

EMERGENCY ARBITRATIONS IN INDIA: VIABILITY AND ENFORCEABILITY

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ABSTRACT

Interim measures are often required at early stages in an arbitration to protect the parties' respective positions for the duration of the arbitration proceedings, including by way of orders to preserve evidence, prevent dissipation of assets and secure the amount in dispute (including costs of the arbitration). Emergency arbitration has gained popularity in the past decade, as it offers a disputing party an avenue to obtain urgent interim relief from an arbitrator appointed exclusively for the purpose, on an expedited basis before the arbitral tribunal is constituted and without having to resort to court proceedings for interim relief. This article discusses the efficacy of relief granted in an emergency arbitration in disputes involving Indian parties or where such relief is required to be enforced in India.

1. INTRODUCTION

Interim measures are often required at the early stages of an arbitration to protect the parties' respective positions for the duration of the arbitration proceedings. This includes orders to preserve evidence, prevent the dissipation of assets and secure the amount in dispute (including costs of the arbitration).

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Before the advent of emergency arbitration, the primary options available to the parties to obtain interim measures early were to either approach a jurisdictional court or await the constitution of the arbitral tribunal. In practice, accounting for procedural timelines and any case-specific delays, obtaining interim relief through these processes could take several weeks or longer, amplifying the risk of a party successfully alienating assets or compromising evidence.

Emergency arbitration, as the name suggests, is a procedure offering a disputing party an avenue to obtain urgent interim relief from an arbitrator appointed exclusively for the purpose. It is done on an expedited basis before the arbitral tribunal is constituted and without having to resort to court proceedings for interim relief. Much like a regular arbitral tribunal, the foundation for emergency arbitration is the principle of party autonomy, with the jurisdiction of the emergency arbitrator founded in the contract between the parties. Many arbitral institutions have separate panels of arbitrators for appointments in emergency arbitration and appointments are often made within one to three days of a request for the emergency arbitration.² Ordinarily, the proceedings are completed and the award on the relief requested is delivered in a short time frame which ranges from five (5) to fifteen (15) days from the appointment of the emergency arbitrator, depending on the rules under which the emergency arbitration is conducted.³

The roots of emergency arbitration can be traced to the International Chamber of Commerce (the “**ICC**”) Rules for Pre-Arbitral Referee Procedure adopted in 1990, which provided for the appointment (subject to a prior agreement between the parties) of a referee who had the power to grant certain interim orders prior to the constitution of an arbitral tribunal.⁴ Further, in 1999, the American Arbitration Association adopted Optional

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2. Rules of Arbitration of the International Chamber of Commerce (ICC) (the “**ICC Rules**”) (1 January 2021), appx V, art. 6.4; London Court of International Arbitration (LCIA) Arbitration Rules (the “**LCIA Rules**”) (1 October 2020), art. 9.6; Arbitration Rules of the Singapore International Arbitration Centre (SIAC) (the “**SIAC Rules**”) (1 August 2016), sch. 1, art. 3.
 3. Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) (the “**SCC Rules**”) (1 January 2023), appx. II, art. 8.1; Arbitration Rules of the Mumbai Centre for International Arbitration (MCIA), (the “**MCIA Rules**”) (15 January 2017), art. 14.6; The Delhi International Arbitration Centre (DIAC) Arbitration Proceedings Rules (the “**DIAC Rules**”) (1 July 2018), art. 14.9; ICC Rules (1 January 2021), appx. V, art. 2.1; LCIA Rules (1 October 2020), art. 9.4; SIAC Rules (1 August 2016), sch. 1, art. 9.
 4. ICC Rules for a Pre-Arbitral Referee Procedure (1 January 1990), art. 3.1.

