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# **ANALYSIS OF THE ENFORCEMENT OF EMERGENCY AWARDS IN INTERNATIONAL COMMERCIAL ARBITRATIONS HEARD IN FOREIGN SEATS**

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## **ABSTRACT**

When a disagreement arises between businesses or organizations located in separate countries, an alternative to the traditional legal system exists in the form of international commercial arbitration. The parties to the dispute agree to use an arbitrator or panel of arbitrators. The arbitrators function in a judicial capacity, issuing a ruling based on the evidence presented by each side. The UNCITRAL Model Law on International Commercial Arbitration is one set of laws that forms the basis for international commercial arbitration. The parties are free to choose the arbitration's language, venue, and applicable law.

Due to the lack of time or the urgency of the subject matter of the dispute, the parties to the dispute may agree to have an arbitrator appointed by an arbitral institution to conduct an emergency arbitration (EA) to address an application for interim relief that cannot wait for the constitution of an arbitral tribunal to address the substantive dispute between the parties. The parties might choose to have their dispute resolved by a local or international tribunal. A judge or arbitrator may only give temporary measures that help move things forward towards a permanent solution. The party seeking interim relief has the burden of proving to the arbitral tribunal that its claim against the counterparty is justified and that the counterparty would suffer severe and irreparable loss in the event that the remedy is not granted. This article examines the 'Theory of implied exclusion' used by courts, which undermines the purpose of interim reliefs (i.e., to secure assets), in the context of foreign-seated International Commercial Arbitrations ('ICA').

The growth of international dispute resolution processes is aided by the increasing significance of inter-state trade and the cross-border links it fosters.

**Keywords:** International Commercial Arbitration, UNCITRAL Model Law, Emergency Arbitration, Foreign Awards.

## **EXECUTIVE SUMMARY**

International business arbitration is a common method used by parties to an international commercial agreement when a disagreement arises that cannot be addressed via dialogue. The arbitral tribunal will thereafter be responsible for making a final and binding decision on the merits of the dispute. An arbitral award may be hard to enforce if it was made in a foreign seat or under other unusual circumstances. Different national laws and regulations, in addition to political and cultural factors, might contribute to this.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is one such international treaty that was enacted to solve such issues. These accords lay forth the norms and processes that must be followed in order to have arbitral judgements enforced across international boundaries. Despite these precautions, there may be major obstacles to enforcing emergency verdicts in international commercial arbitrations held in locations other than the parties' home countries. In the enforcement process, courts regularly scrutinize emergency awards made in cases where further delay might create irreparable loss or prejudice to one of the parties. To get around these problems, businesses with foreign partners should check that their arbitration terms comply with domestic law and any relevant international agreements. They should also take into account the potential for enforcement concerns when choosing their arbitrators and the arbitral institution to oversee their case.

A number of factors, including the robustness of the underlying legal framework, the quality of the arbitrators involved, and the willingness of national courts to recognize and enforce foreign arbitral awards, will determine whether or not emergency awards in international commercial arbitrations heard in foreign seats will be enforced.

## **HISTORY AND CONCEPT OF ARBITRATION**

Beginning at the close of the nineteenth century, India became a thriving center for the practice of arbitration. The Indian Arbitration Act, 1899 was the first piece of Indian legislation to formally recognize arbitration as a means of conflict settlement; nevertheless, its scope was limited to the three presidential cities of Madras, Bombay, and Calcutta. Section 89 and Schedule II of the Code of Civil Procedure, 1908 formalized the expansion of arbitration to parts of British India not covered by the Act of 1899. Since it was determined that the Act of 1899 and the corresponding articles of the Code of Civil Procedure, 1908 were too cumbersome and arcane, and the Arbitration Act of 1940 was passed to replace them. Although the 1940 Act was a comprehensive piece of law on the topic, mirroring the English Arbitration Act of 1934, it did not address the enforcement of international rulings and hence only applied to arbitrations inside the United States. Despite the fact that the Courts were very critical of the 1940 Act and had many negative things to say about it, no changes were made to make the Act more effective. Foreign investment was sought after economic liberalization in 1991, and consequent measures were made to make conducting business easier and create a welcoming business climate. For this reason, the Act of 1940 was replaced by the Arbitration and Conciliation Act, 1996. The Act of 1996 addressed both local and international arbitration since it was based on the UNCITRAL Model Law on International Commercial Arbitration, 1985.

