

Bombay High Court's ad-interim order based on an Emergency Award passed in a SIAC Arbitration (Bombay High Court)

Update by Editor

Published on 24 April 2020

Plus Holdings Limited v. Xeitgeist Entertainment Group Limited and others

Court: High Court of Bombay | **Case Number:** Comm. Arb. Pet. No. 339 of 2019 | **Citation:** 2019 SCC OnLine Bom 13069 | **Bench:** GS Kulkarni J | **Date:** 07 March 2019

GS Kulkarni J of the Bombay High Court recently passed an ad-interim injunction under Section 9 ACA recognising and thus giving effect to an Emergency Award made by a tribunal constituted under the SIAC Rules. The parties settled the matter later. Though an ad-interim order, we cover the case for its importance (see the comments at the end by Vivekananda Neelakantan, an NFRAL member, who represented a party in the arbitration).

A. The background

Hotel Mumbai Pty Ltd. ("HMPL"), an Australian company, was the original owner of rights associated with the movie Hotel Mumbai (based on the 2008 terrorist attacks on Mumbai, India's financial capital).

At one point, HMPL gave the broadcasting rights of the movie to Xeitgeist Entertainment Group Ltd., a Singapore based licensing and distribution company.

In turn, Xeitgeist granted the broadcasting rights to Plus holdings in regions including India. This agreement, however, was terminated on 07 November 2018. A dispute arose concerning the termination. Plus Holdings initiated arbitration under the SIAC Rules and also invoked the emergency interim relief provisions.¹ Xeitgeist claimed that the right had already reverted to the original owner (HMPL) because they were assigned to HMPL by Xeitgeist. In the meanwhile, HMPL had entered into an agreement with Netflix on 06 November 2018 for the release of the movie in India and other SAARC countries.

The Emergency Arbitrator made a preliminary order, and then his final order, subject ultimately to the orders of the regular tribunal, and restrained Xeitgeist from entering into any agreement or conferring any rights on any person inconsistent with or detrimental to, Plus Holdings' rights. It also ordered that Xeitgeist shall take steps within its power to cause any person to whom it has purported to confer any rights which may be inconsistent with, or detrimental to, Plus Holdings' rights, not to (i) exercise any such conferred rights; or (ii) grant any such conferred rights to another person or persons.

Netflix was not a party to the agreement between Plus Holdings and Xeitgeist and was accordingly not a party to the arbitration or the emergency arbitrator proceedings.

¹ Rules of several institutions administering arbitration now provide for emergency arbitration to deal with urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal. Rule 30. 2 of the SIAC Rules provides that "a party that wishes to seek emergency interim relief prior to the constitution of the Tribunal may apply for such relief pursuant to the procedures set forth in Schedule 1." Schedule 1 describes in the detail the procedure for seeking the emergency interim relief "concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal."

B. Plus Holdings’ Section 9 application in the Bombay High Court

Given that Netflix could not have been made a party to the emergency arbitrator proceedings but armed with the emergency arbitrator’s orders against Xeitgeist, Plus Holdings applied to the Bombay High Court for interim measures under Section 9 ACA. In the Section 9 petition, Plus Holdings arrayed Netflix India as an additional party.

GS Kulkarni J heard the matter at an ad-interim stage (where HMPL had not appeared) and “considered the reliefs as granted by the learned Emergency Arbitrator under the Emergency Award” in favour of Plus Holdings. He noted that “it appears that the rights of [Plus Holdings] in regard to the film in question have been sufficiently recognized in the Emergency Award, although granted against [Xeitgeist].”

He noted that the matter needed further examination and “in the meantime considering the facts and circumstances of the case, it would be necessary to grant an adinterim protection to the petitioner till the adjourned date of hearing”. Accordingly, Kulkarni J restrained HMPL from entering into any agreement or creating any third-party rights concerning the film “Hotel Mumbai” for the SAARC territories.

Subsequently, Netflix terminated its agreement with HMPL. The matter was eventually settled between the parties, and the movie, Hotel Mumbai, was released in India through Plus Holdings in 2019.

Read Kulkarni J’s 07 March 2020 order [here](#).

Read the modification made on 13 March 2020 [here](#).

C. NFRAL’s comments (by Vivekananda Neelakantan)

This case is another example of the innovative approach to ‘enforcement’ of emergency arbitrator orders in India despite the lack of legislative recognition to emergency arbitrators under the ACA. Two such previous examples are *HSBC v. Avitel*, 2014 SCC OnLine Bom 102 (Bombay High Court), and *Raffles v. Educomp*, 2016 SCC OnLine Del 5521 (Delhi High Court). In both cases, the applicants relied on SIAC emergency arbitrator decisions in support of their Section 9 applications.

The Hotel Mumbai case is important because it shows that a SIAC EA decision continues to have persuasive value to a Section 9 court even if the court must conduct a *de novo* review of the request for interim relief. This is only apt as SIAC emergency arbitrators invite submissions and evidence from parties, conduct hearings, and provide detailed grounds for their decisions. A decision made via this process, though not binding, should be of considerable value to a Section 9-court while considering similar requests for interim relief.

Lastly, the Section 9 route is all the more critical where non-signatories to the arbitration agreement are crucial to the reliefs sought, as was the case with Netflix here. It is usual to see a stiff opposition to a potential order against a non-signatory, and more so in emergency interim relief proceedings. However, as long as the orders are directed at the parties to the arbitration, the fact that its compliance will impact a third party is not reason enough on its own for an emergency arbitrator not to make such orders. This is because while tribunals and emergency arbitrators do not have the power to make orders directed at third parties, they are fully entitled to make interim orders directed at parties to the arbitration and should not be unduly concerned by the fact that such orders may have an impact on third parties.