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Anti-Arbitral Injunctions in Foreign-Seated Arbitrations: Delhi High Court re-examines the threshold to be applied when deciding grant of anti-arbitral injunctions

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Introduction

Anti-arbitration injunctions occupy an uneasy position in modern arbitration law jurisprudence. They exist because every legal system must retain some residual power to prevent abuse of the adjudicatory process. At the same time, they sit in obvious tension with two foundational commitments of arbitration law, namely, party autonomy and the principle of kompetenz-kompetenz (competence-competence), which holds that the Arbitral Tribunal

is ordinarily competent to rule on its own jurisdiction.

Indian arbitration jurisprudence has therefore approached such relief with visible caution. The Supreme Court's decisions in *Kvaerner Cementation India Ltd.* v. *Bajranglal Agarwal*[1], *NALCO Ltd.* v. *Subhash Infra Engineers (P) Ltd.*[2], and *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*[3] have broadly indicated that courts should be slow to obstruct arbitral proceedings, whether the objection is framed in terms of jurisdiction, validity of the underlying contract, or even the existence of the arbitration agreement itself.

It is against this backdrop that the Delhi High Court's recent decision in *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*[4] assumes significance. The case arose from a suit seeking to restrain two parallel arbitral references before the London Maritime arbitrators Association (LMAA), together with a challenge to a partial award passed on jurisdictional issues. The plaintiffs challenged the arbitral proceedings on multiple grounds, such as the lack of contractual privity with the defendant, the absence of a valid arbitration agreement, impermissible rectification of the contractual text by the Arbitral Tribunal, and procedural oppression flowing from parallel arbitral proceedings. The case, therefore, presented the High Court with a familiar but difficult question: When, if at all, may an Indian Court halt a foreign-seated arbitration at the threshold?

The importance of the *SARR case*[5] lies in the manner in which it frames the inquiry. The judgment does not treat anti-arbitration reliefs as either wholly impermissible or readily available. Instead, it conducts a detailed examination of issues related to jurisdiction, the underlying contract, arbitral consent, and oppression. The structured approach adopted in the *SARR case*[6] may well prove to be the judgment's most enduring contribution.

The Indian legal position on anti-arbitral injunctions

Indian law had, even before the *SARR case*[7], already moved away from any broad conception of anti-arbitration injunctions as an ordinary equitable remedy.

In the *Kvaerner case*[8], the Supreme Court treated the Tribunal's power under Section 16 to rule on its own jurisdiction as a serious statutory command, and held that a civil court could not assume for itself the task of deciding

whether an arbitration clause existed or not.[9] The case of *NALCO*[10] carried the same logic further. Even where the resisting party contended that no concluded contract had come into existence at all, the Supreme Court held that the objection was to be raised before the Arbitral Tribunal and not converted into a civil action to halt the reference. For foreign-seated arbitrations, the *World Sport case*[11] carried the jurisprudence by emphasising that, once the matter falls within Part II of the Arbitration and Conciliation Act, 1996 (Arbitration Act), the judicial inquiry is confined to whether the arbitration agreement is null and void, inoperative, or incapable of being performed.[12] Read together, these decisions establish the broad baseline: Objections going to contractual formation, arbitral consent, or jurisdiction do not readily justify judicial interruption of arbitral proceedings.

The difficulty, however, has never been in stating that courts should be slow to interfere. It has been in identifying the juridical standard on which interference may still take place. Across various High Courts, the judicial standard seems to be gradually crystallising. In the decisions from Calcutta, the High Court tended to approach anti-arbitration injunctions through the lens of anti-suit injunctions, asking whether the arbitral process was "oppressive, vexatious or unconscionable".[13]

The Delhi High Court has placed a higher threshold in *Vikram Bakshi* v. *Mc Donalds India (P) Ltd.*[14] (and thereafter, in the appeal before the Division Bench[15]) and later in *Himachal Sorang Power (P) Ltd.* v. *NCC Infrastructure Holdings Ltd.*[16], and insisted that anti-arbitration injunctions cannot simply be compared to anti-suit injunctions. That distinction was rooted in the autonomy of the arbitral process and the competence-competence principle. The Delhi High Court thus treated judicial intervention as available, but only rarely, and ordinarily where the arbitration agreement was prima facie non-existent, null, void, inoperative, or incapable of performance, or where continuation of the proceedings could be shown to be genuinely oppressive in a legally meaningful sense. The *SARR case*[17] enters this landscape. Its significance lies in the fact that it does not merely repeat the rhetoric of restraint but tries to present an organised analysis.