### **INTRODUCTION**

Due to the speed with which arbitration processes may be completed, it has become the method of choice for settling business disputes. In litigation, like in life, it is crucial to keep the evidence safe until the case is resolved. In order to guarantee that the ultimate decision can be executed, the subject matter of the dispute may be preserved, the parties can be compelled to behave in a way that maintains the status quo, and the court can issue intermediate remedies under Sec.9.

Court relief is discouraged to lighten the load on the judicial system; yet forming an arbitral panel might take months, making it impractical for urgent matters. Institutions of international arbitration, such as the Singapore International Arbitration Centre ('SIAC'), may give swift assistance in times of crisis. Emergency Arbitration ('EA') is available from the London Court of International Arbitration ('LCIA') and other top Indian institutions including the Mumbai Centre for International Arbitration ('MCIA') and the Delhi International Arbitration Centre ('DAC').

The purpose of using arbitration to settle legal disputes is to prevent them from dragging on indefinitely. In certain cases, the parties may need quick relief (of an interim nature) to avert irreparable harm in the interests of justice and fairness. The Emergency Arbitrator's ("EA") ruling in *Future v. Amazon* was affirmed by India's highest court because it followed the idea of prompt remedial action envisioned under the Arbitration & Conciliation Act, 1996 ("the Act").<sup>1</sup> The foregoing observation clears the way for the enforcement of EA awards in the context of domestically-seated arbitration proceedings, but the question of how EA awards passed in foreign-seated arbitration proceedings fare under the Act's enforcement provisions remains unanswered.

In international arbitration, an emergency arbitration is a legal procedure used to obtain temporary relief or immediate remedies before a full arbitration hearing can be held. Its purpose is to provide parties an alternative to waiting for a complete arbitration hearing to be conducted so that they may get the help they need immediately. When there's a chance of permanent damage, when time is of the essence to stop the bleeding, or when assets need to be preserved, people commonly turn to emergency arbitration. Intellectual property and trade secret conflicts, as well as urgent injunctions involving building projects, are all examples of cases in which emergency arbitration may be necessary. An arbitrator is often appointed in emergency arbitration to hear the parties' arguments and make a determination on the temporary remedy sought. Typically, the emergency arbitrator's ruling is final and may be enforced in court.

## **OBJECTIVES OF THE PRESENT STUDY**

The purpose of interim reliefs is to secure assets, and this report analyses how the "Theory of implied exclusion" is being used by courts to undermine that goal in foreign-seated International Commercial Arbitrations ('ICA').

## **EMERGENCY AWARDS: JURISPRUDENCE AND METHODS**

The principles of emergency arbitration are based on the legal maxims *Fumus boni iuris* and

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<sup>1</sup> Reliance - Future Group Deal: Amazon gets relief as Singapore Emergency Arbitrator stalls the sale of Future Group, <https://www.barandbench.com/news/amazon-future-deal-singapore-arbitration-award>

*Periculum in mora*, which state that there must be a reasonable likelihood that the claimant will triumph on the merits and that failure to give relief, might lead to irreparable harm.

To this aim, EAs are designated to issue interim awards. Unless the parties agree otherwise, the emergency provisions of the arbitration rules will apply and an EA will be appointed at the request of a party if immediate relief is required. Appointing an EA usually takes place within two to three business days. An EA award, which can include mandatory, anti-suit, and preservative injunctions, orders for freezing of assets, inspection of evidence, and securing confidential information, is usually pronounced as soon as possible but no later than 2 weeks after the parties submit their statements and are allowed to be heard. An EA award stays in effect until the arbitral tribunal is created, at which point it may hear a request to reconsider the judgement and, if it does, it must resign its position (*functus officio*) immediately afterwards.

