



Supreme Court Rules on Future Retail Vs Amazon

Why in News

Recently, the [Supreme Court](#) upheld the enforcement of an order by the Singapore International Arbitration Centre (SIAC)'s emergency arbitrator that puts on hold the Future Group's deal with Reliance Industries Limited.

Singapore International Arbitration Centre

- It is a not-for-profit international arbitration organisation based in Singapore, which administers arbitrations under its own rules of arbitration and the [United Nations Commission on International Trade Law \(UNCITRAL\) Arbitration Rules](#).

Key Points

▪ Background:

- In August 2020, Future Retail Limited (FRL) had announced that it would sell its retail and wholesale business to Reliance Retail.
- Before the deal could be executed, Amazon objected to it, alleging a breach of contract it had with Future Coupons (the promoter firm of Future Retail).
 - Amazon said that its agreement with Future Coupons had given it a "call" option, which enabled it to exercise the option of acquiring all or part of Future Retail's shareholding in the company, within three to 10 years of the agreement.
- Subsequently, Amazon took Future Retail into Emergency Arbitration before the SIAC, where an emergency arbitrator barred the latter from proceeding with the deal.

- **Emergency arbitration** is a mechanism which "allows a disputing party to apply for urgent interim relief before an arbitration tribunal has been formally constituted".

▪ Significance of Supreme Court's Order:

- **Dismissed** FRL's argument **that the "Emergency Arbitrator is not an arbitral tribunal" under the Arbitration and Conciliation Act of 1996.**
- It upheld the validity of the EA award. The judgment laid down that the **award is "exactly like an order of an arbitral tribunal" contemplated under Section 17** of the 1996 Act. Hence, an award by the EA was like an order under Section 17(1) (interim measures ordered by an arbitral tribunal) of the Act.
 - Section 17 of the Act prescribes the mechanism for parties to an arbitration to seek interim reliefs from the arbitral tribunal during the pendency of the arbitral proceedings.
- The EA orders were **"an important step in aid of decongesting the civil courts and**

affording expeditious interim relief to the parties”.

- The court **pointed out a recommendation that a High-Level Committee constituted by the Government of India under the chairmanship of Justice B N Srikrishna** (retired) to review the institutionalisation of the arbitration mechanism in India and look into the provisions of the Arbitration Act after the 2015 Amendment Act, gave in its 2017 report.
 - It said that “given that international practice is in favour of enforcing emergency awards (Singapore, Hong Kong and the United Kingdom all permit enforcement of emergency awards), it is time that India permitted the enforcement of emergency awards in all arbitral proceedings”.
- The judgment would serve as **a reminder to the parties to carefully agree to the terms and conditions of the arbitration.**
- **No appeal would lie under Section 37 of the Arbitration Act** against an order of enforcement of an Emergency Arbitrator’s order made under Section 17(2) of the Act.
 - Section 37 of the Arbitration Act, prescribes for appeals against certain identified orders of the court and/or arbitral tribunal (as the case may be).
 - However, Section 37 (unlike Section 34) of the Act is silent on the limitation period for filing an appeal.

Arbitration

▪ About:

- It is a process in which disputes are resolved between the parties by appointing an independent third party who is an impartial and neutral person called arbitrator. Arbitrators hear both the parties before arriving at a solution to their dispute.

▪ Arbitration and Conciliation (Amendment) Act, 2021:

- It **amends the Arbitration and Conciliation Act (A&C Act 1996)** so as to (i) enable automatic stay on awards in certain cases and (ii) specify by regulations the qualifications, experience and norms for accreditation of arbitrators.
 - **A&C Act 1996** is an act to amend and consolidate a law related to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental therewith.

▪ Features of the Act:

◦ Qualifications of Arbitrators:

- **It does away with the qualifications of the arbitrators under 8th Schedule of the Arbitration and Conciliation Act, 1996** which specified that the arbitrator must be:

- An advocate under the Advocates Act, 1961 with 10 years of experience, or
- An officer of the Indian Legal Service.

◦ Unconditional Stay on Awards:

- If the Award is being given on the basis of a fraudulent agreement or corruption, then the court can grant an unconditional stay as long as an appeal under Section 34 of the arbitration law is pending.

▪ Benefits:

- Would bring about parity among all the stakeholders in the arbitration process.
- Checking misuse of the provisions under Arbitration and Conciliation Act, 1996 would save the taxpayers money by holding those accountable who siphoned off of them unlawfully.

▪ Drawbacks:

- India already lags behind when it comes to the enforcement of international contracts and agreements. The Act **can further hamper the spirit of [Make in India](#) campaign and deteriorate rankings in [Ease of Doing Business Index](#).**
- India aims to become a hub of domestic and international arbitration. Through the implementation of these legislative changes, resolution of commercial disputes could take longer duration now onwards.

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