



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Amazon v Future Retail: Landmark Judgement of upholding party Autonomy and the Authority of Emergency Arbitrators

Rashi Kumari<sup>a</sup> Rudra Sinsinwar<sup>b</sup>

<sup>a</sup>National University of Study and Research in Law, Ranchi, India <sup>b</sup>National University of Study and Research in Law, Ranchi, India

*Received 16 November 2022; Accepted 26 November 2022; Published 07 December 2022*

---

### INTRODUCTION

Most Indian consumers had interacted with the Future Retail Stores in one way or another through their Big Bazaar stores, Pantaloons, etc. until recently when all their outlets were shutdown or replaced by Reliance Stores in a complex turn of events with the corporate giants' Reliance and Amazon involved in the tussle too. Besides, just when the matter seemed to have arrived at a concluding halt in Amazon's favour, the CCI slapped a huge fine on the company on the pretext of unfair trade practices at the very beginning of the Amazon-Future deal thus jeopardizing the judgement passed earlier. This case commentary shall track the interesting timeline of events that led to the complete shutdown of the Future Retail Stores pan India, the issues that arose throughout, the judgement passed at different forums, and an analysis of the resultant outcomes.

## FACTS OF THE CASE

- On 26<sup>th</sup> December 2019, Amazon invested Rs 1431 crores in FCPL, a subsidiary of the future group, the then-second-largest offline retail store in India. Two noteworthy conditions of this investment are –

1. FRL (Future Retails Limited), the subsidiary of the future group to which Amazon's investment was transferred was not to act on it without the consent of FCPL. Thus, it could not be acted upon without Amazon's consent either.

2. Secondly, Amazon had listed a set of "restricted persons" with whom Future Enterprises could not deal and Reliance Industries Group was an entry in this list.

- On 29<sup>th</sup> August 2020, Future Group entered into a contract with the Mukesh Dhirubhai Ambani Group without informing Amazon and the nature of the deal was such that it altered the very nature of Future Enterprises. The deal was about amalgamating the identities of the Future and Reliance Groups and a resultant alteration in the ownership of the Future Group's assets too.
- Following this set of events which violated both the conditions mentioned above, Amazon filed for arbitration under the Singapore International Arbitration Council Rules<sup>1</sup> and sought urgent interim relief (Interim reliefs are requested from courts and arbitral tribunals so that the disputed amount or subject matter of the dispute is not destroyed or alienated before the dispute is decided) thus calling for the involvement of an Emergency Arbitrator.

The interim award (temporary award before the ultimate decision) given by the Emergency Arbitrator in **October 2020** contained the following directions:

1. The deal made on 29<sup>th</sup> August 2020 by the FRL i.e., the disputed transaction shall not be acted upon.

---

<sup>1</sup> Singapore International Arbitration Council Rules 2016

2. The assets held by the Respondents in the FRL shall not be transacted in any way without the written consent of the claimant (Amazon).

3. FRL shall not interact with Restricted Persons in terms of securities or financing.

- Following this, the Biyani Group (key shareholders in Future Enterprises) contended that the Emergency arbitration was Coram non-judice (before a judge not competent or without jurisdiction) and instead of challenging the arbitral award, filed for a civil suit in **December 2020** which it sought interim relief to forbid Amazon from acting on the Emergency Arbitrator's award and approaching civil authorities. However, FRL's request Act was denied by a single judge in the Delhi High Court.
- Meanwhile, Amazon approached a single judge bench of the Delhi High Court under *section 17(2) of the Arbitration Act*<sup>2</sup> and a judgement was made in Amazon's favour on 2<sup>nd</sup> **February 2021** restraining FRL from acting upon the deal in dispute.
- FRL appealed against this judgement and a division bench ruled in FRL's favour this time by placing a stay on the single-judge ruling until further hearing.
- Meanwhile, in **March 2021** the single-judge bench released a detailed judgement in which it mentioned that a breach of the agreement between the two parties was admitted and the only point in question was the validity of the order of the Emergency Arbitrator, which the single judge bench held enforceable under the Arbitration Act<sup>3</sup>. They went ahead to hold that FRL had thus violated the Emergency Arbitrator's order passed earlier in October 2020, and the respondents were prohibited from acting against the SIAC order any further.
- The detailed judgement was again quashed by the Division Bench and the matter was finally listed for hearing before the Supreme Court of India.

