



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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EX PARTE EMERGENCY ARBITRATION IN INDIA: CAN SIAC'S PROTECTIVE PRELIMINARY ORDERS BE ENFORCED WITHOUT DILUTING SECTION 18 DUE PROCESS?

~ Vaibhav Mewada & Gyan Prakash Upadhyay

I. Introduction

Emergency arbitration exists because some harms do not wait for hearings. Warn a respondent that a freezing application is coming, and the assets are gone before the order is signed. Indian arbitration law nonetheless treats notice and hearing as constitutive of fairness: Section 18 of the Arbitration and Conciliation Act, 1996 requires equal treatment of the parties and that each be given a full opportunity to present his case.¹ The Singapore International Arbitration Centre's 2025 Rules sharpen the resulting tension. Schedule 1 now lets an emergency arbitrator issue a Protective Preliminary Order ("PPO") on an ex parte basis, deciding the application within twenty-four hours of appointment and before the respondent has even been told that one exists.² The Supreme Court's decision in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* did not have to confront this, because the SIAC Rules 2016 under which that dispute arose contained no PPO mechanism.³ The question is therefore genuinely open: can an order

¹ Arbitration and Conciliation Act, No. 26 of 1996, § 18 (India).

² SIAC Rules 2025, Sch. 1, ¶¶ 7, 25–27 (Singapore International Arbitration Centre, 7th ed., in force Jan. 1, 2025).

³ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209 (India); cf. SIAC Rules 2016 (6th ed.) (containing no protective preliminary order mechanism).

made without notice, without a hearing, and without reasons addressed to the party it binds be enforced in India as an order of an arbitral tribunal, consistently with Section 18?

The paradox is that the more urgently protection is needed, the less available prior safeguards become. This article's thesis is that Section 18 does not require simultaneity between order and hearing only that the hearing, once it comes, still be capable of mattering. A PPO is compatible with Section 18 while it remains genuinely provisional narrowly tailored, time-bound, and followed promptly by a real opportunity to contest it.⁴ But compatibility in principle does not answer the harder question at this article's centre: even where a PPO meets that standard, Amazon's own reasoning supplies no ready route to enforcing it under Section 17(2) during its *ex parte* window because that reasoning rests on a premise a PPO, by design, has not yet satisfied.

II. Emergency Arbitration and the Indian Legal Framework

The 1996 Act never mentions emergency arbitrators: Section 2(1)(d) defines "arbitral tribunal" only as a sole arbitrator or a panel of arbitrators.⁵ Section 17 empowers "the arbitral tribunal," once constituted, to grant interim measures materially identical to those a court may grant under Section 9 and, since the 2015 amendment, deems such orders to be orders of the court, enforceable under the Code of Civil Procedure.⁶ Section 9 fills the gap before constitution, but only through the court's own independent jurisdiction. Emergency arbitration occupies neither provision; it is a creature of institutional rules, absorbed into the parties' bargain through Section 19's grant of procedural autonomy and Section 2(8)'s deeming provision that an arbitration agreement includes any arbitration rules the parties have referred to in it.⁷ Whether

⁴SIAC Rules 2025, Sch. 1, ¶¶ 31–33.

⁵Arbitration and Conciliation Act, No. 26 of 1996, § 2(1)(d) (India).

⁶Id. § 17(1)–(2), as substituted by the Arbitration and Conciliation (Amendment) Act, No. 3 of 2016 (w.e.f. Oct. 23, 2015).

⁷Id. §§ 19, 2(8).

an emergency arbitrator's order can borrow Section 17's enforcement machinery is thus not a question the statute answers; it is a question of how far party autonomy can stretch a definition Parliament wrote before such mechanisms existed.

III. The Indian Position After Amazon

Amazon supplied the first clear answer, though a narrower one than is often assumed. Amazon and the Future Group had agreed to Indian-seated arbitration under the SIAC Rules; the emergency arbitrator restrained the Future Reliance transaction, and Amazon sought enforcement under Section 17(2).⁸ The Supreme Court held that the order was one "of the arbitral tribunal" within Section 17(1), reasoning that Section 2(1)(d) is not so constrictive as to exclude an emergency arbitrator where the parties have chosen institutional rules that create one.⁹ Critically, the Court's reasoning was narrower and more procedural than a bare appeal to party autonomy: the order qualified because, under the SIAC framework as it then stood, the emergency arbitration process already delivered what Section 18 requires the parties had to be heard, and reasons had to be given before the order issued.¹⁰ Enforceability rode on procedural equivalence, not on party choice alone.

Two further limits attach. First, Amazon concerns India-seated arbitration only. Where the seat lies abroad, the Delhi High Court held in *Raffles Design International v. Educomp Professional Education*, a decision Amazon left undisturbed that Section 17(2)'s route is unavailable because Part II contains no provision *pari materia* with it; the applicant's only recourse is an independent Section 9 application that may mirror the emergency arbitrator's relief without

⁸Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209, ¶¶ 2–8 (India).

