Engineering Projects (India) v. MSA Global: The test for the grant of Anti-Arbitration Injunctions

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Executive Summary

1. On 26th July 2025, the High Court of Delhi ("**Delhi HC**") granted an anti-arbitration injunction restraining MSA Global, a company incorporated in Oman, from continuing with its arbitration under the International Chamber of Commerce Arbitration Rules ("**ICC Rules**") due to procedural impropriety and a lack of impartiality.
2. The case, while navigating the tension between judicial restraint in arbitration proceedings, has upheld the need to maintain impartiality in arbitration proceedings.
3. Some of the key takeaways include
   (a) The Arbitration and Conciliation Act 1996 ("**Arbitration Act**"), through the doctrine of minimal judicial interference, does not bar the Courts from interfering in cases, including foreign-seated arbitration, that are "*patently unjust or oppressive*"[2]
   (b) An anti-arbitration injunction can be granted when the litmus test for determining vexatious and oppressive proceedings is satisfied. Vexatiousness must be determined from the point of view of the defendant, while the oppressive nature must be determined from the point of view of the plaintiff
   (c) Article 11 of the ICC Rules requires arbitrators to disclose any fact that could even potentially raise apprehension of bias, regardless of its perceived remoteness. Non-disclosure undermines party consent and trust, striking at the very sanctity of arbitral proceedings.

Introduction

[1] We acknowledge and thank Ms. Subhiksha S K, Hidayatullah National Law University for her assistance in co-authoring this insight

[2] *Engineering Projects (India) Ltd. v. MSA Global LLC*, 2025 SCC OnLine Del 5072. **["Engineering Projects**']

4. An Anti-Arbitration Injunction (**"AAI"**) is an order issued against a party or an arbitral tribunal that precludes the initiation or continuation of arbitral proceedings.[3]

5. AAIs stand at the crossroads of the doctrine of *Kompetenz-Kompetenz*, which in essence grants the arbitral tribunal the power to rule on its own jurisdiction as an extension of the principle of party autonomy; and judicial intervention which is done on rare occasions.

6. The Arbitration Act does not provide a specific provision that permits AAIs. However, it is pertinent to note that the same is not prohibited by the Act. Under Indian law, Civil Courts are empowered to grant injunctions under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 ("**CPC**").

7. To date, the Supreme Court of India (**"SC"**) has not conclusively ruled on the permissibility of AAIs in the context of foreign-seated arbitrations. This has inevitably led to various High Courts offering differing views on the issue.

8. In this backdrop, the Delhi HC's decision in *Engineering Projects India Ltd. v. MSA Global* assumes significance, as it directly confronted the question of whether an Indian civil Court could entertain and grant an AAI in respect of a foreign-seated arbitration.

9. The Court examined whether proceedings initiated in Singapore, the chosen seat of arbitration, could be restrained by an Indian court at the instance of one of the contracting parties. The Court's ruling provides important guidance on the scope of civil Court jurisdiction, the threshold for judicial intervention in arbitral autonomy, and the evolving Indian position on anti-arbitration injunctions in foreign-seated arbitrations.

Factual Matrix

10. The arbitration between the parties arose out of delays in performance of obligations under a sub-contract dated 21 September 2015, entered into by the Plaintiff, a public sector enterprise under the Ministry of Heavy Industries, Government of India, and the Defendant, a military and security systems

[3] Sharad Bansal & Divyanshu *Agarwal, Are Anti-Arbitration Injunctions A Malaise? An Analysis in the Context of Indian Law*, 31(4) ARB. INT'L 613, (2015)**["Bansal"]**; Ravitej Chilumuri & Sameer Bindra, *Permissibility of Anti-Arbitration Injunctions in India and its Impact on Commercial Business: A Step Towards Being an Arbitration-Friendly Jurisdiction?* 8(1) National Law School Business Law Review 20, (2022)

integrator based in Oman in furtherance of the main contract dated 29 June 2015 between the Plaintiff and the Ministry of Defence, Oman.

11. Pursuant to Article 11(2) of the ICC Rules, On 20 April 2023 Mr. Yeap submitted his signed Statement of Acceptance, Availability, Impartiality, and Independence, expressly declaring that he had "*nothing to disclose*" with respect to any facts or circumstances that could give rise to justifiable doubts as to his impartiality or independence.

12. The arbitral tribunal, which included Mr. Yeap, issued a partial award on interim measures on 19 June 2024 ("**First Partial Award**").

13. While preparing for the evidentiary hearing, the Plaintiff discovered Mr. Yeap's prior involvement in arbitral proceedings involving the Defendant's Managing Director, Mr. Manbhupinder Singh Atwal, through a Gujarat HC judgment dated 5 July 2024. Alleging a lack of disclosure and doubts about Mr. Yeap's independence, the Plaintiff filed a challenge before the ICC Court under Article 14(1) of the ICC Rules on 19 January 2025.

