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AN ANALYSIS ON THE GENESIS AND GROWTH OF EMERGENCY ARBITRATION IN THE NATIONAL AND INTERNATIONAL PERSPECTIVE

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Abstract: With Increasing globalisation and the Cross-border transaction, every disputant of the disputed matter be it in reference to the National or International Purview, their main focus would be in a nature to resolve their dispute as priorly as possible. In order to ensure that his/her assests and securities would not disturb by the disputant at any point. Sometimes hindrances may arise in such a manner, which slower the process of delivering the justice to the applicant of the disputed matter, which could be one of the prominent reasons of his anticipation in reference to his protection of his or her securities and assets are concerned. On the other way round , granting of the interim relief is time consuming , when the Constitution of the arbitral tribunal itself is not in place , and time constraints is an added yardstick, piling up all these hurdles together traumatizes the applicant of the disputed matter , as to how to protect his/his securities and assets.it is at that need of an a new concept called as Emergency Arbitration has come into a lime light , it highlights are to resolves the disputes within the working days of 8 to 10 days which turns to be the boon to the applicant to waiting eagerly to get the resolution .Emergency arbitration is nevertheless , to be considered as one of the highlighted wing of the Alternate Dispute Resolution System. In addition to that there are many International and National Arbitration Rules which has definitely played a pivotal role in enforcing Emergency Arbitration

Index Terms - . Alternate Dispute Resolution system, Emergency Arbitration, International and National Rules of Arbitrational Rules.

INTRODUCTION

Peace is not absence of conflict; it is the ability to handle conflict by peaceful means." Ronald Reagan

In addition to this different kind of Arbitration process, Time and again , when there arises a scenario , when an affected party to the disputed matter essentially requires a constant relief , against the counter disputed party who might cause threat or harm to the affected party property and evidences and assets as a whole , On practice, things taken into consideration , in order to obtain a arbitral relief via -a vis the process of arbitration, constitution of the arbitral tribunal played an integral part of obtaining necessary relief , the hindrances which followed this process , the constitution of the arbitral tribunal was immensely time consuming which may probably extent to weeks together or sometimes eventually months together, and an added discrepancies to this drawback was, if the party wants to claim an interim relief , and be seemingly been granted by the court of territorial jurisdiction would eventually gain consume a timeline of 90 days, And in case if the dispute has arose between the parties , who are the residents of two different countries , or when the matter is overseas disputes, the affected party to the disputed

matter will be placed in the high level of anticipation that his property, his assets and evidences may be destroyed, at the very need of the hour the concept of the Emergency Arbitration comes into the picture. Emergency Arbitration (EA) are to be considered to be a new relief and been the emerging concept in this very contemporary era when the party to the disputed matter who aims to secure and protect their assets and evidence where they anticipate that such of their assets may either be lost or altered or hampered, in that very need of the hour the concept of the emergency arbitration comes into existence, the needed scenario in which this kind of the arbitration is much needed is that when the time has been the constraints and when the arbitration tribunal itself is not constituted, the a parties to the disputed matter can approach the emergency arbitrator, can get the matter resolved within the stipulated period of 2 business days which is more speedier and expedited. The matter related either being a national dispute or be it cross border or the international dispute, the matter could be resolved via emergency arbitration. All that matters is the element of party autonomy and the parties are under the liberty to choose their rules of international arbitration rules to resolve their disputed matter

Conceptual Analysis of Emergency Arbitration

Meaning of Emergency Relief

The very Conceptual Terminology of “Emergency Arbitration” comes with the very existence of the term of “Emergency relief.” Emergency relief, Emergency relief could be pursued as a protective system of interim measures that have come to supplement the existing system of interim measures previously available. They are employed by a sole emergency arbitrator, who is appointed in an expeditious manner. The purpose being to protect assets and information that might otherwise be altered or lost or otherwise rendered useless or of less value by one party to the detriment of the other, so as not to make the main arbitration proceedings meaningless. Emergency relief is seeing increasing importance in the world of arbitration as well and the different institutions are working on new rules to meet the demands on arbitral solutions today and tomorrow.

