



CASE COMMENT: ENFORCEMENT OF EMERGENCY ARBITRATOR'S AWARD IN INDIA AMAZON.COM NV INVESTMENT HOLDINGS LLC VS FUTURE RETAIL LIMITED & ORS

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INTRODUCTION

The evolving landscape of international commercial arbitration has increasingly emphasized procedural efficiency, party autonomy, and institutional mechanisms that safeguard urgent interests. Among these mechanisms, emergency arbitration has emerged as a powerful tool to secure interim relief before the constitution of a full tribunal. However, its enforceability under national laws, especially in jurisdictions with traditionally rigid arbitration statutes, remains a complex and evolving issue. India's Arbitration and Conciliation Act of 1996, based on the UNCITRAL Model Law, did not originally contemplate emergency arbitration. Yet, with the growing use of institutional rules like those of the Singapore International Arbitration Centre (SIAC), Indian parties have found themselves invoking emergency relief even in the absence of explicit statutory backing. This gap set the stage for one of the most consequential rulings in recent Indian arbitration history: Amazon.com NV Investment Holdings LLC vs. Future Retail Ltd & Ors¹. The case not only raised questions about the legal status of emergency arbitrations in India but also tested the judiciary's commitment to respecting contractual autonomy and embracing global arbitral norms².

FACTS OF THE CASE

Amazon.com NV Investment Holdings LCC (Amazon), a US-based entity, entered into a shareholders' agreement (SHA) in 2019, acquiring a 49% stake in Future Coupons Pct. Ltd. (FCPL), which in turn held a stake in Future Retail Ltd. (FRL). The SHA contained a clause prohibiting FCPL and its affiliates from transferring assets to specified "Restricted Persons", which included Reliance Retail Ventures Ltd (RRVL). Despite this restriction, FRL in

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² AIR 2021 SUPREME COURT 3723

August 2020 agreed to sell its retail and wholesale assets to RRVL. Amazon initiated emergency arbitration proceedings under SIAC Rules and was granted interim relief by the emergency arbitrator on 25th October 2020, restraining FRL from proceeding with the deal. Amazon approached the Delhi High Court under Section 17(2) of the Arbitration and Conciliation Act 1996³ to enforce the emergency award. A single Judge upheld Amazon's request, but the Division Bench reversed this decision. The matter was escalated to the Supreme Court of India.

PRELIMINARY ISSUES

The Supreme Court considered the following legal questions:

- Whether an emergency arbitrator's award is enforceable under Indian law.
- Whether such an award falls within the ambit of Section 17(1) and Section 17(2) of the Arbitration and Conciliation Act 1996.
- Whether Indian courts can enforce an interim relief granted by a foreign-seated emergency arbitrator.

PETITIONER'S ARGUMENTS

The Counsel for the Petitioner (Amazon) contended that the parties had contractually agreed to the SIAC Rules, which explicitly provide for emergency arbitration, and hence, the award rendered by the emergency arbitrator was valid and binding. Section 17(1) of the Act empowers an arbitral tribunal to grant interim relief, while Section 17(2) allows for the enforcement of such an order as if it were a court order. They further contended that the term "arbitral tribunal" should include an emergency arbitrator appointed under the institutional rules agreed upon by the parties. Therefore, enforcing the award honours the principle of party autonomy, which is a recognized cornerstone of international commercial arbitration.

RESPONDENT'S ARGUMENTS

The Respondents argued that the Arbitration Act does not expressly recognize the concept of an emergency arbitrator. Under section 2(1)(d), an arbitral tribunal does not include emergency arbitrators. Since the emergency award was rendered in a foreign-seated

³ Arbitration and Conciliation Act 1996, s 17(2)

arbitration (Singapore), it cannot be enforced under Part I of the Act. The award must be enforced, if at all, under Part II as a foreign award, but interim awards are not recognized under the New York Convention or the Act. Hence, recognition of such awards would contravene India's arbitration framework and public policy.

JUDGMENT AND RATIONALE

On 6th August 2021, the Supreme Court of India, through a division bench comprising Justice R F Nariman and Justice B R Gavai, rendered a landmark decision in *Amazon.com NV Investment Holdings vs. Future Retail Ltd.* The Court held that;

- The emergency arbitrator's award was enforceable under sections 17(1) and 17(2) of the Act.
- When the parties agree to institutional rules that permit emergency arbitration, the emergency arbitrator is an "arbitral tribunal" to grant interim relief.
- Section 17(2) was introduced via the 2015 Amendment to provide teeth to interim relief granted by arbitral tribunals, which includes emergency arbitrators when agreed to by the parties⁴.

