Emergency Arbitration: Is the Case Really an Emergency?

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Introduction

In transnational trade transactions, several modes of dispute settlement mechanisms have evolved in the last centuries. However, one such mode which has gone out of much attraction and debate is arbitration. It is obvious that arbitration is a settlement between two private individuals or private parties giving enormous autonomy to them to decide the procedure in which they wish to settle the disputes. Both domestic and international arbitration is preferred by parties because of its less time-consuming and less procedural nitty-gritty that is to be followed as compared to litigation but it is also preferred by parties because statutorily the intervention of courts is less. However, in arbitration in case of urgent matters a party can either approach a court or the tribunal to get interim relief if the need arises to safeguard their interests. Recently, a new concept has emerged internationally in the field of arbitration, which is the focus of debate globally and almost every institution is trying to incorporate rules regarding the concept and that is- *Emergency Arbitration*. One can say that in this new concept of arbitration i.e., emergency arbitration the party urgently seeks interim relief even before an arbitration tribunal has been constituted. This newly developed procedure

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aims to give parties the urgent interim relief they need while they wait for the arbitral tribunal to be established.

Institutions such as the Singapore International Arbitration Centre (SIAC), the Stockholm Chamber of Commerce (SCC), the Swiss Chamber of Arbitration Institution (SCAI), the Mexico City National Chamber of Commerce (CANACO), and the Netherlands Arbitration Institute (NAI) have already framed rules and procedures regarding not only emergency arbitration but also expedited form of arbitration[1]. India recently witnessed the concept of emergency arbitration in the landmark case of Amazon.com NV Investment Holdings LLC v. Future Retail Limited and Ors.[2], which will be the central focus of this paper discussing the issues that the courts face while dealing with an emergency arbitration and how Indian courts have interpreted an emergency arbitration award. Even if emergency procedures are approached differently in different institutions, rapid tribunal creation and emergency arbitrations have emerged as common, workable solutions. This article will present the emergency protocols of several of the top international arbitration institutions in the world. In the latter part, the author will discuss whether merits can provide sufficient basis on which an emergency arbitrator can provide temporary relief to the parties. Is emergency arbitration a mere reflection of expedited arbitration, which is another form of arbitration carried out in a shortened time frame and at a reduced cost, simplifying the key aspects to reach a decision based on merits? This expedited arbitration is used typically in situations where a simplified procedure with a limited scope works well. The paper will also discuss whether emergency arbitration is cost-

[1] Raja Bose and Ian Meredith, "Emergency Arbitration Procedures: Comparative Analysis" [2012]: Int. A.L.R./ Issue 5, 186.

[2] Amazon.com NV Investment Holdings LLC v. Future Retail Limited and Ors. [2021] SCC OnLine SC 557.

effective for all companies whether big or small or is it only financially giant corporations that can afford emergency arbitration. The strategies of empowering emergency arbitrations while sustaining the authority of the arbitration panel might be a customary practice in conjunction with the way in which diverse jurisdictions are grappling with the enforceability of emergency arbitration orders or awards.

Emergency Arbitration: A Case Study

Arbitration has been the way out that many opt for speedy dismissal of their disputes, by taking their case out of courts to such institutions where they have more autonomy over the entire process of dispute resolution. In arbitration the entire process is more- faster and more flexible than the litigation process in court, offering more confidentiality to businesses. The idea of emergency arbitration has gained significance in recent times. Many arbitral institutions have in the past years tried to incorporate rules and procedures related to emergency arbitration aiming at granting interim protection to parties.

The aim of this new emerging process is to help the parties to get the interim relief that they seek and which cannot wait till the formation of the tribunal. This practice of emergency arbitration is followed quite sincerely by many different countries and international organisations of which proper rules and guidelines have already been laid out. When it comes to India, there lies no proper provisions of emergency arbitration in Indian arbitration laws and rules; though some recognition is given to emergency arbitration rules of other countries and international organisations by Indian courts and their enforceability in India. Also, with the recent judgement of the Supreme Court in the case of Amazon.com NV Investment Holdings LLC v. Future Retail

Limited and Ors, the scenario with regard to the position of emergency arbitration in India can be seen changing.

In the Amazon case, Amazon had initiated arbitration proceedings under the Singapore International Arbitration Centre (SIAC) Rules, as per the arbitration clause in the agreement. Amazon approached an emergency arbitrator to stop Future Group from completing the retail asset sale worth 3.38 USD billion to Reliance. As Amazon contended that this deal was against the shareholder agreement signed between Amazon and the Future group, which contains a list of "restricted persons", with which the Future group is not to enter into any agreement and Reliance, was a part of the restricted list. The Emergency Arbitrator (EA) passed an order putting the deal between Future group and Reliance on halt till the formation of the Arbitral Tribunal. To support this EA's order Amazon put forth that the act of approaching before the SIAC is valid under Indian law as per section 2(8) of this Act which falls under party autonomy and as per Section 2(1)(d)[3] of the Act emergency arbitrator can be envisaged as an arbitral tribunal for the purposes of this Act. The issue that arose here is regarding the enforceability of the emergency arbitration order. But the contention of Future group was around the legal status of the Emergency Arbitrator and its order in India. Future group contended that the SIAC rules are merely procedural and these rules cannot provide for substantive jurisdiction to the SIAC, thus an institution without substantive jurisdiction cannot grant interim relief and thus the main argument was that the order of the arbitrator is null and void.

Against this order Future group approached the Delhi High Court and the single-judge bench upheld the decision of emergency arbitrator and observed

[3] Section 2(1)(d) of Arbitration and Conciliation Act, 1996 – "arbitral tribunal" means a sole arbitrator or a panel of arbitrators.

that he is an arbitrator under Section 17(1) of the Arbitration Act[4]. Against this decision of the single bench, Future group approached the Division bench of Delhi High Court. The division bench stayed both the decisions of the single bench and the SIAC arbitration proceedings.