## **ADVANTAGES OF EMERGENCY ARBITRATIONS**

There are a number of benefits to emergency arbitration in international arbitration. When time is of the essence, having a mechanism like emergency arbitration to quickly and effectively resolve conflicts is invaluable.<sup>2</sup> Unlike traditional arbitration, which must wait until all the paperwork is filed before it can begin, emergency arbitration may be started immediately. As a result, parties may ask for emergency remedies or temporary relief at any point throughout the dispute. Experience and expertise in the applicable field of law ensure that emergency arbitrators can provide well-informed and authoritative rulings on the concerns at hand. In delicate conflicts when parties seek to safeguard their financial interests and reputation, the confidentiality of emergency arbitration procedures may be a significant factor. Awards in expedited arbitration proceedings are typically enforceable in over 160 countries across the globe according to the New York Convention. When compared to alternative means of temporary relief, such as seeking injunctions from national courts, which may entail protracted and expensive litigation, emergency arbitration is generally more cost-effective. When it comes to international conflicts, emergency arbitration provides the parties with a fast, adaptable, private, and inexpensive way to get the immediate relief they need.<sup>3</sup>

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<sup>2</sup> Martin J. Valasek and Jenna Anne De Jong, Enforceability of Interim measures and emergency arbitrator decisions, <https://www.sconline.com/blog/post/2022/03/26/emergency-arbitration/>

<sup>3</sup> ICC Rules of Arbitration, 2012, Arts. 29(1) & (4), <https://www.sconline.com/blog/post/2022/03/26/emergency-arbitration/>

## **DISADVANTAGES OF EMERGENCY ARBITRATIONS**

The most pressing difficulty with emergency arbitration is having the award recognized and enforced. A lot, including enforcement, relies on which jurisdiction the application for enforcement is submitted in, and many nations are still in the process of accepting the sanctity and binding character of the order given by an emergency arbitrator, which provides a preclusive effect. There is a possibility that a country will recognize the provision of emergency arbitration and will enforce the order passed by it, but there is also a chance that any court of a different jurisdiction will be unable to recognize and enforce the same for lack of specific legislation which recognizes the order passed by an emergency arbitration. When an emergency arbitrator issues an interim order that is highly unlikely to be recognized as an award, the situation becomes much more precarious, and it is highly likely that the party who has the interim order in his favor will be at the mercy of the respective courts to have it enforced. Another difficulty is that it is only binding temporarily; once the Arbitral Tribunal has been formed, the award will no longer be binding, and if a new arbitrator is appointed to the substantive Tribunal, that Tribunal can change or suspend the award if the time limit for doing so has not yet passed. The nature of the temporary remedy provided by the emergency arbitrator may also make a difference, especially if it is an order rather than an award.

## **STATUS OF LAW REGARDING ARBITRATIONS**

### **HOSTED IN THE HOME COUNTRY**

A modification to recognize emergency arbitrators appointed in accordance with norms specified by Arbitral institutions and emergency awards were recommended in the 246th Law Commission Report in 2014 and the B.N. Srikrishna Committee Report in 2017.

According to the proposed amendment to Section 2(1) (d), "in the case of an arbitration conducted under the rules of an institution providing for the appointment of an emergency arbitrator includes such emergency arbitrators" would have been added to the definition of an Arbitral Tribunal. *[It is worth noting that EAs are not considered "Arbitral Tribunals" under the UNCITRAL model legislation.]*

These suggestions were not included into the changes made in 2015 or 2019. In the end, the court upheld the validity and enforceability of EA judgements in India-seated arbitration in

Amazon.com NV Investment Holdings LLC v Future Retail Limited & Ors ('Amazon').<sup>4</sup>

An emergency order/award issued by an emergency arbitral panel established by Singapore International Arbitration Centre ("SIAC") was recently enforced by the Supreme Court of India in Amazon.com NV Investment Holdings Inc. v. Future Retail Ltd ("Amazon v. Future"). The Court ruled that a 'emergency arbitrator' falls within the umbrella of the phrase 'arbitral tribunal' as defined in section 17 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act").<sup>5</sup> That's why the judge ruled that his or her verdict/award would be binding in India. However, this decision barely supports the idea that emergency awards issued by foreign courts are enforceable in India. Although SIAC was the entity in charge of executing the emergency award, the tribunal itself was located in Delhi, India.

## **APPLICATION OF ARBITRATION AWARDS IN INTERNATIONAL COMMERCIAL CASES HEARD IN A FOREIGN VENUE**

When assets are situated in various countries, the parties have little choice except to seek enforcement of the judgement via the courts in those jurisdictions. Because of the inapplicability of Sec.17, it is more difficult to enforce awards issued by EAs with a foreign seat non International Commercial Arbitration ('ICA'). A motion for contempt proceedings may be filed under Sec.27 (5) if a party disobeys an arbitral ruling. However, this is not preferable since the remedy may be sought only after the asset has been disposed of, and the arbitral tribunal would have to submit the matter to court to resolve it. After the modification in 2015, going to court to enforce such an award under Section 9 of the Act is the best option such an award enforced under Section9 of the Act is the best option available.