14. On 28 February 2025, the ICC Court found the challenge admissible but rejected it on merits, holding that while the non-disclosure was "*regrettable,*" it did not raise justifiable doubts as to impartiality or independence.

15. On 27 March 2025, the Plaintiff approached the HC of Singapore under Section 3(1) of the Singapore International Arbitration Act, 1994, challenging Mr. Yeap's continued participation, while the defendant filed for the enforcement of the First Partial Award on the interim measures application dated 19 June 2024.

16. In this backdrop, the Plaintiff has filed the present suit before the Delhi HC's Commercial Division seeking a permanent injunction restraining the Defendant from continuing the ICC arbitration with the present tribunal constitution.

Analysis

I. Maintainability of Civil Suit

17. Addressing the maintainability of the suit, the Court examined Section 9 of CPC, which allows Courts to try all civil suits except those that are either expressly or impliedly barred. The Court held that there is a strong presumption in favour of jurisdiction, especially when there is a legal right that is infringed

18. The Court clarified that, while ordinarily the general principles of arbitral autonomy and minimal interference elaborated in various precedents that the defendant relied on would be applied, nothing bars Civil Courts from retaining jurisdiction in proceedings that are oppressive, vexatious and/or unconscionable to the plaintiff.[4]

19. Drawing from the cases of *Union of India v. Dabhol Power Company*[5] & *O.N.G.C. v. Western Co. of North America*[6], it went on to hold that the court had jurisdiction to restrain parties from initiating or continuing with foreign-seated arbitral proceedings, neither Section 5 nor Section 45 of the Arbitration Act, which provide for minimal judicial intervention, bars this.

20. It went on to hold that the principle of minimum judicial interference does not imply negligible interference. The Civil Courts are custodians of all civil rights that should act as a *senitel on the qui vive* (watchful guardian), and are empowered to act when the arbitral process is being misused.

21. This is consistent with international arbitration practice, where the authority to grant anti-arbitration injunctions is exercised rarely, but not excluded in cases of vexatious or oppressive conduct**.**[7]

II. Litmus test to determine vexatious and oppressive proceedings

22. The Court adopted a 'litmus test' to determine if the arbitral proceedings were vexatious and oppressive

    (a) Vexatious: Proceedings without reasonable ground, abuse of legal process because of intent and lack of merit. This must be applied from the point of view of the party seeking the continuation of the arbitral proceeding.[8]

    (b) Oppressive: Proceedings that impose undue harshness or unfair domination. This must be assessed from the view of the party seeking the restraint.[9]

23. The Delhi HC rules that Civil Courts should use the above test to determine if the continuation of the arbitration would result in an abuse of process, if this

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[4] Engineering Projects, *Supra* note 1,¶62
[5] *Union of India v. Dabhol Power Company* 2004 SCC OnLine Del 1298
[6] *O.N.G.C. v. Western Co. of North America* (1987) 1 SCC 496.
[7] *J. Jarvis & Sons Ltd. v. Blue Circle Dartford Estates Ltd* [2007] A.P.P.L.R. 05/14; Minister of Finance (Inc) and *Malaysian Development Berhad v. International Petroleum Investment Coy* [2019] EWCA Civ 2080
[8] Engineering Projects, *Supra* note 1,¶68.
[9] *Ibid.*

was a conclusion the Court reached, it was empowered under the CPC to pass orders including AAIs to preserve the integrity of the arbitral process.

24. The Delhi HC, observed that Article 11(3) of the ICC rules imposes a duty on the arbitrator to disclose any facts or circumstances in writing that may affect the arbitrator's independence in the eyes of the parties or any circumstance that may raise reasonable doubts regarding impartiality.[10]

25. The Court emphasised that the duty of disclosure is not the subjective perception of the arbitrator or the objective standard of the reasonable observer, rather it is the perception of the parties, regarding what they may reasonably perceive to be cause for concern.

26. It observed that Article 11 of the ICC Rules lays down a pre-emptive and precautionary test, meaning that the arbitrator cannot withhold disclosure on the ground that the fact/ association is too remote or benign to influence impartiality.[11] If there exists a possibility that such information might potentially raise apprehension of bias, irrespective of whether the parties ultimately choose to waive the objection, the arbitrator must disclose such information.

27. A failure to do so strikes at the sanctity of the arbitral process and cannot be ignored.

28. The Court, held that the non-disclosure deprived the plaintiff of its rightful opportunity to challenge the impartiality or independence of the co-arbitrator.

29. It concluded that since Mr. Yeap's non-disclosure was deliberate, the plaintiff could not be compelled to accept adjudication by an arbitrator who failed to comply with mandatory requirements, thereby making the arbitration oppressive to the plaintiff.