The case and findings in *SARR*

In the *SARR case*[18], the dispute arose from a voyage charter for the shipment of military cargo for the United Nations Interim Security Force for Abyei from

Mumbai to Sudan. The arrangement was recorded in a fixture recap and a booking note, both dated 4 April 2023. Although the booking note referred to the owners of "MV Pelagica or Sub", the vessel ultimately tendered was MV Panthera J, owned by the defendant. This assumed significance because the plaintiffs later argued that the defendant was a stranger to the contract and that the substituted vessel materially differed from what had originally been contemplated. The background became more complex when hostilities in Sudan disrupted port operations, force majeure was invoked, and disputes emerged over performance, cancellation, and liability.

The defendant then invoked arbitration before the LMAA, and one reference was followed by another. Four preliminary issues were framed, including whether any arbitration agreement existed, whether the relevant "Merchant" was SARR Freights Corporation or SARR Freights Limited, and whether the relevant "carrier" was the owner of MV Pelagica or MV Panthera J. These issues were decided against the plaintiffs by a majority partial award, though there was a dissent on the issue concerning the identity of the carrier. It was in these circumstances that the plaintiffs approached the Delhi High Court seeking to restrain continuation of the LMAA proceedings.

The High Court examined the matter in a structured sequence. *First*, it considered whether the suit was maintainable before an Indian civil court. *Second*, it examined whether there was, at least prima facie, a contractual relationship between the plaintiffs and the defendant. *Third*, it considered whether there was a prima facie agreement to arbitrate. *Fourth*, it considered whether continuation of the foreign arbitral process disclosed such oppression, vexation, or procedural abuse as would justify an anti-arbitration injunction.

On the point of jurisdiction, the High Court rejected the contention that the mere choice of a foreign arbitral seat automatically deprived an Indian civil court of authority to entertain the suit. Proceeding on the ordinary presumption in favour of civil court's jurisdiction under Section 9, Civil Procedure Code, 1908 (CPC), it held that such jurisdiction can be excluded only by express statutory bar or necessary implication, and found no such bar in the present case.[19]

The High Court also held that the plaint could not be rejected at the threshold for want of territorial nexus. The plaintiffs had pleaded that they

carried on business in Delhi, that the cargo documentation and related commercial acts had links to Delhi, that material communications were issued to and received in Delhi, and that part of the cause of action,[20] therefore, arose within the jurisdiction of the Delhi High Court. At the interlocutory stage, the High Court was not prepared to treat these assertions as illusory or insufficient. In doing so, it rejected any broad proposition that selection of a foreign seat automatically eliminates any remedial role for Indian civil courts. Instead, it preserved the distinction between the supervisory jurisdiction of the court at the seat and the separate question of whether an Indian civil court may entertain a suit seeking injunctive reliefs founded on abuse, lack of consent, or absence of contractual foundation.

The existence of jurisdiction was only the threshold question. A court may have authority to entertain the suit and still refuse to interfere once the substantive standards governing anti-arbitration intervention are applied. In this sense, the *SARR case*[21] is careful to separate the existence of jurisdiction from the propriety of granting an injunction.

The second stage of the High Court's analysis was whether a prima facie contractual relationship existed between the plaintiffs and the defendant. The High Court declined to accept the plaintiffs' case of complete non-privity merely because the booking note referred to MV Pelagica or Sub, while the performing vessel was MV Panthera J. Having regard to the parties' communications, the identified substitution, and the manner in which the transaction was acted upon, the High Court found no clear absence of a contractual relationship warranting interference at the threshold.

On the existence of the arbitration agreement, the plaintiffs argued that the booking note incorporated only Clauses 20 to 41, whereas the arbitration clause appeared in Clause 43. The High Court, however, did not treat the matter as one of obvious absence of consent. Looking not only at the booking note but also at the fixture recap and the surrounding commercial material, using the business efficacy test[22], it held that an intention[23] to arbitrate prima facie existed.

Once the High Court reached that conclusion, the case for injunction was considerably weakened. It therefore proceeded to consider whether the arbitral process was nevertheless oppressive, vexatious, or unconscionable.

Although the plaintiffs relied on the parallel LMAA references, the treatment of party identity, and the Tribunal's contractual rectification, the High Court was not persuaded that these circumstances justified the exceptional remedy of an anti-arbitration injunction.

Conclusion and comments

The *SARR case*[24] yields a set of propositions that are likely to remain important in Indian arbitration law. These may be grouped under two heads: *first*, the general principles relating to jurisdiction and contractual construction; and *second*, the standard governing anti-arbitration injunctions.

The judgment clearly distinguishes between the supervisory jurisdiction of the courts at the seat and the jurisdiction of an Indian civil court under Section 9 CPC. The choice of a foreign seat, by itself, does not oust the jurisdiction of an Indian civil court to act under Section 9 CPC.

On contractual privity, the High Court declined to adopt a formalistic view. In the maritime context, where contracts are entered through brokers and agents and vessels may be substituted under the contract itself, the identity of the contracting party had to be gathered from the substance of the arrangement. The High Court, therefore, found prima facie privity between the plaintiffs and the defendant as owner of the substitute vessel.

