

**Foreign award requires a positive affirmation and validation by an Indian court to be treated as a decree, unlike a domestic award which is statutorily treated as a decree upon the expiry of the challenge period or the rejection of a challenge**

The **Bombay High Court** in the case of **Osterreichischer Lloyd Seereederei (Cyprus) Ltd vs Victore Ships Pvt Ltd [Commercial Arbitration Petition No. 398 of 2025]** dated **March 10, 2026**, has clarified that the jurisdiction of a court to grant interim measures under Section 9 of the Arbitration and Conciliation Act, 1996, is not ousted by the mere filing of a petition for recognition and enforcement of a foreign award under Part II of the 1996 Act. The remedy under Section 9 remains available at least until the stage where the Part II Court is satisfied that the foreign award is enforceable and deems it to be a decree of that Court under Section 49 of the 1996 Act.

The High Court ruled that a foreign award requires a positive affirmation and validation by an Indian court to be treated as a decree, unlike a domestic award which is statutorily treated as a decree upon the expiry of the challenge period or the rejection of a challenge. The Court explained that the temporal limitation contained in Section 9(1), i.e., “but before it is enforced in accordance with section 36”, is specific to the enforcement of domestic awards under Section 36 of the 1996 Act, and cannot be extrapolated to limit the applicability of Section 9 in relation to foreign awards, for which Parliament has not provided a similar restriction.

The Court undertook a detailed analysis comparing the enforcement mechanism for domestic awards under Part I with that for foreign awards under Part II, and noted that the proviso to Section 2(2) of the 1996 Act explicitly makes Section 9 applicable to international commercial arbitrations where the award is enforceable under Part II. The limitation in Section 9(1), i.e., “but before it is enforced in accordance with section 36”, is specifically linked to Section 36, which governs domestic awards.

The Court also draw a critical distinction between how the two types of awards become decrees, and explained that a domestic award automatically becomes a decree for enforcement under Section 36 once the time to challenge it under Section 34 expires, or a challenge is rejected. However, a foreign award becomes a decree only when the Part II Court, after being satisfied that it is enforceable, makes a positive declaration to that effect under Section 49. Until this positive affirmation, the foreign award does not have the status of a decree.

The Court observed that when Parliament amended the 1996 Act in 2015 to extend Section 9 to foreign awards, it did not introduce a corresponding time limit linked to Part II proceedings. This was deemed a conscious legislative choice, recognizing the difference in enforcement mechanisms. Therefore, the court cannot judicially infer a time limit that the legislature did not provide.

Further, the Court clarified that a petition filed under Part II is ‘first and foremost a petition for recognition’, and it only ‘translates into execution proceedings’ after the court confers the status of a decree upon the foreign award under Section 49. Until that point, the award is not being ‘enforced’ in a manner that would bar a Section 9 application.

Lastly, the Court stated that the possibility of concurrent jurisdiction between the Section 9 Court and the Part II Court was acknowledged but not considered a bar. The Court said that this is a legislative scheme, and in the absence of a statutory provision to the contrary (similar to Section 9(3) which regulates the overlap with Section 17), the court should not refuse to exercise jurisdiction.