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## **Judicial Scrutiny of Emergency Arbitration: Delhi High Court's Clarification in MCD v. Himalayan Flora and Aromas Pvt. Ltd. <sup>1</sup>**

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### **INTRODUCTION**

The Delhi High Court's judgment in Municipal Corporation of Delhi v. Himalayan Flora and Aromas Pvt. Ltd., marks a significant interpretative development concerning the temporal jurisdiction and functional limits of an Emergency Arbitrator under the DIAC (Arbitration Proceedings) Rules, 2023.

The Court's ruling delineates the exact contours of an Emergency Arbitrator's powers, specifically holding that such authority cannot extend beyond ninety (90) days from the passing of the order and that only the Arbitral Tribunal possesses the competence to extend, vacate, or modify that order. This decision reinforces procedural certainty in institutional arbitration while preventing potential misuse of emergency mechanisms.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The case arose from an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("A&C Act") by the Municipal Corporation of Delhi (MCD) challenging an emergency award dated 11 December 2024.

The said Award, passed by an Emergency Arbitrator under the DIAC Rules, 2023, granted interim reliefs to Himalayan Flora and Aromas Pvt. Ltd., the Respondent. The Emergency Arbitrator subsequently extended the operation of the order beyond the statutory 90-day period.

The MCD assailed this extension as ultra vires, contending that under Rule 14.13 of the DIAC Rules, only the Arbitral Tribunal not the Emergency Arbitrator is empowered to prolong the effect of such an interim order.

The key interpretive question before the Court was therefore whether the Emergency Arbitrator possesses jurisdiction to extend his own order beyond 90 days under the DIAC procedural framework.

### **LEGAL ISSUE AND JUDICIAL REASONING**

#### **1. Interpretation of Rule 14.13 of the DIAC Rules, 2023**

Rule 14.13 forms the fulcrum of the controversy. It provides that:

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<sup>1</sup> 2025:DHC:8977



*"The order passed by the Emergency Arbitrator shall remain operative for a period of 90 (ninety) days from the date of passing of the order 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 (ninety) days."*

The Court observed that the rule's language is unambiguous — the power of extension lies solely with the Arbitral Tribunal, not the Emergency Arbitrator. The inclusion of the second sentence explicitly conferring the extension power on the Tribunal necessarily implies its exclusion from the Emergency Arbitrator's jurisdiction.

The Court further noted that emergency arbitration is a temporary, stop-gap mechanism, designed to preserve the status quo until the Tribunal is constituted. Any self-extension by the Emergency Arbitrator would erode this procedural boundary and undermine the institutional structure intended by the DIAC Rules.

## 2. The Doctrine of "Functus Officio"

A significant aspect of the judgment is the Court's reliance on Rule 14.11, which renders the Emergency Arbitrator *functus officio* after either 14 days or upon issuance of the interim order, whichever occurs earlier.

The Court held that once the order is passed, the Emergency Arbitrator's mandate expires, and he cannot revive or extend the order thereafter. The function of maintaining, modifying, or extending interim measures shifts to the Arbitral Tribunal upon its constitution.

This demarcation ensures procedural finality and prevents duplication of jurisdiction, a crucial safeguard in maintaining the autonomy and efficiency of arbitral proceedings.

## 3. Distinction Between "Emergency Arbitrator" and "Arbitral Tribunal"

The respondent's contention that the DIAC's definitional clause (Rule 2(c)) includes "Emergency Arbitrator" within the term "Arbitral Tribunal" was decisively rejected. The Court clarified that while such inclusion may serve definitional convenience, it cannot override the specific procedural provisions in Rule 14, which distinguish the two entities in function and authority.

Moreover, Rule 14.11 explicitly prohibits an Emergency Arbitrator from being part of the subsequent Tribunal unless agreed by the parties, thereby affirming their distinct institutional roles.

This interpretive approach mirrors the maxim *generalia specialibus non derogant* — specific provisions (Rule 14.13) prevail over general definitions (Rule 2(c)).



## **JUDICIAL OUTCOME**

The High Court held that the emergency order had “lived its life” upon the expiry of the 90-day period and therefore ceased to operate. Consequently, the order of the Emergency Arbitrator dated 11.12.2024 was set aside.

Nevertheless, exercising equitable discretion, the Court directed that status quo as of the date of judgment be maintained for seven days, enabling the respondent to seek appropriate relief under Sections 9 or 17 of the A&C Act.

The appeal was thus allowed, and the emergency order was declared inoperative beyond its statutory term.

## **CONCLUSION**

The Delhi High Court’s ruling in MCD v. Himalayan Flora and Aromas Pvt. Ltd. represents a significant judicial clarification in India’s evolving arbitration landscape. It emphasizes that emergency arbitration is a procedural bridge, not a parallel track — a mechanism intended to address urgency, not to supplant the tribunal’s authority.

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