

Grant of Interim Reliefs against Third Parties: Are **ARBITRAL TRIBUNALS** Fully Equipped?

In certain cases, a non-signatory may have to be impleaded for certain interim reliefs against it; there may also be cases where interim reliefs may be implementable against third parties without formally impleading them. Impleadment of parties in civil disputes primarily depends on whether it would result in presence is necessary for a complete, effective and proper adjudication of the dispute.





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After a long-standing debate on whether non-signatories to the arbitration agreement can be joined as parties to direct interim orders against them, it has now been settled that courts can do so under Section 9 of the Indian Arbitration & Conciliation Act, 1996 (“Arbitration Act”)[See **Value Advisory Services v ZTE Corporation & Ors.**,¹ and **Blue Coast Infrastructure Development Pvt. Ltd v Blue Coast Hotels Ltd. and Anr.**,² (“Blue Coast”).

Section 9 of the Arbitration Act deals with interim measures that can be granted by courts before or during the arbitral process or any time after the arbitral award is made but before its enforcement. Section 17 of the Arbitration Act deals with interim measures that can be issued by the arbitral tribunal during the arbitral proceedings.

The Arbitration & Conciliation (Amendment) Act, 2015 (“2015 Amendment”) attempted to bring the interim reliefs by arbitral tribunal at par with Section 9 of the Arbitration Act. However, the scope of arbitral tribunals to exercise such powers remains inconclusive.

In certain cases, a non-signatory may have to be impleaded prior to grant of interim reliefs against it; there may also be cases where interim reliefs may be implementable against third parties without formally impleading them. Impleadment of parties in civil disputes primarily depends on whether it would result in presence is necessary for a complete, effective and proper adjudication of the dispute.

This post traces the Indian jurisprudence on the powers of an arbitral tribunal to grant interim reliefs to non-signatories to an arbitration agreement.

Wavering stance of Indian Courts

While the question of grant of interim reliefs to third parties by arbitral tribunals is yet to be settled by the Supreme Court of India, High Courts have grappled with the issue over the years. The Madras High Court in **Abhibus Services India Pvt. Ltd. v Pallavan Transport Consultancies Services**,³ (“Abhibus”) acknowledged that non-signatories to the arbitration agreement can be made parties to the proceedings after the 2015 Amendment. It, however, dealt with two questions pertaining to the jurisdiction of the tribunal to do so: first, whether Section 17 of the Arbitration Act empowered the tribunal to implead a party; and second, whether such power to implead can be sourced

¹ Value Advisory Services v ZTE Corporation & Ors., (2009) 3 Arb LR 315.

² Blue Coast Infrastructure Development Pvt. Ltd. v Blue Coast Hotels Ltd. and Anr., (2020) 270 DLT 260.

³ Abhibus Services India Pvt. Ltd. v Pallavan Transport Consultancies Services, (2022) 2 Arb LR 514.

“ The Arbitration Act does not expressly restrict the right to appeal against orders passed by arbitral tribunals to the parties to the dispute, unlike in case of setting aside of arbitral awards under Section 34 of the Arbitration Act

from the overall framework of the Arbitration Act. In **Abhibus**, Section 17(ii)(e) of the Arbitration Act was invoked to implead a non-signatory to the proceedings. Section 17(ii)(e) is a residuary provision which empowers the tribunal to pass any other interim measure of protection as may appear to be just and convenient. The Madras High Court held that:

- An interim order under Section 17 can only be passed against parties to the proceedings. Curiously and contrary to the above, the Madras High Court observed that Section 17 of the Arbitration Act could be invoked to implead a party in passing, before proceeding to deny the authority of the tribunal to do so basis Section 17.
- The relief was sought for impleadment of a non-signatory to a counter claim. The Madras High Court deemed it as bringing “an additional reference to adjudication” and not an interim measure of protection as contemplated under Section 17 of the Arbitration Act. By emphasizing on party consent, the Madras High Court stated that Section 16 (which gives statutory force to the principle of kompetenz - kompetenz) cannot confer wide amplitude to the tribunal to go as far as impleading a party which is not a signatory to the arbitration agreement. An arbitral tribunal does not have inherent powers such as the power to implead non-signatories. Impleading a party to the proceedings by the tribunal would amount to varying and enlarging the terms of reference.