Against the Division bench's judgement, Amazon approached the Hon'ble Supreme Court of India. In this case, the Supreme Court made quite a constructive, purposive, and dynamic interpretation of the Arbitration Act in the context of enforceability of the award of an emergency arbitrator, and to decide on the question of appeal against an order recognising enforcement of the award of an emergency arbitrator. The Supreme Court held that the spirit of arbitration is party autonomy- where parties are free to agree to choose the law they want to be governed by and the arbitral institution, and through this, it was held by the court that when parties voluntarily agree to a dispute resolution, they should be bound by the relief that is granted by such dispute resolution mechanism which involves an emergency arbitrator. The court held that the order passed by the emergency arbitrator carries the same effect as that of an order passed by the arbitral tribunal, under section 17 of the Arbitration and Conciliation Act 1996. Section 17 talks about the power of the arbitral tribunal to grant any interim measure of protection at the request of the parties and as per the requirement of the case. The Supreme Court in this case seems to have given sanction to the point that the legitimacy of an emergency arbitrator is derived in the same manner as that of merits-tribunal i.e., legitimacy is derived from the consent of parties to certain procedural rules.[5]

[4] Sec 17(1) of the Act deals with interim measures ordered by the Arbitral Tribunal.

[5] Naresh Thacker and Harshvardhan Nankani, 'Amazon v. Future: A creature called 'Emergency Arbitrator' (22 September 2022) Economic Laws Practice

Procedural aspect

Procedurally emergency arbitration is believed to be an advanced way of securing interim relief by preserving the status quo of the parties' interest in a quicker way and preventing the tampering with any evidence or any other interim release that parties seek in a much faster way than what was seen earlier in arbitration practice or in litigation.

In the year 1990, The ICC advanced its 'Pre-Arbitral Referee Procedure' arguably the initial step taken by a substantial institution to provide relief before the formation of the tribunal. Article 1[6] provides the definitions "These Rules concern a procedure called the Pre-Arbitral Referee Procedure', which provides for the immediate appointment of a person (*the Referee)* who has the power to make certain orders prior to the arbitral tribunal or national court competent to deal with the case (the "Competent Authority") being seized of it…." Any reference to the 'President' means the president of the ICC International Court of Arbitration and includes, in his absence, a 'Vice-President' and Article 2 provides for the Referee's powers. The powers of the Referee are -

a) to order any conservatory measures or any measures of restoration that are urgently necessary to prevent either immediate damage or irreparable loss and so to safeguard any of the rights or property of one of the parties; Except as provided in Article 2.4, once the Competent Authority becomes seized of the case it alone may order, under the rules applicable to it, any further provisional or conservatory measures that it considers necessary. For such

<https://elplaw.in/amazon-v-future-a-creature-called-emergency-arbitrator/\> accessed 31 December 2022

[6]Rules for a Pre-Arbitral Referee Procedure - Cms.iccwbo.org" (PRE-ARBITRAL REFEREE RULES) <https://cms.iccwbo.org/content/uploads/sites/3/2016/11/1990-Rules-for-a-Pre-Arbitral-Referee-Procedure-ENGLISH.pdf> accessed December 28, 2022

purpose the competent authority, if its rules so permit, shall be deemed to have been authorized by the parties to exercise the powers conferred on the Referee by Article 2.1. As per these rules of ICC a 'Referee' provides the measures and the provided measures are binding until an otherwise decision has been given by a court or a tribunal or referee himself. The rules contained regardless of the fact that 1998 revision of the ICC Rules added provisions allowing applications for immediate measures can also be made directly to courts, Article 8[7] provides for number of Arbitrators and Article 9 provides for confirmation and appointment of arbitrators, the ICC's most recent revision of the ICC Arbitration Rules of 2012 provide with an internal mechanism for dealing with such immediate applications Article 29[8] and Appendix V states the provisions regarding emergency arbitrator.

The 2012 Arbitration Rules of ICC introduced emergency arbitrator's role, "where a party needs urgent conservatory measures that can't await the constitution of arbitral tribunal" (Article 29)[9] under the emergency arbitration rules that have been set forth in the Appendix V of the ICC Arbitration Rules[10] which talks about appointment of emergency arbitrator, challenge to

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[7] 'Rules of Arbitration' (2001) International Chamber of Commerce <https://www.acerislaw.com/wp-content/uploads/2018/08/1998-ICC-Arbitration-Rules.pdf> accessed 27 December , 2022

[8] 'The ICC Rules of Arbitration (2012)' (2014) International Arbitration <https://www.international-arbitration-attorney.com/icc-rules-of-arbitration-2012/#article_29> accessed 28 November 2022

[9] 2012 ICC rules, Article 29 – Emergency Arbitrator

A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal ("Emergency Measures") may make an application for such measures pursuant to the Emergency Arbitrator Rules in Appendix V……. 7)Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of the arbitration agreement. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat.

[10] '2021 Arbitration Rules' International Chamber of Commerce <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/> as accessed December 28, 2022.

emergency arbitrator, place of proceedings, order, cost of the entire session of emergency arbitration, and the general rule.

The step taken by the United Nations Commission of International Trade Law (UNCITRAL) to modify its 1985 Model law on International Commercial Arbitration in 2006 and to incorporate provisions related to interim relief was a welcoming step and it also paved the way for many other institutions to follow in the same line. Under Article 9 and Article 17[11] of the model law provided by UNCITRAL granting of interim relief is talked about, but this granting of interim relief is by the tribunal, these Model law rules does not provide for emergency arbitration concept, rather provide for interim relief from arbitral tribunal only the Stockholm Chamber of Commerce (SCC) was among one of the first institutions along with Singapore International Arbitration Centre (SIAC) in 2010 to provide for Emergency Arbitration proceedings in its rules. Under SCC rules the procedure is to request for an interim measure before the case has been referred to an arbitral tribunal and after the arbitration has been commenced. Also, these emergency arbitration

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11 'The ICC Rules of Arbitration (2012)' (2014) International Arbitration <https://www.international-arbitration-attorney.com/icc-rules-of-arbitration-2012/#article_29> accessed 28 November 2022

UNCITRAL Model Law –
Article 9. Arbitration agreement and interim measures by the court
"It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure".
Article 17. Power of arbitral tribunal to order interim measures
"(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures. (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to: (a) Maintain or restore the status quo pending determination of the dispute; (b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself; (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or (d) Preserve evidence that may be relevant and material to the resolution of the dispute".

rules apply to all SCC arbitrations unless the parties agree otherwise. The decision of the Emergency Arbitrator in SCC arbitration is binding on the parties.