III. Vexatiousness Discernible from the Conduct of the Defendant

30. The Court also observed a deliberate pattern of abuse of process by the defendant that could be seen in persisting with arbitration despite pending challenges, opposing withdrawal before the Singapore HC, and seeking anti-suit injunctions. These amount to *mala fide* tactics designed to harass the plaintiff, obstruct access to justice, and abuse legal process.[12]

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[10] Engineering Projects, *Supra* note 1,¶71.
[11] Engineering Projects, *Supra* note 1,¶81.
[12] Engineering Projects, *Supra* note 1,¶100.

31. While recognising party autonomy and the agreed arbitration mechanism, the Court emphasised that it cannot remain a passive spectator when arbitration proceedings themselves become oppressive and unfair.[13] Where proceedings are tainted by non-disclosure and legitimate doubts as to impartiality, Courts in India have jurisdiction to interdict them to prevent injustice.

32. In light of the oppressive and unfair nature of the arbitral proceedings, the Court held that the plaintiff's suit for an anti-arbitration injunction is maintainable, and proceeded to consider the plaintiff's application for interim relief under Order XXXIX Rule 1 and 2 CPC.

IV. Three-tier test of Injunction

33. The Court reiterated three conditions required — prima facie case, a balance of convenience in favour of the plaintiff, and irreparable injury— for granting an injunction under Order XXXIX, Rules 1 and 2 CPC are *sine qua non*. The Court, relying on various cases[14], held that the three-tier test is a cumulative one, where all three conditions have to be met, even if there exists a prima facie case.

34. The case was held to be prima facie vexatious and oppressive since the ICC Rules require mandatory full and fair disclosure. Mr. Yeap's admission that disclosure would have likely led to an objection implied that the non-disclosure was conscious and deliberate.

35. The balance of convenience is overwhelmingly in favour of the plaintiff since the continuation of the proceedings with an arbitrator who had consciously failed to make mandatory disclosures would lead to an oppressive process that would also waste public funds since the plaintiff was a Public Sector Undertaking (PSU).

36. If the arbitration proceedings continued without an injunction, it would result in an irreparable injury to the plaintiff since (1) it would be compelled to participate in proceedings where the impartiality of the arbitrator is in question and (2) being forced to submit to the jurisdiction of the HC of Singapore which compromises party autonomy and affect the plaintiff's ability to defend its position in a fair and neutral environment.

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[13] Engineering Projects, *Supra* note 1,¶101

[14] *Rashmi Saluja v. Religare Industries* 2025 SCC OnLine Del 692; *Dalpat Kumar v. Prahlad Singh* (1992) 1 SCC 719.; *B.M.L. Garg v. Lloyd Insulations (India) Ltd* 1992 SCC OnLine Del 447; Hari Krishan Sharma v. MCD 1987 SCC OnLine Del 286; *Hazrat Surat Shah Urdu Education Society v. Abdul Saheb JT* 1988 (4) SC 232;

37. Having satisfied the triple test, the Delhi HC ruled that the matter before it was a case fit for the grant of an injunction under Order XXXIX of the CPC.

Anti-Arbitration Injunction: Indian Perspective

38. One of the first Indian decisions that examined the concept of AAIs was the decision in *the Board of Trustees of Port of Kolkata v. Louis Dreyfus Armatures SAS*[15], where the High Court of Calcutta recognised the Court's authority to grant AAI on three grounds:
    (a) Where an issue is raised as to whether there is any valid arbitration agreement between the parties and the Court finds that no agreement exists.
    (b) Where the arbitration agreement is null and void, inoperative, or incapable of being performed.
    (c) Where continuation of foreign arbitration proceedings might be oppressive or vexatious or unconscionable.

39. In case of foreign-seated arbitrations, *World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd*[16] held that the bar to such arbitration can only arise from section 45 of the Arbitration Act. Reaffirming this interpretation in *Chatterjee Petrochem Co v Haldia Petrochemicals Ltd,*[17] the SC held in favour of the arbitration. The SC observed that where the subject matter of the claim is covered by an arbitration agreement which is valid and enforceable, then the dispute ought to be resolved by arbitration. These decisions broadly address the grant of AAI on the ground of an invalid arbitration clause.