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<sup>4</sup> Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. and Future Coupons Pvt. Ltd., SIAC Case No. 960 of 2020

<sup>5</sup> The Arbitration and Conciliation Act, 1996, No 26, Acts of Parliament , 1996 (India).

## **PROVISIONS IN RELEVANCE TO THE ENFORCEMENT OF THE EMERGENCY AWARDS**

Any order made by an arbitral tribunal (sitting in India) will be assumed to be an order of the court and shall be enforced as such under a deeming fiction included in Section 17(2) of the Arbitration Act by the Arbitration and Conciliation Amendment Act, 2015 ("2015 Amendment"). Since the arbitral tribunal in *Amazon v. Future* was located inside the United States, the award made by that body was subject to domestic enforcement.<sup>6</sup> Part-I of the Arbitration Act does not apply to a foreign seated arbitration in the case of *Bharat Aluminum Company v. Kaiser Aluminum Technical Services*; read here for a detailed discussion on the applicability of Part-I to foreign seated arbitrations), so the court could not have relied on section 17(2) to enforce the emergency award.<sup>7</sup> *Amazon v. Future* is a win for domestically seated emergency award enforcement, but it has reignited a discussion over whether or not foreign-seated emergency awards are enforceable in India.

### **SECTION 9: APPLICABILITY TO ARBITRATION**

#### **HELD ABROAD**

There has been a lot of development in the case law around the enforcement of interim measures in foreign seated arbitration under Sec.9. Unless parties explicitly or impliedly disclaim its application, the Supreme Court ruled in the seminal case of *Bhatia International v. Bulk Trading S.A* that Part I of the Act shall apply even to foreign-seated ICA.<sup>8</sup> Although this judgement's goal—enforcing foreign awards—was admirable, the resulting "theory of implied exclusion" remains a point of contention. According to this hypothesis, factors such as the arbitration institution's regulations, the arbitration agreement's controlling law, and the location of the arbitration hearing decide whether or not Part I, and more especially Sec.9, applies.

Part I is now exclusively applicable to arbitrations with an Indian seat since the court in *Bharat Aluminum Co. v. Kaiser Aluminum Technical Service* accepted the notion of territoriality.

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<sup>6</sup> *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd* (2022) 1 SCC 209.

<sup>7</sup> *Bharat Aluminum Co. Vs Kaiser Aluminum Technical Services*, 2010 1 SCC 72

<sup>8</sup> *Bhatia International v/s. Bulk Trading S.A.* (2002)4 SCC 105

An amendment to Section 2(2) and an accompanying proviso expanded the applicability of Sections 9, 27, and 37 to ICAs based in areas where awards are recognized and enforceable under the Act. Unless otherwise agreed upon, the New York and Geneva treaties. Bhatia's idea of implicit exclusion, however, makes it difficult to know whether an agreement to the opposite must be stated or may be assumed.

An EA order was issued to freeze the assets of the respondent in *Avitel Post Studioz Ltd. v HSBC PI Holdings (Mauritius) Ltd.*, a Singapore-based ICA. The petitioner used Sec.9 to seek the same remedy.<sup>9</sup> This decision cannot be implemented immediately, but the Bombay High Court reasoned that a Sec.9 application might be filed separately to enforce interim relief in accordance with SIAC guidelines. *Raffles Design International India P. Ltd. v. Educomp Professional Education Ltd.*, a case with comparable facts, upheld this view. The court cited the 2015 modification to Sec.2(2), noting that it would use its own discretion in deciding whether interim reliefs are necessary rather than relying exclusively on the EA decision.<sup>10</sup>

However, courts have accepted the Bhatia view, which is detrimental to the parties and undermines the intent of the 2015 amendment. Having been unsuccessful in obtaining interim relief via an EA under the norms of the **Japan Commercial Arbitration Association ('JCAA')**, the petitioner in *Ashwin Minda & Anr v U-Shin Ltd* turned to the Delhi High Court under Section 9 of the Arbitration Act. The court found that the JCCA, in contrast to the SIAC regulations in HSBC and Raffels, forbade the use of courts to obtain interim reliefs and included a complex structure for implementing interim decisions. The court concluded that a Sec.9 application could not be sustained, and so returned to the outdated principle of Implied Exclusion. When a party is refused interim reliefs by an EA, the court ruled that they do not have a second chance under Sec.9.