In India the 20th law commission constituted in 2012 was given the task of reviewing the provisions of arbitration laws as various inadequacies were observed in the functioning of the act. The commission proposed to broaden the definition of arbitral tribunal by including 'emergency arbitrator' in it. This definition was not made part of the amended Act of 2015. Later a high-level committee constituted in 2016 reviewed the working of arbitration mechanism in the country and its recommendation was that for making India 'a robust center for international and domestic arbitration'[12] India need to adopt the recommendations made by law commission and advised that India ought to permit the emergency awards and should enforce them as there is already significant uncertainty regarding emergency arbitration in Indian law[13]. Even after all such recommendations no statutory recognition has been given to the awards or orders passed by emergency arbitrators. In Indian laws, the mention is not of emergency arbitration, but the law provides for fast-track arbitration through arbitral tribunals. This is given under Section 29B of the Arbitration and Conciliation Act[14] and it was added by the 2015

[12] 'Constitution of High-Level Committee to Review Institutionalization of Arbitration Mechanism in India', (December, 2016) Press Information Bureau Press Release, Ministry of Law and Justice, Government of India <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155959>accessed 15 September, 2022

[13] Ranjeet Shetty, 'Recognition and Enforcement of Emergency Arbitration In India: A Comment on The Supreme Court's Ruling in Amazon - Future Dispute' (March 2022) Argus Partners Solicitors and Advocates <https://www.argus-p.com/papers-publications/thought-paper/recognition-and-enforcement-of-emergency-arbitration-in-india-a-comment-on-the-supreme-courts-ruling-in-amazon-future-dispute/#_ftn22 > accessed 31 Dec 2022

[14] Section 29b, Arbitration and Conciliation Act –
29B. Fast track procedure. - (1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the

Amendment. Under this section, a sole arbitrator is appointed to look over the matter, instead of the provision of each party appointing their arbitrator, or there being three arbitrators. But it is an irony that the time limit for arbitral tribunals to dispose of the matter under fast-track arbitration proceedings is six months. Also under this section, the tribunal is to decide based on the documents, pleadings and written submissions, without any oral hearing and the tribunal can go ahead with an oral hearing if it feels that this is what is necessary.

The International Centre for the Settlement of Investment Disputes (ICSID) chapter IV is about arbitration and Article 47 of the ICSID Convention, Arbitration Rule 39[15] permits for the tribunal to consider interim remedies to protect the parties' interests wherever appropriate. The procedure under ICSID is for the parties to request temporary measures, following which the time limit for the written submission is set, the tribunal holds a hearing, and a judgment must be reached within 30 days after the tribunal's formation.

The Swiss Chambers Arbitration Institution (SCAI) also consists of rules for emergency arbitration; Under Article 43[16] applications have to be submitted

arbitral tribunal, agree in writing to have their dispute resolved by fast-track procedure specified in sub-section (3) …… (6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.

[15] ICSID Convention – Article 47 – Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.
Rule 39 – Provisional Measures – 1) At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal……..(6) Nothing in this Rule shall prevent the parties, provided that they have so stipulated in the agreement recording their consent, from requesting any judicial or other authority to order provisional measures, prior to or after the institution of the proceeding, for the preservation of their respective rights and interests.

[16] SCAI Rules –Emergency Relief - Article 43 – 1. Unless the parties have agreed otherwise, a party requiring urgent interim measures pursuant to Article 26 before the arbitral tribunal is constituted may submit to the Secretariat an application for emergency relief proceedings (hereinafter the "Application") ……. 11. The emergency arbitrator may not serve as

before an emergency arbitrator for emergency relief pursuant to Article 26[17] for availing interim relief (power of the arbitral tribunal to grant interim relief). The timeline under SIAC is to give a decision on the application within fifteen days after the secretariat transmits the file to the emergency arbitrator.

Pertinent to mention here that when all these institutions globally have made provisions for emergency arbitration the question still remains about the legitimacy, enforceability and bindingness of the emergency arbitrators' order before the arbitral tribunal.

The Embodiment of the Arbitral award

The final decisions of emergency arbitrators can take different forms of an order or award, depending on the institutional rules which have been followed, for granting an award. For instance, SIAC rules talk about emergency arbitrators making an 'interim order or award', and LCIA (London Court of International Arbitration) rules talk about 'any order or award'. The New York convention to which India is a signatory also faced the main question of enforcing the order given out by the referee under the 1990s ICC Pre-Arbitral Rules. And in Société nationale des pétroles du Congo et République du Congo v. Total Fina Elf E&P[18] case, the Paris court held that the decision passed by the pre-arbitral referee doesn't even comprise an arbitral award. The Court stated that a referee's order has the same binding

arbitrator in any arbitration relating to the dispute in respect of which the emergency arbitrator has acted, unless otherwise agreed by the parties.

[17] SCAI Rules – Interim Measures of Protection - Article 26 – 1. At the request of a party, the arbitral tribunal may grant any interim measures it deems necessary or appropriate. Upon the application of any party or, in exceptional circumstances and with prior notice to the parties, on its own initiative, the arbitral tribunal may also modify, suspend or terminate any interim measures granted…….6. The arbitral tribunal shall have discretion to apportion the costs relating to a request for interim measures in an interim award or in the final award.

[18]

force as any other contractual condition that the parties agree to be bound by through an agreement. But contrary to these 1990s pre-arbitral referee rules of ICC, the present ICC provisions on EA are an integral part of ICC's arbitration rules. The Swiss Rules on International Arbitration clearly state that the award of an emergency arbitrator will have the effect of a decision passed by the arbitral tribunal on interim measures, and this is given in Article 43(8) read along with Article 29 of the Swiss rules[19]. Following the minimal procedural requirements, in addition to being impartial and independent, the Swiss Rules on International Arbitration gives the impression that when ruling on temporary measures, the emergency arbitrator has the same authority as an arbitral panel. With regard to the form and nature of measures provided by the EA as interim relief, there are various approaches taken by different jurisdictions when it comes to enforcing the EA's decision. With the arbitral award there exist many formalistic distinctions across various institutions, but it has been seen that irrespective of the terminology many of the jurisdictions give recognition to the concept of substance over form[20] suggests that the value of the judgement is prioritized over the many labels that the arbitral ruling is given under different regulations.