⁹Id. ¶ 13.

¹⁰Id.; Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors., Civil Appeal Nos. 4492–93 of 2021 (Supreme Court of India, Aug. 6, 2021) (Nariman & Gavai, JJ.).

being bound by it.¹¹ *Ashwani Minda v. U-Shin Ltd.* confirmed the same architecture from the opposite direction, holding that a party cannot use Section 9 as a second attempt at relief an emergency arbitrator has already refused, once the parties' chosen rules comprehensively occupy the field.¹² Second, even India-seated protection is not indefinite. In *Municipal Corporation of Delhi v. Himalayan Flora & Aromas Pvt. Ltd.*, the Delhi High Court held that an emergency arbitrator's award cannot survive on its own force once a tribunal ought to have been constituted, treating an eleven-month-old order as having lapsed after ninety days an analogy drawn from Section 9(2)'s own ninety-day limit on court-ordered interim protection obtained before arbitration commences.¹³ Emergency relief, on this reading, is transitional by design: legitimate only to the extent it yields promptly to a properly constituted process.

Legislative reform is aware of this gap. The Draft Arbitration and Conciliation (Amendment) Bill, 2024, circulated for public consultation in October 2024, proposes a new Section 9A that would expressly recognise emergency arbitrators, deem their orders enforceable under Section 17(2), and empower the eventual tribunal to confirm, modify, or set them aside.¹⁴ The Bill remains, as of this writing, a draft. Its existence confirms that Amazon is judicial improvisation around a statutory silence a point that matters once Protective Preliminary Orders, unknown when Amazon was decided, enter the analysis.

IV. The Section 18 Objection

¹¹*Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd.*, 2016 SCC OnLine Del 5521 : (2016) 234 DLT 349 (Delhi High Court).

¹²*Ashwani Minda v. U-Shin Ltd.*, 2020 SCC OnLine Del 1648 (Delhi High Court, Single Judge, May 12, 2020), aff'd 2020 SCC OnLine Del 721 (Delhi High Court, Division Bench, July 7, 2020).

¹³*Municipal Corporation of Delhi v. Himalayan Flora & Aromas Pvt. Ltd.*, ARB.A.(COMM.) 54/2025 (Delhi High Court, Mar. 18, 2025); Arbitration and Conciliation Act, No. 26 of 1996, § 9(2) (India).

¹⁴Department of Legal Affairs, Ministry of Law and Justice, Government of India, Draft Arbitration and Conciliation (Amendment) Bill, 2024, proposed § 9A (public consultation notice dated Oct. 18, 2024).

The strongest objection to any ex parte mechanism is textual. Section 18 carries no urgency exception a respondent bound by a PPO has, at the moment it is made, been treated unequally in the most literal sense. Gary Born's well-known objection to ex parte relief in arbitration goes further, doubting that such orders can accomplish any serious purpose, since arbitrators lack coercive power over third parties and bank accounts, so that a due-process cost is incurred for a remedy of uncertain practical value.¹⁵ On this view, Section 18 is the price of choosing a private, consensual process over a court injunction, and nothing in the statute lets an arbitrator charge less.

Indian courts have not accepted so absolute a reading, nor reduced Section 18 to a question of timing alone. In *Fortuna Skill Management Pvt. Ltd. v. Jaina Marketing & Associates*, the Delhi High Court held that the full opportunity Section 18 guarantees is not unlimited but bounded by reasonableness and fairness, adopting the Singapore Court of Appeal's approach in *China Machine New Energy Corp v. Jaguar Energy Guatemala LLC* that the question is whether a reasonable and fair-minded tribunal would have proceeded as this one did.¹⁶ Read alongside Order XXXIX Rule 3 of the Code of Civil Procedure which has permitted Indian courts to grant injunctions without notice since 1976, provided the court records why delay would defeat the relief and the applicant serves the order and supporting papers immediately this suggests Indian procedural fairness has never equated equal treatment with simultaneous treatment.¹⁷ What Rule 3 forbids is not sequencing but abandonment, the Supreme Court held only in 2025, in *Time City Infrastructure and Housing Ltd. v. State of U.P.*, that an ex parte

¹⁵Gary B. Born, *International Commercial Arbitration* § 17.02[G][10] (3d ed. 2021).

¹⁶*Fortuna Skill Management Pvt. Ltd. v. Jaina Marketing & Associates*, FAO(OS)(COMM) 123/2024 (Delhi High Court, July 3, 2024); *China Machine New Energy Corp. v. Jaguar Energy Guatemala LLC*, [2020] 1 SLR 695, [2020] SGCA 12 (Singapore Court of Appeal).

