

Explained: What does the interim arbitration award to Amazon mean for the Future-RIL deal?

Can Future Group challenge the interim award of the emergency arbitrator in India? We explain

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A tribunal in Singapore on Sunday (October 25) evening [restrained Future Group and Reliance Industries Limited](#) from proceeding with a Rs 24,713-crore deal signed in August for Future Retail to sell its retail, wholesale, logistics and warehousing units to Reliance Retail and Fashionstyle.

The emergency order by the Singapore International Arbitration Centre (SIAC) came on a plea from global e-commerce giant Amazon.

Why did Amazon approach SIAC for arbitration?

The arbitral institution administering the arbitration, the applicable rules and the seat of arbitration is decided as per the contractual agreement between the parties. In this case Amazon and Future Group have under their agreement agreed to refer their disputes to SIAC, with Singapore presumably being the contractual choice for the seat/place of arbitration.

Why was an emergency award passed to stop the Future-RIL deal?

Once a dispute is referred to arbitration pursuant to the agreement between the parties, the process of appointment of the arbitral tribunal takes place. Typically, in case of a three member tribunal, both the parties appoint one member each to the tribunal, while the third member is jointly appointed by the two nominees or, if they fail to agree, by SIAC. This process takes a certain time to complete.

However, under the rules of SIAC, parties can move SIAC to appoint an emergency arbitrator to get urgent interim relief, even as the process of appointment of the main arbitral tribunal is underway.

Accordingly, pursuant to Amazon's request, an Emergency Arbitrator was appointed by SIAC, who after hearing the parties passed the emergency award.

How can this interim award be enforced on the parties in India?

According to Ashish Kabra, who heads the International Dispute Resolution & Investigations Practice for Nishith Desai Associates in Singapore, currently under Indian law, there is no express mechanism for enforcement of the orders of the Emergency Arbitrator.

Typically, the parties voluntarily comply with the Emergency Award. However, if the parties don't comply with the order voluntarily, then the party which has won the emergency award, in this case Amazon, can

move the High Court in India under Section 9 of the Arbitration & Conciliation Act, 1996, to get similar reliefs as granted by the Emergency Arbitrator.

Kabra said that in the past, High Courts in India have passed orders which indirectly enforced the reliefs granted by the Emergency Arbitrator.

Can Future Group challenge the interim award of the emergency arbitrator in India?

The Future Group cannot challenge the order passed by the Emergency Arbitrator in India. It may either apply before the Emergency Arbitrator itself showing cause why the order should be vacated or modified, or await the constitution of the arbitral tribunal and then apply before the main tribunal.

However, if a petition is filed before the High Court in India under Section 9 of the Arbitration & Conciliation Act, 1996, then the Future Group could put forth its objections on why the reliefs as granted by the Emergency Arbitrator should not be granted by the High Court.

Why has Singapore become the hub of international arbitration?

Singapore has emerged as the preferred location for international arbitration involving Indian companies as foreign investors typically want to avoid the rigmarole of the Indian courts.

“Foreign investors who have invested in India feel that Singapore is neutral ground for dispute resolution. Singapore itself over time has built a stellar reputation as jurisdiction driven by rule of law with international standards and high integrity. This gives comfort to investors that the arbitration process will be quick, fair and just,” said Nishith Desai, founder of Nishith Desai Associates and a former board member of SIAC.

India now has its own international arbitration centre in Mumbai. But in context of arbitration, this is a recent development.

According to the 2019 annual report of SIAC, India was the top user of its arbitration seat with 485 cases being referred to SIAC, followed by Philippines at 122, China at 76 and the United States at 65.

Will this interim award have any impact on the Competition Commission of India (CCI) decision in the Future-RIL deal?

There is no specific requirement under the regulations that requires the CCI to defer its decision due this order of the Emergency Arbitrator. However, passive or perception-based impact of the order cannot be ruled out, said Kabra. “It also depends on whether Reliance and Future voluntarily make any statements before the CCI,” he added.