



## High Court of Delhi holds that emergency arbitration orders are enforceable under Section 17(2) of the Arbitration Act in India-seated arbitrations<sup>1</sup>

### Brief Facts

On 25 January 2021, Amazon.com NV Investment Holdings LLC (“**Amazon**”) filed a petition before the High Court of Delhi (“**Court**”) seeking enforcement of the order dated 25 October 2020 (“**Order**”) passed by the emergency arbitrator (“**EA**”). The Order was passed in Indian seated arbitration proceedings, which Amazon had commenced against Future Coupons Private Limited (“**FCPL**”), Future Retail Limited (“**FRL**”) and their promoters (i.e., the Biyanis) under the rules of the Singapore International Arbitration Centre, 2016 (“**SIAC Rules**”). The petition was filed under Section 17(2) of the Arbitration and Conciliation Act, 1996 (“**Act**”) read with Order XXXIX, Rule 2A and Section 151 of the Code of Civil Procedure, 1908 (“**CPC**”).<sup>2</sup>

### Issues

**Issue (i):** What is the legal status of an emergency arbitrator and is an order passed by an emergency arbitrator an interim order under Section 17(1) and enforceable under Section 17(2) of the Act?

**Issue (ii):** Does the ‘group of companies’ doctrine apply only to proceedings under Section 8 of the Act?

**Issue (iii):** Is the Order a nullity?

### Judgment

**Issue (i):** The Court upheld the findings of the EA and held that an emergency arbitrator is an arbitral tribunal for all intents and purposes. Section 2(1)(d) of the Act defines “*arbitral tribunal*” to mean a sole arbitrator or a panel of arbitrators, which is wide enough to include an emergency arbitrator. The Court also referred to Rule 1.3 of the SIAC Rules, which defines “*Emergency Arbitrator*” as an arbitrator, and Rule 7 of Schedule I of the SIAC Rules, which empowers the emergency arbitrator to exercise all powers of an arbitral tribunal. Section 2(6) of the Act gives complete freedom to parties to authorise any person, including an institution, to determine disputes between the parties. Section 2(8) of the Act provides that where parties have authorised an institution, their arbitration

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agreement shall include the rules of that institution. Therefore, in the instant case, the Court deduced that the parties had incorporated the SIAC Rules into their arbitration agreement and had therefore, agreed to emergency arbitration as provided under the SIAC Rules. According to the Court, given an emergency arbitrator is an arbitral tribunal in the scheme of the Act, it follows that an emergency order/award is an interim order under Section 17(1) of the Act and is consequently, enforceable under Section 17(2) of the Act. The Court also opined that the current legal framework is sufficient to recognise emergency arbitration and no legislative amendment is required in this respect.

**Issue (ii):** The Court undertook an exhaustive review of the Supreme Court’s jurisprudence on the ‘group of companies’ doctrine (“**Doctrine**”) to categorically hold that the EA had correctly invoked the Doctrine to conclude that FRL was a proper party to the arbitration agreement (Amazon had invoked arbitration under the agreement to which FCPL, and not FRL, was a signatory). The Court unequivocally confirmed that the Doctrine is not confined to proceedings under Section 8 of the Act. Applying the tests laid down by the Supreme Court, the EA had found, *inter alia*, that: (i) FCPL and FRL belonged to the same Biyani group; (ii) the parties’ conduct reflected their clear intention to bind both, FCPL and FRL; (iii) the elements of direct relationship between the signatory and non-signatory, direct commonality of subject matter, and composite nature of transaction were satisfied; and (iv) the agreements contain similar arbitration clauses and are so intrinsically intermingled that their composite performance only shall discharge the parties of their respective mutual obligations.

**Issue (iii):** The Court held that the Order is not a nullity because the EA merely enforced the agreements, which were valid. Even FRL did not dispute their validity and therefore, the Court considered FRL’s contention to be deliberately misleading, vague and unsubstantiated.

## Analysis

The Court’s decision, namely that emergency arbitration orders are directly enforceable as interim orders under Section 17(2) of the Act in India-seated arbitrations has significant ramifications. Thus far, emergency award holders have generally adopted a duplicative approach under Section 9 of the Act wherein they seek reliefs identical to what they sought and obtained in emergency arbitration. However, this judgment now empowers emergency award holders to directly enforce the award. Further, the Court expressly observed that emergency arbitration “*is a very effective and expeditious mechanism*” and “*has added a new dimension to the protection of the rights of the parties. However, if the order of the Emergency Arbitrator is not enforced, it would make the entire mechanism of Emergency Arbitration redundant*”. In this vein, the Court was extremely critical of FRL’s conduct to deliberately and wilfully violate the Order and also of FRL’s contentions in the petition. Accordingly, the Court, *inter alia* imposed costs of INR 2 million on the Respondents and ordered attachment of the assets of all Respondents under Order XXXIX, Rule 2A(1) of the CPC. The Court also directed the Respondents to not take any further action in violation of the Order.

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While FRL expectedly appealed this judgment the following day, the Court's logical treatment of the confusing issue of the status of emergency arbitration orders/awards in India is welcome. Therefore, subject to the outcome of FRL's appeal, it will be very interesting to track the uptake of emergency arbitration in India and how it compares to the oft-resorted remedy of seeking interim protection under Section 9 of the Act. The Court's emphatic recognition of emergency arbitration is also likely to provide impetus to institutional arbitration in India because, as also acknowledged by the Court, the rules of several institutions, such as the Delhi International Arbitration Centre and the Mumbai Centre for International Arbitration, provide for emergency arbitration akin to the SIAC Rules.

As on date, the division bench of the Court has stayed this judgment until the next date of hearing on 30 April 2021. Meanwhile, the SIAC arbitration proceedings are continuing.

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### Endnotes

- 1 Authored by Rishab Gupta, Partner, Kartikey Mahajan, Counsel and Juhi Gupta, Senior Associate; *Amazon.com NV Investment Holdings LLC v. Future Coupons Private Limited and Others*, O.M.P. (ENF)(COMM) 17/2021, High Court of Delhi, 2021 SCC OnLine Del 1279, judgment dated 18 March 2021.  
**Coram:** J.R. Midha, J.
- 2 The Court granted interim protection to Amazon in an interim order dated 2 February 2021 wherein the Court directed FRL to maintain *status quo*. FRL challenged this interim order, which was subsequently stayed by a division bench of the Court, which in turn was challenged by Amazon before the Supreme Court. The Supreme Court *inter alia* halted the regulatory approval process. The Supreme Court proceedings are ongoing.

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