Rules for Emergency Measures of Protection as part of its commercial arbitration rules.⁵ While the World Intellectual Property Organisation proposed an amendment to its arbitration rules to incorporate an emergency relief mechanism in the mid-1990s, the amendment was not made until 2014.⁶

In the next two decades, several arbitral institutions incorporated emergency arbitration mechanisms in their respective rules. The Singapore International Arbitration Centre (“SIAC”)⁷ and the Stockholm Chamber of Commerce (“SCC”)⁸ revised their rules in 2010, while the ICC⁹ and the Swiss Arbitration Centre (“SAC”)¹⁰ included provisions for emergency arbitration in the 2012 versions of their arbitral rules. The Hong Kong International Arbitration Centre (“HKIAC”),¹¹ the London Court of International Arbitration (“LCIA”),¹² and the China International Economic and Trade Arbitration Commission (“CIETAC”)¹³ followed suit in 2013, 2014 and 2015 respectively. Several arbitral institutions based in India (such

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5. Optional Rules for Emergency Measures, The American Arbitration Association Commercial Arbitration Rules and Mediation Procedures (1 April 1999).
 6. World Intellectual Property Organisation (WIPO) Arbitration Rules (1 June 2014), art 49(a).
 7. SIAC Rules (1 July 2010), sch. 1. See SIAC Rules (1 August 2016), for the latest version <https://siac.org.sg/siac-rules-2016> accessed 6 February 2023.
 8. SCC Rules (1 January 2010), appx. II. See SCC Rules (1 January 2023), for the latest version https://sccarbitrationinstitute.se/sites/default/files/2023-01/scc_arbitration_rules_2023_eng.pdf accessed 6 February 2023.
 9. ICC Rules (1 January 2012), appx. V. See ICC Rules (1 January 2021), for the latest version <https://iccwbo.org/content/uploads/sites/3/2020/12/icc-2021-arbitration-rules-2014-mediation-rules-english-version.pdf> accessed 6 February 2023.
 10. Rules of Arbitration of the Swiss Arbitration Centre (SAC) (the “Swiss Rules”) (1 June 2012), art 43. See Swiss Rules (1 June 2021), for the latest version <https://www.swissarbitration.org/wp-content/uploads/2022/07/Swiss-Rules-2021-EN.pdf> accessed 6 February 2023.
 11. Hong Kong International Arbitration Centre (HKIAC) Administered Arbitration Rules (the “HKIAC Rules”) (1 November 2013), sch. 4. See HKIAC Rules (1 November 2018), for the latest version https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/2018%20Rules%20book/2018%20AA%20Rules_English.pdf accessed 6 February 2023.
 12. LCIA Rules (1 October 2014), art. 9-B. See LCIA Rules (1 October 2020), for the latest version https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx accessed 6 February 2023.
 13. CEITAC Arbitration Rules (1 January 2015), appx. III <https://www.cietac-eu.org/download/china-international-economic-and-trade-arbitration-commission-cietac-arbitration-rules/> accessed 6 February 2023.

as the Mumbai Centre for International Arbitration (the “**MCIA**”),¹⁴ Delhi International Arbitration Centre (the “**DIAC**”),¹⁵ and the Indian Council of Arbitration (the “**ICA**”),¹⁶ also provide for emergency arbitration in their rules.

Emergency arbitration has gained popularity in the past decade. Since the introduction of provisions on emergency arbitrations in its rules in 2010, SIAC reportedly received 129 applications for the appointment of an emergency arbitrator (all of which were accepted by SIAC),¹⁷ several of which involved Indian parties either as claimants¹⁸ or respondents.¹⁹ The ICC had received a total of 95 requests until 2019.²⁰ Relief is not, however, granted in every case, as it is only in exceptional cases that urgent interim relief is justified.²¹ A majority of requests have been made in relation to disputes in the commercial, construction, maritime and trade sectors.²²

This article discusses the efficacy of relief granted in an emergency arbitration in disputes involving Indian parties or where such relief is required to be enforced in India.