The rationale behind an “Emergency Arbitration” quotes to be an “Emergency relief” is that, when securing an interim relief by the party affected from the court of territorial jurisdiction takes minimum of a time line of 90 days, added to that when the constitution of the Arbitral Tribunal its self is not been constituted and the time constraints is another discrepancies added to it, in addition to such a scenario the affected party to the disputed matter is anticipating that this valuable assets, evidences and securities may be destroyed by the counter disputant, at that very need of an hour, The so called emergency relief of Emergency Arbitration comes to existence, It is protective in that it serves to conserve the status quo between parties seeking arbitral relief. The rules of the system have in common across the different arbitral institutions that they are used before the arbitral tribunal¹ has begun its proper work, even before the tribunal is constituted, thereby giving them the emergency nomination.

Meaning of Emergency Arbitration.

Emergency Arbitration could be termed as system of mechanism, which plays a significant role in granting interim measure or relief to the affected party to the disputed matter when they are anticipating that their assets, valuable securities may be disturbed by another party to the disputed matter, in addition to that, when the time constraints are the discrepancies involved and when the arbitral institution is itself not constituted, It is at that need of an hour, the arbitral proceedings conducted by an Emergency Arbitrator based on the both the credentials which speaks about having a prior arbitration agreement entered between the parties or the proceeding conducted in relation to the disputed matter has to be based on the very consensus of the Party autonomy,

¹ Collins Erin Pre-Tribunal Emergency Relief in International Commercial Arbitration, Loyola University Chicago International Law Review, Vol 10 Issue 1 (Fall/winter 2012) PP .105-[ii], <https://heionline-org-christuniversity.knimbus.ComHOL/License>,

The potency and effectiveness guaranteed by the procedures of Emergency Arbitration survives 2 important legal maxims;

1. **Fumus boni iuris:** There is a possibility of the reasonableness that the claimant party will succeed on the merits
2. **Periculum in Moram:** There may be loss caused to the claimant party which has to be compensated by the reasonable amount of the damages if an urgent relief is not granted as far as the disputed matter is concerned

Once the very sole objective of allowing the emergency award is passed by the Emergency Arbitral Tribunal, the tribunal gets functus officio thereafter. This element forms the crux of the entire Emergency Arbitral Tribunal setup. It is believed that passing the emergency award in the most expeditious and timely manner most importantly forms the quintessence of the Emergency Arbitration. In the contemporary era, Parties to the disputed matter make their way towards the procedures of the Emergency Arbitration because of the main reason that it solves the disputes in the at-most timely manner, to be more precise the procedures under Singapore International Arbitration Centre (SIAC) and Hongkong International Arbitration Centre Rules (HKIAC) and many other rules emphasize and set out that, any disputed matter presented before the Emergency Arbitrators, it is assumed that the dispute gets solved within the time span of 2 days only. This element has become the highlight of emergency arbitration, when this very crux of solving the dispute is not followed in the timely manner, the entire process becomes infructuous. The Procedure of Emergency Arbitration is opted by the parties rather than that of the traditional Indian court system because the Emergency Arbitration holds its upper hand as far as the litigation cost, assurance regarding the maintenance of the confidentiality of the matter is concerned.

Who is an Emergency Arbitrator?

Emergency Arbitrator is nevertheless considered to be the Ad-hoc Arbitrator appointed on the basis of the consensus of the parties or in accordance to the prior arbitration agreement entered between the parties of the disputed matter to conduct the proceedings of the Emergency Arbitration and to pass the interim order within the stipulated period of 2 business days, every power and function of the emergency arbitrator becomes functus officio once the interim order is passed.²

Whether the Emergency Arbitrator is also considered to be an Arbitrator?

Although emergency arbitrators are considered to have contractual authority, it is controversial whether they have judicial power." On the other hand, even if there is no clear regulation on the enforceability of emergency arbitrator decisions, if the execution of the temporary legal protection decisions given by the arbitrator is enabled in the country where they are made, the emergency arbitrators may also be subject to this regulation. Regarding enforcement, the New York Convention allows for the enforcement of foreign arbitral decisions only. Therefore, enforcement of the decision made by the emergency arbitrators under the New York Convention is not possible unless they are considered to be arbitrators in conjunction with their jurisdiction.³

Functions carried out by an Emergency Arbitrator.

It is the very duty of the emergency arbitrator to consider the application for emergency relief as expeditiously as possible, at least within the stipulated period of Two business days.

² Akash Srivastava, Emergency Arbitration and India -Along Overdue Friendship, Indian Journal of Arbitration Law, Vol 10, Issue No 1 (July 2021), pg. 98-122. <https://heionline-org-christiniversity.knimbus.comHOL/License>.

