Where the arbitral award rejects the applicant's substantive claim, directs return of the bank guarantee, and there exists a prior consent arrangement fixing the outer limit for continuation of that bank guarantee, the Court will not direct continuation of the security merely because a Section 34 challenge is pending

The **Bombay High Court** in the case of **Oil and Natural Gas Corporation vs Swiber Offshore Construction PTE Limited [Comm Arbitration Petition No. 17832 of 2026] dated June 15, 2026**, has held that although an unsuccessful party in arbitration may maintain a post-award petition under Section 9 of the Arbitration and Conciliation Act, 1996, such relief can be granted only in rare and compelling cases satisfying a higher threshold than an ordinary interim application. Where the arbitral award rejects the applicant's substantive claim, directs return of the bank guarantee, and there exists a prior consent arrangement fixing the outer limit for continuation of that bank guarantee, the Court will not direct continuation of the security merely because a Section 34 challenge is pending, even if the opposite party is in liquidation and the challenge raises arguable issues.

The Court observed that after an arbitral award has been rendered, a petition under Section 9 stands on a different footing, and the principles applicable to post-award relief require a higher threshold to be met. Thus, the Court held that an unsuccessful party is not barred from seeking relief under Section 9, but such relief cannot be granted in a routine manner. Apart from a prima facie case, balance of convenience, and irreparable injury, the applicant must show exceptional circumstances such that refusal of interim protection would result in a situation which cannot later be corrected even if the challenge succeeds.

The Court noted that ONGC had raised arguable grounds in its Section 34 challenge, including contentions relating to Clause 6.3.2, the Tribunal's approach to proof of actual loss, and the findings on delay and categories of loss. However, the Court held that these were matters for examination in the Section 34 proceedings and that an arguable challenge by itself was insufficient for grant of post-award interim relief under Section 9. The Court was thus unable to conclude that ONGC had shown such an exceptionally strong prima facie case that the award could virtually be disregarded for the purpose of interim protection.

A significant factor weighed against ONGC was the existence of the Consent Terms governing continuation of the bank guarantee, which ONGC had not adequately disclosed in the present petition. The Court observed that these Consent Terms directly concerned the duration of the bank guarantee after the award and that fairness required disclosure of such an arrangement while seeking discretionary relief. The omission was held to be material, as ONGC was effectively seeking enlargement of its rights beyond the period consciously agreed by the parties, rather than mere preservation of an existing arrangement.

The Court further observed that the plea of urgency was weakened by ONGC's conduct. Although ONGC was aware from the outset of the issue concerning continuation of the bank guarantee and had already sought such relief in its Section 36(3) application, it filed the present Section 9 petition only on 15 May 2026 and served it on 1 June 2026, shortly before expiry of the guarantee on 15 June 2026.

The Court also held that although Swiber's liquidation and ONGC's apprehension regarding recovery were relevant factors, the bank guarantee could not be treated as a general security for all claims of ONGC against Swiber. It was furnished specifically in connection with liquidated damages under Clauses 6.3.2 and 6.3.4, and liquidation by itself was insufficient to elevate the case to the category of a rare and compelling case contemplated in Home Care Retail Marts (P) Ltd. v. Haresh N. Sanghavi [2026 SCC OnLine SC 670].

Applying this principle, the Court held that ONGC had failed to establish exceptional and compelling circumstances justifying post-award interim protection under Section 9, and accordingly dismissed the petition seeking continuation, renewal, extension or substitution of the bank guarantee, while keeping all questions in the pending Section 34 and Section 36 proceedings expressly open.