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14. MCIA Rules (15 January 2017), art. 14 https://mcia.org.in/mcia-rules/english-pdf/#mcia_rule14 accessed 6 February 2023.
 15. DIAC Rules (1 July 2018), art. 14 <http://dhcdiac.nic.in/wp-content/uploads/2020/01/DIAC-Arbitration-Proceedings-Rules-2018.pdf> accessed 6 February 2023.
 16. ICA Rules of International Commercial Arbitration (the “**ICA Rules**”) (1 April 2016), art. 33 <https://www.icaindia.co.in/International.pdf> accessed 6 February 2023.
 17. Singapore International Arbitration Centre, SIAC Year in Review (2021), pp. 9 and 10 <https://siac.org.sg/wp-content/uploads/2022/06/SIAC-AR2021-FinalFA.pdf> accessed 6 February 2023.
 18. A total of 15 applications for appointment of emergency arbitrator has been filed by Indian parties. Singapore International Arbitration Centre, SIAC Year in Review (2021), p. 10 <https://siac.org.sg/wp-content/uploads/2022/06/SIAC-AR2021-FinalFA.pdf> accessed 6 February 2023.
 19. A total of 61 applications for appointments of emergency arbitrator has been filed with Indian parties as Respondents to such arbitrations. Singapore International Arbitration Centre, SIAC Year in Review (2021), p. 10 <https://siac.org.sg/wp-content/uploads/2022/06/SIAC-AR2021-FinalFA.pdf> accessed 6 February 2023.
 20. ICC Commission Report on Emergency Arbitrator Proceedings (April 2019), p. 37 <https://iccwbo.org/content/uploads/sites/3/2019/03/icc-arbitration-adr-commission-report-on-emergency-arbitrator-proceedings.pdf> accessed 6 February 2023.
 21. ICC Commission Report on Emergency Arbitrator Proceedings (April 2019), p. 4 <https://iccwbo.org/content/uploads/sites/3/2019/03/icc-arbitration-adr-commission-report-on-emergency-arbitrator-proceedings.pdf> accessed 6 February 2023.
 22. Singapore International Arbitration Centre, SIAC Year in Review (2021), p. 10 <https://siac.org.sg/wp-content/uploads/2022/06/SIAC-AR2021-FinalFA.pdf> accessed 6 February 2023.

2. BROAD FRAMEWORK OF EMERGENCY ARBITRATION

The appointment of an emergency arbitrator is typically requested when a notice of arbitration is issued, or shortly thereafter, and before the arbitral tribunal is constituted. The emergency arbitrator is entitled to set the procedure which will apply to the emergency arbitration, including the schedule for evidence and submissions to be adduced and for hearing (if any).

An emergency arbitrator has the power to order or award any interim relief deemed to be appropriate. Their powers are typically similar to those vested in the properly constituted tribunal, including to rule on its own jurisdiction and the procedure to be applied to the emergency arbitration proceedings.

While the legal standard for grant of interim relief may vary across jurisdictions, emergency arbitrators make their determination on the request for interim relief based on a very preliminary view of the merits of the case. The applicant is typically required to establish that: (a) there is a risk of serious or irreparable harm to the party seeking relief; (b) the urgency is such that the request for relief cannot await the constitution of the arbitral tribunal; (c) the grant of interim relief requested does not pose the risk of a prejudgment on the merits of the case; and (d) the balance of convenience is in favour of the grant of relief. The emergency arbitrator is required to record reasons for his/her decision.²³

Orders or awards issued by the emergency arbitrator are usually finite in time – either to survive until the arbitral tribunal is constituted or until such order/award is reconsidered by that tribunal or until the final award is made by that tribunal (or if the claim is withdrawn or the arbitral tribunal is not constituted within a specified time frame).

The emergency arbitrator has no power to act once the arbitral tribunal is constituted under the applicable procedure. Any orders and/or awards issued by the emergency arbitrator may be reconsidered, modified, or vacated by the properly constituted tribunal. The orders or awards of the

23. ICC Rules (1 January 2021), appx. V, art. 6.3; LCIA Rules (1 October 2020), art. 9.9; SIAC Rules (1 August 2016), sch. 1, art. 8; SCC Rules (1 January 2023), appx. II, art. 8.2(ii); HKIAC Rules (1 November 2018), sch. 4, art. 14(b); MCIA Rules (15 January 2017), art. 14.7.

emergency arbitrator are not binding on the arbitral tribunal and the arbitral tribunal may either confirm, modify, or vacate such order or award.²⁴

The entire process, from the time an application for emergency arbitration is made until the award on the emergency relief requested, is rendered, is usually completed within five (5) to fifteen (15) days from the date of the appointment of the emergency arbitrator.²⁵

3. THE INDIAN POSITION ON EMERGENCY ARBITRATION

The Arbitration and Conciliation Act, 1996, as amended (the “**Arbitration Act**”) does not expressly provide for emergency arbitration or the enforcement of an emergency arbitrator’s orders or awards. Following the developments in the rules of arbitral institutions, some jurisdictions have revised their national legislation to recognise emergency arbitration.²⁶ For instance, the Hong Kong Arbitration Ordinance of 2013 allows courts in Hong Kong to enforce relief granted by emergency arbitrators, whether the order is issued in an arbitration seated in Hong Kong or abroad.²⁷