Abhibus also overruled **VG Santhosam v Shanthi Gnanasekaran**.⁴ (“**VG Santhosam**”) - a previous judgment of the Madras High Court - on a specific observation made therein. **VG Santhosam** had held that (a) the Arbitration Act does not contain any express or implied provision empowering the tribunal to implead parties;

⁴ VG Santhosam v Shanthi Gnanasekaran, (2020) 5 Mad LJ 198.

⁵ Chloro Controls (India) (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641.

⁶ Arupri Logistics (P) Ltd. v. Vilas Gupta, 2023 SCC OnLine Del 4297.

⁷ IMC Ltd. v. Board of Trustees of Deendayal Port Trust, (2020) 4 Arb LR 221 (DB).

⁸ Amazon COM NV Investment Holdings LLC v. Future Coupons Private Limited, (2021) 4 Arb LR 67.

(b) however, in the absence of statutory provisions, parties can be impleaded by the tribunal by applying the principles of **Chloro Controls (India) (P) Ltd. v. Severn Trent Water Purification Inc.**⁵ in the interest of an effective adjudication. **Abhibus** diverged from such observation by holding that once it is established that the tribunal is not empowered to implead parties under the Arbitration Act, reliance cannot be placed on judicial precedents for exercising such power.

The Madras High Court decision of **Abhibus**, was also relied on by the recent Delhi High Court decision of **Arupri Logistics (P) Ltd. v. Vilas Gupta**.⁶ However, the Gujarat High Court and Delhi High Court have, previously, allowed impleadment of third parties by tribunals and issued orders against them [See **IMC Ltd. v. Board of Trustees of Deendayal Port Trust**,⁷ (“**IMC**”) and **Amazon COM NV Investment Holdings LLC v. Future Coupons Private Limited**, (“**Amazon**”).⁸ They appear to have done so by analyzing the merits of such impleadment, i.e., whether such third parties formed part of the “Group of Companies” which would otherwise have been amenable to a joinder. Neither **IMC** nor **Amazon** discussed the source of the apparent power of the tribunal to implead third parties. On the other hand, other High Courts such as the Madras High Court in **Abhibus**, **VG Santhosam**, the Delhi High Court,⁹ and the Bombay High Court¹⁰ have denied the tribunal wielding



such power in the absence of express provisions under the Arbitration Act.

Looking beyond the Indian jurisprudence

The view taken in **Abhibus, VG Santhosam**, and the like seems to be consistent with the internationally accepted position of disallowing the tribunal to join third – parties and issue orders against them based on party consent.¹¹

Further, even institutional rules contemplate joinder of non-signatories only if they consent to such joinder. For instance, Rule 22.1(x) of the LCIA Rules, 2020 confers power upon the tribunal to join a third person upon the written consent of the third person and the applicant party. It should, however, be noted that such joinder can only be considered upon an application of a party to the arbitration agreement and not by the tribunal's own accord. Similarly, under Rules 7.1 and 7.8 of the SIAC Rules, 2016 an additional party can be joined only if:(a) it is

prima facie bound by the arbitration agreement; or (b) all parties, including the additional party, have consented to the joinder of the additional party.

Has the 2015 Amendment truly levelled up the powers of arbitral tribunals?

An argument made frequently in favour of impleading third – parties to the proceedings by the tribunal under Section 17 is that after the 2015 Amendment, Section 17 has been brought on par with Section 9. Therefore, since Section 9 confers the power on courts to implead non-signatories, tribunals can be deemed do so as well under Section 17. However, in **Blue Coast and Gatx India Pvt. Ltd. v Arshiya Rail Infrastructure Ltd. & Anr.**¹², the Delhi High Court observed that while it is true that the 2015 Amendment has widened the scope of Section 17, such interim reliefs can only be requested against parties to the arbitration unlike Section 9.¹³

Therefore, the 2015 Amendment cannot be assumed to be altering the fundamental character of Section 17, which is to empower the tribunal to issue interim orders for the effective resolution of disputes limited to the agreement between the parties to the arbitration.

