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Two Clauses Short: An Examination of SARR
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and Anti-Arbitral Injunctions



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Two Clauses Short: An Examination of SARR Freights-II and the Interplay between Arbitral Consent and Anti-Arbitral Injunctions

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Arbitration is founded on party consent and party autonomy. Once parties have agreed to arbitrate, courts ordinarily respect that choice and leave questions of jurisdiction to be decided by the Arbitral Tribunal in the first instance. The position is different where the parties dispute whether they ever agreed to arbitrate at all. In such cases, a party may seek an anti-arbitral injunction to restrain the arbitral proceedings.

A recent decision of a Division Bench of the Delhi High Court in *SARR Freights Corpn. v. Argo Coral Maritime Ltd.*¹, reversing a Single Judge, held that an arbitration clause in an earlier document was not incorporated into the parties' subsequent signed agreement, and restrained a London-seated arbitration. The dispute concerned a contract for the transportation of military cargo from India to Sudan. This article examines both decisions and their contrasting approaches to arbitral consent.

During negotiations, SARR's broker, Pirama, and Argo's booking agent, Ocean7, agreed upon a fixture recap which, amongst other terms, provided for "*English law and London arbitration*". A booking note was thereafter signed by SARR and Ocean7. The booking note contained a section titled "*Special Terms*", which expressly incorporated additional rider Clauses 20—41. The riders attached to the booking note, however, extended up to Clause 43, with the arbitration provision appearing only in Clause 43. The dispute therefore centred on whether Clause 43 nevertheless formed part of the parties' agreement, notwithstanding the express reference in the Special Terms to Clauses 20—41.

That drafting mismatch produced three different answers. A majority of the London Maritime Arbitrators Association (LMAA) Tribunal treated the reference to Clause 41 as a typographical error and rectified it to Clause 43. A Single Judge of the Delhi High Court, considering an application for interim anti-arbitral relief, found a *prima facie* agreement to arbitrate and declined to restrain the LMAA proceedings. The Division Bench, however, reached the opposite conclusion. It treated the signed booking note as the final expression of the parties' bargain, held that Clause 43 had not been

incorporated, and restrained Argo from taking further steps in the arbitration.

The contract documents

The controversy did not arise merely because Clause 43 fell outside the range of rider clauses expressly incorporated into the booking note. The manner in which the booking note had been completed and the relationship between that document and the earlier fixture recap were equally important.

The section titled “*Special Terms*” concluded with the words: “As per additional rider Clauses 20—41 in attached.” This became significant because the parties had not simply adopted the standard form without modification. They had expressly limited the rider clauses incorporated into the booking note to Clauses 20—41. Clauses 41, 42, and 43 appeared on the same final page of the attached riders, with the parties’ signatures below Clause 43.

The booking note also contained a precedence provision. It recorded that the contract would be performed “subject to the terms contained on Page 1 and 2 hereto which shall prevail over any previous arrangements and which shall in turn be superseded (except as to dead freight) by the terms of the Bill of Lading”. No bill of lading was ultimately issued. The effect of this provision became central to the disagreement between the Single Judge and the Division Bench over whether the agreement to arbitrate recorded in the earlier fixture recap continued to form part of the parties’ final bargain.

The jurisdictional dispute before the LMAA

After the United Nations issued an advisory declaring cargo movements through Sudanese ports unsafe, SARR cancelled the booking note on the ground of *force majeure*. Argo thereafter invoked arbitration under Clause 43. SARR participated in the arbitral proceedings while expressly reserving its right to challenge the jurisdiction of the LMAA Tribunal.

The dispute ultimately gave rise to two arbitral references. In the first reference, the LMAA found, *prima facie*, that the Tribunal had been constituted against SARR Freights Limited, whereas the booking note had been signed by SARR Freights Corporation. Argo therefore issued a fresh notice of arbitration against SARR Freights Corporation. The two references were thereafter directed to be consolidated and heard concurrently for the determination of common preliminary issues.

The preliminary issues included whether an arbitration agreement existed under the fixture recap and/or the booking note, and whether the reference to “Clauses 20—41” in the booking note should be rectified to “Clauses 20—43”. By a majority partial award, the LMAA Tribunal, applying English common law, held that the parties had agreed to English law and London arbitration under the fixture recap and that, on a proper construction of the booking note consistent with business common sense, disputes were to be referred to London arbitration under Clause 43. The majority further held that the reference to Clause 41 was a typographical error and ought to be rectified to Clause 43 in accordance with the parties’ intention as reflected in the fixture recap.

Why the Single Judge allowed the arbitration to continue

SARR thereafter approached the Delhi High Court seeking, among other reliefs, to restrain Argo from continuing the LMAA proceedings. In *SARR Freights Corpn. v. Argo Coral Maritime Ltd.*², the Single Judge first held that the High Court had territorial jurisdiction to entertain the suit. The principal question, however, was whether the fixture recap and the booking note, considered together, disclosed an agreement to arbitrate.

In addressing that question, the Single Judge relied on *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd.*³, where the Supreme Court held that an arbitration agreement does not fail merely because the document containing it is unsigned. An agreement to arbitrate may be discerned from the parties’ correspondence and other written exchanges, provided they establish that the parties were *ad idem*. The enquiry is therefore directed at whether the parties’

communications record a consensus to arbitrate, rather than at a signature as a formal requirement.

