

Indian Supreme Court Issues Landmark Decision: Emergency Arbitrator Awards in India-Seated Arbitrations Are Directly Enforceable

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Key Takeaways:

- The Indian Supreme Court in *Amazon.com NV Investment Holdings LLC v. Future Retail Limited* held that emergency arbitrator awards issued in arbitrations seated in India are directly enforceable by virtue of Section 17(2) of the Arbitration & Conciliation Act 1996.
- Emergency arbitration is an increasingly viable option for parties to obtain urgent relief before an arbitral tribunal is in place.
- Parties needing urgent relief at the outset of a dispute should consider carefully the pros and cons of emergency arbitration or a court application for such relief, and assess where, and against whom, the relief will be enforceable.

Last month, in an unprecedented decision, the Indian Supreme Court held in *Amazon.com NV Investment Holdings LLC v. Future Retail Limited* (“Judgment”) that an emergency arbitration award issued in an arbitration seated in India is enforceable under the Arbitration & Conciliation Act 1996 (the “Arbitration Act”). This is a significant decision for India-seated arbitrations as it had been unclear whether such awards were enforceable in India. The Supreme Court has clarified that they are. This means that parties to certain India-seated arbitrations can now obtain an emergency arbitration award with the confidence that, if necessary, it can be enforced in the Indian courts. In practice, arbitral institutions have reported high levels of compliance with emergency arbitration decisions, rendering court enforcement unnecessary in many instances.

WHAT IS EMERGENCY ARBITRATION?

Emergency arbitration is a procedure which enables institutions to appoint an arbitrator—before or after a party commences arbitration but before the parties appoint the tribunal—to decide an application for urgent interim relief. Parties can usually obtain relief from emergency arbitrators within a couple of weeks. Emergency

arbitrators may issue their decisions in the form of an order or award. The arbitral tribunal subsequently can revisit and modify the emergency award.

The International Centre for Dispute Resolution was the first arbitral institution to introduce an emergency arbitration procedure in 2006, in response to concerns about seeking interim relief from national courts before constitution of a tribunal. A party may choose to approach an emergency arbitrator for relief instead of a national court, for example, in the interest of time or to preserve confidentiality. Most leading arbitral institutions now provide for emergency arbitration, and arbitration hubs such as Singapore and Hong Kong have enacted legislation recognising the enforceability of awards and orders issued by emergency arbitrators. However, the enforceability of such emergency orders or awards remains an open issue in a number of other jurisdictions.

Amazon.com v. Future Retail Limited

In August 2019, Amazon agreed to invest in the Future Group (“Future”) on the condition that Future would not transfer its retail assets without Amazon’s consent. Future was also prohibited from selling its assets to certain restricted persons, including the Reliance Group (“Reliance”). However, in August 2020, Future announced it had agreed to sell assets worth US\$3.4 billion to Reliance. Amazon alleged that this was a breach of the Shareholders’ Agreement between Future and Amazon, and launched arbitration proceedings under the rules of Singapore International Arbitration Centre (“SIAC”) based on the arbitration agreement in the Shareholders’ Agreement.

Amazon also secured an interim award from an emergency arbitrator suspending the transaction between Future and Reliance under the SIAC rules (the “Emergency Award”). Amazon then filed a petition in the Delhi High Court requesting enforcement of the Emergency Award. Future argued that the Emergency Award had no legal status and was not enforceable under the Arbitration Act. In March 2021, the Delhi High Court issued an order enforcing the Emergency Award and rejecting Future’s argument. Future appealed to the Indian Supreme Court.

The Supreme Court issued its decision on 6 August 2021, agreeing with Amazon that the Emergency Order is enforceable under the Arbitration Act. It disagreed with Future’s argument that Section 17(2) of the Arbitration Act (as amended in 2015)—which provides enforcement of interim orders issued by arbitral tribunals seated in India in the same manner as a court order—distinguishes between interim awards issued by an arbitral tribunal and emergency orders, and that only the former are enforceable. The Supreme Court held that there is no express or implied bar against the enforcement of emergency arbitration orders in the Arbitration Act. Accordingly, the Supreme Court decided that emergency arbitration orders are enforceable pursuant to Section 17(2).

The Supreme Court found that the applicable SIAC rules expressly identify an emergency arbitrator as “an arbitrator” and that the emergency arbitrator has the power to provide interim relief under the rules. The Supreme Court emphasised that each party has full autonomy in deciding who is to determine issues that arise between the parties. Having made their choice, in this case by agreeing to the SIAC rules, neither party should be permitted to avoid an emergency arbitrator’s decision solely because it did not agree with the decision. The Supreme Court recognised emergency arbitration as “an important step in aid of decongesting the civil courts and affording expeditious interim relief to the parties”.

COMMENTARY

Notably, each of the Law Commission of India in 2014 and the Srikrishna Committee in 2017 had recommended that the definition of “arbitral tribunal” under the Arbitration Act be amended to include an emergency arbitrator, but this was not adopted. Following the Judgment, it appears that jurisprudence from courts, rather than legislation, currently leads the development of emergency arbitration in India.

As such, the Judgment continues a trend of positive Indian Supreme Court decisions on arbitration (see our previous client updates [here](#) and [here](#)).

However, at least one question remains. The *Amazon.com v. Future Retail Limited* arbitration was seated in India; the Judgment therefore may not guarantee that emergency arbitration awards where the arbitration is seated outside India will be directly enforceable in India. In the past, Indian courts have held that emergency awards for arbitrations outside India do not equate to court orders and are not directly enforceable. There is no provision in the Arbitration Act equivalent to Section 17(2) that applies to arbitrations seated outside India. To get around this, the Indian courts have instead issued interim orders in line with the substance of emergency awards.

More broadly, the Supreme Court’s decision highlights the needs for parties to consider carefully the most viable route to obtain urgent relief that is needed at the outset of a dispute. In choosing between emergency arbitration and court relief, parties need to weigh up several factors, including whether courts will enforce an emergency arbitration decision in jurisdictions where enforcement may be necessary. Other key factors are whether *ex parte* relief is required (without the opposing party being made aware of the application), and whether relief is needed against third parties. If such relief is needed, then depending on the applicable rules, emergency arbitration may not be a viable option. However, where it is both viable and advantageous, a successful emergency arbitration can enable parties to secure an early win, whilst obtaining the

protection they need to secure their position pending the ultimate determination of their claims.

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Please do not hesitate to contact us with any questions.

LONDON



Geoffrey P. Burgess
gpburgess@debevoise.com



Lord Goldsmith QC
phgoldsmith@debevoise.com



Samantha J. Rowe
sjrowe@debevoise.com



Patrick Taylor
ptaylor@debevoise.com



Shreya Aren
saren@debevoise.com



Gareth Hughes
ghughes@debevoise.com

HONG KONG



Mark Johnson
mdjohnson@debevoise.com



Cameron Sim
csim@debevoise.com



Catherine Amirfar
camirfar@debevoise.com

NEW YORK



Donald Frances Donovan
dfdovonan@debevoise.com



Mark W. Friedman
mwfriedman@debevoise.com



Ina C. Popova
ipopova@debevoise.com



Dietmar W. Prager
dwprager@debevoise.com



Natalie Reid
nlreid@debevoise.com



David W. Rivkin
dwrivkin@debevoise.com