Like in the case of *Kohli Ventures Limited and Others v. Archer Power Systems Private Limited*, the arbitration in this case was to be held in London and controlled by ICC rules.<sup>11</sup> Because of the implicit exclusion of the proviso of Section 2(2), another provision that rendered Part II relevant, the court did not provide interim relief under Section 9. The court did, however, make the

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<sup>9</sup> *Avitel Post Studioz Ltd. v HSBC PI Holdings (Mauritius) Ltd.* 2020 SCC OnLine SC 656

<sup>10</sup> *Raffles Design International India P. Ltd. v. Educomp Professional Education Ltd.*, 2016 SCC OnLine Del 5521

<sup>11</sup> *Archer Power Systems Pvt. Ltd. v. Kohli Ventures Ltd. & Ors.*, 2017 (4) CTC 449 (Madras High Court, 2017)

intriguing statement that "if a party is not entitled to relief under Section 9, the court will not grant such relief." If an application under Section 9 is made after an award has been made in the present matter, the parameters and dynamics of the relevant law may change.

This meant that the decision to give an interim remedy may have been different if the ultimate international award had been sought to be implemented in India. This creates more work and a distinction that doesn't need to be made between interim assessments performed before and after a grant has been awarded.

Despite this, the legal standing is uncertain since different High Courts have taken different approaches. According to the Bombay High Court's decision in *Aircon Beibars FZE v Heligo Charters Pvt. Ltd.*, it is not possible to avoid Part I of the Act or the application of Section 9 without an express agreement to do so.<sup>12</sup> Since the helicopter at issue was located within the court's jurisdiction, it ruled that temporary relief may be issued to safeguard the asset. The court took a "purposive view" in order to give effect to the goal of the 2015 amendment, which was to prevent the asset from being wasted.

In a case with similar facts, *Actis Consumer Grooming Products Limited v. Tigaksha Metallics Private Limited & Ors*, the Himachal Pradesh High Court granted interim relief because the asset was within its jurisdiction without having to wade through the weeds of implied exclusion of Part I.<sup>13</sup> The arbitration was held in Geneva under the rules of the LCIA.

The Delhi High Court elaborated on this view in *Goodwill Non-Woven (P) Ltd. v Xcoal Energy & Resources LLC*.<sup>14</sup> The defendant said that the subject matter was not inside India and so the court lacked jurisdiction based on the location of the subject's assets. Although the court ruled that temporary measures might be given to acquire a bank guarantee even if the assets were situated outside of India, it ultimately decided against doing so since a prima facie case did not exist. When the petitioner's rights were recognized in the Emergency Award, the Bombay High Court issued an ad-interim order in *Plus Holdings Ltd. v Xeitgeist Entertainment Group Ltd. & Ors*.

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<sup>12</sup> *Aircon Beibars FZE v Heligo Charters Pvt. Ltd.*, 2018 SCC OnLine Bom 1388

<sup>13</sup> *Actis Consumer Grooming Products Limited v. Tigaksha Metallics Private Limited & Ors.*, (2020) SCC OnLine HP 2234

<sup>14</sup> *Goodwill Non-Woven (P) Ltd. v Xcoal Energy & Resources LLC*, 2020 SCC OnLine Del 631

Injunction under Sec.9 and remarked that a positive EA judgement has significant weight.<sup>15</sup>

## **THINGS TO TAKE INTO ACCOUNT WHEN CARRYING OUT FOREIGN EA/INTERIM AWARDS**

The following principles arise from the above judicial decisions:

