An unsuccessful party in arbitration can seek post-award interim protection under Section 9, but only on a much higher standard requiring rare and compelling circumstances

The **Bombay High Court** in the case of **Oil and Natural Gas Corporation vs Afcons Gunanusa Joint Venture [Comm Arbitration Petition (L) No. 20173 of 2026] dated July 10, 2026**, has held that an unsuccessful party in arbitration can seek post-award interim protection under Section 9, but only on a much higher standard requiring rare and compelling circumstances. In this case, where the arbitral tribunal had itself found delay attributable to the contractor and applicability of the liquidated damages clause, and where the challenge under Section 34 raised substantial legal issues on Section 74 and liquidated damages jurisprudence rather than merely factual re-appreciation, continuation of the existing bank guarantees was justified to preserve the subject matter of the dispute and prevent irreversible prejudice.

The Court treated Clause 6.3.4 as prima facie supporting continuation of the guarantees till final settlement of the liquidated damages dispute, and directed Afcons to renew, extend and keep alive all bank guarantees furnished under Clause 6.3.4 of the GCC, on the same terms and for the same amounts, pending final disposal of ONGC's Section 34 petition challenging the award dated 10 March 2026.

The Court then analysed the contract structure and found prima facie support for ONGC's stand. Clause 6.3.4 had been inserted after delay occurred, at Afcons' request, to replace deduction of liquidated damages from running bills with bank guarantee security. The clause expressly stated that the bank guarantees would continue till the issue of ONGC's right to recover liquidated damages was settled. The Court said that, prima facie, this showed that both parties had consciously agreed to secure the dispute through guarantees while allowing the project to continue.

On balance of convenience and irreparable injury, the Court accepted that continuation of the bank guarantees would merely preserve an existing arrangement that had remained in place for nearly fifteen years. ONGC was not seeking immediate invocation or enforcement, only continuation of security pending Section 34. The Court found that Clause 6.3.4 prima facie supported continuation till final settlement, and that the claim-period clause in the bank guarantee did not fully answer ONGC's concern that once the guarantees expired, the security itself might disappear.

The High Court further observed that the bank guarantees were the only security for ONGC's liquidated damages claim. If they lapsed and ONGC later succeeded in Section 34, the challenge could become ineffective. The Court also noted that one constituent of the joint venture was a foreign Indonesian company, and after completion of the project the joint venture had already served its purpose. In that backdrop, recovery difficulties could not be brushed aside. The Court held that a corporate guarantee was not commercially equivalent to an unconditional bank guarantee, and therefore Afcons' offer was not an adequate substitute.

The Court finally recorded a cumulative list of circumstances showing "rare and compelling circumstances" within the meaning of Home Care. These included the tribunal's findings on delay and applicability of Clause 6.3.2, the legal nature of ONGC's Section 34 challenge, the public utility character of the project, the introduction of Clause 6.3.4 at Afcons' request, the long-standing existence of the guarantees, the fact that ONGC only sought preservation of existing security, the lack of equivalence between a corporate guarantee and a bank guarantee, ONGC's prompt approach to court, and the risk of irreversible prejudice if the guarantees were allowed to lapse.