Enforceability and Legitimacy of Emergency Arbitrator

[19] Swiss Rules – Article 43 (8) - A decision of the emergency arbitrator shall have the same effects as a decision pursuant to Article 29. Any interim measure granted by the emergency arbitrator may be modified, suspended or terminated by the emergency arbitrator or, after transmission of the file to it, by the arbitral tribunal.
Article 29 – Interim Measures - Article 29 1. At the request of a party, the arbitral tribunal may grant any interim measures it deems necessary or appropriate. Upon the application of any party or, in exceptional circumstances and with prior notice to the parties, on its own initiative, the arbitral tribunal may also modify, suspend or terminate any interim measures granted…… A request for interim measures addressed by any party to a judicial authority shall not be deemed to be incompatible with the Arbitration Agreement or to constitute a waiver of that agreement.

[20] Dominik Horodyski, Enforcement of emergency arbitrator's decisions – legal problems and global trends, ResearchGate, pg.31 (2016).

A main question that emerges from the development of emergency arbitration procedure is whether the benefits afforded to a party through it are undermined by uncertainty as to whether an order or award issued accordingly is enforceable.

The status of enforceability of an emergency arbitrator's decision is different with respect to state courts, arbitral institutions, and existing worldwide trends. Before enforceability, the initial question to be dealt with is regarding the seat of proceedings of emergency arbitration. As the judgement in Amazon vs. Future case has resolved the doubt regarding the enforceability of orders of the emergency arbitrator in India the same are enforceable. But when it comes to foreign seated emergency arbitrations the question relating to enforceability is unanswered, and the parties take recourse to section 9 of the Arbitration Act in an attempt to enforce the orders of emergency arbitration..

Ways through which such decisions can be put into force is when the national law provides very clearly for putting into effect their decisions o or the decision can be enforced under the New York Convention, or by using the existing laws that recognize and enforce the interim measures granted by arbitral tribunals in analogy to the decisions of EA[21]. Only certain countries have explicit laws that provide for the enforcement of decisions of an emergency arbitrator, for instance, enforcement is provided in the national law of Singapore and Hong Kong. Singapore through an amendment in 2012 broadened the definition of the arbitral tribunal and of the award. Similarly, Hong Kong in 2013 amended their law and made the decision of the emergency arbitrator enforceable in the same way as a court order.

[21] *Ibid pg. 33*

The New York Convention, to which India has also signed, exclusively addresses the acceptance and execution of international arbitral judgments. According to this Convention, for an award to be enforceable it should be both binding and final as per Article 1(1) of the Convention. When it comes to the nature of an emergency arbitrator's judgment, the majority of US courts regard the temporary measure issued by the emergency arbitrator to be final as a matter of law for enforcement purposes[22]. In Sperry International Trade v. Government of Israel[23] The US courts have determined that an arbitral interim award is final, making it enforceable under the Convention. The US district court in this case ruled that the interim order was final, making it enforceable under the New York Convention. Similarly, in Southern Seas Navigation Ltd. Of Monrovia v. Petroleos Mexicanos of Mexico City[24], the interim ruling was treated as a final award and found to be enforceable, and the court reasoned that such an award was an end in itself, as the purpose of such an interim measure is to clarify the parties' rights only for the interim period, and the decision on the merits is still pending[25]. The US courts have been the pioneers in setting out the practical path that might help ignore the conceptual obstacles in facilitating an EA decision and the mechanism agreed upon by the parties[26].

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[22] *Ibid pg. 34*

[23] Sperry International Trade v. Government of Israel (1982) United States Court of Appeal 532 F. Supp. 901n

[24] Southern Seas Navigation Ltd. of Monrovia v. Petroleos Mexicanos of Mexico City, 606 F. Supp. 692, United States District Court, S.D. New York (1985), excerpts cited by D.F. Donovan, [in:] A. van den Berg (ed), International Commercial Arbitration: Important Contemporary Questions, ICC Congress Series No. 11, Kluwer Law International, p. 142 (2003).

[25] Horodyski, supra note 21, at 32.

[26] *Ibid pg. 37*

The third path is to find an analogy between the interim measures passed by the arbitral tribunals and the decisions of the emergency arbitrator. There can be no debate about whether or not this analogy may be used, for the question comes around the legitimacy of the decisions of the EA and the authority of the emergency arbitrator to issue interim measures. But in India the Supreme court through the Amazon v. Future case has sanctioned to an Emergency Arbitrator's legitimacy, saying that this legitimacy is derived from the party's consent to certain procedural rules[27] party autonomy is the grund-norm of arbitration. In Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.[28] The Supreme Court's interpretation was in favour of emergency arbitration. The Supreme Court observed that just because the Law Commission's recommendations are not followed by Parliament, it doesn't necessarily make us reach the conclusion that the suggestion of the Law Commission can't be made a part of the statute if the statute is properly interpreted[29].

Indian Perspective

With reference to emergency arbitration certain amendments were proposed as there are no existing rules in India but the amendments were never included in the Arbitration Act. The stand in India regarding the binding nature of arbitral awards can be understood from the fact that India is a signatory to the

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[27] Naresh Thacker and Harshvardhan Nankani, "Amazon v. Future: A creature called 'Emergency Arbitrator" (September 2022) Economy Laws Practice <https://elplaw.in/amazon-v-future-a-creature-called-emergency-arbitrator/\> accessed 31 Dec 2022

[28] Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd [2021] 4 SCC 713, [27]-[29] and [32]

[29] Naresh Thacker and Harshvardhan Nankani, "Amazon v. Future: A creature called 'Emergency Arbitrator" (September 2022) Economy Laws Practice <https://elplaw.in/amazon-v-future-a-creature-called-emergency-arbitrator/\> accessed 31 Dec 2022.

New York Convention and this Convention talks about the process of recognizing and enforcing of arbitral awards delivered in foreign jurisdictions. As of now, India has not laid out any rules that deal with the binding nature of the award of an EA and its position on enforcing foreign seated arbitrations which also include emergency arbitration. According to the SC, 'arbitration proceedings' cannot be restricted to any type or form implying that emergency arbitrator proceedings can also be understood to be part of arbitral proceedings[30].