- Interim/EA awards in foreign-seated ICAs are not directly enforceable under the existing legislative framework;
- A comparable interim relief may be petitioned for under Sec.9, which will be considered separately on its merits.
- Although a favorable award has persuasive value, an unfavorable award may result in the court refusing to consider the Sec.9 application.
- Courts are adopting a purposive view and considering whether the assets are located in their territorial jurisdiction to prevent their dissipation, but the registrar requires that parties remain aware of whether institutional rules permit or at least do not expressly exclude an application to the court to obtain interim relief.
- All of this points to an increasing use of emergency arbitration as Criteria for temporary relief.
- There must be a reasonable possibility that temporary relief will be granted. Therefore, it is necessary that, at first glance, there be a sufficient cause or assumption to establish a fact, barring rebuttal or disproof.
- The claimant's interests must outweigh the defendant's in the balance of convenience. This means that the odds of the issue being resolved in the plaintiff's favor are high.
- Perilum in mora, which means that the claimant faces imminent risk or the possibility of suffering irreparable harm if no safeguards are put in place. Granting an interim measure requires a level of urgency that precludes waiting for the Arbitral Tribunal to be formed. In this case, the plaintiff has the burden of evidence.
- The emergency arbitrator must verify that the temporary measure requested is proportionate before awarding it. If the issue is resolved in the plaintiff's favor, the given remedy should be enough to safeguard his interests without unduly burdening the defendant.

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<sup>15</sup>Plus Holdings Ltd. v Xeitgeist Entertainment Group Ltd. & Ors., (2019) SCC Online Bom 13069.

## **PROPOSALS AND FUTURE STEPS: THE WAY**

### **FORWARD**

First, Sections 2(1) (c) and 2(1) (d) should be revised to establish the irrevocability of EAs in institutional arbitrations and encourage parties to choose EAs over Sec.9 applications.

To further facilitate the recognition and enforcement of interim awards in Foreign sitting ICAs, the legislature should alter the Act to incorporate paragraph 17H of the UNCITRAL Model Law. It is argued that the goal of the 2015 Amendment is at odds with the analysis of institutional norms that constitutes the notion of implicit exclusion. In HSBC and Raffels, the court used Part I based on SIAC guidelines that allowed it, while in the cases of Ashwin and Archer, the parties were on their own. It is unable to be fixed because of the difficulty in determining the parties' intentions within the current institutional framework. To effectively protect property within their jurisdiction, courts need to go beyond the implicit exclusion doctrine and take a more aggressive stance. To avoid rendering parties remedy less by imputing purpose of exclusion where none exists, the situation should ideally be a presumption in favor of application of Part I until specifically excluded.

The United Kingdom and Singapore, two advanced democracies with strong support for arbitration, may serve as models. Interim remedy is granted by English courts when an asset within their jurisdiction is at danger of being wasted, according to a review of recent instances. In other circumstances, judges look for a rational connection between the parties, the contract, or the arbitration agreement and English law. While courts in Singapore may enforce foreign-seated arbitration interim rulings directly, the reverse is not true. Overall, although the Amazon ruling does pave the road for domestic emergency arbitration, the enforcement of foreign seated ICA EA judgements remains much to be wanted if India is to become widely recognized as a pro-arbitration state.

### **CONCLUSION**

Recognizing the emergency prizes is a positive step in India, but there is still more work to be done on the policy's implementation. The arbitration process is governed by statutes that the tribunal and the parties must follow. In keeping with the spirit of the Constitution, which placed

strict limits on the power of the court, it is now up to lawmakers to write the legislation that will determine the finer details of EA awards. As a result, it may be argued that India's current legal framework for foreign EA awards needs urgent revision in light of the increasing dependence of many stakeholders on it and in order to bring it into line with developing international norms.

From the above, it is apparent that emergency arbitration is a growing trend in International Commercial Arbitration due to the deficiencies of the Courts of Justice in many nations. The emergency arbitral Award or Order might save both time and money compared to a judicial judgement. However, in India it has been unclear whether or not the emergency award may be enforced. The Emergency Appointment of Arbitrator and Award or Order is not provided for under the Arbitration and Conciliation Act of 1996. However, it is encouraging to see that, in line with the worldwide trend, the High Courts and the Supreme Court of India have recently tended to accept the Award or Order of the emergency arbitrator. Some changes are needed to the Arbitration & Conciliation Act, 1996, and they need to be enacted quickly to prevent litigation about the enforceability of emergency arbitration in India. It is also important for the parties to have their position on emergency arbitration clearly defined in the contract or arbitration agreement itself so that they may avoid any new litigation arising out of emergency arbitration and its enforcement.

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