

UPDATE

This Update has been prepared by Vikas Mehta, Partner and Kritika Sethi, Senior Associate.

EMERGENCY ARBITRATION – A RECAP

Introduction

Last few months have been abuzz with discussion on the validity and enforcement of the award of the SIAC's Emergency Arbitrator in the dispute between Amazon.com NV Investment Holding LLC ("Amazon") and Future Retail Limited ("FRL") and its group companies in India. The said debate has been put to rest by the recent Hon'ble Supreme Court's judgment in the said case. Understanding the same is imperative to analyzing whether the parties may opt for an emergency arbitration in the future, in case the same may need to be enforced in India.

What is Emergency Arbitration and when can parties opt for it?

Institutional Arbitrations, like ICC and SIAC, provide an option of emergency arbitration to litigants under their respective rules governing the arbitration. Emergency Arbitration provides an option to the parties to seek urgent interim reliefs before an arbitral tribunal is constituted. In cases where the parties have not been able to mutually appoint an arbitral tribunal, constitution of an arbitral tribunal may not happen instantly. For example, an appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") may take time. However, injunction or any other interim relief may be required to ensure that the subject matter of the dispute, etc. is preserved during the pendency of constitution of the arbitral tribunal. Accordingly, such reliefs may be sought by parties before an Emergency Arbitrator. Recently, an award passed by the Emergency Arbitrator in the Amazon-Future dispute was challenged before the Hon'ble Supreme Court, wherein the validity and enforcement of such an award was the question which was answered by the Hon'ble Supreme Court.

What is the dispute between Amazon and Future Group/Reliance Group?

The dispute between Amazon, on one hand, and Biyani Group and Reliance Group, on the other hand, pertained to a claim of breach of an agreement between Amazon and Biyani Group in 2019. In the said agreement, Amazon restrained, inter alia, FRL and Future Coupons Pvt. Ltd. from encumbering/transferring/selling/divesting/disposing its retail assets to restricted people. These restricted people included Reliance Group. Arbitration was invoked by Amazon upon execution of an agreement between FRL and Reliance Group in 2020. Accordingly, Amazon sought urgent reliefs before an Emergency Arbitrator. Amazon secured a favourable award dated October 25, 2020 against FRL from the Emergency Arbitrator, under which FRL was restrained from completing its transaction with Reliance Retail worth approximately Rs. 24,731 crore. ("EA Award").

Is an Emergency Arbitrator's award valid in India?

In previous judgments of the Hon'ble Bombay High Court[1] and Hon'ble Delhi High Court[2], awards of emergency arbitrators were being considered when parties approached the respective courts under Section 9 of the Arbitration Act. Under Section 9 of the Arbitration Act, parties can independently seek interim reliefs before, during or after arbitral proceedings. However, the validity and enforcement of such awards under the Arbitration Act was left unanswered.

While appointment/award of an Emergency Arbitrator is not provided under the Arbitration Act, in its order dated August 6, 2021, the Hon'ble Supreme Court has interpreted an award of Emergency Arbitrator to be an interim award under Section 17 (1) of the Arbitration Act. Emphasizing upon party autonomy under the Arbitration Act, the Hon'ble Supreme Court gave a wider interpretation to Section 17 of the Arbitration to include an award passed by the Emergency Arbitrator.

This is a landmark judgment of the Hon'ble Supreme Court wherein award of an Emergency Arbitrator has been recognized and its validity has been upheld. The same has reinstated litigant's confidence in opting for Emergency Arbitration in the future.

¹ HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd., (2014) SCC Online Bom 102.

² Raffles Design International India Pvt. Ltd. & Anr. v. Educomp Professional Education Ltd. & Ors., (2016) 234 DLT 349; Ashwani Minda and Ors. v. U-Shin Ltd. and Ors, (2020) SCC Online Del 1648.

This Update has been prepared by Vikas Mehta, Partner and Kritika Sethi, Senior Associate who can be reached at vikas.mehta@aquilaw.com and kritika.sethi@aquilaw.com. This Update is only for informational purposes and is not intended for solicitation of any work. Nothing in this Update constitutes legal advice and should not be acted upon in any circumstance.