

Emergency Arbitration an Indian Perspective

Pankaj Thakur

Abstract

Indian Law has been very well drafted leaving no gap and ensuring the person who suffered has all means and remedy to secure their interest without law being misused. In arbitration, interim relief is essential for protecting the parties' interests and guaranteeing the validity of arbitral decisions. However, the effectiveness of such remedy has been weakened by the judiciary's interventionist attitude under Section 9 of the Arbitration and Conciliation Act, 1996.

In order to overcome this difficulty, arbitration institute have implemented the Emergency Arbitration procedure, which enables parties to request temporary relief from an emergency arbitrator prior to the arbitration tribunal's formation.

The enforceability of decisions rendered by emergency arbitrators is still a major concern despite their benefits, especially as Indian law does not automatically make their decisions binding. This article looks at emergency arbitrators' constitutional jurisdiction, the validity of its rulings, as well as the effects of the 246th Law's revisions. It examines how emergency arbitration might provide prompt relief and how it is changing, particularly with relation to India.

Keywords: Arbitration, Emergency Arbitration, Interim Relief.

Introduction

On rare occasions, one of the disputing parties may also destroy dispute-related evidence, causing the other party to suffer irreversible harm. Since the process of destruction may take place even before the panel is formed, the issue of subject matter destruction becomes even more significant in arbitration conflicts. In any case, an emergency arbitration to protect them is required to prevent the subject matter from being destroyed.

In the realm of arbitration, the idea of emergency arbitration is novel and developing. Emergency arbitration is used when parties require immediate temporary relief prior to the establishment of an arbitral tribunal. Ad-interim arbitration is similar to the idea of emergency arbitration.

Injunction as stated in Section 37 of the Specific Relief Act, 1963, and governed by the Code of Civil Procedure, 1908, wherein the main goal in both situations is to maintain the status quo until the disagreement is resolved on the grounds of merit. In civil disputes and issues involving intellectual property, Indian courts frequently invoke the power of an ad interim injunction to restrain one side.

Without first going to a tribunal, an emergency arbitrator is chosen by both parties to the dispute with their assent. Unless the contracting parties have chosen to opt out, an emergency arbitration award is binding and applies exclusively to the parties to the arbitration agreement.

The goal of emergency arbitration is to give a party or parties who are unable to wait for the establishment of an arbitral tribunal immediate protem or conservatory relief.

Emergency Arbitration is based on two principles:

Fumus boni iuris - A reasonable chance that the party making the request will be successful on its own merits;

Periculum in mora - (delay will lead to danger towards property) which states that if the measure is not approved right away, the loss would not and could not be made up for in damages.

Only for a certain period of time may an emergency arbitrator give temporary relief or interim measures. The authority of an emergency arbitrator is comparable to that of an ad hoc tribunal established for a specific objective. Many nations have 'opt-out' policies for emergency arbitration. Therefore, if the parties agree, the Emergency Arbitration Provisions will apply.

What is Emergency Arbitration

The idea of emergency arbitration is similar to that of an ad-interim injunction, which is governed by the Code of Civil Procedure, 1908 and Section 37 of the Specific Relief Act, 1963. In both situations, the main goal is to maintain the status quo until the dispute is decided on its merits. In civil disputes and intellectual property cases, Indian courts frequently invoke the provision of an ad interim injunction to restrain one party from abusing.

It is important to note that an emergency arbitrator is chosen and set up by the parties themselves without first going through a tribunal. For this reason, it is preferable to use institutional arbitration, which acknowledges the idea of an emergency arbitrator and can set one up as soon as possible, rather than adhoc arbitration, since in the latter case, if the parties cannot agree on an arbitrator or if one of the parties fails to appoint an arbitrator, the parties—even if they didn't intend to—would be forced to use the courts to appoint an arbitrator, which occasionally causes delays in the resolution of the dispute. However, unless the contracting parties have chosen to opt out, the emergency arbitration clause is binding and only applies to those who have signed the arbitration agreement.

The International Centre for Dispute Resolution, or "ICDR," initially embraced the emergency arbitration clause in 2006, laying out the principles for the emergency arbitrator and its processes. The identical clauses from the ICDR were then incorporated into the 2012 edition of the International Chamber of Commerce Rules, or "ICC" for short. Other organizations, including the Netherlands Arbitration Institute ("NAI" for short), the Singapore International Arbitration Centre ("SIAC" for short), Swiss Arbitration, Institute of the Stockholm Chamber of Commerce ("SCC" for short), and the Australian Centre for International Commercial Arbitration ("ACIA" for short), also adopted the 2012 version of the ICC Rules, which stipulated that an emergency arbitrator should be appointed when a party requires immediate interim or conservatory measures that cannot wait for the establishment of an arbitral tribunal¹.