Indian laws clearly lack in demarcating whether an emergency arbitration decision is an order or award and what would be the enforceability mechanism for such order or award. The legislative intent behind the recent changes that were made to the Arbitration Act has been to make it clear that a tribunal has the power to grant interim relief. Furthermore, the measures provided by emergency arbitration are also in the nature of interim relief. This creates confusion between the position of an order or award of EA and that of a tribunal. When the aim of EA is to provide interim measures and as per Indian laws unless the parties otherwise agree, they can obtain interim measures from an arbitral tribunal or court. So, when both emergency arbitration and arbitral tribunal can provide interim measures, why exactly is the award given by the former not enforced in the manner and with a strict sense like an arbitral tribunal's award is enforced is a question that remains unanswered. The emergency arbitrator's judgment is not binding on the arbitral tribunal, and neither party is required to comply with their decision. The non-binding nature of the emergency arbitrator's award creates a huge loophole in the whole process of EA because when one party approaches EA

[30] Narmdeshwar Singh, 'Enforcement of Emergency Awards – India Takes a Leap' (September 2021) JDSUPRA <https://www.jdsupra.com/legalnews/enforcement-of-emergency-awards-india-3040455/ > accessed 31 Dec 2022

for immediate relief, the other party intends to not even comply with its decision from the very beginning of the proceedings. It is considered that the orders of emergency arbitrators hold just interim powers and they don't affect the final award.

An Analysis of Case studies

There exists a mixed opinion and decision of courts with reference to emergency arbitration. In Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd.[31] the parties got interim orders from a foreign seated arbitration conducted under the SIAC rules. The parties here approached the Hon'ble Delhi HC to enforce the interim orders that were passed by the EA, in response to which the court said that the decision given by an emergency arbitrator seated in a foreign country, cannot be put into force under the Indian Arbitration Act. The HC granted interim relief to the parties under Section 9 of the Arbitration Act which talks about the interim measures that the court can take before or during arbitral proceedings. But the court did not put into force the award of the arbitrator.

In a similar case of Avitel Post Studioz Ltd. v. HSBS PI Holdings (Mauritius) Ltd.[32] interim relief was granted by an emergency arbitrator under SIAC rules, but the Hon'ble Bombay High Court did not put into effect the award that was given by the emergency arbitrator rather granted interim relief under Section 9 of the Arbitration Act. Through both cases, the High Courts hinted at the restrictions prevalent in India regarding the enforcement of emergency awards in a foreign seated arbitration.

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[31] Raffles Design International India Pvt. Ltd. v. Educomp Professional Education Ltd. [2016] 234 DLT 349 (Delhi High Court)

[32] Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd [2014] SCC OnLine Bom 929 (Bombay High Court)

Again, in the case of Ashwani Minda v. U-Shin Ltd,[33] the parties approached an EA and were governed by the Japan Commercial Arbitration Association Rules (JCAA) and when the emergency arbitrator refused to grant interim relief to the parties, the applicant came before the Delhi HC to ask for similar relief under section 9 of Arbitration Act. Observing strictly the court observed, that the party cannot go around and approach the court for the relief that they could not get from the emergency arbitrator. The court came to the decision that the court could not sit and work as a Court of Appeal to examine the order or award of an emergency arbitrator. It is worth noting that the court's views might be seen as a subtle endorsement of the competency of an emergency arbitrator for giving interim reliefs as an alternative to approaching the court under section 9 for interim relief[34].

All these cases and the response of the courts show that there are no statutory provisions for enforcing foreign seated arbitration awards in India, but nothing stops the court from granting similar interim reliefs under section 9 of the Arbitration Act. This process of parties approaching the emergency arbitrator and then, to the court for getting interim relief, in the absence of a law, to directly enforce orders or awards of emergency arbitrator resulted in an increased burden on both the courts and parties themselves; as parties had to face unnecessary delays (quite opposite to what the parties wanted).

Other judgements related to arbitration where the stand of the court can be seen clearly is the BALCO[35] case where the court gave its decision in favor

[33] Ashwani Minda v. U-Shin Ltd. AIR [2020] (NOC 953) 314

[34] Ranjeet Shetty, 'Recognition and Enforcement of Emergency Arbitration In India: A Comment on The Supreme Court's Ruling in Amazon - Future Dispute' (March 2022) Argus Partners Solicitors and Advocates <https://www.argus-p.com/papers-publications/thought-paper/recognition-and-enforcement-of-emergency-arbitration-in-india-a-comment-on-the-supreme-courts-ruling-in-amazon-future-dispute/#_ftn22 > accessed 31 Dec 2022

[35] Bharat Aluminium Co. vs. Kaiser Aluminium Technical Services Inc, (2012) 9 SCC 552

of party's autonomy and in a different case of Xeitgeist Entertainment[36] court granted relief similar to the decision that was granted by a foreign seated arbitration[37].

In the recent judgement of Amazon. v. Future Retail[38], the Supreme Court gave the judgement in favor of enforcing the decision of the emergency arbitrator in an India-seated arbitration. Importantly, the Indian stand on the enforceability of foreign-seated emergency arbitration awards is still not clear. Again, the direct enforceability of an EA award is yet to be provided with or legislated through an Act, one has to approach the court to get the award recognized and get it enforced. Since the New York Convention exclusively addresses the acceptance and enforcement of international arbitral judgments, the Convention requires the order to be final for being enforceable. But when the finality of the emergency arbitration award itself is put in question by the parties, it is argued that they (the parties) should not approach the courts for enforcement and there is a dire need for the rules to be framed where direct enforcement can be done by parties through arbitration institutions and they can have an authority to put the same in enforcement. Along with this, an emergency arbitration is meant to give temporary relief with or without delving into the merits of the case. But inadvertently, the EA delves into the merits of the case even for giving a temporary relief which should be submitted and awarded by an arbitral tribunal as decided by the contractual terms. This itself is questionable and

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[36] Plus Holdings v Xeitgeist Entertainment Group 2019 SCC OnLine Bom 13069, [6, 8] (Bombay High Court)

[37] Similar stand like that of BALCO case was taken by court in case Centrotrade Minerals & Metal Inc. vs. Hindustan Copper Ltd. ((2017) 2 SCC 228) and in Bharat Aluminium Co. vs. Kaiser Aluminium Technical Services Inc. ((2016) 4 SCC 126).

