



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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EMERGENCY ARBITRATION AND JUDICIAL RECOGNITION IN INDIA: A CASE COMMENTARY ON AMAZON V FUTURE RETAIL

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I. INTRODUCTION

When Singapore speaks, must Delhi listen?

Amazon.com NV Investment Holdings LLC ("Amazon"), the world's largest marketplace where millions of buying and selling take place, but this time Amazon sought to stop a sale. This was not just any sale; to stop this, Amazon banged at the doors of an emergency arbitrator under Singapore International Arbitration Centre ("SIAC") thousands of miles away instead of a court. Now a question would be: will Indian laws accept the decisions passed by this very emergency arbitrator? The answer to it is a resounding yes. But it wasn't so easy to get it then, *Amazon v. Future Retail* is one of the very big steps to frame the architecture of Indian arbitration law.¹

The case consists of different fields forming an intersection between commercial, corporate, constitutional and legal matters across different nations.

II. DISPUTE

To begin with, we need to understand a peculiar chain in corporates: now Amazon wasn't a shareholder of Future Retail, yet they wanted to stop a sale made by Future Retail. How was this possible? In year 2019, Amazon invested in Future Coupons Private Limited ("FCPL") approximately 200 million dollars, a promoter of Future Retail Limited ("FRL"). Amazon's investment was formed through a Shareholders' Agreement and contracts containing a right of

¹ *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209 (India).

first refusal clause and a negative covenant prohibiting FRL from transferring assets to a “Restricted Person”, a list that included Mukesh Ambani’s Reliance Industries.²

The issue started when the Future Group in August 2020 announced a massive 3.4 billion dollar deal selling FRL’s retail, wholesale, logistics, and warehousing assets to Reliance Retail Ventures Limited (“RRVL”). To stop this deal before it was too late, Amazon invoked emergency arbitration under SIAC Rules 2016,³ obtaining an *ex parte* Emergency Award from a sole Emergency Arbitrator (“EA”) restraining the deal, which followed a litigation labyrinth wherein multiple legal bodies were involved with intertwining intricacies of the SIAC Emergency Award, a contested enforcement proceeding before the Hon’ble Delhi High Court’s Single Judge, a Division Bench reversal, and finally the Hon’ble Supreme Court of India’s landmark restoration.

III. ISSUES

A. DOES AN EMERGENCY ARBITRATOR QUALIFY AS AN “ARBITRAL TRIBUNAL”?

The very first argument that was in question was under the Arbitration and Conciliation Act, 1996 (“ACA”) and whether its Section 2(1)(d),⁴ which defines “arbitral tribunal” as a sole arbitrator or a panel of arbitrators, encompasses an Emergency Arbitrator which Future Retail argued that an EA is a creature of institutional rules, not statutes, and therein it falls outside the given definition, rendering any of its orders invalid in Indian Courts.

The Hon’ble Supreme Court, with its nuanced approach, highlighted that the definition must be read functionally and not literally.⁵ The Court clarified that an EA exercises the same adjudicatory function as any interim tribunal, and the ACA’s silence about emergency arbitration in its definition showcases legislative incompleteness rather than deliberate exclusion. The judgment drew inspiration from the 2015 Amendment to the ACA,⁶ which itself was aligned with the United Nations Commission on International Trade Law (“UNCITRAL”).

B. DOES SECTION 17(1) CAPTURE PRE-TRIBUNAL INTERIM ORDERS?

² Id.

³ SIAC Rules 2016, r. 30 (Singapore Int’l Arb. Ctr. 2016).

⁴ The Arbitration and Conciliation Act, No. 26 of 1996, § 2(1)(d) (India).

⁵ *Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd.*, supra note 1.

⁶ The Arbitration and Conciliation (Amendment) Act, No. 3 of 2016 (India); UNCITRAL, Report of Working Group II on Arbitration and Conciliation on the Work of Its Sixty-Third Session, U.N. Doc. A/CN.9/861 (2015).

Section 17(1) of the ACA talks about an “arbitral tribunal” granting interim orders “during arbitral proceedings.”⁷ Future Retail again argued that as there was no tribunal formed at the time when the EA rendered its orders, the orders could not be “during arbitral proceedings.” The Court rejected the argument with elegance; instead of going for temporal literalism, the Hon’ble Supreme Court interpreted “arbitral proceedings” for the purposes of Section 17 to begin when the Notice of Arbitration is filed, not when the tribunal is constituted. The EA acts as the tribunal *pro tempore*, and their orders are enforceable under Section 17(2) of the Act as if they were court orders.⁸

The judgment had a profound impact; it closed the enforcement gap that had long troubled emergency arbitration in India and brought the ACA in closer alignment with the SIAC Rules, specifically Rule 30.3, which states that the EA’s orders are binding on the parties.⁹

C. THE ANTI-SUIT INJUNCTION AND JUDICIAL PROPRIETY

The most critical part of this lawsuit would be the manoeuvring Future Retail attempted through parallel proceedings, obtaining relief from the Hon’ble Delhi High Court’s Single Judge and later seeking to resist enforcement on the ground that the EA’s findings had been superseded. The Hon’ble Supreme Court treated this as an abuse of process, reinforcing the principle that parties who contractually and consensually agree to institutional arbitration cannot selectively invoke domestic courts to undermine the very proceedings they agreed to.

