

This Fortnight in Arbitration

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16 March 2021 to 31 March 2021

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(1)

Enforcement of emergency award in the Amazon v. Future group dispute (Delhi High Court)

18 March 2021| Amazon.Com NV Investment Holdings LLC v. Future Coupons Private Limited & Others Delhi High Court | OMP (ENF)(Comm) 17/2021 | JR Midha | 2021 SCC OnLine Del 1279 | **Stayed** by the Supreme Court.

At the core of the dispute between Amazon and the Future group, for the present purposes, is an order made by an Emergency Arbitrator (“EA”) appointed under the Rules of the Singapore International Arbitration Centre. Among the various proceedings is Amazon’s petition to enforce under **Section 17 (2) ACA** the order of the EA. On 02 February 2021, the Delhi High Court made an interim order and by its judgment of 18 March 2021 decided Future group’s objections on enforceability.

The High Court has ruled on the legal status of an Emergency Arbitrator (“EA”) and concluded that an EA is an Arbitrator for all intents and purposes under the ACA and his order is enforceable under **Section 17(2) ACA**. Additionally, an interim measure ordered by the EA not having been appealed in accordance with law is effective and cannot be challenged in enforcement proceedings under **Section 17(2) ACA**.

The group of companies doctrine has been neatly summarised. Several orders have been made under Order XXXIX Rule 2A of the Code of Civil procedure, 1908 to punish the respondent for deliberate and wilful violation of an earlier interim order.

From various proceedings among the parties, the matter was taken to a 2-judge bench of the High Court and then to the Supreme Court of India. Several issues are pending before the Supreme Court in SLP (C) No. 002856-002857/2021 as well as SLP(C) No. 006113 - 006114/2021.

Read the order [here](#).

Categories: [Section 17 ACA](#) | [Interim Measures Ordered by Arbitral Tribunal](#) | [Emergency Arbitrator](#) | [SIAC](#) | [SIAC Rules](#) | [Group of Companies](#) | [Raffles](#)

(2)

Limitation period for filing appeal under Section 37 ACA (Supreme Court of India)

18 March 2021| Government of Maharashtra v. M/s Borse Brothers Engineers & Contractors Pvt. and connected matters | Civil Appeal No. 995 of 2021 & others | RF Nariman, BR Gavai and Hrishikesh Roy JJ

Overruling *NV International v. State of Assam* (2020) 2 SCC 109, the 3-judge bench has decided that the limitation period for filing appeals under **Section 37 ACA** would be governed by **Section 13 CCA**, but where that provision was not attracted either **Article 116** and **Article 117** of the Limitation Act, 1963 (“LA”) as the case may be.

Read the judgement [here](#).

Categories: [Appealable Orders](#) | [Section 13 | Challenge Procedure](#) | [Commercial Courts Act](#) | [Section 37 ACA](#) | [Section 43 ACA](#) | [Limitations](#) | [Limitation Under Section 37](#) | [Set Aside or Refusing to Set Aside an Arbitral Award](#) | [Section 34 ACA](#) | [Setting aside arbitral award](#) | [Section 5 ACA](#) | [Extent of Judicial Intervention](#)

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Exclusive jurisdiction clause versus clause designating a place of arbitration (Madras High Court)

19 March 2021| Balapreetham Guest House Pvt. Ltd. Mypreferred Transformation and Hospitality Pvt. Ltd. | OP 438/2020 | PT Asha J | 2021 SCC OnLine Mad 1126

While one clause of the dispute resolution clause provided that “courts at Chennai shall have exclusive jurisdiction”, another clause provided that “the place of arbitration shall be New Delhi.”

What was the seat of the arbitration?

The court held, following *BGS SGS Soma JV v. NHPC Ltd.*, (2020) 4 SCC 234, that the seat of the arbitration was New Delhi: “the very fact that parties have chosen a place to be the Seat necessarily implies that both parties have agreed that the quotes at the seat would have to use diction over the entire arbitral process.”

Also, harmoniously construed, the apparently conflicting clauses mean that if parties decided to abandon arbitration for a civil suit, the courts at Chennai would have jurisdiction.

Read the judgement [here](#).

Categories: [Section 2 \(1\) \(e\) ACA](#) | [Definitions](#) | [Court](#) | [Seat of Arbitration](#) | [Place of Arbitration](#) | [Exclusive Jurisdiction Clause](#) | [BGS Soma](#)

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What is egregious fraud? (Delhi High Court)

26 March 2021 | AMR-Bbb Consortium v. Bharat Coking Coal Ltd. & another | FAO(OS) (Comm.) 20/2021 | Rajeev Sahai Endlaw & Sanjeev Narula JJ | 2021 SCC OnLine Mad 1126

Fraud is an exception for grant of injunction against encashment of bank guarantees. But the fraud has to be of a very high degree, which would vitiate the very foundation of the bank guarantee. It must be egregious nature to vitiate the underlying transaction. An allegation that grounds were orchestrated to terminate the contract is vague and does not meet the law requirement on the concept of fraud.

Also, a declaration that the underlying contract was void ab initio cannot be granted in [Section 9 ACA](#).

Read the judgment [here](#).

Categories: [Section 9 ACA](#) | [Interim Measures by Court](#) | [Bank Guarantee](#) | [Injunction Against Bank Guarantee](#) | [Egregious Fraud](#)

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