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makes arbitration more complicated. One can find recourse for interim relief to courts and now, to an EA- is there any difference between the both except for the procedural distinction, and the time aspect involved.

Review Aspect in an Emergency Arbitration

With reference to various sources for selecting the elements that are used by emergency arbitrators for granting emergency measures, the elements for acceptance of an application for granting relief are prima facie jurisdiction, urgency, if prima facie there is a case on the case's merits and the serious or irreparable harm that may be done if the matter is not heard. When references from various sources imply that the emergency arbitration process takes place on the merits of the case, then how is the procedure of emergency arbitration any different from the process of arbitration before the tribunal? Recent report on decisions given by emergency arbitrator in 2015-2016 of Stockholm Chambers of Commerce (SCC)[39]show that the frameworks with regard to the merits of the case, for it to be selected for review in an emergency arbitration are undergoing some change. And one such changing element is to show that the claimant's claim is more plausible i.e., that the claimant is more likely to succeed on merits than the respondent. Many of the rules on the procedure of emergency arbitrators lack the precise mention of the conditions or elements required for granting interim measures or relief.

There are no standards that have been accepted by any of the institutions, even when tribunals have the opinion that some kind of review of the merits of the case should be done to accept matters. Reference was made to UNCITRAL

[39] 'Kyongwha Chung', "Prima Facie Case on the Merits in Emergency Arbitrator Procedure" (September 8, 2017) Kluwer Arbitration Blog <http://arbitrationblog.kluwerarbitration.com/2017/09/08/prima-facie-case-merits-emergency-arbitrator-procedure/> accessed 27 December,2022

Model Law by Stockholm Chambers of Commerce emergency arbitrators to look for precedents on emergency relief, and the preceding criteria imposed by Section 17A is that the party demonstrates a realistic prospect of success on the merits of the claim. The requirements for an arbitral tribunal to award an interim measure of protection are spelled out in Model Law Article 17A. Interim measures, as they are known, are orders for temporary relief that safeguard the interests of the parties before the ultimate settlement of an issue.

Certain difference is there in the manner emergency arbitrators under different laws have considered a claim to be plausible. This difference in the presence of standards can be seen as English courts required the party to show a real (close to surety)) chance of success on merits, whereas U.S. courts require the party to show either a substantial likelihood, a possibility or a probability of getting success on the merits. Other jurisdictions like Spain and Germany have a stricter standard on the line of "fumi boni juris (literally: smoke of a good fire)" for accepting the matter for emergency arbitration[40]

There is confusion in the set standard for granting interim measures as some jurisdictions require a real prospect of success on the case's merits, some other jurisdictions require just probability or a likelihood, and others require a substantial likelihood. These instances show the confusion around the nature of the decision that is passed by emergency arbitrators and the grounds over which such orders are passed.

The very nature and purpose of an emergency arbitration is to limit the emergency arbitrators from deciding on the case's merits, like the restrained timelines, providing expeditious measures. The dictum of relief at such an expeditious rate, when the mandate of the emergency arbitrator is temporary,

[40] *Ibid 12*

discourages a substantive review of the merits of a matter. But references to elements from different sources show that merits of case are taken into consideration for reviewing the applications, whereas the aim behind setting up emergency arbitration is to provide interim measures without going on the merits of the case.

All these aspects lead to more confusion, and nowhere shows that EA's decisions are not based on the merits of the case. It is therefore argued that the above discussions lead the authors to conclude that interim relief is inevitably granted by emergency arbitrators on the merits of the case.

Institutional Procedure for An Emergency Arbitration

The International Centre for Dispute Resolution (ICDR), an American Arbitration Association's international branch, provides the services of dispute resolution and international arbitration. ICDR is headquartered in New York. ICDR incorporated a provision, dealing with emergency measures of protection, into its International Arbitration Rules on May 1, 2006. Under Article 37[41] of the ICDR Rules, parties are entitled to arbitration and can appoint an EA- one who will address the grievances and further requests to initiate emergency relief as found necessary before the establishment of the arbitration panel. And under the amended ICDR rules effective from 2014 the emergency measures for protection of the parties is given under Article 6.[42]

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[41] ICDR Rules 2006- Article 37 – Emergency Measures of Protection
"1. Unless the parties agree otherwise, the provisions of this Article 37 shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after May 1, 2006……. 9. The costs associated with applications for emergency relief shall initially be apportionment of such costs".

[42] ICDR Rules 2014 – Article 6 – Emergency Measures of Protection
1. A party may apply for emergency relief before the constitution of the arbitral tribunal by submitting a written notice to the Administrator and to all other parties setting forth the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the

Many other institutions have also made certain rules regarding emergency arbitration like the ICC Arbitration Rules in 2012 introduced the role of an emergency arbitrator, The step of UNCITRAL Commission to modify its 1985 model law on International Commercial Arbitration in 2006 and to incorporate provisions related to interim measures was a welcoming step and it also paved way for many other institutions to make rules on the same line.

American Arbitration Association (AAA) also provides provisions for emergency arbitration, under rule 39[43] of its rules amended and effective from September 2022. Under AAA the interim relief is to be awarded within 30 calendar days, from the closing of hearing of the matter.

Hong Kong International Arbitration Centre (HKIAC) rules also have provisions for emergency arbitration for relief to the parties before formation of tribunal, under Schedule 4[44] of the HKIAC Rules, 2013. The parties must file an application for the appointment of an emergency arbitrator and the emergency arbitrator's decision is binding on the parties[45]. In this case, the arbitrator must render a ruling within 15 days after receiving the case file.

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reasons why the party is entitled to such relief……8. The costs associated with applications for emergency relief shall be addressed by the emergency arbitrator, subject to the power of the arbitral tribunal to determine finally the allocation of such costs.

[43] Rule 39 of American Arbitration Association – Emergency Measures of Protection
Rule 39 – Unless the parties agree otherwise, the provisions of this Rule shall apply to arbitrators conducted under arbitration clauses or agreements entered on or after October 1, 2013…… The emergency arbitrator may take into consideration whether the request for emergency relief was made in good faith.