³ Ahmet Kilinc, Jurisdiction and Enforceability of Emergency Arbitrator Decisions, 24 GSI ARTICLE LETTER 258 (2021). <https://heionline-org-christiniversity.knimbus.comHOL/License>

Where such schedule has to be established in such a manner which creates an opportunity of reasonableness and allows the parties of the disputed matter to present their case. Provided the proceedings can be either carried out by means of Telephonic conference or by means of any submission made in writing or any means of other alternatives falling within circumference of the formal hearing.

Usually, only the vital clarification and based on the paramount required documentation and written submission are taken into consideration by the emergency arbitrator while laying down their decision, such an approach is carried out by the emergency arbitration is to meet up the strict deadlines and solve the dispute as quickly as possible.

Generally, the timeline laid down for passing an emergency award depends on various International Institutional Arbitration rules, however, the panel of the Emergency arbitrator consumes eight to ten business days from the date of filing the application up to the date of the interim order being passed.

It is also assumed that some of the powers of the Emergency Arbitrator are also vested within the arbitral tribunal and taking this into consideration, the Emergency Arbitrator is also vested with the power to allow any interim measure of protection, in case if the arbitrator is in the opinion such a protection is required to be granted to the affected party in- reference to the disputed matter is concerned.

Interim order passed by the Emergency Arbitrator can be in-relation to the freezing of the order, inclusion of both prohibitory and mandatory injunctions, any order passed in relation to the inspection and the preservation of the evidences, when the affected party is also in the opinion that there is an abuse and misusage of any confidential information relating to Intellectual Property Rights, preventive orders are passed.

Powers vested within an Emergency Arbitrator

Nevertheless, it is the very power vested in the hands of the Emergency Arbitrator to issue interim relief or any measure which is conservatory in nature, for instance, any kind of injunctions which can be either prohibitory or mandatory in nature, the power issuing an asset freezing order, for the very purpose, the emergency arbitrator carries out a much alike nature of functions although not exactly to the functions carried out by the Arbitral tribunal. Whatsoever, it is important to note that the decision granted by the emergency arbitrator acts a nature of an interim order only, which aids the Arbitral Tribunal granting the final arbitral award. And the entire legal setup of the emergency arbitration also gets dissolved as soon as the interim order is delivered

In the very recent Landmark **Case of Gerald Metals SA Vs Timis**⁴, The court of equity stated that, As per Section 44(3)⁵ of the Arbitration and Conciliation Act clearly stipulates that an English court may pass an urgent relief, in supportive to the very order passed by the arbitral tribunal. The relief passed can be relation to freezing order, or any order passed in regards to the preservation of the evidences and assets. But in this very landmark case it was observed that “there would be no power existing in the hands of the English High Court to grant any urgent relief, where the urgent relief could be granted by the Emergency arbitrator himself or the expediated rules under the LCIA (London Centre of International Arbitration) Rules

⁴ (2016)EWHC 2327 (Ch)

⁵Section 44 : Court powers exercisable in support of arbitral proceedings.

Section 44(3) ; If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

Advantages of Emergency Arbitration:**Neutrality**

Parties are free to choose a neutral arbitral venue when drafting their arbitration clause. Also, once a dispute has arisen, parties have the ability to appoint independent arbitrators of their choice to form a neutral tribunal. Emergency Arbitration permits the parties to agree on the procedures they wish to apply to their arbitration.

Time and Cost Efficiency

Due to the flexibility and finality of arbitration proceedings, resolving disputes through arbitration may often be quicker and cheaper than resolution through court litigation or other means of dispute resolution.

Confidentiality

Arbitration hearings are conducted in private and awards are, under normal circumstances, not published. Therefore, disputes will not be revealed to the public and where possible business relationships can be maintained.

Enforceability

Enforcement of foreign court judgments can be difficult in the absence of an appropriate bilateral treaty. Under the New York Convention signed by more than 150 jurisdictions, each of the Convention parties undertake to recognise and enforce arbitral awards made in other signatory countries.