40. Indian Court have consistently granted AAIs in respect of arbitration that could correctly be characterized as being vexatious and oppressive.[18]

41. Another ground where AAI suits are filed are under Article 45 where the arbitration agreement is null and void, inoperative, or incapable of being performed.[19] For instance, in the *Bina Modi* case,[20] the Court held that issues

[15] G.A. 1997 of 2014, decision dated 29 September 2014.
[16] *World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd* (2014) 11 SCC 639
[17] *Chatterjee Petrochem Co v Haldia Petrochemicals Ltd* (2014) 14 SCC 574
[18] *McDonald's India Private Limited v. Vikram Bakshi and Ors* (2016) SCC Online Del 3949; *Himachal Sorang Power Pvt. Limited (HSPL) v. NCC Infrastructure Holdings Limited (NCCL)* (2019) SCC Online Del 7575.
[19] *ADM International Sarl v. Sunraja Oil Industries (P) Ltd* 2021 SCC OnLine Mad 16535; *Bina Modi v. Lalit Modi* 2020 SCC OnLine Del 901; *McDonald's India Private Limited v. Vikram Bakshi and Ors* (2016) SCC Online Del 3949.
[20] *Bina Modi v. Lalit Modi* 2020 SCC OnLine Del 901

regarding trusts are not arbitrable under Indian law, rendering the agreement null and void, inoperative, or incapable of being performed.

Comparison with other Jurisdictions

42. Internationally, AAIs have usually been granted only under exceptional circumstances. The English position, as seen from the English Arbitration Act, 1996 has a restricted approach[21] that provides specific grounds where AAI can be granted. These include (i) when the arbitration agreement is "*invalid, inoperative or incapable of being performed*, (ii) a challenge to an award rendered under the English Arbitration Act, 1996 on certain grounds specified; (iii) when relief is sought by a party alleged to be a party but had taken no part in the proceedings.

43. While the overarching position appears to be similar, the Indian Arbitration Act in India does not explicitly provide statutory grounds for granting AAIs, nor does it create an express bar on their grant.

44. In *British Caribbean Bank Ltd. v. the Government of Belize* **("British Bank"),** an appeal to the Carribbean Court of Justice (CCJ) from an order of the Court of Appeal granting an AAI against an investor state arbitration under a Bilateral Investment Treaty between the UK and Belize, the CCJ observed interference through an AAI must only be "*with extreme hesitation*".[22]

45. The grounds of "*oppressive and vexatious proceedings*" is a popular ground for granting AAI. The *British Bank case (*supra) considered oppressive and vexatious proceedings to be the only valid ground for the grant of AAI in ongoing arbitral proceedings after the tribunal the validity of the agreement is established.

46. The Russia-Ukraine conflict has led to the development of the law on AAIs since Russian Courts have been passing AAIs in respect of international arbitrations initiated against state entities. Article 248 of the Russian Arbitrazh Procedural Code (**"APC"**), unlike the standard that is predominantly followed across the world, grants Russian Courts exclusive jurisdiction over disputes involving parties subject to sanctions imposed by "*unfriendly states*" and imposes penalties on parties for not complying with the injunctions. This low standard

[21] Bansal, *Supra* note 2.
[22] [2013] CCJ 4 (AJ)

affects the autonomy enjoyed by the arbitral tribunals.[23] Some arbitral tribunals, such as the case of *Uniper vs Gazprom*, have refused to recognise such injunctions and proceeded to grant an award of EUR 13 billion.[24]

Conclusion

47. The Delhi HC's decision must be seen through the prism of the unique facts of the dispute before it. The deliberate lack of disclosure by an arbitrator in flagrant violation of the applicable ICC rules, and the subsequent ruling of the ICC Court that the non-disclosure termed 'regrettable' did not establish justifiable doubts in respect of the arbitrator's independence, created a situation where the arbitral proceedings became oppressive to the plaintiff.

48. The Court located the power of a Civil Court in India to grant an AAI in respect through the provisions of the CPC allowing Courts to grant injunctions. While doing so, it reiterated that this power is to be resorted to only to preserve the sanctity of the arbitral process and prevent its blatant misuse.

49. The well-established triple test for granting of an injunction was applied only after the test for whether the arbitral proceedings was oppressive was fulfilled. This highlights the importance of testing at the threshold whether the facts of the case before a Civil Court show that the continuation of the arbitration is oppressive or vexatious.

50. The Delhi HC's decision is in line with several jurisdictions and the broader international consensus that AAIs must be sparingly granted in exceptional circumstances. The decision repeatedly highlights this restrained approach to caution civil courts from granting AAIs as a matter of course.

51. The decision paves the way for parties stuck in arbitrations that are oppressive and vexatious to approach civil courts for an AAI if they meet the high threshold laid down by the Delhi HC.

52. This increases the efficiency of arbitration as a dispute resolution mechanism by creating a mechanism whereby there is a recourse to a party for the rare occasion when the arbitral process is misused against it.

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[23] Sebastian Wuschka & Nele Wachholz, *Dealing with Anti-Arbitration Injunctions in International Commercial Arbitration*, KLUWER ARBITRATION BLOG (August 24, 2025, 2:15 AM), https://legalblogs.wolterskluwer.com/arbitration-blog/dealing-with-anti-arbitration-injunctions-in-international-commercial-arbitration/

[24] Ibid; *Uniper Global Commodities SE and METHA – Methanhandel GmbH v. Gazprom Export*, PCA Case No. 2023-02 (AA895).