That is not to say that efforts to introduce the concept in Indian law have been non-existent. The Law Commission of India, in its 246th report, recommended that an emergency arbitrator be included within the definition of the term “*arbitral tribunal*” under Section 2(1)(d) of the Arbitration Act,²⁸ in order to align the arbitral practice in India with the various institutional rules providing for emergency arbitration.²⁹ A similar

24. ICC Rules (1 January 2021), appx. V, art. 6.6; LCIA Rules (1 October 2020), art. 9.11; SIAC Rules (1 August 2016), sch. 1, art. 10; SCC (1 January 2023), appx. II, art. 9.4(i); HKIAC Rules (1 November 2018), sch. 4, art. 17(a); MCIA Rules (15 January 2017), art. 14.9.

25. SCC Rules (1 January 2023), appx. II, art. 8.1; the MCIA Rules (15 January 2017), art. 14.6; DIAC Rules (1 July 2018), art. 14.9; ICC Rules (1 January 2021), appx. V, art. 6.4; LCIA Rules (1 October 2020), art. 9.4; SIAC Rules (1 August 2016), sch. 1, art. 9.

26. See, for instance, International Arbitration (Amendment) Act, No. 12 of 2012 (Singapore), s. 2; Arbitration Amendment Act, 2016 (New Zealand), s. 4; Arbitration (Amendment) Act, No. 2 of 2018 (Malaysia), s. 2; International Arbitration Act, No. 44 of 2017 (Fiji), s. 2; Arbitration (Amendment) Ordinance, No. 7 of 2013 (Hong Kong), ss. 22-A and 22-B; Conciliation and Arbitration Law, No. 708 of 2015 (Bolivia), ss. 67-71.

27. Arbitration (Amendment) Ordinance, No. 7 of 2013 (Hong Kong), ss. 22-A and 22-B.

28. Law Commission of India, Report No. 246 – Amendments to the Arbitration and Conciliation Act, 1996 (August 2014), p. 37 <https://lawcommissionofindia.nic.in/reports/report246.pdf> accessed 6 February 2023.

29. Law Commission of India, Report No. 246 – Amendments to the Arbitration and Conciliation Act, 1996 (August 2014), p. 37 <https://lawcommissionofindia.nic.in/>

recommendation was made by the committee set up by the Government of India in 2017 headed by Justice (Retd.) B.N. Srikrishna to review the institutionalisation of the arbitration mechanism in India (the “**Srikrishna Committee**”), which also suggested that the definition of “*arbitral award*” in Section 2(1)(c) of the Arbitration Act be amended to include the decision of an emergency arbitrator.³⁰ The Srikrishna Committee noted that these recommendations were significant since emergency decisions issued in a foreign-seated arbitration may not otherwise be enforceable in India.³¹ However, even though the Arbitration Act has been amended in 2015, 2019 and 2021, the recommendations of the Law Commission and the Srikrishna Committee have not been reflected in the Arbitration Act.

The Arbitration Act, therefore, does not expressly recognise emergency arbitration or the relief granted by an emergency arbitrator. More particularly, the Arbitration Act is silent on whether a decision of the emergency arbitrator would be treated as an order or an award. This is significant in foreign-seated arbitrations as an interim order issued in such proceedings may not be enforceable under Part II of the Arbitration Act unless it is in the nature of an award (as opposed to an order).³² In India-seated arbitrations, the mechanism for challenge and enforcement would also depend on whether the decision of the emergency arbitrator had the trappings of an order or an award.

Indian courts have, however, attempted to resolve the controversy. In 2021, the Supreme Court of India (“**Supreme Court**”) considered the enforceability in India of a decision issued in an emergency arbitration conducted under the SIAC Rules in an India-seated arbitration between ‘Amazon.com NV Investment Holdings LLC’ and ‘Future Retail Limited’ and its affiliates (“**Amazon**”).³³ The Supreme Court held that in cases

reports/report246.pdf accessed 6 February 2023.