---

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

<sup>3</sup> Indian Arbitration and Conciliation Act 1996

## HISTORY

A look at the facts makes one wonder about the purpose behind the Future Group selling stakes on such a huge basis in such a short span. A look into the financial performance of the Biyani Group and the effect of COVID on the same might help.

- **Why did the Future Group sell its stakes?**

The future group had been in debt for quite a long. This was first appreciated in the year 2012 when the future group had to release control over the 'pantaloon' stores to the Aditya Birla Group in light of the above debts. This brought certain relief to the future group, however, the calm ended when in 2019 the Covid outbreak made things worse than before. This was because all the properties they owned were rented and the lack of customers inflated their debts to a humongous scale. These issues in addition to the market crash of 2008 led to an event horizon from where the future group was not able to return.

- **Too much diversification**

The owner of the company diversified and invested in commodities that were not catering to his customer base. Despite being a retail business Mr. Biyani, CEO of Future group invested in things like movies and insurance businesses. This failure to understand his own demographic led to an unwarranted expansion of his business in a bad way which led to only 4 of the total 24 businesses surviving. Even after the demerging, their debts kept piling up which led to them losing the pantaloons store in 2012. With this history as an understanding of the basis of this legal struggle let us now take a look at the judicial, legal, and facts of the dispute between Future and reliance and Amazon.

## STATUTES

### *Section 74, Indian Contract Act<sup>4</sup>*

Compensation for breach of contract where penalty stipulated for. – 1 [When a contract

---

<sup>4</sup> Indian Contract Act 1872, s 74

has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

***Section 17, Arbitration and Conciliation Act, 1996<sup>5</sup>***

Interim measures ordered by the arbitral tribunal. –

(1) A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced under section 36, apply to the arbitral tribunal –

- (i) for the appointment of a guardian for a minor or person of unsound mind for arbitral proceedings
- (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 authorise for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken, or any observation to be made, or experiment to be tried, which may be

---

<sup>5</sup> Indian Arbitration and Conciliation Act 1996, s 17

necessary or expedient for 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 arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for, and about, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.<sup>6</sup>

Section 19, Arbitration and Conciliation Act, 1996<sup>7</sup>

19. Determination of rules of procedure. —

1. The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
2. Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
3. Failing any agreement referred to in subsection (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
4. The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.<sup>8</sup>

*Section 37(2b), Arbitration and Conciliation Act, 1996<sup>9</sup>*

37. Appealable orders-

---

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

<sup>7</sup> Indian Arbitration and Conciliation Act 1996, s 19

<sup>8</sup> Indian Arbitration and Conciliation Act 1996, s 19

<sup>9</sup> Indian Arbitration and Conciliation Act, 1996, s 37(2b)

- (2) An appeal shall also lie to a court from an order of the arbitral tribunal—
- (b) granting or refusing to grant an interim measure under section 17.<sup>10</sup>

## ISSUES OF THE CASE

- Despite the arguments being based on the Arbitration and Conciliation Act, of 1996<sup>11</sup>, the case in discussion is quite simply that of breach of contract (*sections 73,<sup>12</sup> 74,<sup>13</sup> 75<sup>14</sup> of the Indian Contract Act*). The deal between Amazon and FRL specifically prohibited contracts between FRL and Reliance, and the said condition which was one of the considerations in the deal was breached. However, the breach of the said condition was accepted by the Biyani Group and it was against the award of the emergency arbitrator that they were contending, which is what brought the Arbitration and Conciliation Act<sup>15</sup> into the picture.
- Whether an award of an emergency arbitrator delivered under the Singapore Arbitration and Conciliation Act can be considered as an order under *section 17(1) of the Indian Arbitration and Conciliation Act<sup>16</sup>*.
- Whether an order passed by the High Court under *section 17(2) of the Indian Arbitration and Conciliation Act<sup>17</sup>* enforcing an award of an emergency arbitrator can be appealed against.

