



# Jus Corpus Law Journal

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## Case Comment: Future Retails Limited v Amazon.Com NV Investment, 2022

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### ABOUT THE FACTS

*Amazon Group* on December 2019 invested 1431Cr. in *Future group* and acquired its subsidiary *Future Coupon Pvt. Ltd.* Which was 7.9% of the *future group*, as a result of this deal Amazon's holding in the *future group's* stake was marked as 3%. The investment was recorded in the Share subscriber agreement on August 2019, being a major shareholder of the group, Amazon had a great say in the major decisions since it held 3% of the shareholding. In the Schedule III of the FCPL Shareholders' agreement between *Amazon* and *Future group*, a list of the multinational subsidiary group was mentioned as per that list *Future group*, *Future Coupons Pvt. Ltd.*, as well as *Biyani group* who were major shareholders of *Future group*, were "prohibited" from encumbering/ transferring/ selling/ divesting /disposing of its retail assets to "restricted persons".

In case of any dispute, it was mentioned that the emergency arbitrator will be *Singapore International Arbitration Centre [SIAC]* and all the disputes will be handled by SIAC. Hence on 26th December 2019, *Amazon group* invested the aforesaid sum of Rs.1431 crore in *Future Coupon*

*Pvt. Ltd.* which “flowed down” to *Future Retail Limited* on the very same day. The basic understanding between the companies was quite evident, Amazon’s investment in the retail assets of *Future Retail Limited* would continue to vest in *Future Retail Limited*, as a result of which FRL could not transfer its retail assets without FCPL’s consent would indirectly be granted by Amazon. After seemingly half a year or so, On 29<sup>th</sup> August 2020, Future group entered into an agreement with *Mukesh Dhirubhai Ambani Group* and amalgamated *future group* subsidiary *Future retail limited*, the agreement demanded the complete disposal of retail assets of future retail ltd. After this judgement Future retail along with the Reliance group went to NCLT for their further operational approval and got the agreement approved.

Soon after that Amazon filed for appeal at the high court under Section- 17(2)<sup>1</sup> & 37(b)<sup>2</sup> of the Arbitration and Conciliation act, 1996, And the court diluted the judgment by the lower court and stated that the judgement by the lower court was prima facie and declared that the Award by Singapore International Arbitration convention was fair enough hence, the injunction so froze prior can now come under enforcing and injunctions are valid.<sup>3</sup> Hence Future group cannot proceed with its deal previously made and the Future Group has to pay the damages previously claimed by Amazon group. As Future group was about to face a massive loss it re-appealed to the supreme court, the apex court has been hearing the fresh appeals which are against Delhi high court order that restrains them from further continuing with their deal and acquiring Rs 24,731 crore merger deal with Reliance Retail and asks them to stick to the Emergency award so given by Singapore International Arbitration convention.

## CONTENTION

*Arguments from the petitioner -*

The following were the contentions that were raised by the petitioner i.e. *Future Group -*

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<sup>1</sup> Arbitration and Conciliation Act 1996, s 17(2)

<sup>2</sup> Arbitration and Conciliation Act 1996, s 37(b)

<sup>3</sup> *Ibid*

- *Future Group* claimed that the restrictions so imposed by the *Amazon group* were vague and were Null as per the orders of *FEMA FDI* rules.
- *Future Group* claimed that the Emergency Arbitrator [EA] here *Singapore international arbitration convention* [SIAC] was falsely interrupting the agreement between *Future Group, Biyani group, Reliance Inc., and Mukesh Dhirubhai Ambani Group*.
- *Future Group* claimed in its arguments that the Award was biased as here *Singapore international arbitration convention* [SIAC] was assigned by *Amazon group*.
- *Future Group* also stated that *Singapore international arbitration convention* [SIAC] did not have any authority to be positioned as Emergency arbitrators in the present case.