30. Ministry of Law and Justice, Government of India, *Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (30 July 2017), pages 76-77 <https://legallaffairs.gov.in/sites/default/files/Report-HLC.pdf> accessed 6 February 2023.
31. Ministry of Law and Justice, Government of India, *Report of the High-Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (30 July 2017), p. 76 <https://legallaffairs.gov.in/sites/default/files/Report-HLC.pdf> accessed 6 February 2023.
32. Part II of the Arbitration Act only deals with enforcement of arbitral awards rendered in foreign-seated arbitrations, including interim awards, and does not provide for enforcement of orders issued by arbitral tribunals in foreign-seated arbitrations.
33. Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. (2022) 1 SCC 209.

where institutional rules applied, the definition of an “arbitral tribunal” in Section 2(1)(d) of the Arbitration Act would include emergency arbitrators, and accordingly, decisions issued by emergency arbitrators under those rules would be an order of the “arbitral tribunal” under Section 17(1) of the Arbitration Act.³⁴ The Supreme Court held that the emergency arbitrator’s decision was an order under Section 17(1) of the Arbitration Act, and accordingly enforceable under Section 17(2) of the Arbitration Act.³⁵

This decision does not squarely apply to foreign-seated arbitrations governed by Part II of the Arbitration Act (to which Section 17 of the Arbitration Act does not apply). In two earlier cases involving decisions of an emergency arbitrator in foreign-seated arbitrations, the party seeking relief approached the Indian courts under Section 9 of the Arbitration Act requesting an order in the same terms as those granted by the emergency arbitrator.³⁶ In each of these cases, the courts considered that the petitioner could not seek enforcement of the decision of the emergency arbitrator in a foreign-seated arbitration under Section 17 of the Arbitration Act, and relief was granted under Section 9 of the Arbitration Act after conducting an independent analysis of the merits of the relief requested. As such, the emergency arbitration proceedings may have been unnecessary to the obtaining of interim relief.³⁷

4. VIABILITY OF THE EMERGENCY ARBITRATION OPTION

Whether or not emergency arbitration is the appropriate avenue for urgent interim relief will inevitably require a case-to-case analysis. The option for emergency arbitration is, of course, only available when the arbitration agreement incorporates (expressly or by reference) provisions for emergency arbitration, and where so available, can be invoked only in scenarios of necessity and urgency, and where the grant of relief cannot await the constitution of the arbitral tribunal in the ordinary way.

One significant factor to consider when evaluating whether or not to invoke emergency arbitration is whether the restricted time frame in which the emergency arbitration is to be conducted and concluded allows for the merits of the case for interim relief to be fully addressed and appreciated by

34. Amazon, para 35.

35. Amazon, paras 12 and 40.

36. HSBC PI Holdings (Mauritius) Ltd. v. Avitel Post Studioz Ltd. 2014 SCC OnLine Bom 102 (“**Avitel**”); Raffles Design International India (P) Ltd. v. Educomp Professional Education Ltd. 2016 SCC OnLine Del 5521 : (2016) 6 Arb LR 426 (“**Raffles Design**”).

37. Avitel, para 89; Raffles Design, paras 103-105.

the emergency arbitrator. The disputing parties work within a significant time constraint to prepare their case and present any relevant evidence. Likewise, the emergency arbitrator has limited opportunity to consider and evaluate the case, often also simultaneously being required to devote time and attention to procedural issues arising in relation to the emergency arbitration, including challenges to jurisdiction (for instance, for by passing pre-arbitration requirements stipulated in the arbitration agreement). Such circumstances may pose a hurdle in complex and high-value arbitrations and may challenge the emergency arbitrator's ability to render a decision within the stipulated timeline. A case-specific analysis of the effectiveness of an emergency arbitration is critical in deciding whether to expend time and resources in invoking the mechanism.

In the Indian context, where the option of emergency arbitration is available, its suitability should be weighed against two primary considerations (in addition to any case-specific factors): (i) the enforceability of the emergency relief granted (the enforcement consideration); and (ii) whether an alternative remedy is likely to be more efficacious (such as approaching the jurisdictional court for interim relief under Section 9 of the Arbitration Act) (the efficacious alternative consideration).³⁸ Where institutional rules or procedures agreed by the parties include a provision for the expedited formation of the arbitral tribunal or an expedited arbitration procedure, that would be a third alternative to consider when a party is evaluating which forum is appropriate to obtain the urgent interim relief required.

