



## ENFORCING FOREIGN SEATED EMERGENCY AWARDS IN INDIA: A PROCEDURAL WORKAROUND

### AUTHORS

Mr. Ravitej Chilumuri                      Ms. Mihika Jalan                      Mr. Kunal Parekh  
Partner, Khaitan and Co.      Principal Associate, Khaitan and Co.      Associate, Khaitan and Co.

---

*Disclaimer: The views expressed are personal.*

### Introduction

The idea of “Emergency Arbitration” has gained significant traction over the past couple of years in the international arbitration community. Emergency arbitration is a process through which parties can avail urgent interim and conservatory reliefs before the formation of an arbitral tribunal. This is done to ensure that the assets forming the subject matter of the arbitration and/or being claimed by the opposing party are preserved, and the object of arbitration is not defeated pending the constitution of the arbitral tribunal. This recourse becomes particularly important if access to courts is limited or if courts from which interim reliefs are sought, are tardy.

### Legal Framework for Emergency Arbitrators’ Awards [“EA Decision”]

All major arbitral institutions around the world have provisions in their arbitration rules to include emergency arbitration.<sup>1</sup> Furthermore, arbitral institutions established in India have incorporated provisions for Emergency Arbitrators in their rules as well.<sup>2</sup> To ensure that interim relief is obtained in time, the arbitral institution moves towards the appointment of an Emergency Arbitrator very quickly once the request for the appointment of an Emergency Arbitrator has been raised by the party and accepted by the institution. The Singapore International Arbitration Centre [“SIAC”] Rules expressly provide for the appointment of an Emergency Arbitrator within one

---

<sup>1</sup> International Chamber of Commerce, ‘Rules of Arbitration of the International Chamber of Commerce’ (2021) art 29; Singapore International Arbitration Centre, ‘Arbitration Rules of the Singapore International Arbitration Centre’ (2016) sch 1 (SIAC Rules); London Court of International Arbitration, ‘LCIA Arbitration Rules’ (2020) art 9B.

<sup>2</sup> Delhi International Arbitration Centre, ‘DIAC (Arbitration Proceedings) Rules (2023) r 14 (DIAC Rules); Mumbai Centre for International Arbitration, ‘Arbitration Rules of the Mumbai Centre for International Arbitration’ (2017) r 14 (MCIA Rules).

day.<sup>3</sup> Similarly in India, the Mumbai Centre for International Arbitration [“**MCIA**”] Rules provide for the appointment of an Emergency Arbitrator within one business day from the receipt of the request and payment of fees,<sup>4</sup> and the Delhi International Arbitration Centre [“**DIAC**”] Rules provide for the appointment of an Emergency Arbitrator within two business days from making such a request.<sup>5</sup> Further, these institutional arbitration rules provide for the time frame within which the Emergency Arbitrator is required to pronounce its order. For example, the MCIA Rules and DIAC Rules provide for a period of 14 days, from the date of appointment, for an Emergency Arbitrator to pass orders.<sup>6</sup>

Evidently, emergency arbitration appears to be an efficient way to avail urgent interim reliefs. However, efficiency and enforceability of an EA Decision are required to be assessed before recommending emergency arbitration as a potential approach. Despite the increasing popularity of Emergency Arbitrator provisions, the enforceability of an EA Decision in India remains doubtful. While Singapore has given statutory recognition to the concept of Emergency Arbitrators,<sup>7</sup> the Arbitration and Conciliation Act, 1996 [“**Arbitration Act**”], does not contain any provisions for emergency arbitration. The Hon’ble Supreme Court of India has held that if in an arbitration agreement the parties have agreed to institutional rules that incorporate reference to emergency arbitration, they are deemed to have consented to undergoing emergency arbitration if required.<sup>8</sup>

Since the Arbitration Act does not contain any provisions for emergency arbitration, there are concerns about the enforceability of EA Decisions in India. In reference to India seated arbitrations, these concerns were addressed by a three-judge Bench of the Hon’ble Supreme Court of India in *Amazon.com NV Investment Holdings LLC v Future Retail Ltd. & Ors.*<sup>9</sup> [“**Amazon.com**”]. The Hon’ble Supreme Court while enforcing a SIAC EA Decision for an arbitration seated in New Delhi held that there were no provisions in the Arbitration Act prohibiting emergency arbitration, and parties by agreeing to institutional rules having provisions for emergency arbitration had consented to the same while exercising their party autonomy.<sup>10</sup> Pertinently, the Hon’ble Supreme Court also clarified that “arbitral tribunal” as defined under Section 2(1)(d) of the Arbitration Act includes an Emergency Arbitrator.<sup>11</sup> Moreover, an EA Decision would be classified as an “interim

---

<sup>3</sup> SIAC Rules, sch 1.