So frozen prior can now come under enforcement and injunctions are valid. Hence Future group cannot proceed with its deal previously made and the Future Group has to pay the damages previously claimed by Amazon group. As Future group was about to face a massive loss it re-appealed to the Supreme Court, the apex court has been hearing the fresh appeals which are against Delhi high court order that restrains them from further continuing with their deal and acquiring Rs 24,731 crore merger deal with Reliance Retail and asks them to stick to the Emergency award so given by Singapore International Arbitration convention.

*Arguments from the respondent -*

The following were the contentions that were raised by the petitioner i.e. *Amazon group-*

- Amazon claimed that as per the Shareholder Subscriber agreement it was cleared that petitioners cannot enter into any type of form encumbering/ transferring/ selling/ divesting /disposing of with the restricted persons, and no issue was appalled by the petitioners at that time.
- As per the agreement it was also mentioned that if any dispute arises that the emergency arbitrator will be Singapore International Arbitration Convention [SIAC].

## JUDGEMENT

On 6<sup>th</sup> August 2021, The Apex court, revised the award by the Singapore international arbitration convention<sup>4</sup>, the judgement of the High court civil suit as well as the judgement of appeal by Amazon group and ordered as under-

- Hon'ble supreme court after revising the Award by Singapore international arbitration convention [SIAC] stated that the award was fair and was unbiased and true.

The court also stated that the award by such specific Arbitral bodies is legally binding and is just like court orders but by arbitration conventions.

Hon'ble supreme court after revising the order of the high court civil suit by Future retail Pvt. Ltd. stated that the order was prima facie and did not recognise the situation of the entire case, the supreme court dismissed the claim by future group, that the arbitral award was illegal and dismissed the argument that the **“Emergency Arbitrator is not an arbitral tribunal”**, and nullified the civil suits' order by High court.

Hon'ble supreme court after revising the order of high court appeal by Amazon stated that the order was fair and true, and supported the order by stating that the Emergency arbitral orders were fair and true and hence, an award by the EA was like an order under Section 17(1) (interim measures ordered by an arbitral tribunal) of the Act.

Facts presented by Amazon as well as finally passed the order of the High court stated that the Awards by the Singapore, Hong Kong, and the United Kingdom all permit enforcement of emergency awards, and the Award by them are just like orders and hence the Singapore International Arbitration convention award was valid and is enforceable by law.

Under section-17(2), 34<sup>5</sup>, and 37(b) of the Arbitration and conciliation act, 1996 the award by the Singapore International Arbitration convention is fair and enforceable hence the injunctions are also enforceable. Also, the Hon'ble supreme court advised to read and asked companies to beware at the time of agreeing to all such types of enormous deals. Court also stated that no

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<sup>4</sup> Ibid

<sup>5</sup> Arbitration and Conciliation Act 1996, s 34

appeal will lie under section 37<sup>6</sup> of the Arbitration and conciliation act, against the award under section 17(2)<sup>7</sup>. And hence, the final order by the Hon'ble supreme court favoured the Amazon group.

## DEFECTS IN LAW

- The Award by *Singapore International Arbitration Convention [SIAC]* was not null and was legally binding under section 17(2) of the *Arbitration and conciliation act,1996*.
- Apart from that the order of the High court civil suit was on prima facie as the High court did not recognise the entire scenario and formulated the entire order, on a biased basis.
- The fact that *Future Group* went to NCLT for further of their do with *Reliance Inc.* was illegal in nature.
- If the principle of Natural justice could also have been recognised then the current case could not have stretched to such an extinct.
- After the inter alia judgement of the Hon'ble High court NCLT set aside the objection of Amazon considering it premature, due to which all the furtherance took place between Reliance and Future Group.
- As said in the appeal of Amazon's judgement, "The High court Civil suit Judgement was prima facia" NCLT could also have realised the issue and should have barred the Amalgamation until final judgement for that time was awaiting.

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<sup>6</sup> Arbitration and Conciliation Act 1996, s 37

<sup>7</sup> Arbitration and Conciliation Act 1996, s 37(2)