A. The Enforcement Consideration

The enforceability in India of a decision of an emergency arbitrator has now received greater clarity through the judicial pronouncements discussed above. Briefly put, in India-seated arbitrations, following the Supreme Court's decision in *Amazon*, the decisions in an emergency arbitration are enforceable as orders of the court under Section 17(2) of the Arbitration Act. Accordingly, from an enforcement perspective, there is no legal distinction between a decision of the arbitral tribunal under Section 17(1) of

38. See *Bhatia International v. Bulk Trading SA* (2002) 4 SCC 105; *Videocon Industries Ltd. v. Union of India*, (2011) 6 SCC 161; *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services*, (2012) 9 SCC 552; and *Union of India v. Reliance Industries Ltd.* (2015) 10 SCC 213 for whether such relief would be available in foreign seated arbitrations commenced prior to the amendment to the Arbitration Act in 2015.

the Arbitration Act and a decision issued by an emergency arbitrator in an India seated arbitration.

The position is, however, different in foreign-seated arbitrations. Part II of the Arbitration Act provides for the enforcement of awards issued in foreign seated arbitrations (to which the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 or the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 apply) but does not provide for the enforcement of interim orders issued in such arbitrations. For that reason, as was the case in *Avitel* and *Raffles Design*, the beneficiary of an emergency arbitrator's decision in a foreign seated arbitration has no means to enforce such order of the tribunal and is compelled to take recourse to Section 9 of the Arbitration Act (where it has not been excluded by the parties). The interim relief must be granted by a jurisdictional court in the same terms as those granted by the emergency arbitrator.

The time and cost implications of approaching separate forums for interim relief (i.e., the emergency arbitrator, followed by an Indian court) play an important role in determining whether the emergency arbitration option is feasible in the circumstances of the case. There may be justification for undertaking the exercise in some cases such as, for instance, where enforcement of the emergency arbitrator's decision is contemplated in multiple jurisdictions (of which India may be one). The decision is either enforceable *per se* in those jurisdictions or the courts in such jurisdictions would show deference to the emergency arbitrator's decision or the defendant is likely to comply with the emergency award without an enforcement action.

B. The Efficacious Alternatives Consideration

Another important consideration is whether a more efficacious alternative is available including whether such alternative is less time-consuming or if it is less expensive.

From an Indian perspective, the principal alternatives to emergency arbitration are court granted relief under Section 9 of the Arbitration Act or, where the arbitration agreement or any applicable institutional rules or arbitration procedures permit, options for the expedited formation of the arbitral tribunal so that the urgent relief can be requested from the properly constituted tribunal.

Emergency arbitration ceases to be an option once the arbitral tribunal is constituted.³⁹ Since emergency arbitration is typically invoked only when the urgency in obtaining interim relief is such that it cannot await the constitution of the arbitral tribunal, waiting for interim measures until the arbitral tribunal is constituted may not be feasible. Equally, in an India seated arbitration which contemplates a fast track arbitration procedure under Section 29B of the Arbitration Act, awaiting the appointment of the sole arbitrator may not be a practical alternative where emergency relief is required – since the sole arbitrator under Section 29B(2) of the Arbitration Act is to be appointed by agreement of the parties, and such agreement may not be forthcoming.

In each case, the time taken in the formation of an arbitral tribunal may defeat the purpose if a party requires emergency relief.

Where the option is available, with an overall timeframe of less than three weeks (i.e., approximately one (1) to three (3) days for the appointment of an emergency arbitrator,⁴⁰ and from that time, to five (5) to fifteen (15) days to obtain the decision on the request for interim relief),⁴¹ emergency arbitration is very likely to be more expedient in terms of time taken to obtain a decision on the request for interim relief. Following the *Amazon* ruling, an emergency arbitrator's decision is enforceable in the same way as an order of the arbitral tribunal and there no distinction between the two alternatives in foreign seated arbitrations as interim orders of either the emergency arbitrator or the arbitral tribunal are not *per se* enforceable under Part II of the Arbitration Act.

