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SIAC Rules 2025: Could Protective Preliminary Orders Face Enforcement Challenge in India

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The much-touted 7th Edition of the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules 2025") came into force earlier this year on 1 January 2025. The SIAC Rules 2025 codify the conventions and practices of the SIAC Court of Arbitration ("SIAC Court") as well as of arbitral tribunals which have emerged over the last decade. Axiomatically, such codification offers parties greater certainty during arbitral proceedings but may dilute some measure of party autonomy and tribunal discretion.

One such radical introduction under the SIAC Rules 2025 – ripe for debate – is the emergency arbitrator's ("EA") power to order *ex-parte* relief, i.e., a Protective Preliminary Order ("PPO"), including prior to the filing of a notice of arbitration. In this piece, we juxtapose such PPOs with the nascent emergency arbitration regime in India under the Arbitration & Conciliation Act 1996 ("Act"). We will explore the validity of PPOs within the broader Indian arbitral landscape, given the *ex-parte* nature of the relief, and comment on the enforceability of PPOs in India.

PPOs vis-à-vis Party Autonomy

The PPO mechanism under the SIAC Rules 2025 is a welcome introduction, alleviating the likelihood of long-drawn-out court processes in India. The introduction is consistent with the UNCITRAL Model Law on International Commercial Arbitration, which allows arbitral tribunals to grant *ad-interim ex-parte* relief.

This is a big shift, considering that neither the 6th Edition of the Arbitration Rules of the SIAC ("SIAC Rules 2016") nor any other major arbitral institution's rules provided for such relief. Importantly, arbitration proceedings commencing on or after 1 January 2025 (regardless of when the arbitration agreement was entered into) shall be conducted in accordance with the SIAC Rules 2025, unless otherwise agreed by the parties. This means that while the parties may have agreed to conduct a potential arbitration in accordance with the "SIAC Rules" (without specifying the year) and may have intended to refer to the SIAC Rules 2016 (which were in force at the time), the new SIAC Rules 2025 would nonetheless apply due to lack of specificity in the underlying agreement.

Thus, the PPO mechanism would apply even when the parties could not have been aware of its features at the time of entering into the arbitration agreement. The PPO mechanism is rife with new

features, for instance: (i) an application for a PPO can be filed even prior to filing a notice of arbitration [Sch. 1, para 2(a) *read with* para 25]; (ii) if parties have not expressly agreed on the seat of arbitration in their arbitration agreement, the emergency arbitration would nonetheless commence with Singapore as the seat [Sch. 1, para 12], whereas parties would previously have had an opportunity to come to an agreement in this regard prior to an order being passed [SIAC Rules 2016, Sch. 1, para 4]; and (iii) a PPO can direct a counter-party "not to frustrate the purpose of the emergency interim or conservatory measure requested" [Sch. 1, para 25].

While some parties may enjoy the benefits of expeditious protective measures, their counterparties may not be as receptive to *ex-parte* interim orders passed by an EA (i) whose appointment cannot be challenged prior to the order being granted; (ii) in a proceeding they did not have any notice of; and (iii) pending an arbitration which may not even have been notified, much less initiated.

Such aggrieved counterparties could request the SIAC Court, the subsequent arbitral tribunal, and other appropriate courts to declare the PPO mechanism to be outside the contemplation of the arbitration agreement (which had referred to the "SIAC Rules"). Such temporal conflicts between the applicable version of the institutional rules at the time of execution of the arbitration agreement and the version at the time of initiation of arbitration have been the subject of much scholarly debate (see here and here).

PPOs: Uncharted Waters in India

In the last few years, emergency arbitration has been recognised in India, following the Indian Supreme Court's decision in *Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209 ("*Amazon*") (previously discussed on this blog, here and here). The Supreme Court held that interim awards passed by emergency arbitrators in India-seated arbitrations were enforceable in the same manner as interim orders issued by arbitral tribunals under Section 17 of the Act (which allows an arbitral tribunal to pass interim orders during the course of the arbitration proceedings).

In arriving at this conclusion, the Supreme Court mapped the emergency arbitration mechanism (as contained in SIAC Rules 2016) to *pari materia* provisions of the Act – in particular: (i) the EA was understood to constitute an 'arbitral tribunal' under Section 2(1)(d) of the Act (which includes a sole arbitrator); (ii) the emergency arbitration was deemed to be within the ambit of 'arbitration' under Section 2(1)(a) of the Act (which includes *any* arbitration); and (iii) the institutional rules were understood to constitute part of the arbitration agreement entered into in exercise of party autonomy, under Sections 2(6) and 2(8) of the Act (whereby the parties are free to conduct their arbitration under the aegis of an institution and/or adopt an institution's rules therefor). Accordingly, the Court concluded that orders passed by an EA 'during the proceedings' would constitute 'interim orders' under Section 17(1) and would be enforceable under Section 17(2) of the Act.