¹⁷Code of Civil Procedure, No. 5 of 1908, Order XXXIX, Rule 3 & proviso (India); see also Shiv Kumar Chadha v. Municipal Corp. of Delhi, (1993) 3 SCC 161 (India).

injunction obtained without satisfying these conditions must be vacated regardless of merits, because the safeguards are the price of dispensing with notice, not discretionary courtesies.¹⁸

Section 18, on this reading, does not ask whether a hearing preceded the order. It asks whether the process gave the respondent a fair and reasonable chance to be heard before its rights were finally settled. An order that is provisional in substance reversible, time-limited, promptly followed by a genuine opportunity to contest it has not deprived the respondent of that chance; it has deferred it to the only moment at which deferral does not defeat the relief's purpose. An order provisional in name only because it pre-empts the merits, because the follow-up hearing arrives too late to matter, or because no reasons accompany it even in summary form has not sequenced the hearing. It has denied it.

V. Can Ex Parte Protection Be Procedurally Fair?

Five variables compose a workable standard of procedural proportionality. First, urgency must be demonstrated, not asserted: the applicant must show that notice to this respondent would probably defeat the relief familiar already from Order XXXIX Rule 3 and from SIAC's own rule that a PPO may issue only where advance notice risks undermining the relief sought.¹⁹ Second, the relief must be status-quo preserving, not merits-adjudicative: freezing or restraining orders qualify; orders pre-empting a commercial outcome do not. Third, the order should be reasoned, even summarily, enough to permit later scrutiny. Fourth, it must be self-terminating on a short, fixed clock absent confirmation: SIAC Rules 2025 model this precisely, with a PPO expiring three days after issuance unless the applicant has served the case papers, and in any event after fourteen days unless incorporated into the emergency arbitrator's own

¹⁸Time City Infrastructure and Housing Ltd., Lucknow v. State of U.P., 2025 INSC 966 (Supreme Court of India, Aug. 11, 2025).

¹⁹Code of Civil Procedure, No. 5 of 1908, Order XXXIX, Rule 3 proviso (India); SIAC Rules 2025, Sch. 1, ¶ 25.

order.²⁰ Fifth, and most important, the respondent must receive a genuine opportunity to present its case at the earliest practicable time, with the emergency arbitrator required to rule promptly on any objection.²¹ Where all five are present, the order's ex parte character is a sequencing choice consistent with Section 18; where any is structurally absent, it has crossed from urgency into unfairness, and an Indian court should withhold assistance.

This is where the article's central claim must be stated precisely, because Amazon does not resolve it it exposes it. Amazon's ratio was not that party autonomy lets institutional rules substitute for the statute at large. It was narrower: an emergency arbitrator's order qualifies as an order of the arbitral tribunal under Section 17(1) because the process, as designed, already delivers what Section 18 requires before the order issues.²² A PPO inverts that premise. For the first hours or days of its life, it is precisely the kind of order Amazon's own logic would not yet recognise as tribunal-equivalent, because the procedural parity Amazon relied on has not yet occurred. A PPO, during its ex parte window, does not automatically inherit Section 17(2)'s enforcement machinery merely because a later, confirmed order in the same proceeding would.

That doctrinal gap is real, and Indian law offers no legislative answer; the Draft Bill's proposed Section 9A speaks to emergency orders generally and does not distinguish a PPO's ex parte phase from its confirmed phase.²³ Absent that answer, the more defensible route uses materials Indian courts already possess. During the ex parte window, a PPO should be treated as persuasive but not self-executing: an applicant seeking Indian court assistance while the order remains unconfirmed should proceed under Section 9, on the ordinary prima facie case, balance of convenience, and irreparable harm standard, with the PPO as strong evidentiary material the

²⁰SIAC Rules 2025, Sch. 1, ¶¶ 27, 29–30, 33.

²¹Id. ¶¶ 31–32.

²²Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., (2022) 1 SCC 209, ¶ 13 (India).

²³Draft Arbitration and Conciliation (Amendment) Bill, 2024, proposed § 9A.

same mirroring technique used for foreign-seated emergency orders that fall outside Section 17 altogether.²⁴ Once the respondent has had its earliest opportunity to be heard and the emergency arbitrator confirms, modifies, or lets the order lapse, it re-enters Amazon's logic: having now satisfied the procedural parity Amazon required, it should be enforceable under Section 17 as a full tribunal order subject, per *Himalayan Flora*, to not outliving the constitution of a proper tribunal indefinitely.²⁵ This is not a demotion of *ex parte* relief to second-class status, but recognition that Section 17(2)'s status as a deemed court order is a privilege Amazon extended for procedural equivalence and a privilege tied to a condition should not outrun it.