This draws stark resemblance from the England and Wales Court of Appeal’s reasoning in *Gerald Metals SA v. Timis*,¹⁰ where the court held that parties cannot weaponise national court jurisdiction against the arbitral forum they chose. The Court in Amazon’s case read the Shareholders’ Agreement’s governing law clause and SIAC arbitration agreement as a compact of fidelity establishing arbitration first, litigation at the end.

IV. ANALYSIS

The institutionalisation of emergency arbitration through SIAC Rule 30 and its equivalents under various organisations such as the International Chamber of Commerce and the American Arbitration Association¹¹ addresses a genuine procedural gap, a lacuna that highlights that the

⁷ The Arbitration and Conciliation Act, No. 26 of 1996, § 17(1) (India).

⁸ The Arbitration and Conciliation Act, No. 26 of 1996, § 17(2) (India).

⁹ SIAC Rules 2016, r. 30.3 (Singapore Int’l Arb. Ctr. 2016).

¹⁰ *Gerald Metals SA v. Timis*, [2016] EWHC 2327 (Ch) (Eng.).

¹¹ SIAC Rules 2016, r. 30 (Singapore Int’l Arb. Ctr. 2016); ICC Rules of Arb. art. 29 & App. V (Int’l Chamber of Commerce 2021); AAA-ICDR Int’l Dispute Resolution Procedures r. 6 (Am. Arb. Ass’n 2021).

time itself taken to constitute a tribunal, which is often weeks or months, can cause an irreparable harm. The EA framework permits a party to seek urgent interim relief within 24 to 48 hours of filing.

India's ACA did not specifically address emergency arbitration until its amendment in 2021,¹² which proposed to incorporate the same framework but was never passed in its original form. The Hon'ble Supreme Court in *Amazon* thus acted as bridging chief, reading the existing statutory framework to accommodate a commercially necessary institution. This judicial bridging is both praiseworthy and cautionary. It is praiseworthy because it preserves India's attractive, arbitration-friendly jurisdiction, and cautionary because every case would then ponder and depend upon the legitimacy and efficacy of courts legislating through interpretation.

V. CRITICAL COMMENTARY

Indian courts have historically been criticised for excessive interference in arbitration, which developed a reputation that deterred international parties from choosing India as a hub but with *Amazon* came a decisive shift: Indian courts will enforce party autonomy, give institutional rules their intended effect, and resist procedural manipulation, making the judgment partially praiseworthy.

There are still uncomfortable questions which have been left unanswered. First, the Court did not engage seriously with the due process concerns inherent to *ex parte* emergency proceedings. The EA in this case acted without hearing Future Retail, a structural deficit that courts in other jurisdictions have flagged as potentially incompatible with natural justice. Second, the Court's treatment of FCPL as the proper party to invoke arbitration, despite them being the covenant on the surface with FRL, raises corporate veil issues that were disposed of in a summary manner.

Thirdly, and most importantly, the Court did not settle whether an EA order that was specifically issued by the SIAC EA could be directly enforced in India under Section 17, or whether it required some other pathway of a New York Convention award.¹³ The Court treated the SIAC Emergency Award as equivalent to a domestic Section 17 order; by doing this the

¹² *The Arbitration and Conciliation (Amendment) Bill, 2021*, No. 14 of 2021, India (lapsed).

¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

Court may have blurred the domestic-international distinction, which may create anomalies in future cases.

VI. GLOBAL COMPARATIVE HORIZON

The *Amazon* judgment places India alongside jurisdictions of Singapore, Hong Kong, and England, where they have robustly enforced emergency arbitrator orders. Singapore's International Arbitration Act expressly recognises EA orders as enforceable.¹⁴ The United States has been more hesitant, with federal courts split on the question under the Federal Arbitration Act.¹⁵

What distinguishes *Amazon* is that India accomplished recognition without legislative reform through judicial activism alone. This is a critical juncture which demonstrates dynamic institutions but also underscores the need for Parliament to codify emergency arbitration in the ACA, providing clarity and certainty rather than relying on the interpretative latitude of a single bench.

VII. CONCLUSION

Amazon v. Future Retail was more of a jurisprudential moment rather than a corporate dispute that forced Indian courts to formally acknowledge that international commercial arbitration operates in a distinct legal ecosystem, wherein rules are constitutive and not merely procedural.

The Hon'ble Supreme Court's holding that emergency arbitrator orders are enforceable under Section 17 of the ACA is doctrinally sound, commercially necessary, and globally harmonious but it has its own limitations. The lacuna for due process and the domestic-international intersection is manageable for now, but Indian arbitration law needs codification. What the judgment has ultimately established is that when parties choose Singaporean arbitration and when Singapore speaks through an emergency arbitrator, Delhi must listen.

¹⁴ International Arbitration Act (Cap. 143A) § 2(1) (2002) (Sing.).

¹⁵ 9 U.S.C. § 1 et seq. (2018).