benefit of the award debtor, and is restricted to a stay of the award. However, neither Section 36 nor Section 34 of the 1996 Act provides any remedy similar to Section 9 to the award holder, in aid of and in order to facilitate the fruition of the award.
54. The provisions as to attachment before judgment and consequential sale and similar remedies contemplated under Order XXI of the CPC are all part of the final execution of the decree and do not empower the executing court to grant any *ad interim* relief during the pendency of the execution proceeding.
55. Thus, it would be an absurd proposition that whereas the award debtor is afforded the relief of stay under Section 36(2) in an enforcement proceeding, the award holder, despite enjoying the award in its favour and having levied execution duly, will have to wait for its fruits till the award is finally satisfied by conclusion of the execution case and remain a mute spectator till then, helplessly watching the award debtor deal with, appropriate, emaciate and/or even dissipate the subject of

the award so as to render the award toothless, not worth the paper it is printed on, exclaiming: “the award is dead, long live the award”.

56. It is well-settled that in interpreting a provision, patent absurdity and unworkability have to be eliminated. Proceeding from such perspective, if we are to accept the proposition laid down by the Division Bench of the Madras High Court in *Gopuram Enterprises (supra)*¹⁰ and/or the ratio of the Single-Judge Bench in *Centrient Pharmaceuticals (supra)*¹¹, the award holder would be rendered remediless, despite having a valid award in its hand, till the award is finally executed, which violates the cardinal principle of justice and equity: *Ubi Jus Ibi Remedium*.
57. In such view of the matter, this issue is decided in favour of the appellant, to the effect that the expression “before it is enforced in accordance with Section 36”, featuring in Section 9 of the 1996 Act, has to be construed as “till the award is finally satisfied by conclusion of the enforcement proceeding under Section 36”.

Applicability of the Doctrine of Election

58. The learned Single Judge, while passing the order impugned herein, proceeded to invoke the Doctrine of Election, upon observing that the appellants are seeking to approbate and reprobate in the same breath and could not have maintained the application under Section 9 without withdrawing their challenge against the dismissal of the execution case.

¹⁰ *Gopuram Enterprises Ltd, Chennai v. Integrated Finance Company Ltd, Chennai, reported at 2021 SCC OnLine Mad 16559*

¹¹ *Centrient Pharmaceuticals India Pvt. Ltd. v. Hindustan Antibiotics Ltd reported at 2019 SCC OnLine BOM 1614*

59. However, such doctrine is rendered academic in the facts of the present case, since nothing would turn on the stance taken by the award holder/appellant. If we proceed on the premise that the Settlement Agreement arrived at between the parties in mediation is an agreement containing an arbitration clause (Clause 50), as asserted by the respondents, Section 9 of the 1996 Act would be applicable by default, since there is no dispute regarding the said provision being applicable before or during arbitral proceedings. On the other hand, if the said Settlement Agreement is construed to be a finally concluded award, in such case as well, in terms of the findings arrived at hereinabove, the Court is empowered to grant interim and ad interim protection under Section 9, till the award is fully satisfied by enforcement, at the conclusion of the execution case.
60. Thus, either way, whether the Settlement Agreement is a final award or an agreement containing an arbitration clause, the provisions of Section 9 of the 1996 Act are applicable to the dispute between the parties. As such, it is immaterial what stand the appellants take in that regard. The 'Doctrine of Election' argument of the respondents, accordingly, falls flat.

Merits

61. The impugned order, thus, cannot be sustained, being legally erroneous.
62. The question which now arises is, even if the impugned order is set aside, whether the appellants are entitled independently, under Section

9 of the 1996 Act, to have ad interim protection in terms of the prayers made in their Section 9 application.

63. At the ex parte *ad interim* stage, it is the averments made in the application for interim protection and the materials annexed thereto or filed therewith which are to be taken as sacrosanct, till those are rebutted by the respondents at the subsequent stage of final hearing of the application under Section 9.
64. Thus, we proceed to consider whether the appellants were entitled to ad interim protection on the basis of the averments made in their Section 9 application and its annexures. From a plain reading of the clauses of the Settlement Agreement between the parties, in particular Clauses 20 and 27 of the same, it is evident that mutual liabilities were cast on the parties in respect of the business of TOTAL and SUPERSPIRIT as was being carried on till then in the name of Hindustan. The said business, in terms of Clause 20, was to belong to the 'ASA Group' (appellants) with immediate effect and the parties were to inform this to TOTAL and SUPERSPIRIT and take all necessary steps and sign all papers and documents for transfer of such business to an entity of the 'ASA Group' to be specified by the latter.
65. Till such transfer was formalised, the business with TOTAL and SUPERSPIRIT was to be continued without stoppage in the name of Hindustan, though the revenues would belong to the 'ASA Group' and were to be paid by the 'EPI Group' to the 'ASA Group' after retaining a mutually agreed amount for use of the tanks for such period.