6. Final and binding

Arbitration awards are usually final and not subject to review on the merits, meaning prolonged court appeal procedures can generally be avoided.⁶

RESEARCH QUESTIONS

The research would try to answer the following question

1. What is the legal recognition granted for the enforcement of the arbitral award pronounced by an emergency arbitrator in an Indian seated arbitration
2. What is the legal recognition granted for the enforcement of the arbitral award pronounced by an emergency arbitrator in foreign seated arbitration
3. What are some of the issues and problems arising in the enforcement of arbitral awards passed by the emergency arbitrator in India

RESEARCH OBJECTIVES

1. To exhaustively analyze the intended meaning and concept of emergency arbitration as a whole
2. To analyze the genesis and the growth of the Emergency arbitration in the sphere of International and national Context
3. To analyze the legal recognition granted in reference to the arena of emergency arbitration by various International Institutional Rules of Arbitration
4. To analyze the legal recognition granted in reference to the arena of emergency arbitration by various Institutional Rules of Arbitration in the Indian Scenario

⁶ Patricia Shaughnessy, Emergency Arbitration Justice on the Run, Scandinavian Studies in Law, Vol 63, 2017, Pg319 -330, <https://heinonline-org-christiniversity.knimbus.com/HOL/License> ,

The Genesis and the growth of Emergency Arbitration: In the International Context :

The very regime of Emergency Arbitration and its development can be witnessed way-back from the year of 1990's, with the very introduction of the procedure relating to pre-arbitral process by the International Chamber of Commerce. At the very initial stages, the applicability of the procedures was applied only to the parties who opted the procedures, Unfortunately the very attempt of the ICC procedures failed with the statistics of resolving a very minimal number of 14 cases with the long durational span of 24 years.⁷

After the initiative taken by the ICC, suffered a failure, it was then the World Intellectual Property Rights (WIPO) Organization backed up the Initiative, by adopting the rules of Emergency arbitration or emergency reliefs by incorporating it within the recommended Arbitration clause for WIPO Arbitration. In interfuse with the WIPO Emergency Relief Rules and The WIPO Arbitration Rules , parties to the disputed matter agreed solve their dispute in provided in accordance with their recommended Arbitration clause ⁸.One of the important Highlight of the WIPO Rules were , it also let the emergency relief ex-parte , which involved a very notice given to the respondent , which eventually accorded with the actual peril , which usually defeated the very intention of the procedure , Unfortunately the suggested and proposed changes were not accepted.

Down the lane in the year of 1999, The American Arbitration Association (AAA) in their Commercial Arbitration Rules they imbibed the opt-in rules for emergency protection measures as well, However the adoption of such emergency rules was based entirely on the very essence of the party autonomy, based on the parties of the opt -in procedures only the AAA would undergo the further appointment of the Emergency Arbitrator with the very purpose to avert the irreparable loss or damage. ⁹

The International Division of AAA along with the International Centre of the Dispute Resolution are considered to be the noted institutions at the pre-eminent level, which incorporated the opt out 'Emergency Arbitrator procedure Rules. However in the very ICDR's 2006 revision rules , the very Emergency arbitration procedures were available by default ,which simply clarifies that is all left to the party discretion to opt-in or opt-out , the Emergency Arbitration reliefs as far as their resolving of their disputed matter are concerned, ¹⁰(set out at Article 37 of the ICDR 2006 Rules) which clearly envisages and explain the very aspect of confidentiality should be maintained by the emergency arbitrator or the Administrator in concerned to the confidential information provided by the parties or the witness of the disputed matter. As per Article 30 of ICDR Rules only with the parties' prior consent any confidential information shall be revealed to the public, otherwise none of the information falling within the counters of trade secrets involving the aspect of confidentiality would be revealed to the public.

Round the Clock of 10 long years, All the Leading Arbitration Institution have incorporated the rules of Emergency Arbitration measures within their system, now it has become a norm, Some of the Pre- dominant Arbitration Institutions System are The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) ¹¹.

⁷ Andrea Calvarias & Jose Ricardo Feris, Running the ICC Emergency Arbitral Rules; The First Ten Cases 25(1) ICC INT'L CT of Arb, BULL 25, 27 (2014)

⁸ Richard Allan Horning, Interim Measures of Protection; Security for claims and Costs, and Commentary on the WIPO Emergency Relief Rules (In Toto) REV International Arbitration, Pg 155- 170 (1998)

⁹ American arbitration association commercial arbitration rules and mediation procedures (1999), optional rules for emergency measures of protection, o-1 to o-8.