The Indian Courts often pass *ex-parte* interim orders, upon an aggrieved party suitably highlighting (i) a *prima facie* case; (ii) balance of convenience in its favour; and (iii) irreparable harm likely to be suffered by it, *in the absence of* such relief being granted. However, the Act does not recognise or adopt the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration, which allows for *ex-parte ad-interim* orders to be passed by arbitral tribunals. Further,

Section 18 (which confers equal and full opportunity to the parties to present their case) and Section 24(2) of the Act (which mandates sufficient advance notice of any hearing) apparently preclude *ex-parte* orders in the usual course by a tribunal.

This was illustrated in *Godrej Properties Ltd. v Goldbricks Infrastructure Pvt Ltd.*, where the Arbitrator *suo moto* without conducting any hearing passed an *ex-parte* interim order. The Bombay High Court setting aside the Arbitrator's *ex-parte* order held that, even considering the urgency, the Arbitrator could not have dispensed with the formal procedural requirements under the Act, and proceeded *ex-parte* without issuing notice and conducting a hearing in accordance with Sections 18 and 24(2) of the Act. Inasmuch as the Amazon ruling establishes parity between the orders of a tribunal and an EA, it is difficult to presume that such parity would be extended by Indian courts to an EA seeking to grant *ex-parte* relief under the Act.

Given the context, two issues arise with respect to the enforcement of PPOs under the Act: (i) whether the SIAC Rules 2025 can apply to an arbitration when they could not possibly have been within the parties' knowledge and contemplation at the time of entering into the arbitration agreement; and (ii) whether PPOs (which do not adhere to the requirements of notice, party autonomy, and fair hearing), can be enforced under the Act.

Interestingly, the proposed Draft Arbitration & Conciliation (Amendment) Bill 2024 ("the Draft Bill") (discussed here) [1] does provide for the codification of emergency arbitration [proposed Section 9A] and the enforcement of interim orders passed thereunder [proposed Section 17(da)]. Further, the proposed amendment to Section 18 of the Act seeks to replace the "full" opportunity to present a case afforded to a party with a "fair and reasonable" opportunity. The Draft Bill arguably creates fertile ground for *ex-parte* orders to be recognised under the Act by doing away with the formal procedural equality between the parties in favour of a more reasonable standard. However, pending enactment and interpretation, the proposed amendments may not be sufficient to mitigate the prevailing jurisprudential stance on emergency arbitration and *ex-parte* orders. Therefore, the validity of PPOs issued by emergency arbitrators will have to stand the test of appeal and/or enforceability, notwithstanding the Supreme Court's ruling in *Amazon*.

Pro-enforcement Bias and Limited Scope for Challenge in India

Indian courts may receive applications for the enforcement of PPOs issued by EAs. An order of an EA (for India-seated arbitrations) would generally be enforceable under Section 17(2) of the Act (per *Amazon*). However, PPOs issued by EA may not satisfy the test of enforcement at first glance, given the lack of notice and fair hearing in a PPO (which are the prerequisites of the *prima facie* procedural fairness of Section 17 orders). Nonetheless, given that the strict procedural requirements under the Code of Civil Procedure 1908 ("Code") do not apply to arbitral tribunals, courts may still be inclined to enforce PPOs on the basis of their overall merit and reasonable fairness.

Schedule 1 of the SIAC Rules 2025 provides for the following checks and balances (as previously discussed here) to ensure that the PPO is not prejudicial to the interests of any party: (i) the applicant shall serve all related documentation upon the counterparty within 12 hours of the making of the PPO [Sch. 1, para 29]; (ii) the PPO shall expire after 3 days, unless the applicant has served such documents (or explained the steps taken to do so) [Sch. 1, para 30]; (iii) the

counterparty shall be allowed to present its case before the EA at the earliest practicable time [Sch. 1, para 31]; and (iv) the PPO would, in any case, expire after 14 days [Sch. 1, para 33]. Further, an application may also be made before a properly constituted tribunal for the PPO to cease to be binding [Sch. 1, para 20(b)]. Given the availability of such safeguards within the institutional framework of the SIAC Rules 2025, a court may be hesitant to hear challenges to a PPO prematurely, solely on the grounds of lack of notice or fair hearing.

Concluding Thoughts

As discussed above, post-*Amazon*, Indian courts have the ability to enforce PPOs issued in emergency arbitrations seated in India. However, in the absence of enabling provisions in the Act itself, such power may be exercised sparingly, discretionarily and – most importantly – unpredictably. Pending specific amendments to the Act, it will be interesting to see whether Indian courts accept PPOs as alleviating the burden of interim relief applications (under Section 9 of the Act which allows the jurisdictional court to pass interim orders before, during or after the arbitration proceedings) or relegate them to a procedural anomaly. While the response of arbitration users to PPOs could be mixed, one cannot deny that the arbitral landscape is primed for *ex-parte* interim relief to become more commonplace as arbitration becomes the preferred choice for dispute resolution.

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References

?1 The Draft Bill has been removed from the Government of India’s website where it was published, and therefore has not been hyperlinked.

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