An arbitral tribunal is distinguishable from a court of law. An arbitral tribunal is a creation of an arbitration agreement for private adjudication of a dispute and derives authority from

⁹ Sudhir Gopi v. Indira Gandhi National Open University, (2017) 164 DRJ 227.

¹⁰ ONGC v. Jindal Drilling & Industries Ltd., (2015) 7 Bom CR 62.

¹¹ Oxford Shipping Co Ltd v Nippon Yusen Kaisha, [1984] 3 All E.R. 835; PT First Media TBK v Astro Nusantara International BV and Ors., [2014] 1 SLR 372; Gary B. Born, International Commercial Arbitration (3rd Edn.), Chapter 17 – paragraph 5(a).

¹² Gatx India Pvt. Ltd. v Arshiya Rail Infrastructure Ltd. & Anr., (2015) 216 DLT 20.

¹³ ArunKapur v. VikramKapur, (2002) 95 DLT 42.

such agreement. The arbitral tribunal does not have any inherent power, unlike a civil court which is a public forum for dispute resolution.

However, with the 2015 Amendment, arbitral tribunals have indeed been cloaked with wider powers which may affect third parties. For instance, the interim reliefs may be for protection of properties which are in possession of a third party. In such cases, third parties who may be affected by such interim reliefs may prefer an appeal under Section 37 of the Arbitration Act. The Arbitration Act does not expressly restrict the right to appeal against orders passed by arbitral tribunals to the parties to the dispute, unlike in case of setting aside of arbitral awards under Section 34 of the Arbitration Act.¹⁴

Concluding remarks

Arbitral tribunals source their very existence from the contract between the parties. In that regard, tribunals are yet to be fully equipped to enlarge the scope of submission and implead non-parties to the proceedings. If deemed necessary given a factual exigency,

the party seeking impleadment of a third-party may have to resort to an application before the court under Section 9 of the Arbitration Act. While the Supreme Court of India briefly observed in **State Bank of India v. Ericsson (India) (P) Ltd.**,¹⁵ that a tribunal cannot affect rights and remedies of third-party creditors by passing interim orders under Section 17, it is yet to discuss the scope and powers of arbitral tribunals in detail. It would bode well for the Indian arbitration regime if a finding is made by the Supreme Court of India or the legislature to conclusively address this issue.

¹⁴ Prabhat Steel Traders Pvt. Ltd. v Excel Metal Processors, 2018 SCC Online Bom 2347; Edelweiss Asset Recon-struction Company Ltd. v Secretary, Department of Financial Services & Ors., (2021) 280 DLT 398 (DB)

¹⁵ State Bank of India v. Ericsson (India) (P) Ltd., (2018) 16 SCC 617.

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Shweta is actively involved in several high-stake litigations across jurisdictions at domestic and international levels. She regularly appears before the High Court of Delhi, the Supreme Court of India. She is extensively involved in key commercial litigations with special focus on technology litigation. She has also been involved in a wide range of domestic and foreign-seated arbitrations – governed by rules of leading arbitral institutions. Enforcement of judgments and arbitral awards (domestic as well as foreign) comprises a significant component of her practice area. She takes keen interest in white collar investigations and employment-related litigations as well. Shweta has several articles and papers published to her credit, with a special focus on arbitration - in International Arbitration Law Review, Kluwer Arbitration blog etc. She is also listed as a 'Contributing Author' by LexisNexis PSL Arbitration. She has also contributed chapters in books on international arbitrations. She was also instrumental in drafting the Guidance Note signed with the Dubai International Financial Centre (DIFC) on execution of judgments from UAE in India, which was signed by the Chief Justice of DIFC Courts and NDA.

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