



ARBITRATION AND CONCILIATION

# Emergency Arbitrator's interim order is perishable – maximum shelf-life is 90 days and cannot be self-extended

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Emergency arbitration was designed as a flash-medicine swift, short-lived, and meant to keep the patient alive until the specialist arrives. In *Municipal Corporation of Delhi v. Himalayan Flora & Aromas Pvt. Ltd.*, a single bench of the Delhi High Court has reminded every litigant in India that the medicine has an un-extendable expiry date: ninety days. Refusing to let an Emergency Arbitrator play both doctor and surgeon, Justice Purushaindra Kumar Kaurav set aside an eleven-month-old interim award that had purported to stay alive by its own force. The judgment is now the clearest judicial precedent on the outer limits of emergency power under the 2023 DIAC institutional Rules.

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## The Parties and the Contract

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The Municipal Corporation of Delhi, acting as the purchaser under a supply-cum-services contract that required Himalayan Flora & Aromas Pvt. Ltd., a Delhi-based aroma-chemical company, to deliver and maintain large-scale horticulture installations across traffic islands. The agreement contained a standard DIAC arbitration clause and a bank-guarantee clause that allowed MCD to encash the guarantee on breach.

## The Dispute Erupts

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Between September and November 2024 MCD issued three letters threatening to invoke the 10-crore performance guarantee and blacklist the company for alleged non-performance. Himalayan Flora responded by rushing to the Delhi International Arbitration Centre on 27 November 2024, invoking Rule 14 of the freshly notified DIAC Rules, 2023 and asking for an Emergency Arbitrator to restrain the Corporation “from any coercive step, including but not limited to encashment of bank guarantees.”

## The Emergency Award

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Within fourteen days, as mandated, Mr. S. K. Dholakia, former Judge of the Delhi High Court appointed Emergency Arbitrator, passed an ex-parte order on 11 December 2024. Paragraph 17 of the award directed MCD to maintain status quo “until the Arbitral Tribunal is constituted or for such further period as may be considered appropriate.” The order was served the same evening and remained unchallenged for weeks because MCD’s internal file took time to reach the Law Department.

## The Rival Arguments

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MCD, contended that Rule 14.13 uses the expression “unless extended by the Arbitral Tribunal” as an expressio unius that shuts out the Emergency Arbitrator. She relied on the statutory definition of Arbitral Tribunal in section 2(1)(d) of the Arbitration & Conciliation Act, 1996 which does not embrace an emergency appointee, and argued that any DIY extension would make the emergency arbitrator functus officio only on paper. Himalayan Flora, urged a purposive reading: Rule 2(c) of the DIAC Rules itself defines “Arbitral Tribunal” to include an Emergency Arbitrator; therefore, the power to extend travels with the person. He reminded the Court that the balance of convenience favoured continuity because the Tribunal had just been appointed and needed breathing space to examine interim protection.

## Legal Provisions in Focus

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The entire battle was fought on the terrain of Rule 14 of the DIAC Rules, 2023. Sub-rule 14.11 declares that the Emergency Arbitrator “shall become functus officio after 14 days or after the order is made, whichever is earlier, and shall not be a part of the Arbitral Tribunal unless otherwise agreed.” Sub-rule 14.13 states that the emergency order “shall remain operative for a period of

90 days unless modified, substituted or vacated by the Arbitral Tribunal. The Arbitral Tribunal shall also have the power to extend the operation of the order beyond the period of 90 days.” Section 37 of the Arbitration & Conciliation Act, 1996 empowers the High Court to hear appeals against orders refusing to set aside an arbitral award, and by judicial consensus extends to awards of Emergency Arbitrators.

## Court’s Reasoning

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Justice Kaurav read the two sub-rules together and held that they create a two-tier architecture: the Emergency Arbitrator is a stop-gap whose authority is extinguished in two separate instalment i.e., substantively after fourteen days and effectually after ninety. The phrase “by the Arbitral Tribunal” is deliberately prefixed to the power of extension, whereas no such phrase appears before the power to “modify, substitute or vacate,” highlighting that extension is a heavier, legislative-type power reserved for the full Tribunal. The inclusive definition in Rule 2(c), the Court ruled, is internal to the Rules and cannot override the statutory architecture of the 1996 Act. To hold otherwise would allow an emergency appointee to preside over his own order in perpetuity, defeating the legislative policy that interim measures must be subjected to adversarial scrutiny by a regularly constituted tribunal.

## Final Disposition

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Allowing the appeal, the Court declared the Emergency Award of 11 December 2024 “inoperative and unenforceable” after 90 days, i.e., with effect from 11 March 2025. Yet, conscious that the order had governed the field for almost eleven months, the judge granted Himalayan Flora seven days’ status-quo “as existing today” to enable it to file a fresh interim petition before the newly appointed Tribunal. All pending applications were disposed of with the express clarification that the Tribunal would decide the matter afresh, uninfluenced by any observation made in the judgment.

The myth that emergency arbitrators can keep their orders on life-support indefinitely has fallen. *Municipal Corporation of Delhi v. Himalayan Flora & Aromas Pvt. Ltd.* is now the sign-post at the edge of the ninety-day cliff, warning every litigant that if you want interim protection to survive, you must migrate in time to the Arbitral Tribunal. Emergency arbitration remains what it was always meant to be a tourniquet, not a transplant.

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