The emergency arbitration procedure, which is essentially the same in all of the aforementioned arbitration institutions, allows the institution to quickly appoint a single arbitrator upon request from any party in order to decide on the party's immediate interim relief claim. It should be evident right once that the chosen emergency arbitrator is allowed to establish his own procedure. The time frames for the exchange of submissions and any response to them, any hearings, the parties' preferred method of contact, and the admission of evidence are all examples of the processes that the emergency arbitrator may prescribe. It's important to note that any conservatory relief or interim measures given by an emergency arbitrator will

¹ Mondaq, Emergency Arbitration in India: Concept and Beginning.

only be in effect for a certain amount of time because they were created with the specific intent of providing such relief and will end as soon as the goal is fulfilled or the time frame specified has passed.

Emergency Arbitrator and Its Duty

An arbitrator designated specifically for an emergency arbitration is known as an emergency arbitrator. The Emergency Arbitrator's responsibilities include the following, and they cease when the Interim Order is issued:

1. As quickly as feasible, the Emergency Arbitrator will set up a timeline for reviewing the emergency relief claim.
2. A fair chance to be heard should be given to all parties. There are two types of proceedings: formal and informal.
3. The emergency arbitrator is unable to conduct a thorough investigation due to time constraints, with the exception of some significant clarifications, and must instead base his decision solely on the written submissions and supporting documentation that have been provided to him.
4. Although deadlines differ depending on the international arbitration rules, an emergency arbitration normally takes eight to fifteen days from the application date to the award date.
5. In accordance with these Rules, the Emergency Arbitrator will have the same powers as the Arbitral Tribunal, including but not limited to the power to rule on his own jurisdiction and issue any temporary orders required to safeguard the dispute's subject matter.
6. Interim orders can take several forms, such as asset freezing orders, mandatory and prohibitive injunctions, orders for the preservation and examination of evidence, and preventative orders to stop the infringement of intellectual property rights.

Emergency Arbitration Global & Indian Perspective

The International Chamber of Commerce (ICC) introduced the "Pre-Arbitral Referee Procedure" in 1990, which was the first attempt to introduce a notion of "emergency relief" prior to the formation of a tribunal. However, before 1998, such temporary remedies had to be obtained through court involvement rather than an internal emergency relief structure; this was changed by the 2012 Amendment. The United Nations Commission of International Trade Law (UNCITRAL) also took a positive move in 2006 by amending the 1985 UNCITRAL Model Law on International Commercial Arbitration and adding provisions for temporary relief, which opened the door for other international institutions to follow².

In 2010, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) and the Singapore International Arbitration Centre (SIAC) were among the first organizations to allow for emergency arbitration hearings under their rules. The London Court of International Arbitration (LCIA) in 2014, the American Arbitration Association (AAA) in 2015, the Hong Kong International Arbitration Centre (HKIAC) in 2013, the International Chamber of Commerce (ICC) in 2012, and the Mumbai Centre for International Arbitration (MCIA) in 2017 came shortly after.

The Indian perspective with global view, Indian courts and domestic tribunals have the authority to grant temporary measures while an arbitration case is ongoing under Sections 9(1) and 17(1) of the Arbitration Act 1996. A pro tem order made by the tribunal under Section 17(1) may be enforced by the Indian court as if it were a court order, according to Section 17(2).

² Tejas Sateesha Hinder and Tanishka Saxena, Enforcement of Emergency Arbitration Done yet not Undone.

In its 246th Report on Amendments to the Arbitration and Conciliation Act, 1996, the Law Commission of India suggested amending Section 2(d) of the Act. The amendment's goal was to legally recognize institutional rules such as the SIAC Arbitration Rules, the ICC Rules, or any other rule that allows for the appointment of an emergency arbitrator in India. However, as of March 2025, the Arbitration and Conciliation Act of 1996 still does not fully incorporate the suggestions.

In any event, the temporary decision or award of an emergency arbitrator is not specifically mentioned in either Section 9(1) or Section 17(1) of the Arbitration Act. Therefore, it is unclear if an award rendered by an emergency arbitrator in an arbitration with an Indian seat would be covered by the Arbitration Act's authoritative framework and, if so, how it would be upheld.

According to the Honorable Supreme Court of India, a court order implementing an emergency arbitrator's ruling made under the SIAC Arbitration Rules is not appealable and can be maintained under the Arbitration Act of 1996. With this ruling, India's policy is in line with global norms that support the acceptance and implementation of emergency awards.