The Court further held that party autonomy is the cornerstone of arbitration law, both internationally and under Indian law. By opting for SIAC Rules, the parties had not only consented to arbitration in Singapore but also to the procedural regime governing emergency relief. It was immaterial, according to the Court, that the concept of emergency arbitration was not explicitly mentioned in the Indian statute. What mattered was the intent of the parties, which the Court described as "sacrosanct" in commercial arbitration⁵. A notable portion of the judgment was devoted to reinforcing the principle that the judiciary must play a supportive role in arbitration, not supervisory. Therefore, the Court concluded that Indian law recognizes the enforceability of such awards, thus affirming Amazon's position and restoring the order of the Single Judge of the Delhi High Court.

⁴ Arbitration and Conciliation (Amendment) Act, 2015

⁵ AIR 2021 SUPREME COURT 3723

ANALYSIS OF THE CASE

Party Autonomy and Institutional Arbitration: This landmark judgment reaffirmed the sanctity of party autonomy. The parties had explicitly agreed to SIAC Rules, which include provisions for emergency arbitration. By upholding the emergency award, the Supreme Court reinforced the notion that contractual choices in arbitration must be respected, as supported by international jurisprudence and Model Law principles.⁶

Purposive Interpretation of Section 17 of the Act: The Supreme Court of India adopted a purposive and harmonious construction of sections 17(1) and 17(2). Although the term “emergency arbitrator” does not appear in the Act, the Court focused on the legislative intent and the need to give full effect to the interim relief framework introduced by the 2015 Amendment. This judicial interpretation aligned Indian practice with international norms, including those in Singapore and Hong Kong, where emergency arbitration is statutorily recognized.⁷

Foreign-Seated Emergency Arbitrators: Despite being seated in Singapore, the emergency arbitrator’s award was enforced under Part I due to the parties’ implied agreement to SIAC Rules and the applicability of Indian law. This approach is consistent with the doctrine laid down in *Indus Mobile Distribution Pvt. Ltd vs. Datawind Innovations Pvt. Ltd*⁸, which allowed parties to opt into Part I even when seated outside India. However, this interpretation must be viewed in light of the judgment in *Bharat Aluminium Co vs. Kaiser Aluminium Technical Services Inc*,⁹ which established that Part I applies only to arbitrations seated in India unless expressly opted into. The judgment in *Amazon* thus sets a precedent for the enforcement of emergency awards under institutional rules where parties implicitly consent to such applicability.

Investor Protection and Global Perception: The judgment sends a strong signal to foreign investors about India’s commitment to upholding modern arbitration mechanisms. Emergency arbitration is vital for protecting parties’ interests before a tribunal is constituted, especially in today’s fast-moving commercial settings. The judgment reinforces the credibility of India as an arbitration-friendly jurisdiction in the global community.

⁶ UNCITRAL Model Law on International Commercial Arbitration 1985, arts 17-17J

⁷ Singapore International Arbitration Act (Cap. 143A, 2002)

⁸ 2017 (7) SCC 678

⁹ 2010 1 SCC 72

COMPARATIVE JURISPRUDENCE

Emergency arbitration, though a relatively recent innovation in international arbitration, has been widely accepted across key arbitral jurisdictions, which have either incorporated emergency arbitrator provisions into their national laws or recognized their awards judicially.

Singapore: Singapore stands as a leading arbitration-friendly jurisdiction and was one of the first to adopt emergency arbitration formally within its legislative framework. The Singapore International Arbitration Act was amended in 2012 to include references to emergency arbitrators. Under section 2(1) of the Act, an “arbitral tribunal” includes an emergency arbitrator, thereby granting legal recognition and enforceability to their orders.

Hong Kong: It embraced emergency arbitration through its Arbitration (Amendment) Ordinance Act, 2013, which expanded the definition of “arbitral tribunal” to include emergency arbitrators appointed under the arbitration rules agreed by the parties. Sections 22A and 22B grant legal recognition and ensure enforceability through domestic courts. The practice has gained wide usage among commercial parties engaging in cross-border transactions, particularly in Mainland China-Hong Kong disputes, where swift interim protection is essential.

United States: In the United States, courts have recognized and enforced emergency arbitrator decisions under the Federal Arbitration Act. The landmark judgment in the case of *Yahoo! Inc. vs. Microsoft Corp*¹⁰ acknowledged the binding nature of an emergency arbitrator’s interim award issued under the American Arbitration Association (AAA)/ International Centre for Dispute Resolution (ICDR) rules.

CONCLUSION

The judgment in *Amazon vs. Future Retail* is a milestone in Indian arbitration jurisprudence. By recognizing the enforceability of emergency arbitrator awards under institutional rules, the Supreme Court of India has strengthened party autonomy and brought India in line with international arbitration norms. The decision affirms that emergency arbitration is not merely a procedural add-on, but a vital tool in safeguarding rights pending the constitution of a full tribunal. It also bridges the statutory gap in India’s arbitration law and provides much-needed clarity. Going forward, the legislature should consider explicitly including emergency

¹⁰ 983 F. Supp. 2d 310 (S.D.N.Y. 2013)

arbitrators within the Act to eliminate ambiguity. Until then, this judgment remains the cornerstone for emergency arbitration in India.