On the existence of an arbitration agreement, the High Court refused to adopt a purely literal reading and instead examined the broader contractual matrix, including the parties' correspondence, and their conduct, to determine whether the parties' prima facie intended to arbitrate. The reasoning is thus grounded in a commercially sensible construction that gives the arrangement business efficacy, rather than one that would render the parties' bargain unworkable by stripping it of any meaningful dispute resolution mechanism.

As to granting an anti-arbitration injunction, the High Court reaffirmed that it is an exceptional remedy. The threshold is stricter than in anti-suit injunction cases because party autonomy and *kompetenz-kompetenz* require greater judicial restraint. The burden lies squarely on the party seeking the injunction to show that the arbitral proceedings are vexatious, oppressive, or unconscionable.

The High Court further treated Section 45, Arbitration Act as the principal statutory guide. Unless the arbitration agreement is null and void, inoperative, or incapable of performance, the parties must be referred to arbitration. On the facts, none of these conditions was satisfied.

The judgment also emphasised that once the court reaches a prima facie conclusion that a valid arbitration agreement exists, Section 16, Arbitration Act prevents it from effectively conducting a mini-trial over objections to the Tribunal's jurisdiction.

Finally, the judgment reaffirmed the importance of principles of comity and minimal judicial interference. The courts must remain slow to obstruct arbitral proceedings and may do so only rarely, on principles comparable to those reflected in Sections 8 and 45, Arbitration Act.

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1. (2012) 5 SCC 214.
2. (2020) 15 SCC 557.
3. (2014) 11 SCC 639 : (2014) 4 SCC (Civ) 226.
4. 2026 SCC Online 1293.
5. *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*, 2026: DHC: 2097.
6. *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*, 2026: DHC: 2097.
7. *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*, 2026: DHC: 2097.
8. *Kvaerner Cementation India Ltd.* v. *Bajranglal Agarwal*, (2012) 5 SCC 214.
9. *Kvaerner Cementation India Ltd.* v. *Bajranglal Agarwal*, (2012) 5 SCC 214, the Supreme Court in the relevant para observes:

   3. There cannot be any dispute that in the absence of any arbitration clause in the agreement, no dispute could be referred for arbitration to an Arbitral Tribunal. But, bearing in mind the very object with which the Arbitration and Conciliation Act, 1996 has been enacted and the provisions thereof contained in Section 16 conferring the power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration

agreement, we have no doubt in our mind that the civil court cannot have jurisdiction to go into that question.

10. *NALCO Ltd.* v. *Subhash Infra Engineers (P) Ltd.*, (2020) 15 SCC 557.
11. *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639 : (2014) 4 SCC (Civ) 226.
12. The relevant para in *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639 : (2014) 4 SCC (Civ) 226, notes:

    The language of Section 45 of the Act quoted above makes it clear that notwithstanding anything contained in Para I or in the Code of Civil Procedure, a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in Section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. ...
13. *LMJ International Ltd.* v. *Sleepwell Industries Co. Ltd.*, 2012 SCC OnLine Cal 10733; *Board of Trustees of the Port of Kolkata* v. *Louis Dreyfus Armatures SAS*, 2014 SCC OnLine Cal 17695.
14. 2014 SCC OnLine Del 7249.
15. *Mcdonald's India (P) Ltd.* v. *Vikram Bakshi*, 2016 SCC OnLine Del 3949.
16. 2019 SCC OnLine Del 7575.
17. *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*, 2026: DHC: 2097.
18. *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*, 2026: DHC: 2097.
19. Reference was made to the decision in *Dhulabhai* v. *State of M.P.*, 1968 SCC OnLine SC 40; *Engg. Projects (India) Ltd.* v. *MSA Global LLC*, 2025 SCC OnLine Del 5072.
20. *See*, Civil Procedure Code, 1908, S. 20(*c*).
21. *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*, 2026: DHC: 2097.
22. *Nabha Power Ltd.* v. *Punjab State Power Corpn. Ltd.*, (2018) 11 SCC 508 : (2018) 5 SCC (Civ) 1; *Glencore International AG* v. *Shree Ganesh Metals*, 2025 SCC OnLine SC 1815.
23. Reliance was placed on the decision in *Govind Rubber Ltd.* v. *Louis Dreyfus*

Commodities Asia (P) Ltd., (2015) 13 SCC 477 : (2016) 1 SCC (Civ) 733; *Trimex International FZE Ltd.* v. *Vedanta Aluminium Ltd.*, (2010) 3 SCC 1 : (2010) 1 SCC (Civ) 570 : (2010) 1 ITCC 255 in support of the proposition that an agreement to arbitrate may be borne out of correspondence exchanged between the parties.

24. *SARR Freights Corpn.* v. *Argo Coral Maritime Ltd.*, 2026: DHC: 2097.