Amazon NV Investment Holdings LLC v. Future Retail Ltd. & ors³

Here the supreme court sets a noteworthy precedent by highlighting the significance of party sovereignty as a fundamental principle of Indian arbitration. Regarding an assertion with an Indian seat, the ruling validates an emergency award issued in accordance with the procedures of an arbitral institution (like SIAC) by acknowledging it as a pro tem ruling from an Indian arbitral tribunal. The decision means that Indian courts can apply an emergency arbitration award from an arbitration with an Indian seat in the same manner that they would a decree. Additionally, because the order for implementation of such an emergency award (EA) would be binding and no appeal should lay with the party.

In this case fact of case was as - A stay on the disputed transaction was granted by an Emergency Arbitrator who was appointed after Amazon filed arbitration proceedings against the Future Group under the SIAC Rules. The disputed sale was carried out by Future Group in spite of this award⁴. Amazon additionally submitted an application for the enforcement of the Emergency Arbitrator's ruling under Section 17(2) of the Arbitration Act to a Delhi High Court single judge bench. Initially, the single judge issued a status quo order, preventing the Future Group from completing the contested sale. The Court then issued a comprehensive ruling in which it determined, among other things, that the Emergency Arbitrator's award qualified as an order under Section 17(1) of the Arbitration Act and that the court could enforce it under Section 17(2) of the same Act. Before a two-judge Delhi High Court appellate bench, Future Group filed separate motions challenging both the single judge's ruling and the initial status quo decision. Through distinct rulings, the appeal bench stayed the prosecution of the status quo order and the single judge's ruling. Amazon filed a Supreme Court challenge to these orders as well.

Indian Arbitration Institution has also incorporated provision of emergency arbitration in their regulation such as –

1. "Emergency Arbitration" is covered by Part III of the Delhi High Court's Arbitration Rules by the Delhi International Arbitration Center (DAC). Section 18A of the regulations specifies provisions pertaining to authority, process, and the appointment of an Emergency Arbitrator.

³ Amazon NV Investment Holdings LLC v. Future Retail Ltd. & ors 2021 SCC OnLine Del 1279.

⁴ Kuldeep Kumar, Dr Raj Rani Emergency Arbitration: Global and Indian Perspective.

2. Section 3 of the Mumbai Center for International Arbitration (Rules) 2016 lists the EA and Emergency Arbitrator provisions as of June 15, 2016.
3. EA and Emergency Arbitrator provisions are listed in International Commercial Arbitration (ICA) under Section 33, Section 36(3), effective January 1, 2014.

Enforcement of Award in Emergency Arbitration

There are 2 views with regard to enforcement of emergency arbitration award, some convention like New York Convention has a different view. The New York Convention, which maintains that an award is only binding on a "Contracting State," renders the EA's award unenforceable. The Convention is ambiguous on whether or not an EA's award qualifies as a "award" and does not acknowledge these declarations because the Arbitral Tribunal's decision regarding the correction of an EA's award is final⁵.

While on other side Since a foreign award under the Indian Arbitration Act refers to final awards, the issue of whether an award from a foreign-seated emergency arbitration award can be directly enforced in India emerges; in actuality, an emergency arbitration award is merely an interim remedy and not the arbitrator's final decision. But in the historic **Amazon-Future**⁶ decision, the Indian Supreme Court maintained the emergency arbitration award verdict, taking a "arbitration-friendly-approach" stance. While some governments take a very strict approach to enforcing emergency arbitration awards, other jurisdictions fully implement them.

Conclusion

A particular type of arbitration called emergency arbitration is intended to give parties rapid interim relief prior to the formation of the full arbitral tribunal. It minimizes the possible harm caused by delays by enabling important concerns to be resolved promptly, usually within a few days. When a party requires immediate protection of their rights or interests prior to the formation of a regular arbitral tribunal, emergency arbitration is typically utilized. The objective is to stop or lessen the harm that could happen if the case is not settled until the full tribunal is established. Interim relief, like a temporary injunction or restraining order, is usually the main emphasis of the emergency arbitrator's ruling.

Emergency arbitration is not specifically covered by the Arbitration and Conciliation Act; instead, it is based on institutional rules and party agreements. Interim relief, like a temporary injunction or restraining order, is usually the main emphasis of the emergency arbitrator's ruling.

Emergency arbitration is governed by the Indian Arbitration and Conciliation Act of 1996 as well as the rules of the relevant arbitral body (such as the SIAC or ICC). The emergency arbitrator's orders are usually enforceable, as established in cases like Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. and Bharat Aluminium Co. v. ABB Power Ltd.

⁵ Poorna Dixit, Emergency Arbitration a handy tool not handled properly

⁶ 2021 SCC OnLine Del 1279