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Delhi High Court grants anti-arbitration injunction against a foreign seated international commercial arbitration

On July 25, 2025, the Hon'ble Delhi High Court ("**Delhi HC**") in the case of ***Engineering Projects (India) Limited vs. MSA Global LLC (OMAN)***¹, granted an anti-arbitration injunction restraining MSA Global LLC (Oman) ("**MSA**") from proceeding with a Singapore-seated arbitration under the aegis of the International Chamber of Commerce ("**ICC**"). The injunction was granted due to a party nominated arbitrator's failure to disclose a potential conflict of interest. The Delhi HC, while taking note of the prevailing non-interventionist approach pertaining to arbitration, held that the same would not preclude courts from acting as safeguards when the arbitration proceedings are "*blatantly vexatious, unconscionable, oppressive, and violative of the public policy of India*".

Brief facts

1. Engineering Projects (India) Limited ("**EPIL**") was awarded a contract for design, supply, installation, integration and commissioning of the border security system at Oman-Yemen border. EPIL entered into a Sub-Contract Agreement ("**Agreement**") with MSA for certain works to be carried out at specific sections of the Oman-Yemen border. The Agreement contained an arbitration clause referring disputes to arbitration under the aegis of the ICC, while conferring exclusive jurisdiction upon the courts at New Delhi. The Agreement provided that the place of arbitration would be "*mutually discussed and agreed*".
2. Disputes arose between the parties and MSA invoked the arbitration clause to commence arbitration proceedings, appointing Mr. Andre Yeap SC as their nominee arbitrator. Mr. Yeap submitted his statement of acceptance and independence to the ICC stating that he had "*nothing to disclose*". Accordingly, an arbitral tribunal comprising Mr. Jonathan Acton Davis KC, Hon'ble Retd. Justice Mr. A.K. Sikri and Mr. Andre Yeap SC was constituted ("**Tribunal**"). The parties agreed to Singapore as the seat of arbitration.
3. During the course of arbitration, a previously undisclosed fact of Mr. Yeap's appointment as an arbitrator in a previous arbitration by the Managing Director of MSA came to light. Owing to non-disclosure of this fact, EPIL filed an application under the Rules of Arbitration of ICC, 2021 ("**ICC Rules**") challenging Mr. Yeap's impartiality and neutrality. While ICC acknowledged the non-disclosure to be 'regrettable', it went on to reject EPIL's application. Aggrieved, EPIL preferred an application before the High Court of Singapore challenging Mr. Yeap's participation in the arbitral proceedings.
4. Parallely, EPIL filed a civil suit before the Delhi HC seeking a declaration and injunction against the continuation of arbitration before the Tribunal on the ground that the proceedings are vexatious and oppressive ("**Suit**"). EPIL also filed an application under Order 39 Rule 1 and 2, Code of Civil Procedure, 1908 ("**CPC**") seeking temporary

¹ CS(OS) 243/2025

injunction on the arbitral proceedings during the pendency of the Suit (“**Application**”). Considering the Suit, EPIL moved an application to withdraw its application filed before the Singapore High Court. However, the Singapore High Court did not permit such withdrawal.

Issue

The Delhi HC was called on to decide whether it had the power, in a civil suit, to intervene in respect of a foreign seated arbitration and, if so, whether such intervention was factually justified.

Analysis and finding

1. **On maintainability of civil suits and anti-arbitration injunctions:** The Delhi HC reaffirmed that civil courts have jurisdiction over all civil matters under Section 9 of CPC, unless expressly barred. It clarified that courts may intervene when denial of relief would lead to grave injustice or oppression. The Delhi HC referred to Indian² and English³ jurisprudence to hold that anti-arbitration injunctions can be granted in cases of vexatious or oppressive conduct, though such powers must be used sparingly.
2. **On test for ‘Vexatious and Oppressive Proceedings’:** The Delhi HC interpreted vexatious and oppressive proceedings as unduly harsh or unfair proceedings intended to harass a party. The Delhi HC further underscored the fact that as per Article 11 of the ICC Rules, impartiality of an arbitrator (or the risk of it) ought to be interpreted from the perspective of the parties, thus making full disclosure of material information imperative. Accordingly, it was held that Mr. Yeap’s failure to disclose conflict of interest undermined the arbitrator’s independence, making the proceedings unfair. Such non-disclosure justified EPIL’s claim of being subjected to oppressive and unfair proceedings.
3. **On MSA’s conduct as evidence of vexatiousness:** The Delhi HC also placed reliance on MSA’s actions including enforcing a partial award rendered by the Tribunal and opposing EPIL’s request to withdraw its challenge before the Singapore High Court. This attempt to entangle EPIL in unnecessary jurisdictional and procedural hardship demonstrated MSA’s *mala fides*.
4. **On grant of interim relief:** The Delhi HC, having found the arbitration proceedings to be vexatious and oppressive, held that the triple-test for injunctive relief i.e., the prima facie case, the balance of convenience, and irreparable harm, was satisfied. It observed that compelling EPIL to participate in oppressive proceedings would significantly prejudice its ability to defend its case in a fair and impartial forum. This harm clearly outweighed any inconvenience caused to MSA by the grant of an anti-arbitration injunction. Accordingly, the Application was allowed, and the arbitral proceedings were stayed till the pendency of the Suit.

Conclusion

The judgment of the Delhi HC, where it has intervened in a foreign seated arbitration, being conducted under the aegis of an arbitral institution, leads to various questions regarding the power of Indian courts and the exercise thereof.

While it can be argued that the Delhi HC drew a nuanced distinction between the sanctity of an arbitration agreement and its own power to injunct vexatious arbitral proceedings, the fact that a parallel challenge on the same issue as pending before the Singapore courts raises questions and concerns regarding forum shopping, comity of courts and recognition of institutional arbitration by Indian courts. This is more so when courts in India would have always had the option of intervening at the stage of enforcement of the award.

² *Union of India vs. Dabhol Power Company*, 2004 SCC OnLine Del 1298; *Himachal Sorang Power Private Limited vs. NCC Infrastructure Holdings Limited*, 2019 SCC OnLine Del 7575

³ *J. Jarvis & Sons Ltd. vs. Blue Circle Dartford Estates Ltd.*, [2007] A.P.P.L.R. 05/14; *Minister of Finance (Inc) and Malaysian Development Berhad vs. International Petroleum Investment Coy*, 2019] EWCA Civ 2080

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This Prism is prepared by:



Ananya Kumar
Partner



Utkarsh Khandelwal
Associate



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