¹⁰ Article 37 of the ICDR 2006 Rules - Article 37: Confidentiality

1. Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Administrator. Except as provided in Article 30, unless otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the Administrator shall keep confidential all matters relating to the arbitration or the award.

2. Unless the parties agree otherwise, the tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

¹¹ SCC Rules (2010), Art 32 (4) and Appendix II

The Singapore International Arbitration Centre (SIAC)¹² in 2010; The Court of Arbitration of the International Chamber of Commerce (ICC)¹³ The Hongkong International Arbitration Centre (“HKIAC”)¹⁴ in 2013; The London Court of Arbitration (LCIA)¹⁵ and The International Institute for Conflict Prevention & Resolution (CPR)¹⁶ in 2014 The China International Economic and Trade Arbitration Commission (CITEAC)¹⁷ IN 2015. There also existence of notable exceptional Arbitration Institution which refused to incorporate the rules of Emergency Arbitration in to their Arbitration rules namingly the Vienna International Arbitral Centre and it is also very important to be noted the UNCITRAL which are notably and often proves its applicability to the Ad- hoc International Arbitration cases, unfortunately have not incorporated the provisions of the Emergency Arbitration into their Rules.

The Genesis and the growth of ‘Emergency Arbitration, In the National Context (India)

In order to put in frame the very concept of ‘Emergency Arbitration’ in the regime of the Indian legal system, The Law Commission at its 246th Report came up with the agenda amending the very Parent Act Arbitration and Conciliation Act 1996 in order to be in par with arbitral institutional rules laid down by the international Arbitration center such as SIAC (The Singapore International Arbitration Centre), Rules of International Centre of the Dispute Resolution (ICDR); The Court of Arbitration of the International Chamber of Commerce (ICC); The Hongkong International Arbitration Centre (“HKIAC”); The London Court of Arbitration (LCIA) and Conflict The International Institute for Conflict Prevention & Resolution (CPR) or another rules which afford to give a legal recognition to the very conceptual avenue of the ‘Emergency Arbitration’.

It is important to note that The very parent Act of Arbitration and Conciliation Act underwent the proposed amendment in the year of 2015, changes were brought in-reference to Section 9 and section 17 (where the any order passed by the arbitral tribunal in-reference to the disputed matter shall be deemed to be the decree passed by the court itself) of the said act which enforced its applicability on the foreign seated arbitration provided a prior arbitration agreement should have been executed between the parties to the disputed matter referring to the same, Nevertheless In the very Landmark case of BALCO vs. Kaiser Aluminum Technical Services¹⁸, the Apex Court laid down its decision that Part I of the said act is applicable to the arbitration taking place in the ‘Domestic country’ or the so called Domestic Arbitration whereas the enforceability of the foreign seated award, obtains its recognition only under Part II of the Arbitration and Conciliation Act and nowhere under Part I of the Act.

As there was intensified level of other developments took place under the said Act, The Law Commission under its 246th report¹⁹ made its attempt to get the very concept of Emergency Arbitration within the regime of the Indian Legal system, The commission highlighted the issue existing in the very provision of Section 2(d) of The Arbitration and Conciliation Act,

¹² SIAC RULES (2010) revised in 2013 and 2016 now rule 31 and schedule 1

¹³ ICC Rules (2012), Art 29 and Appendix V- explains the provisions relating to Emergency Arbitrator

¹⁴ HKIAC RULES (2013) Art 23.1 and Schedule 4.

¹⁵ LCIA RULES (2014) Art 9B

¹⁶ CPR RULES (2014) Rule 14

¹⁷ CIETAC Rules (2015) Art 23 and Appendix III, However, interim relief is reserved to Chinese courts in most of the circumstances, Michael Dunmore, *The Use of Emergency Arbitration Provisions*, Global Arb News (Sept 10, 2015) <https://globalarbitrationnews.com/use-emergency-arbitration-provisions>.

