

JUDGMENT UPDATE

DISPUTE RESOLUTION & ARBITRATION



Amazon.com NV Investment Holdings LLC v. Future Retail Ltd & Ors

Civil Appeal 4492 – 4493 of 2021

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Background facts

- Amazon.com NV Investment Holdings LLC (**Amazon**) had infused INR 1,431 crore into Future Coupons Pvt Ltd which was to 'flow down' to Future Retail Ltd (**FRL**). Based on mutual understanding, Amazon's investment in the retail assets of FRL would continue to vest in FRL due to which FRL could not transfer its retail assets without Amazon's consent.
- Within few months from the date of investment, FRL and 12 other group companies of Future Group entered into a transaction with Mukesh Dhirubhai Ambani Group (**Reliance Group**). The transaction envisaged amalgamation of FRL with Reliance Group, including transfer of its retail assets to Reliance Group, which led to dispute between FRL and Amazon.
- As a result of this transaction, Amazon initiated an arbitration proceeding against Future Group under the Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules). Amazon filed an application requesting for injunction against the transaction and sought emergency interim relief. On October 25, 2020, an Emergency Arbitrator passed an interim award restraining Future Group from taking any steps towards the disputed transaction. However, Future Group went ahead with the transaction, describing the interim award as nullity.
- FRL then filed a suit before the Delhi High Court in which it sought to interdict the arbitration proceedings and asked for an interim relief to restrain Amazon from writing to statutory authorities by relying on the Emergency Arbitrator's award. However, the Delhi High Court refused to grant the interim relief, which was not challenged by FRL.
- Separately, Amazon filed a Petition before the Delhi High Court under Section 17(2) of the Arbitration and Conciliation Act, 1996 (**Act**) for enforcement of Emergency Arbitrators' interim award. On February 2, 2021, and March 18, 2021 (**detailed judgment**), the Delhi High Court restrained Future Group from proceeding with the transaction. However, FRL challenged the order before Division Bench of the Delhi High Court, and the Division Bench stayed the judgment of the Single Bench. Against this order, Special Leave Petition was filed, and the Supreme Court stayed all the proceedings before the Delhi High Court.

Issues at hand

- Whether an award delivered by an Emergency Arbitrator under the SIAC Rules can be said to be an order under Section 17(1) of the Act?
- Whether an order passed under Section 17(2) of the Act in enforcement of the award of an Emergency Arbitrator by a Single Judge of the High Court is appealable?

Our viewpoint

The Supreme Court in the landmark judgment has upheld the validity of the Emergency Arbitrator's award and has equated Emergency Arbitrator with the Arbitral Tribunal.

The order passed by the Emergency Arbitrator has the same effect as an order passed by the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996.

Decision of the Court

- The Supreme Court observed that the heart of Section 17(1) is the application by a party for interim reliefs. There is nothing in Section 17(1), when read with other provisions of the Act to interdict the application of rules of arbitral institutions that the parties may have agreed to. This being the position, at least insofar as Section 17(1) is concerned, the arbitral tribunal would, when institutional rules apply, include an Emergency Arbitrator, the context of Section 17 “otherwise requiring” – the context being interim measures that are ordered by arbitrators. The same object and context would apply even to Section 9(3) which makes it clear that the Court shall not entertain an application for interim relief once an arbitral tribunal is constituted, unless the Court finds that circumstances exist which may not render the remedy under Section 17 efficacious.
- Since Section 9(3) and Section 17 form part of one scheme, an ‘arbitral tribunal’ as defined under Section 2(1)(d) would not apply and the ‘arbitral tribunal’ spoken of in Section 9(3) would be like the ‘arbitral tribunal’ spoken of in Section 17(1) which, would include an Emergency Arbitrator appointed under institutional rules.
- Based on the 246th Law Commission Report and Srikrishna Report dated July 30, 2017, the Supreme Court expressed the view that “an Emergency Arbitrator’s award, i.e., order, would undoubtedly be an order which furthers these very objectives to decongest the court system and to give the parties urgent interim relief in cases which deserve such relief. Given the fact that party autonomy is respected by the Act and there is no interdict against an Emergency Arbitrator being appointed, it is clear that an Emergency Arbitrator’s order, which is exactly like an order of an arbitral tribunal once properly constituted, in that parties have to be heard and reasons are to be given, would fall within the institutional rules to which the parties have agreed, and would consequently be covered by Section 17(1), when read with the other provisions of the Act.
- The Supreme Court maintained that having agreed to paragraph 12 of Schedule 1 to the SIAC Rules, it cannot lie in the mouth of a party to ignore an Emergency Arbitrator’s award by stating that it is a nullity when such party expressly agrees to the binding nature of such award from the date it is made and further undertakes to carry out the said interim order immediately, without delay.
- While deciding the second issue, the Supreme Court observed that despite Section 17 being amended by the same Amendment Act, by making Section 17(1) the mirror image of Section 9(1) as to the interim measures that can be made, and by adding Section 17(2) consequently thereof, significantly, no change was made in Section 37(2) (b) to bring it in line with Order XLIII, Rule 1(r). The said Section continued to provide appeals only from an order granting or refusing to grant any interim measure under Section 17. There can be no doubt that granting or refusing to grant any interim measure under Section 17 would only refer to the grant or non-grant of interim measures under Section 17(1)(i) and 17(1)(ii).
- In fact, the opening words of Section 17(2), namely, ‘subject to any orders passed in appeal under Section 37’ also demonstrate the legislature’s understanding that orders that are passed in an appeal under Section 37 are relatable only to Section 17(1). For example, an appeal against an order refusing an injunction may be allowed, in which case sub-Section (2) of Section 17 then kicks in to enforce the order passed in appeal. Also, the legislature made no amendment to the granting or refusing to grant any measure under Section 9 to bring it in line with Order XLIII, Rule 1(r), under Section 37(1)(b). What is clear from this is that enforcement proceedings are not covered by the appeal provision.
- The Court finally held that no appeal lies under Section 37 of the Act against an order of enforcement of an Emergency Arbitrator’s order made under Section 17(2) of the Act.