## ARGUMENTS ADVANCED

### *Amazon*

- The representatives of Amazon argued that an emergency arbitrator's award can never be considered a nullity and cited multiple judgements to prove the same. Also,

---

<sup>10</sup> Indian Arbitration and Conciliation Act 1996, s 11

<sup>11</sup> Indian Arbitration and Conciliation Act 1996, s 5

<sup>12</sup> Indian Contract Act 1872, s 73

<sup>13</sup> Indian Contract Act 1872, s 74

<sup>14</sup> Indian Contract Act 1872, s 75

<sup>15</sup> Indian Contract Act 1872, s 5

<sup>16</sup> Indian Arbitration and Conciliation Act 1996, s 17(1)

<sup>17</sup> Indian Arbitration and Conciliation Act 1996, s 4

he said that an emergency arbitrator's award stands till it is set aside and since the award was not contended by the Biyani Group; it stands and shall be obeyed.

- Mr. Chinoy, also appearing on behalf of Amazon contended that a breach of the said award had been admitted by the Biyani group and their only argument about the award was that it was void because of having been made by an emergency arbitrator.
- It was asserted that the FRL impliedly considered the emergency arbitrator's interim order under the SIAC rules as the proper forum to approach since it appeared before the emergency arbitrator, kept on taking interest in the arbitration proceedings, etc.
- They plead that the Emergency Arbitrator's award can be enforced under *section 17(2) of the Arbitration and Conciliation Act 1996*<sup>18</sup>.

### ***Future Retail Limited***

- They tried to justify their breach of the agreement with Amazon by putting up Covid losses as a reason and a resultant need for transacting assets to safeguard the interests of the Future Group and their identity.
- FRL plead tortious obstruction by Amazon in a legitimate deal entered into between FRL and Reliance of transfer of assets. They claimed so because the deal with Amazon had been made by FCPL (Future Coupons Retail Limited) SHA, a subsidiary of the Future Group whereas the deal with Reliance had been entered into by another subsidiary, FRL (Future Retail Limited)- a subsidiary over which Amazon had no authority.
- It was contended that the control sought by Amazon on FRL couldn't be executed without Government approval as per the FEMA FDI rules. The Arbitration agreement was between FCPL and Amazon and thus, Amazon could not take FRL to arbitration despite the merger of FRL SHA and FCPL SHA following the decision of selling assets to Reliance dated August 2020.
- They thus justified their action of taking a civil action against Amazon on the grounds of unlawful interference in the FRL Reliance deal by approaching an

---

<sup>18</sup> *Ibid*



emergency arbitrator about the same under the ambit of *section 17(2) of the arbitration and conciliation Act, 1996*<sup>19</sup>

### ***Reliance***

- Reliance argued that the emergency arbitrator's award was a nullity in law and cited clause 25 of the FCPL SHA (Shareholders Agreement) to point out that the law to be considered under the scope of arbitration was the *Indian Arbitration and Conciliation Act, 1996*<sup>20</sup>. The SIAC rules mentioned only acknowledge intervention procedures.
- The authority of the emergency arbitrator to pass an order under *section 17 of the Arbitration and Conciliation Act, 1996*<sup>21</sup> was questioned.
- It was contended that an interim order passed by an emergency arbitrator stops being enforceable following 90 days of passing in case an arbitral tribunal is not constituted by then.
- Furthermore, the counsel argued that the *Indian Arbitration and Conciliation Act, 1996*<sup>22</sup> is based on the UNCITRAL model law (United Nations Commission on International Trade Law) and since UNCITRAL model law doesn't contain any provisions for an emergency arbitrator, the same body shall have no authority under the *Indian Arbitration and Conciliation Act, 1996*<sup>23</sup>.

### **CASE LAWS**

#### ***Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc.***

This case was cited to answer whether an emergency arbitrator's order can come under the Arbitration Act and thus count as an order under section 17(1) of the same. In the given case, party autonomy was upheld concerning section 2(6) of the Arbitration Act<sup>24</sup> which

---

<sup>19</sup> Indian Arbitration and Conciliation Act 1996, s 17(2)

<sup>20</sup> Indian Arbitration and Conciliation Act 1996, s 5

<sup>21</sup> Indian Arbitration and Conciliation Act 1996, s 17

<sup>22</sup> Indian Arbitration and Conciliation Act 1996, s 5

<sup>23</sup> *Ibid*

<sup>24</sup> Indian Arbitration and Conciliation Act 1996, s 2(6)

makes it clear that parties are free to determine an issue and authorise any person or entity to deal with the issue, subject to restrictions<sup>25</sup>. Furthermore, section 19(2) was cited to establish that parties are free to settle upon an arbitral tribunal and the procedure to be followed. It was held that “Party autonomy being the brooding and guiding spirit in arbitration, the parties are free to agree on the application of three different laws governing their entire contract