<sup>4</sup> MCIA Rules, r 14.2.

<sup>5</sup> DIAC Rules, r 14.3.

<sup>6</sup> MCIA Rules, r 14.6; DIAC Rules, r 14.10.

<sup>7</sup> International Arbitration Act 1994, s 2(1).

<sup>8</sup> *Amazon.com NV Investment Holdings LLC v Future Retail Ltd. & Ors.* (2022) 1 SCC 209 [21].

<sup>9</sup> *Amazon.com NV Investment Holdings LLC v Future Retail Ltd. & Ors.* (2022) 1 SCC 209.

<sup>10</sup> *ibid* [21].

<sup>11</sup> *ibid* [23].

order” as under Section 17 of the Arbitration Act, and could be enforced as a court order by virtue of Section 17(2) of the Arbitration Act.<sup>12</sup> While the chances of enforcing an EA Decision in an India seated arbitration have increased with this much needed clarification, the chances of enforcing an EA Decision in a foreign seated arbitration are unpredictable as described below in further detail.

### **Enforcing Foreign EA Decisions – a Procedural Workaround**

*Amazon.com* laid to rest the concerns surrounding the enforcement of an EA Decision seated in India because the Supreme Court had held that an EA Decision can be enforced as a court order under Section 17(2) of the Arbitration Act. Nevertheless, Part I of the Arbitration Act, which includes Section 17(2) of the Arbitration Act applies only to arbitrations seated in India<sup>13</sup> with the exception of Sections 9, 27, 37(1)(a) and 37(3) under Part I of the Arbitration Act which apply to foreign seated arbitrations so long as there exists no agreement to the contrary.<sup>14</sup>

The problem with enforcing a foreign seated EA Decision arises because there is no provision *pari materia* or corresponding to Section 17(2) in Part II of the Arbitration Act which is concerned with arbitrations seated outside India. The UNCITRAL Model Law on International Commercial Arbitration, 1985 [“**UNCITRAL Model Law**”] contains express provisions for the enforcement of foreign seated interim measures.<sup>15</sup> These have not found their way into the Arbitration Act, thus resulting in uncertainty as to the provision under which such measures would be enforced in the event where the parties seek to enforce them.<sup>16</sup>

Parties have sought to enforce foreign seated EA Decisions before various Indian courts. However, the issue of enforcement of foreign seated EA Decisions is yet to be tested before the Hon’ble Supreme Court. This paper examines how different High Courts have approached the issue of enforcement of a foreign seated EA Decision, and the solutions devised by Courts to give effect to an EA Decision.

*Pre-Amazon.com*

- *HSBC PI Holdings Ltd. v Avitel Post Studioz Ltd.* [“**HSBC PI**”]<sup>17</sup>

---

<sup>12</sup> *ibid* [40], [46].

<sup>13</sup> Arbitration & Conciliation Act 1996, s. 2(2).

<sup>14</sup> *ibid*.

<sup>15</sup> United Nations Commission on International Trade Law, ‘UNCITRAL Model Law on International Commercial Arbitration’ (1985) arts 17 H-17 I.

<sup>16</sup> Muskan Agarwal and Amitanshu Saxena, ‘Interim Measures of Protection in Aid of Foreign-Seated Arbitrations: Judicial Misadventures and Legal Uncertainty’ (2021) 7 NLSBLR 73, 76.

<sup>17</sup> *HSBC PI Holdings (Mauritius) Ltd. v Avitel Post Studioz Ltd. & Ors.* [2014] SCC OnLine Bom 102.

The first instance of a party seeking to enforce an EA Decision came up before the Hon'ble Bombay High Court [**Bombay HC**] in *HSBC PI* involving disputes arising out of shareholders and share subscription agreements. In an SIAC arbitration seated in Singapore,<sup>18</sup> the Emergency Arbitrator had issued orders directing Avitel to refrain from disposing of, dealing with or diminishing the value of assets up to USD 50 million. Thereafter, HSBC. approached the Bombay HC for interim reliefs under Section 9 of the Arbitration Act seeking identical reliefs. An argument was advanced by Avitel that the nature of the petition was such that it essentially sought enforcement of a foreign award under Section 9 of the Arbitration Act and that the requirements under Section 48 of the Arbitration Act could not be circumvented. The Bombay HC rejected this argument by holding that the petition for interim measures under Section 9 would be applicable to foreign seated arbitrations as well. The Bombay HC rejected the argument that the requirements of Section 48 of the Arbitration Act would apply to petitions under Section 9 also.<sup>19</sup> The Bombay HC independently analysed the pleadings and arguments advanced by the parties under the petition and granted interim relief along the lines of what had been granted in the emergency award.<sup>20</sup> However, it is pertinent to note that while the EA Decision had been issued in May 2012, the instant petition was disposed of more than one year later in January 2014 (although ad interim reliefs had been granted).