Under Section 9 of the Arbitration Act, courts have wide powers to grant interim relief at any time before, during or after the making of a final award and until such award is enforced.⁴² This remedy is available even in foreign-seated arbitrations unless parties exclude the application of Section 9.⁴³

39. ICC Rules (1 January 2021), appx. V, art. 6.6; LCIA Rules (1 October 2020), art. 9.11; SIAC Rules (1 August 2016), sch. 1, art. 10; SCC (1 January 2023), appx. II, art. 9.4(i); HKIAC Rules (1 November 2018), sch. 4, art. 17(a); MCIA Rules (15 January 2017), art. 14.9.

40. ICC Rules (1 January 2021), appx. V, art. 2.1; LCIA Rules (1 October 2020), art. 9.6; SIAC Rules (1 August 2016), sch. 1, art. 3.

41. SCC Rules (1 January 2023), art. 8.1; MCIA Rules (15 January 2017), art. 14.6; DIAC Rules (1 July 2018), art. 14.9; ICC Rules (1 January 2021), appx. V, art. 2.1; LCIA Rules (1 October 2020), art. 9.4; SIAC Rules (1 August 2016), sch. 1, art. 9.

42. Arbitration and Conciliation Act 1996, s. 9(1).

43. Arbitration and Conciliation Act 1996, s. 2(2).

Approaching an Indian court under Section 9 of the Arbitration Act is often a useful mechanism to obtain interim relief for several reasons. For instance, Section 9 proceedings can be instituted even before the arbitration agreement has been invoked.⁴⁴ By contrast, emergency arbitration can only be instituted after arbitration has been invoked and reference has been made to the designated arbitral institution. Often urgent interim relief is required at short notice when the requesting party may not be in a position to draw up a detailed notice of dispute or notice of arbitration. In such cases, Section 9 proceedings may afford quick and effective relief and allow for the requesting party to prepare its notice of arbitration and claim thoughtfully.

Subject to the procedural rules of the jurisdictional court, Section 9 proceedings also allow for the possibility of obtaining relief on an *ad interim* or even an *ex parte* basis. In such cases, relief may be available through Section 9 proceedings on a shorter timeline than the emergency arbitration. The ability to obtain *ex parte* and/or *ad interim* relief, of course, is subject to the rules and practices of the jurisdictional court, which may require advance notice of such proceedings to be served on an opposite party.

Further, the requesting party has no enforcement concerns to contend with in relation to orders of a court under Section 9 of the Arbitration Act. Given the experience in *Avitel* and *Raffles Design* where, in foreign seated arbitrations, Section 9 proceedings were required to be instituted in the Indian courts to effectively enforce emergency arbitration decisions, Section 9 proceedings may be a more time and cost-efficient mechanism in ordinary scenarios (see also discussion on other factors such as potential enforcement of emergency arbitrator's decision in multiple jurisdictions).

These factors in favour of obtaining interim relief under Section 9 of the Arbitration Act should be counterbalanced against the advantages offered by an emergency arbitration and any party preferences to approach a neutral and private forum (such as the emergency arbitration) to adjudicate the request for interim relief. For instance, emergency arbitration proceedings are confidential, whereas court proceedings in India are typically public proceedings. The availability of skilled and experienced arbitrators for appointment as emergency arbitrators is another significant advantage, particularly where any sector-specific experience (such as construction, commodities or shipping) is of particular value.

44. Sundaram Finance Ltd. v. NEPC India Ltd. (1999) 2 SCC 479, para 13.

Finally, where enforcement of the interim relief being requested may be required in multiple jurisdictions, obtaining such relief through emergency arbitration that can be enforced in all the relevant jurisdictions (assuming it is so enforceable in those jurisdictions, and without significant time or cost implications) eliminates the risk of conflicting decisions of the courts of those jurisdictions and is likely to be more time and cost effective than approaching each of the courts in those jurisdictions for the relief.

5. CONCLUSION

Emergency arbitration has developed over the past several years to offer a workable mechanism to parties requiring urgent relief to obtain such relief before the arbitral tribunal is formed and without resort to a jurisdictional court. Whether emergency arbitration is a suitable option inevitably involves a case-specific analysis, much of which rests on the seat of the arbitration, the time and cost efficiency emergency arbitration is able to offer, and the legislative and judicial support for emergency arbitrations in jurisdictions worldwide in terms of enforceability of the decision rendered.