– (1) proper law of contract, (2) proper law of arbitration agreement, and (3) proper law of the conduct of arbitration”<sup>26</sup>

***Raffles Design International India Pvt. Ltd. & Anr. v Educomp Professional Education Ltd. & Ors***

It was held in this case that in case that an emergency arbitration conducted outside India wouldn't be enforceable in India. “The only question that now remains to be considered is whether the petitioner can approach this Court for an interim relief considering that it has already approached the Arbitral Tribunal in Singapore and thereafter, also obtained a judgment in terms of the interim order from the Singapore High Court.”<sup>27</sup> “In the circumstances, the emergency award passed by the Arbitral Tribunal cannot be enforced under the Act and the only method for enforcing the same would be for the petitioner to file a suit.”<sup>28</sup>

***Tayabhai M. Bagasarwalla v Hind Rubber Industries (P) Ltd***

It was held in this case that an order, even if invalidated later for falsely assumed jurisdiction, shall be obeyed as an order until it has not been revoked. “The question is whether a person who disobeys an interim injunction made by the Civil Court can be punished under Rule 2-A of Order 39 of the Code of Civil Procedure<sup>29</sup> where it is ultimately

---

<sup>25</sup> Indian Arbitration and Conciliation Act 1996, s 28

<sup>26</sup> *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* 2011 SC

<sup>27</sup> *Raffles Design International India Pvt Ltd & Anr v Educomp Professional Education Ltd & Ors* 2000 SC

<sup>28</sup> *Ibid*

<sup>29</sup> Code of Civil Procedure 1973, order 39, rule 2A

found that the Civil Court had no jurisdiction to entertain and try the suit?"<sup>30</sup> "The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit."<sup>31</sup> This thus addresses Future Group's claim that the emergency arbitrator had no jurisdiction to pass an order in the said case.

### *Sri Krishan v Anand*

"Powers of Tribunal to order interim measures - under section 17, the Arbitral Tribunal has the power to order interim measures of protection, unless the parties have excluded such power by agreement. Section 17 is an important provision, which is crucial to the working of the arbitration system since it ensures that even for interim measures; the parties can approach the Arbitral Tribunal rather than await orders from a court. The efficacy of section 17 is, however, seriously compromised given the lack of any suitable statutory mechanism for the enforcement of such interim orders of the Arbitral Tribunal."<sup>32</sup>

## THE JUDGEMENT

The issue of whether an emergency arbitrator's award can be considered an order under *section 17(2) of the Indian Arbitration and Conciliation Act*<sup>33</sup> was ruled in Amazon's favour for the following reasons:

- It was ruled that the Arbitration Act allows for having a dispute decided by Emergency Arbitrators including those passing interim orders. Also, it was held that the term 'arbitral tribunal' used in *section 17(1)*<sup>34</sup> is not restrictive of the inclusion of emergency arbitrators
- The purpose of keeping the Arbitration Act open to awards by emergency

---

<sup>30</sup> *Tayabhai M. Bagasarwalla v Hind Rubber Industries (P) Ltd* 2015 SC

<sup>31</sup> *Ibid*

<sup>32</sup> *Sri Krishan v Anand* (2009) 3 Arb LR 447 (Del)

<sup>33</sup> Indian Arbitration and Conciliation Act 1996, s 17(2)

<sup>34</sup> Indian Arbitration and Conciliation Act 1996, s 17(1)

arbitrators was referred to for further justification as being a speedy decongestion of civil courts and affording the parties quick interim relief. Furthermore, sections 9(2) and 9(3)<sup>35</sup> were cited to support the reasoning since these sections were introduced to the Arbitration Act to encourage the decongestion of courts

- Furthermore, the concept of 'party autonomy' was upheld by relying on sections 2(8)<sup>36</sup> and 19(2)<sup>37</sup> of the Arbitration Act. 19(2)<sup>38</sup> especially clearly upholds that parties to a contract are free to decide upon arbitration proceeding rules. Now, since the parties had chosen the SIAC rules, the involvement of an emergency arbitrator is legible
- The principle of estoppel was deliberated upon by Justice Nariman in the context that the parties had agreed to the rules which contain in their ambit the concept of awards by emergency arbitrators and thus, have to participate in EA proceedings.