¹⁸ BALCO Vs Kaiser Aluminium Technical Services (2012) 9 SCC 552

¹⁹ The Law Commission’s 246th Report dated 05.08.2014

where the section expressly stated that Arbitral Tribunal constituents either a sole Arbitrator or Panel of Arbitrators,²⁰ where there was no mention of the existence of Emergency Arbitrators at all, as a consequence to which the commission proposed that any arbitration conducted via through the institutions must also allow provisions for the appointment of Emergency Arbitrators as well. It was contemplated that, the recommendation, made by the Law Commission report would take a global turn, and was believed that a clear pathway was laid down in reference to the provisions relating to the appointment of the Emergency arbitration was concerned, unfortunately every such expectations of incorporating the concept of Emergency Arbitrators within the section 2(d) of the said Act was turned upside down. The Amendment Act of 2015 was a failure incorporating Emergency Arbitrators. Some of these setbacks and lacunas within the act has given an emergence to several complexities and issues raised before various High Court and The Apex Court.

But whatsoever, though there is no statutory recognition given to Emergency Arbitration, luckily in India,

some notable Arbitration Institution have recognised the concept of ‘Emergency Arbitration’ namely:(In Indian Scenario)

Delhi International Arbitration Centre (DAC): The very provisions reflecting the recognition of Emergency Arbitration could be seen in Part III of the Arbitration Rules of The Delhi High Court, In Addition to this, Section 18 A of the said rules enumerates the very procedures for the appointment, time period, powers of the Emergency Arbitrators.

Court of Arbitration of the International Chamber of Commerce – India enunciated under Article 29 of the Arbitration and ADR Rules R/W Appendix V sets out the provisions of Emergency Arbitration and Emergency Arbitrators.

International Commercial Arbitration (ICA); also sets out the provisions relating to Emergency Arbitration under Section 33 R/W Section 36 (3) w.e.f 01.01.2014

Madras High Court Arbitration Centre (MHCAC) Rules 2014 also sets out the provisions relating to EA and Emergency Arbitrator under Part IV, Section 20 read with Schedule A and Schedule D.

Mumbai Centre for International Arbitration (Rules) 2016 also enumerates the provisions of EA and Emergency Arbitrator under section 3 w.e.f 15.06.2016.

Legal recognition granted for the enforceability of the arbitral award passed by the Emergency Arbitrator in an Indian seated arbitration under the Arbitration and Conciliation Act1996.

Although the 246th law commission report very effectively made its efforts to bring an amendment to the Arbitration and Conciliation act, specially to include the term emergency arbitrator within the purview of section 2 (d)²¹of the said act which enumerates that arbitral

²⁰ Section 2(d) of the Arbitration and Conciliation Act 1996.

²¹ Section 2 (d) of the Arbitration and Conciliation Act 1996, arbitral tribunal” means a sole arbitrator or a panel of arbitrators, <https://legislative.gov.in/sites/default/files/A1996-26.pdf>,

tribunal constitutes either a sole or the panel of arbitrator, where it has failed to laid down a legal recognition to the emergency arbitrator or the award passed by the emergency arbitrator or be it the entire process of emergency arbitration, on the other hand neither Section 9 or Section 17 (1) of the said lays down recognition to the award passed by the emergency arbitrator. However as supportive stick, there are various institutional rules be it the International or in the Indian scenario which gives a due recognition to the entire procedure of the Emergency Arbitration as a whole. The very process of analysing the legitimate recognition granted to the purview of the Emergency Arbitration is been witnessed and thereby highlighted by various judicial decision, some of them are reflected in this thesis;

. Legal recognition granted for the enforceability of the arbitral award passed by the Emergency Arbitrator in a foreign seated arbitration under the Arbitration and Conciliation Act 1996.

Although there are several International Institutions of Arbitration Rules such as. Singapore International Arbitration Rules (SIAC), Hong Kong International Arbitration Centre (HKIAC), Rules of International Chamber of Commerce Arbitration Rules (ICC), International Centre of Dispute Resolution Arbitration Rules (ICDR), London Court of Arbitration (LCIA) Rules, WIPO Arbitration Rules, Arbitration Institute of Stockholm Chamber of Commerce which grants a due recognition to the procedure of Emergency arbitration and the award passed by such emergency arbitrator, But as far the Arbitration and Conciliation Act 1996, although it legally recognizes the enforceability of the foreign arbitral award under the Part II of the Said act under the New Conventional Rules 1958, Nowhere under the act gives a legal recognition to the foreign arbitral award passed by the emergency arbitrator, But the contrary recognition of the emergency arbitrator award has been granted through various judicial pronouncements

Some of the Judicial approaches via the means of leading cases in-reference to Emergency Arbitration in the avenue of National context:

In the Landmark Case of **HSBC PI Holdings (Mauritius) Ltd Vs Avital Post Studios Ltd & Ors**²² In this very landmark case, there was arbitration agreement entered between the parties of the disputed matter, which eventually enabled them to retain their rights to claim the measure of interim relief before the very jurisdiction of the national courts of India, in-furtherance in this case parties obtained their interim order passed by the Emergency arbitrator in the foreign seated arbitration i.e., in Singapore, later the enforceability of such a favourable order was claimed in India as well. The Bombay High upheld the interim order passed by the emergency arbitrator and observed that, there was no direct enforcement of an interim order, in addition to this the Bombay high court also laid down that the principle of the BALCO judgement is not applicable to this case, the only reason is because the agreement entered between the parties was much prior to the BALCO Judgement rendered.

In the Case of Raffles Design International India Private Limited & Ors Vs Educomp Professional Education Limited & Ors²³ In this very Landmark case, a very contrary decision to that of the prior case (HSBC Vs Avital) was observed by the Delhi High Court, where it stated that there can be enforceability of the interim order passed by the emergency arbitrator, Nevertheless in addition such a

²² HSBC PI Holdings (Mauritius) Ltd Vs Avital Post Studios Ltd & Ors., Arbitration Petition No 1062/2012 dated January 22nd, 2014, para 89, <https://indiankanoon.org/doc/92854857/>

²³ Raffles Design International India Private Limited and Ors. vs. Educomp Professional Education Limited and Ors. 2016 (6) ARBLR 426 (Delhi), <https://indiankanoon.org/doc/166921970/>

observation the court also stated that Under the very section 9²⁴ of the Arbitration and Conciliation Act 1996 , the parties can recourse to the court of the territorial jurisdiction to claim the interim relief , There was also further clear clarification laid down by the Delhi High Court ,that there would not be any recognition laid down by the courts in-reference to the interim measures granted by the Emergency Arbitrator.

In the Case of Ashwani Minda and Ors. v U-Shin Ltd. and Ors,²⁵ the facts of the case states that there was an arbitration agreement entered between the parties , where the agreement was governed by the provisions of Emergency Arbitration executed under the rules of Japan Commercial Arbitration Association (JCAA).Dispute arose between the parties , when there was very element of restraint laid down by the applicant over the respondent from acquisition of the shares procured in an auction offer , in consequences to which the matter was taken before the Emergency Arbitrator to claim a relief of interim measure .The interim relief was not granted to the applicant , aggrieved by the decision laid down by the emergency arbitrator , A fresh application for interim relief was under section 9 was filed before the Court of law (Delhi) , The court observed that , when the application to sought a interim relief under section 9 is already been rejected by the emergency arbitrator , then in such a scenario the same relief cannot be granted by the court of law, and the decision laid down by the emergency arbitrator was indirectly enforced by the court. The same decision was re-affirmed by the Delhi High Court.

Amazon.com NV Investment Holdings LLC v. Future Retail Limited and Others²⁶. In this very landmark case, there was an arbitration agreement which was entered between parties of the disputed matter, where the rules were governed under the schedule 1 of the SIAC Rules , There was an interim award granted in the favour of Amazon by the emergency arbitrator as per section 17(1),²⁷ where further an application was filed under section 17(2) ²⁸of the

²⁴. Section 9 of the Arbitration and Conciliation Act 1996 : Interim measures, etc., by Court.—3 [(1)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:— (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
- (b) securing the amount in dispute in the arbitration;
- (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (d) interim injunction or the appointment of a receiver;
- (e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

4 [(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]

²⁵ 2020 SCOnlineDel, <https://indiankanoon.org/doc/4385884/>

²⁶ Amazon.com NV Investment Holdings LLC v. Future Retail Limited and Others, CIVIL APPEAL NOs. 4494-4495 OF 2021, <https://www.sconline.com/blog/post/2021/03/19/amazon-v-future-retail/>

²⁷ Section 17(1) of the Arbitration and Conciliation Act 1996, - Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

²⁸ Section 17(2) of the Arbitration and Conciliation Act 1996-The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

Arbitration and conciliation Act for the enforceability of the award. The court also upheld the recognition of the award passed by the emergency arbitrator. There were two issues raised in the case by the very Apex court in-reference to the Indian Seated arbitration:

Whether the interim award passed by an emergency arbitrator governed by the SIAC Rules could be considered as an interim award passed by the arbitral tribunal itself as per section 17(2)

When any order is been passed by the Indian Court as per section 17(2) of the arbitration act. Specially in-reference to the award passed by the emergency arbitrator, can it be capable of being appealable under the act?