[44] HKIAC Rules – Schedule 4 – Emergency Arbitrator Procedures
1. A party requiring Emergency Relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the arbitral tribunal, submit an application (the "Application") for the appointment of an emergency arbitrator (the "Emergency Arbitrator") to HKIAC…… 24. The Emergency Arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

[45] http://hkiac.org/arbitration/rules-practice-notes/administered-arbitration-rules/hkiac-administered-2013-2#S4

London Court of International Arbitration (LCIA) under Article 9[46] provides for emergency arbitration. Here the emergency arbitrator has to pass a final decision within 14 days of appointment. For appointment of arbitrator under LCIA an application has to be made as per the rules of LCIA.

Provisions of these institutional rules show the methods and ways by which it is attempted that the parties can be provided with urgent interim relief, and won't have to approach time-consuming arbitral tribunals. Emergency arbitration is an easier process, where all the parties make an application at the earliest instance and they would have their issues resolved within 15 to 20 days, as different time limits have been set by different institutions.

Recent Developments

While dealing with EA, one also needs to cater to the concept of expedited arbitration. In line with the expectations, more applications were received under the expedited procedure, under the SIAC rules. Therefore, one can question if an expedited arbitration procedure is more reliable or easy to follow than emergency arbitration. Is there really any difference in the procedure followed by either the EA or the expedited arbitration?

The Singapore International Arbitration Centre has provisions for both emergency arbitration and expedited arbitration procedure[47]. Since the

[46] LCIA Rules – Article 9B – Emergency Arbitrator - 9.4 Subject always to Article 9.16 below, in the case of emergency at any time prior to the formation or expedited formation of the Arbitral Tribunal (under Articles 5 or 9A), any party may apply to the LCIA court for the immediate appointment of a temporary sole arbitrator to conduct emergency proceedings pending the formation or expedited formation of the Arbitral Tribunal (the "Emergency Arbitrator")…… 9.16 Article 9B shall not apply if either: (i) the parties have concluded their arbitration agreement before 1 October 2014 and the parties have not agreed in writing to 'opt in' to Article 9B; or (ii) the parties have agreed in writing at any time to 'opt out' of Article 9B.

[47] Rule 5.1 of SIAC Rules – Application for Expedited procedure and Rule 26.2 of SIAC Rule – Application for Emergency arbitration. Other Global institutions that provides for both

introduction of the emergency arbitration concept and by the end of 2014, a number of 42 applications have been filed with SIAC, and out of these applications, 24 applications were granted by the emergency arbitrator (four by consent and four in part) and 14 were rejected. The enforceability of orders given by emergency arbitrators depends on the parties of the case and the jurisdictions as the awards issued by emergency arbitrators are enforceable under Singapore law.

Enforcing effect to an award of emergency arbitration under Singapore law was given through an amendment in 2012 in Singapore's International Act and this amendment gave the enforceability effect to awards and orders issued by emergency arbitrators in the arbitrations seated inside Singapore or outside Singapore arbitrations.

The expedited procedure adopted by SIAC was included in its rules in 2010 and the said procedure was a time and cost-saving option available to parties. Here the limit for filing for expedited procedure was the setting of a pecuniary limit to a dispute[48]. The expedited approach has proven to be highly popular with parties when it was introduced in 2010. The SIAC has received 159 applications as of December 31, 2014; 107 of which have been approved. The SIAC received 44 requests in 2014 and 23 of them were approved.

Emergency arbitration and Expedited Procedure are Stockholm Chamber of Commerce (SCC) under 2010 Expedited rules and Appendix II, Netherlands Arbitration Institute (NAI) Rules 2010 (Article 42a and 42b), Swiss Chambers Arbitration Institute (SCAI) Rules 2012 (Article 42-43), Mexico City National Chamber of Commerce (CANACO) Rules 2008 (Article 36 and 50).

[48] For expedited procedure under SIAC rules the pecuniary limit is SGD 6,000,000 in accordance with Article 5.1 of the SIAC Rules. Similarly other institutions also have such pecuniary limits like HKD 25,000,000 in accordance with Article 41.1 of the HKIAC Rules; USD 2,000,000 in accordance with Annex VI of the ICC Rules; CHF 1,000,000 in accordance with Article 42.2 of the Swiss Rules;

Unquestionably, the availability of expedited procedure and emergency relief is a welcome and useful substitute for parties looking for temporary relief who might be hesitant to navigate the uncharted or unfamiliar waters of local courts in other jurisdictions as well as those looking to minimize their time and financial outlays. Instead, the accelerated procedure provided under SIAC rules and the provisions regarding emergency arbitrator under the SIAC offer parties a quick and effective way to get prompt and enforceable relief within the impartial, private, and economical setting of international arbitration.

When it comes to Indian laws, there exists no law that talks about emergency arbitration and the term expedited is used to refer to the proceedings of an arbitral tribunal, and the Arbitration act provides for this accelerated procedure under Section 29B in the name of fast-track arbitral proceedings. This fast-tracks proceedings under section 29B though does not exactly talk about interim relief, rather it talks about an expedited method. In the name of fast disposal of cases parties in India have to take recourse to the Arbitration Act and under section 17(1) can get interim order from the tribunal and can get the same enforced under section 17(2)[49] of the Arbitration Act. Other than this section 9[50] of the Act provides Indian courts the power to pass orders of

[49] Arbitration and Conciliation Act – Section 17 – Interim Measures ordered by Arbitral Tribunal
(1) 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.
(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).

[50] Arbitration and Conciliation Act 1996 – Section 9 – Interim Measures, etc. by court -
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…… (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 order as it has for the purpose of, and in relation to, any proceedings before it.

interim relief in favor of the parties on an urgent basis. An application under Section 9(1) is ought to be considered only in times when the application cannot be made to wait till the time of formation of arbitral tribunal[51].

The point that can be taken from here is how many international institutions provide for emergency arbitration rules, and this can be seen as an attempt to reduce the procedural time, and the mechanisms that parties need to follow to get an immediate relief. In answer to raising criticisms about the length of arbitral proceedings institutions provided with the option of fast-track arbitration (also known as expedited arbitration)[52].