## ISSUES

1. The question of whether section 17(2) is appealable under *section 37 of the arbitration and conciliation act*<sup>39</sup> has been answered by the supreme court. According to the court section, 17(2) is not appealable under section 37 of the act because section 37, in the learned opinion of the court, is a complete act in itself.
2. Moreover, the opening words of section 17(2)<sup>40</sup> are "Subject to any orders passed in appeal under section 37"<sup>41</sup>. Therefore, any orders passed under section 37 are related only to *section 17(1)* and not *Section 17(2)*<sup>42</sup>.

## UPDATES ON THE CASE

The legal battle between the two corporate giants did not end with the apex court

---

<sup>35</sup> Indian Arbitration and Conciliation Act 1996, s 9 (3)

<sup>36</sup> Indian Arbitration and Conciliation Act 1996, s 2(8)

<sup>37</sup> Indian Arbitration and Conciliation Act 1996, s 19(2)

<sup>38</sup> *Ibid*

<sup>39</sup> Indian Arbitration and Conciliation Act 1996, s 37

<sup>40</sup> Indian Arbitration and Conciliation Act 1996, s 37(2)

<sup>41</sup> Indian Arbitration and Conciliation Act 1996, s 37

<sup>42</sup> Indian Arbitration and Conciliation Act 1996, s 17(2)

discussion. Here is a brief summarization of the following legal tussle.

### *CCI slaps fine on Amazon*

Despite the August 2021 judgement of the Supreme Court in the matter, in October 2021 the Competition Commission of India, following a complaint from the Future Group about the deliberate suppression of information by Amazon about the nature of their 2019 deal, suspended the approval of the same and fined Amazon Rs. 200 crores.

### *Arbitration proceedings get put on hold*

The 2019 deal between Amazon and Future Group got suspended by CCI in November 2021. Subsequently, the arbitration proceedings between the two sides got halted citing the suspension as the reason for the same.

### *Amazon files an appeal at NCLT*

Amazon approached the National Companies Law Tribunal against the orders of the antitrustbody.

### *Amazon files an appeal at the Supreme Court*

Amazon approached the Supreme Court in the same month in an appeal against the Delhi High Court's order of putting a stay on the ongoing arbitration proceedings between Amazon and Future Group.

### *Reliance starts to convert future group stores*

Instead of fighting with Amazon, Reliance instead made a play for real estate as most of the retail business is dependent upon the location of the store and its nearby demographic. The deal was about amalgamating the identities of the Future and Reliance Groups and a resultant alteration in the ownership of the Future Group's assets too. This move was considered by Amazon to be illegal and therefore to protect its interests Amazon filed a case against Future and asked for a stay order, which was violated by the Reliance group

despite the supreme court's judgement because they 'converted' the old stores while the dispute was still on the bench. In their defence, they said that their stakes in the future group conferred on them the ownership of the store and therefore they changed the name without changing the old employees of the future group.

### **ANALYSIS AND SIGNIFICANCE: CONCLUDING REMARKS**

This is a landmark judgement on the ambiguity of Indian arbitral jurisprudence. Initially, as the comment talks about in the earlier sections Arbitration and conciliation acts remain silent and ambiguous when it comes to the decisions and their binding power on the parties and Indian courts in case of emergency Arbitrators. The tussle between the two richest men in the world has shaken the indifference of the Indian courts in this matter and has brought about guidelines and mandates in these situations going forwards. As observed above, reliance claimed that the remedy provided by the emergency arbitrator in Singapore was not maintainable and therefore the stay order granted by the Singapore Arbitration Centre did not apply. However, the supreme court of India decided in favour of Amazon and gave its judgements under two facets.

**It granted legal recognition to emergency arbitrators:** The supreme court of India granted legal recognition to emergency arbitrators and professed that it is immaterial what the party 'feels' about a judgement and that the riders granted by an emergency arbitrator are binding in nature. In this the supreme granted legal sanctity to emergency arbitrators in India.

**It highlighted party autonomy:** The Supreme Court highlighted the fact that if the parties have a clause within their contract which highlights that in case of dispute they may refer to the Singapore arbitration centre then in that case it is the sole autonomy of any party to approach the centre for immediate relief about the above. Therefore, this case revolutionized a small sector of the arbitration and reconciliation act by clearly demarcating the and also assigning legal sanctity to the decisions of the Emergency Arbitrators in India.