66. The 'ASA Groups' were given an option either to build new tanks on 'ASA Group' land or purchase tanks of Hindustan from the 'EPI Group' at a mutually agreed amount and shift them to the 'ASA Group' land. The tanks presently being used for the business of TOTAL and SUPERSPIRIT where they were at present, and allotment of the land on which the same was located to the 'ASA Group' along with the said tanks was to be considered as a possibility by the parties, in which event the area of land so allotted was to be adjusted against the land area to be allotted in lieu of RGSF land mentioned in Clause 27.
67. Clause 27 provides, *inter alia*, for the interchange and replacement/exchange of the lands between the parties.
68. It is nobody's case that the Settlement Agreement does not exist, since the respondents themselves have sought appointment of an arbitrator in terms of Clause 50 of the said agreement. Thus, on the strength of the agreement and the averments made in the Section 9 application, the appellants have made out a sufficiently strong *prima facie* case for grant of *ad interim* protection.
69. For the first time in their written arguments before this Court, the respondents have sought to make out a case to the effect that TOTAL vacated the subject-premises on September 10, 2025, that is, the very date when the *ad interim* order was refused by the learned Single Judge in the impugned order. Such conduct on the part of the respondents was evidently *mala fide*, in order to obviate any challenge which may be preferred to the order of the learned Single Judge refusing *ad interim* injunction. More importantly, since the application under Section 9

itself was pending till then and allegedly an application has been taken out under Section 11 of the 1996 Act by the respondents themselves for reference of the dispute to arbitration, the alleged act of vacating the subject-premises on September 10, 2025, in hot haste was evidently to frustrate such reference itself, which cannot be given a premium by the court.

70. Although the respondents were represented through counsel on September 24, 2025, when an *ad interim* order was passed by this Court, such factum of handing over of possession was not informed to this Court. Even subsequently, at no stage was such information intimated to this Court by the respondents. Hence, the alleged evacuation of the premises by the respondents cannot be taken note of.
71. In such view of the matter, this Court is of the opinion that the *ad interim* order passed on September 24, 2025, by this Court in the present appeal ought to be made absolute till disposal of the application under Section 9 of the 1996 Act before the learned Single Judge.
72. Lastly, the respondents argue that since the appellants have not referred the dispute to arbitration within 90 days from obtaining the *ad interim* order from this Court, the bar under Section 9 (2) is attracted. However, such bar is not applicable to the *ad interim* protection, if any, granted by the appellate court in an appeal under Section 37 of the 1996 Act. There is nothing within the four corners of the 1996 Act which imposes such fetter in an appeal under Section 37. In any event, an *ad interim* protection granted by the appellate court is in aid of the

appeal under Section 37 and, *stricto sensu*, is not an “interim measure of protection under sub-section (1)” of Section 9.

73. Even otherwise, as an application is admittedly pending under Section 11 of the 1996 Act, at the behest of the respondents themselves, for appointment of an arbitrator, the rigours of Section 9(2) are diluted.

CONCLUSION

74. In view of the above, APOT No. 209 of 2025 is allowed on contest, thereby setting aside the impugned order dated September 10, 2025 passed in AP (COM) No.726 of 2025 and granting ad interim injunction under Section 9 of the 1996 Act, restraining the respondents and/or their men and agents from interfering with the business carried on by the appellants with TOTAL and SUPERSPIRIT, either by seeking to terminate the contract entered into with them, including by refusing to renew such contracts, or by requiring them to stop using the tanks referred to in the Memorandum of Settlement between the parties dated September 10, 2024, or by seeking to recover the said tanks from them or by preventing their access to or use of the tanks and related infrastructure for the purpose of storing and handling petroleum products or in any other manner whatsoever till disposal of AP COM No. 726 of 2025.

75. IA No: GA (COM) 1 of 2025 is also disposed of accordingly.

76. The learned Single Judge having determination now is requested to dispose of the application under Section 9 of the Arbitration and

Conciliation Act 1996, being AP (COM) No.726 of 2025, on its own merits and in accordance with law.

77. It is made clear that the findings arrived at in the instant judgment are tentative in nature, arrived at for the adjudication of the *ad interim* prayer made in connection with the Section 9 application, and shall not be conclusive for the purpose of final disposal of the Section 9 application.
78. There will be no order as to costs.
79. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)