The first one among many institutions of arbitration to come up with the expedited procedure was the Geneva Chamber of Commerce and Industry in 1992. The point of difference between arbitral tribunals and emergency arbitration is of the procedural aspects of them, and is of the time taken by both these institutions to give their decision.

Expedited procedure can be termed as a complete arbitration process, compressed into a shorter span of time for faster resolution of disputes. The fast-track arbitration's condition are different from one jurisdiction to another, and between different arbitral institutions

Fast-track arbitration is distinguished from emergency arbitration, even though both provide a compressed procedure, but in emergency arbitration the application is for interim or conservatory measures, which cannot wait till

51 'Abhisar Vidyarthi', "Time for Indian Courts to Make Way For Emergency Arbitrators?" (September, 2022) India Corp Law < https://indiacorplaw.in/2022/09/time-for-indian-courts-to-make-way-for-emergency-arbitrators.html> accessed 27 December 2022

52 'Josephine Hage Chahine', "Fast Track Arbitration: a time-efficient procedure that could hinder the award?" (May, 2020) Jus Mundi < https://blog.jusmundi.com/fast-track-arbitration-a-time-efficient-procedure-that-could-hinder-the-award/> accessed 28 December,2022

the formation of the tribunal. But fast-track arbitration's key features can be – appointing a sole arbitrator and this could be a mandatory condition, it is optional for the arbitrator to create terms of reference, another possibility is that the requests for document production is not complied with within the limit of the time taken and to put a limit on the written submissions and evidences, possibility to settle the matter with the hearing alone and not go for examination of witnesses and experts, providing a summary award[53].

Fast track arbitration can be considered appropriate for matters where simple legal questions are in issue (like cases of project resumption, disputes out of simple transactions), nothing such which requires the involvement of experts, for instance, sale and purchase agreements. Because fast-track arbitrations are arbitral proceedings by tribunals only, the shortened time limits can lead to constraints on parties while presenting their case like refusal for document production. And due to such shortcomings, the parties might also refuse to agree with the award and might not consider it binding on themselves. The only thing that is different about such measures issued under fast-track arbitration, does not carry the res judicata effect. The award issued by the arbitrator in emergency arbitration is not applicable with the tribunal as per various arbitration institutions' rules, and the decision of emergency arbitration carries effect till a decision has been given by the tribunal.

Going by this it can be understood that the process of emergency arbitration is more efficient when it comes on requiring urgent interim relief as expedited procedure is just arbitral tribunal proceedings with compressed time limits for faster disposal of matter.

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[53] *Ibid*

Conclusion

Emergency arbitration has been a part of a lot of discussions in the sphere of arbitration in recent years. This practice has evolved in quite a rapid manner, the objective of providing interim and urgent relief to the parties led to the emergence of this concept of emergency arbitration when various other methods exist for parties to take recourse to arbitration. Institutions around the world have attempted in an intriguing manner to come up with the rules and procedures of emergency arbitration at the earliest, and all this has helped in realizing the aim of arbitration i.e., private, and speedy resolution of disputes. Given the increasing recognition of this practice of emergency arbitration, there arise certain questions about the procedure, the end effect of the emergency arbitrator's award, the basis of accepting the matter, and most importantly the acceptability of this mode of arbitration. This concept of emergency arbitration is considerably unique in comparison to the procedures already existing, but certain claims of emergency arbitration like that of giving a decision without delving into the merits of the case, are something that cannot be agreed to. Going by the rules and procedures of several institutions and jurisdictions one thing that can certainly be said is that the emergency arbitration is delivered on the merits of the case, even if it is a cursory glance, as per some institutional rules, but institutions like Stockholm Chambers of Commerce, UNCITRAL Model law and rulings of English courts gives the idea that the case is taken by the emergency arbitrator on basis of merits of the case, similarly, the decision is rendered on the basis of the merits of the case. When emergency arbitration is talked about, the doubt that may arise with some is that is it the same as the Expedited procedure, and to that, the answer is no, the similarity that is in both the procedures of emergency arbitration and expedited arbitration is the time factor, which is how both the processes aim to cut short the time taken for disposing of the

matter, but Expedited procedure at its roots is just a fast-tracked approach on the proceedings of arbitral tribunals only. The point that is to be made here is that emergency arbitration is more effective than expedited arbitration. Under expedited procedure, even for speedy disposal, the arbitral tribunal is only approached, but with emergency arbitration, the entire point that has been attempted to be made is that the parties don't have time to go to arbitral tribunals. The major question arises around the binding force that the decision of the emergency arbitrator carries, to which no static answer could be found. To substantiate the claim about the question regarding the binding nature of the emergency arbitrator's given the decision the recent International Bar Association undertaken report can be cited, titled The Current State and Future of International Arbitration: Regional Perspective, this report was completed in 2015 and this report highlights that how one of the most relevant problems that the contributors point at was the enforceability of the decisions given by emergency arbitrators[54]. As discussed above in the paper that the enforceability of the decision of the emergency arbitrator can be led through three ways, it can be either when the law of the country directly provides for enforcing decision of EA, or using the existing national laws to recognize and enforce the granted interim measures or under the New York Convention. Certain countries and international institutions have given explicit recognition to the awards of emergency arbitrators like Singapore or Hong Kong. With reference to India the only explicit recognition is given to enforcing the decisions of Indian-seated arbitration, but in the context of enforcing foreign seated arbitrations the stand is still not clear. This process of emergency arbitration is no doubt more convenient for the parties for faster disposal of

[54] 'The Current Stata and Future of International Arbitration: Regional Perspectives' (2015) International Law Association < https://cvdvn.files.wordpress.com/2018/10/int-arbitration-report-2015.pdf> accessed 28 December 2022

matters, but this vacuum around the enforceability of EA's decision can make the parties skeptical about this method. The need of the hour is for the jurisdictions to put forth rules for recognizing the decisions and enforcing the same, so that the aim with which this entire concept of emergency arbitration was brought forth can be achieved. The doubts or anomalies around the procedure of emergency arbitration have been discussed, but what still needs to be looked into is whether or not emergency arbitration is the correct way out in emergency situations.