The Apex Court laid down its decision in the Amazon and further observed that;

Any award passed by the emergency arbitrator shall be deemed to be an order passed under section 17(1) of the Arbitration and Conciliation Act, and its enforceability can also be carried out in accordance with section 17(2) of the said Act.

It was also observed that, an award passed by the emergency arbitrator do has a binding effect and there shall be no appeal raised in opposition to the enforcement of the award passed by the emergency arbitrator as mentioned under section 17 (2)

In addition to the above-mentioned order passed, the Apex court also held that it's the element of the party autonomy which would be given a greater priority above all the criteria, and it is left to the parties of the disputed matter to choose the institutional rules for solving their respective disputed matter

3.12. Some of the Judicial approaches via the means of leading cases in-reference to Emergency Arbitration in the International Context

In the Leading Case of Yahoo Vs Microsoft Corporation Case²⁹, The District Court of New York highlighted the very importance of the Emergency Arbitrator and observed that the award passed by the emergency arbitrator is considered to be final and efficiently binding over the parties of the disputed matters, In furtherance it was also laid down that, in no such manner the emergency arbitrator shall be obstructed from delivering the final award which importantly aims in securing and meeting the very purpose of status quo in matter in dispute. Regardless to the very fact, whether the relief of award is yet to be granted by the Arbitral Tribunal. The yahoo submission of evacuating the very award passed by the Emergency Arbitrator was rejected by the court of justice.

In another leading case of Chinmax Medical Systems Vs Alere San Diego³⁰ In this very leading case, The Southern District Court of California laid down a very contrary decision in

²⁹ Yahoo Inc Vs Microsoft Corporation United States District Court, Southern District Court of New York, 13 CV 7237, 2013 U.S. Dist. LEXIS 151175, at *1 (S.D.N.Y. October 21, 2013), [https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2013cv07237/418671/26/#:~:text=Yahoo!%20Inc.,%3A2013cv07237%20%2D%20Document%2026%20\(S.D.N.Y.,](https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2013cv07237/418671/26/#:~:text=Yahoo!%20Inc.,%3A2013cv07237%20%2D%20Document%2026%20(S.D.N.Y.,)

³⁰ Chinmax Medical Systems Inc., v. Alere San Diego, Inc., Southern District of California, Case No. 10cv2467 WQH (NLS), May 27, 2011, <https://docs.justia.com/cases/federal/district-courts/california/casdce/3:2010cv02467/339009/12>, https://www.govinfo.gov/app/details/USCOURTS-casd-3_10-cv-02467

reference of vacating the award passed by an emergency arbitrator, questioning the view point of the jurisdictions of the award so passed, and held that such an emergency award passed was not final and binding for the very purpose of the New York Convention Rules.

3.13. Some of the issues and problem arising in the enforcement of arbitral award passed by the emergency arbitrator in India

One of the biggest problems commences with the very section 2(d) of the Arbitration and Conciliation Act, the underlying reason is that, arbitral tribunal constitutes only sole or the panel of arbitral, no legal recognition is granted to the Emergency arbitrator as a whole

The above-mentioned issues give rises to the antecedent issues such, to the extent of non-recognition of the arbitral award granted by the emergency arbitrator, or be it the entire proceeding carried out by the emergency arbitrator has not been recognised under the parent act that is the Arbitration and Conciliation Act 1996.

The other issue is that, Section 9 and Section 17(1) which grants the due power to the court and the tribunal to pass the arbitral award and grants a legal recognition to such an arbitral award as well, but none of this section either grants any legal recognition to award passed by the emergency arbitrator.

Emergency arbitrator is the process which entirely imbibed on the principle of the speedy disposal of the matter, so they give higher degree of importance to the written submission, that oral proceeding, where the parties may sometime be been blocked in expressing their averments or their statement of defence before the said emergency arbitrator

Although the decision or an emergency interim relief granted by the emergency arbitrator is binding in nature, over the parties of the disputed matter, it can be easily revoked or modified or even vacated by the Arbitral tribunal based on the reasonable request made by the parties of the disputed matter. In such a circumstance the very aspect of the binding effect of the emergency arbitration becomes questionable.

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