- *Raffles Design International India Pvt. Ltd. v Educomp Professional Education Ltd. & Ors.*<sup>21</sup>  
[**Raffles**]

The next case on this issue came up before the Hon'ble Delhi High Court [**Delhi HC**] in *Raffles* which was once again a Singapore seated SIAC arbitration.<sup>22</sup> *Vide* EA Decision dated 6 October 2015, the Emergency Arbitrator had granted the interim reliefs sought by the Claimant. The Respondents continued to act in contravention of the EA Decision as a result of which the Claimant was constrained to approach the Delhi HC under Section 9 of the Arbitration Act.

Hence, the Delhi HC was required, inter alia, to decide the question about whether the Petitioner could approach the Delhi HC for an interim relief considering that it had already approached the Arbitral Tribunal in Singapore, and thereafter obtained a judgment in terms of the interim order from the Singapore High Court. The Delhi HC observed that Section 17 of the Arbitration Act was not applicable to foreign seated proceedings, and there was no provision in the Arbitration

---

<sup>18</sup> *ibid* [2].

<sup>19</sup> *ibid* [77], [89].

<sup>20</sup> *ibid* [93]–[101].

<sup>21</sup> *Raffles Design International India Pvt. Ltd. & Anr. v Educomp Professional Education Ltd. & Ors.* [2016] SCC OnLine Del 5521.

<sup>22</sup> *ibid* [4.4].

Act for the enforcement of foreign seated interim orders. Consequently, a foreign seated EA Decision could not be enforced under the Arbitration Act and the only remedy for the same was by filing a civil suit.<sup>23</sup> Nevertheless, the Delhi HC noted that while recourse to Section 9 of the Arbitration Act is not available for the purpose of enforcing the orders of an arbitral tribunal that does not mean that a court cannot independently apply its mind and grant interim reliefs in cases where such reliefs are warranted.<sup>24</sup> The Delhi HC held the Section 9 petition to be maintainable. However, interestingly, while ad interim relief had been granted immediately,<sup>25</sup> the Section 9 petition was disposed of as being infructuous in 2017 since the SIAC award had been passed.<sup>26</sup>

- *Plus Holdings Ltd. v Xeitgeist Entertainment Group Ltd. & Ors.*<sup>27</sup> [**“Plus Holdings”**]

The Bombay HC in *Plus Holdings* granted ad interim relief precisely along the lines of a Singapore seated SIAC EA Decision in favour of the Petitioner. While granting the remedy, the Bombay HC considered the reliefs by the Emergency Arbitrator and the merits of the Petitioner’s contentions based on the material before it. Subsequently, it dismissed the Section 9 petition for want of prosecution as whilst the matter was settled *inter se* between the parties, the petitioner (who was to remain present and withdraw the section 9 petition) was not present on the hearing date.<sup>28</sup>

- *Ashwani Minda and Jay Ushin Ltd. v U-Shin Ltd. & Minebea Mitsumi Inc.*<sup>29</sup> [**“Ashwani Minda”**]

In the absence of a statutory enforcement mechanism for an EA Decision and by permitting a party to file an application for interim reliefs before Indian courts, an interesting question came up in *Ashwani Minda* – whether having chosen an institutional process in a foreign-seated arbitration, having invoked the provisions of Emergency Arbitrator, and having failed in its endeavour to obtain interim relief, a party can then seek the self-same relief in an application for interim reliefs before Indian courts. This dispute arose in a Japan seated arbitration under the institutional rules of the Japan Commercial Arbitration Association.<sup>30</sup> In this case, the Emergency Arbitrator *vide* order dated 2 April 2020 rejected the request for emergency reliefs.<sup>31</sup> Subsequently, but prior to the constitution of the Tribunal, one of the parties, aggrieved by the order of the Emergency Arbitrator,<sup>32</sup> approached the Delhi HC under Section 9 of the Arbitration Act seeking

---

<sup>23</sup> *ibid* [102]-[104].

<sup>24</sup> *ibid* [105].

<sup>25</sup> *Raffles Design International India Pvt. Ltd. & Anr. v Educomp Professional Education Ltd. & Ors.* (Del HC, 2 December 2015).

<sup>26</sup> *Raffles Design International India Pvt. Ltd. & Anr. v Educomp Professional Education Ltd. & Ors.* (Del HC, 26 April 2017).