VI. Comparative Lessons

India is not alone in needing to answer this. Singapore resolved the question legislatively: the International Arbitration Act was amended in 2012 to bring an emergency arbitrator within the statutory definition of arbitral tribunal, so that no separate enforceability question arises an emergency order, PPO included, benefits from the same court-assisted enforcement as any other tribunal order, subject to the High Court's leave.²⁶ Hong Kong reached a similar destination through the Arbitration Ordinance, whose sections 22A–22B give courts express power to enforce emergency relief as such, rather than requiring courts to reason an emergency arbitrator into an ordinary definition of “tribunal.”²⁷ England took the same statutory path only in 2025, its Arbitration Act inserts a new section 41A into the Arbitration Act 1996, giving emergency arbitrators power to issue peremptory orders and extending the court's enforcement

²⁴*Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd.*, 2016 SCC OnLine Del 5521; *HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd.*, 2014 SCC OnLine Bom 102 (Bombay High Court).

²⁵*Municipal Corporation of Delhi v. Himalayan Flora & Aromas Pvt. Ltd.*, ARB.A.(COMM.) 54/2025 (Delhi High Court, Mar. 18, 2025).

²⁶International Arbitration Act 1994 (2020 Rev. Ed.), § 2(1) (definition of “arbitral tribunal”) & § 12(6) (Singapore).

²⁷Arbitration Ordinance (Cap. 609), §§ 22A–22B (Hong Kong).

powers to reach them a reform prompted by precisely the gap Amazon had to litigate its way around.²⁸

The common thread is not that these jurisdictions permit *ex parte* relief without safeguard, the SIAC PPO regime that applies across all these seats already builds in an urgency threshold, automatic expiry, and a mandatory prompt hearing.²⁹ The thread is that each jurisdiction answered the enforceability question by statute, rather than leaving courts to stretch a pre-existing definition of “arbitral tribunal” to cover a mechanism Parliament never contemplated. India’s difficulty is not that its courts have reached the wrong substantive balance, Amazon’s insistence on procedural equivalence as the price of enforcement is more protective of Section 18 than Singapore’s blanket statutory inclusion. India’s difficulty is that it has tried to solve a legislative problem judicially, and Amazon’s interpretive bridge, built for a fully-heard order, was never engineered to bear a PPO’s *ex parte* weight.

VII. The Proposed Indian Standard

Two consequences follow. First, Indian courts facing a PPO enforcement application should apply the five-factor proportionality standard above not as a free-standing fairness inquiry but as the condition on which Amazon’s equivalence reasoning depends: satisfy it, and the order earns Section 17 treatment once confirmed; fail it, and the remedy lies in Section 9. This can develop judicially Fortuna already supplies the proportionality vocabulary, Himalayan Flora the temporal discipline without waiting for Parliament. Second, legislative reform remains preferable to permanent judicial improvisation, since the stakes are too significant for case-by-case stretching. The Draft Bill’s Section 9A is a step forward but is silent on exactly the distinction this article treats as decisive: it does not separate a PPO’s *ex parte* phase from a

²⁸ Arbitration Act 2025, c. 4, § 8 (inserting § 41A into the Arbitration Act 1996 and amending §§ 42, 44) (UK).

²⁹ SIAC Rules 2025, Sch. 1, ¶¶ 25–33.

confirmed order, and could be read wrongly, on Amazon's own logic as extending Section 17(2) enforcement to orders that have not yet earned it. A precise amendment would deem an emergency arbitrator's order enforceable under Section 17(2) only once the respondent has had the opportunity to be heard the rules contemplate, leaving any earlier ex parte order enforceable, if at all, through Section 9's ordinary machinery.

For SIAC procedure itself, the implication is reassuring rather than adversarial: the Rules 2025 PPO framework already satisfies most of what Indian law would require demonstrated urgency, automatic expiry, a mandatory prompt hearing.³⁰ What it cannot supply is the Indian statutory hook that would let a court treat a still-unconfirmed PPO as a court order in its own right. That gap is India's to close, not SIAC's.

VIII. Conclusion

The research question was whether Indian law can enforce an SIAC emergency arbitrator's ex parte protective order without compromising Section 18. The answer is conditional, not evasive yes, once the order has passed through inter partes confirmation consistent with procedural proportionality and not yet, while it remains ex parte, under Section 17 as Amazon currently stands. Ex parte protection is not inherently unfair; unreviewed, indefinite, or merits-foreclosing protection is. India's task is not to choose between urgency and due process, but to finish the statutory work Amazon began and the Draft Bill has only sketched giving Protective Preliminary Orders, and emergency arbitration generally, an enforcement pathway calibrated to how much procedural parity they have actually delivered at the moment enforcement is sought.

³⁰SIAC Rules 2025, Sch. 1, ¶¶ 25–33.