

SUPREME COURT OF INDIA RECOGNISES ENFORCEMENT OF EMERGENCY ARBITRATOR AWARD

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Prior to 2010, if a party to an international arbitration requires to get an interim order, prior to formation of the arbitral tribunal, it was left with no other option other than approaching the appropriate National Court of the Respondent or the National Court having the jurisdiction over the subject matter covered under the application for interim order. The said deficiency of the international arbitration mechanism made the interim arbitration process complex and expensive. Hence in the year 2010 the International Centre for dispute resolution (ICDR) which is the international arm of American Arbitration Association (AAA) and Singapore arbitration centre (SIAC) introduced the provision of emergency arbitrator to the arbitration process by amending their rules. Since the above provision is incorporated into the Arbitration Rules of all popular Global arbitral institutions, once the parties adopt the said rules of the institution, Emergency arbitrator mechanism is available to them.

On the application of one of the parties to the arbitration to the Arbitral Institution seeking to appoint an Emergency arbitrator, for the purpose of dealing with an application for an interim order due to certain emergency, the arbitral Institution appoints the Emergency Arbitrator. On receipt of such an application, the institution appoints an emergency arbitrator within a few hours or days, who will hear the parties urgently (Mostly virtually) and pass the order/award. The important characteristics of an Emergency Arbitrator award are as follows:

- a. Emergency arbitrator has powers to deal with only emergency relief applications
- b. Emergency arbitrator enjoys all the powers as the regular arbitration tribunal
- c. emergency arbitrator must complete his work within 14 days
- d. emergency arbitrator cannot continue after the formation of the arbitral tribunal
- e. emergency arbitrator orders can be reviewed or altered dead by the arbitral tribunal
- f. emergency arbitrator award can be challenged only in the seat of arbitration
- g. normally emergency arbitrator will not be part of the arbitral tribunal

Many countries recognise emergency arbitrator award and enforce them under New York Convention². Countries like Singapore, Hong Kong etc., have recognised the emergency arbitrator award as enforceable by amending their arbitration law. UNCITRAL Model Law³ clause 17(H) provides for enforcement of interim awards.. English Courts recognise emergency arbitration awards and in the

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² New York Convention on Recognition and Enforcement of Arbitral awards, 1958

³ The UNCITRAL Model Law on International Commercial Arbitration 1985

case of Gerald Metals⁴, it was held that courts can entertain applications seeking interim relief only if the emergency arbitrator provision is not available in the Rules of the Institution or adequate powers are not provided to the emergency arbitrator to effectively deal with the issues raised in the application.

But Indian law⁵ also does not have any provision recognising Emergency arbitration awards Even prior to 2015 Amendment⁶ Law Commission of India vide its “Report No.246 Amendments to the Arbitration and Conciliation Act,1996” recommended to the Government of India, seeking to amend S.2 of the Act and include Emergency arbitrator but Government of India did not come forward to do it. Till 2021 (Amazon case) no Court in India got the opportunity to directly test the validity of an Emergency arbitrator award or an application seeking to enforce an emergency arbitration award. In all the cases including HSBC case⁷ & Raffles case⁸, parties holding the emergency arbitrator award filed an application in the High Court and sought an interim order under S.9 of the Act based on the emergency arbitration award. Hence, the then law was that emergency arbitrator award can be enforced indirectly in India by filing an application under S.9 of the Act.

But Supreme Court of India by way of a Judgment dated 06.08.2021⁹, changed the law heavily relying on the principle of party autonomy and the effect of adopting an arbitration rules of an arbitral institution and held that emergency arbitrator award is enforceable in India, like an order passed by the Arbitral tribunal under Section.17 of the Act. The brief facts of the case are that there are three shareholders agreements entered into between the parties Amazon and Biyani group. As per the said agreements prohibited encumbering/ transferring/ selling/ divesting/ disposing of retail assets to “restricted persons” and Reliance Industries Group is a restricted party. On 26th December 2019 Amazon invested a sum of Rs.1431 Crores and after a few months on 29th August 2020, the Biyani group entered into a transaction with the Reliance group which envisages amalgamation of FRL with Reliance group.

Amazon initiated arbitration proceedings and filed an application on 5th October 2020 seeking emergency interim relief under SIAC Rules, asking injunctions against the aforesaid transaction. The Emergency arbitrator passed an “interim award” granting injunction from taking steps in furtherance of the above said transaction with Reliance. Amazon filed an application under S.17(2) of the Arbitration in the High Court of Delhi and sought for enforcement of the said Emergency Arbitrator

⁴ Gerald Metals Vs Timis (2016) EWHC 2327 (Ch)

⁵ Arbitration and Conciliation Act,1996

⁶ Arbitration and Conciliation (Amendment) Act,2016

⁷ HSBC Holdings Mauritius Limited Vs Avitel Post Studioz Ltd (2014) SC Online 102 & 2015 SCC Online 6352

⁸ Raffles India International Private Limited Vs Educomp Professional education Limited 2016 SCC Online Del 5521

⁹ Amazon.com NV Vs Future Retail Limited



award. High Court of Delhi allowed the application and the said detailed Judgment of the single judge of Delhi High Court and appeal was filed before the Division Bench and the division bench stayed the order of the Single Judge. Hence matter was taken to Supreme court by AMAZON and Supreme Court of India settled the law.

Now the law is well settled by the Supreme Court Bench headed by Justice Mr R.F. Nariman that the Emergency arbitrator award is enforceable in India, when the seat of Arbitration is India. Let us wait and see how this Judgment is going to help foreign seated arbitrations and when the procedural law is not Arbitration and conciliation Act,1996.