<sup>27</sup> *Plus Holdings Ltd. v Xeitgeist Entertainment Group Ltd. & Ors.* [2019] SCC OnLine Bom 13069.

<sup>28</sup> *Plus Holdings Ltd. v Xeitgeist Entertainment Group Pte. Ltd. and Ors.* [2019] BHC-OS 16607.

<sup>29</sup> *Ashwani Minda and Jay Ushin Ltd. v U-Shin Ltd. & Minebea Mitsumi Inc.* [2020] SCC OnLine Del 721.

<sup>30</sup> *ibid* [4].

<sup>31</sup> *ibid* [10].

<sup>32</sup> *ibid* [43].

interim reliefs similar to those that had been rejected by the Emergency Arbitrator on the grounds that the Arbitral Tribunal was yet to be constituted.<sup>33</sup> and since they were aggrieved by the order of the emergency arbitrator.<sup>34</sup> The Delhi HC rejected the Section 9 petition, and observed that Section 9 of the Arbitration Act could not act as a ground for appealing the decision of an Emergency Arbitrator. Once the parties had chosen the seat, the rules and the tribunal, they could not later revise their choice after the dispute had arisen.<sup>35</sup> The Delhi HC went on to observe that the independent evaluation and grant of remedies as envisaged in *Raffles* would only apply in cases where the emergency tribunal had granted relief, and not in cases where it had been rejected.<sup>36</sup>

*Post – Amazon.com*

- *Ashok Kumar Goel & Anr. v Ebix Cash Ltd. & Ors.*<sup>37</sup> [“**Ebix Cash**”]

A change in the line of thinking is evident post *Amazon.com*. This was seen recently in *Ebix Cash* before the Bombay HC. While granting interim relief in a Section 9 petition along the lines of those granted by a Singapore seated SIAC Emergency Arbitrator, the Bombay HC noted that the EA Decision was well reasoned and that there was no reason to reject the findings recorded in the EA Decision.<sup>38</sup> The Bombay HC, in fact, found that such an approach would support arbitration and ensure its effectiveness.<sup>39</sup> Laying emphasis on party autonomy being the bedrock of an arbitration agreement, the Bombay HC held that parties having agreed to institutional rules with provisions for emergency arbitration would be bound by such an award and must comply with it immediately.<sup>40</sup> The Bombay HC granted reliefs to the Petitioner,<sup>41</sup> and observed that the “award” was an interim order and not an arbitral award requiring enforcement under Part II of the Arbitration Act in view of the decision in *Amazon.com*.<sup>42</sup>

## Key Takeaways and Conclusion

From the above, it is clear that while an EA Decision is referred to as an “award”, it is in fact an interim order passed by an Emergency Arbitral Tribunal. There is no direct enforcement

---

<sup>33</sup> *ibid* [14], [39].

<sup>34</sup> *ibid* [43].

<sup>35</sup> *ibid* [44].

<sup>36</sup> *ibid* [46].

<sup>37</sup> *Ashok Kumar Goel & Anr. v EbixCash Ltd. & Ors.* [2024] BHC-OS:15701.

<sup>38</sup> *ibid* [29].

<sup>39</sup> *ibid* [29F].

<sup>40</sup> *ibid* [29E-29F].

<sup>41</sup> *ibid* [29G].

<sup>42</sup> *ibid* [29A-29B].

mechanism prescribed under Part II of the Arbitration Act for such decisions or orders in foreign seated arbitrations.

Coupled with the above and in the absence of a statutorily prescribed mechanism for enforcement of an interim ruling by a foreign seated arbitral tribunal, Section 9 proceedings are the only enforcement mechanism for reliefs granted in an EA Decision. In fact, as the Courts have pointed out, when parties have already agreed to the arbitral tribunal, the seat, the applicable rules and the forum to obtain interim measures, when disputes arise, the parties cannot override their arbitration agreement.

The current mechanism to make EA Decisions efficacious in India necessitates a party to undertake further proceedings, thus militating against the very principles and foundations which have necessitated the concept of EA Decision, i.e., urgent relief within a few days. As seen from the above cases, to make such urgent relief efficacious in practice, parties may spend a few months before Indian courts. In such situations, an efficacious remedy arguably remains which is at the first instance, to institute Section 9 proceedings, for interim measures of protection which relate to assets and properties located in India and are the subject matter of the foreign seated arbitration.

As India evolves to accommodate modern international arbitration practices and looks to becoming more arbitration friendly, it must seek to harmonise the Indian arbitration law with leading institutional rules to ease the enforceability of EA Decisions.