The Single Judge also relied on *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*⁴ There, although the parties contemplated the execution of a formal contract, their detailed email exchanges were found sufficient to establish a concluded bargain. The Supreme Court also noted the submission concerning the practice in shipping transactions of brokers first agreeing essential terms through correspondence before fuller contractual documentation follows, observing that such a submission could not be underestimated.

Applying these principles, the Single Judge regarded the fixture recap as recording the essential terms agreed between the parties, including “*English law and London arbitration*“. The Single Judge further noted that there was no document before the High Court evidencing an intention to alter what had been agreed in the fixture recap or to dispense with the agreement to arbitrate. This, together with the presence of Clause 43 on a signed page of the booking note, supported the Single Judge’s *prima facie* conclusion that an agreement to arbitrate continued to form part of the parties’ bargain.

Why “20—41” was treated as an oversight by the Single Judge

Two factual features assumed particular significance.

First, Ocean7’s blank standard form itself referred to rider Clauses 20—41. The Single Judge considered this to support the view that the omission of Clauses 42 and 43 was an error which had simply persisted from the standard form into the executed booking note.

Second, the final page containing Clauses 42 and 43 had been signed and stamped by both parties. The Single Judge regarded this as further evidence that Clause 43 formed part of the booking note notwithstanding the narrower reference in the Special Terms.

The precedence clause was interpreted on a similar basis. In the Single Judge’s view, the stipulation that the booking note would “*prevail over*“ previous arrangements displaced only those earlier terms which were inconsistent with it. The fixture recap’s reference to London arbitration was considered consistent with Clause 43 rather than inconsistent with it. The Single Judge also considered it commercially implausible that parties to an international shipping contract would consciously abandon an agreed arbitral mechanism without putting any alternative dispute resolution mechanism in its place.

Once a *prima facie* arbitration agreement was found, the question was whether the circumstances nevertheless justified an anti-arbitral injunction. The Single Judge held that such relief was exceptional, and that the existence of parallel references and the jurisdictional objections advanced by SARR did not render the LMAA proceedings sufficiently oppressive, vexatious, or unconscionable to justify judicial intervention. The interim application was therefore dismissed.

The Division Bench judgment: The Same documents, the opposite conclusion

The Division Bench affirmed the Single Judge’s conclusion that the Delhi High Court had territorial jurisdiction. SARR had its permanent office in Delhi, the booking note was signed there, the cargo was to move from Delhi in the first instance, and any enforcement against SARR would be pursued in Delhi. The fact that another forum might also have jurisdiction did not oust the jurisdiction of the Delhi High Court once a substantial part of the cause of action had arisen in Delhi.

On the existence of an arbitration agreement, however, the Division Bench read the same contractual material differently. The blank Ocean7 form was one example. What the Single Judge treated as evidence of a clerical error carried forward into the executed booking note, the Division Bench regarded as an indication that arbitration did not form part of the standard terms.

The Division Bench reasoned that, since Ocean7 dealt with parties across jurisdictions, questions of arbitration, seat, forum, and governing law required specific agreement. The fact that the standard form itself referred only to Clauses 20—41 therefore weighed against treating Clause 43 as having been incorporated by mistake.

The placement of the signatures below Clause 43 produced a similar divergence. The Single Judge regarded the signature and stamp on the final page as supporting the inclusion of Clause 43. The Division Bench, by contrast, held that the signatures could not enlarge the express range of rider clauses incorporated through the Special Terms. Where the booking note expressly referred only to Clauses 20—41, the mere presence of Clauses 42 and 43 above the signatures on the same page could not make them part of the parties' agreement.

The precedence clause was equally important. The Single Judge had construed it as displacing only those earlier arrangements which were inconsistent with the booking note. The Division Bench instead treated it as an express stipulation that the signed booking note would prevail over previous arrangements. Since no bill of lading was issued, there was no subsequent contractual document capable of superseding the booking note. The booking note therefore became the controlling document for identifying the terms of the parties' final bargain.

The Division Bench also disagreed with the commercial-sense reasoning adopted by the Single Judge. The Single Judge had considered it unlikely that sophisticated parties to an international shipping transaction would abandon an agreed arbitral mechanism without replacing it with another dispute-resolution provision. The Division Bench approached the issue from the opposite direction. If parties who had earlier contemplated arbitration subsequently decided not to retain it, they could do so by omitting the arbitration provision from the final agreement and providing that the later agreement would prevail over earlier arrangements. In its view, that was precisely what the booking note did. Although the Division Bench did not state this expressly, the absence of an arbitration clause would not leave the parties without a forum, since their disputes could still be determined by courts of competent jurisdiction.

The Division Bench also compared the two documents and found that the booking note was not a mechanical reproduction of the fixture recap. The vessel provisions had changed, the detention clause had been widened, and the Special Terms specifically provided that delays due to swell would not count as detention, overriding the rider clause on that point. The arbitration provisions themselves differed: the fixture recap referred only to "English law and London arbitration", whereas Clause 43 adopted the Baltic and International Maritime Council (BIMCO) dispute resolution clause with LMAA Terms and Procedures. The fixture recap had also been negotiated between agents, whereas SARR itself signed the booking note.

Against this background, the Division Bench found no ambiguity or defective language in the incorporation of Clauses 20—41. Clause 43 fell outside the range of clauses expressly incorporated into the booking note. On that basis, the Division Bench held that no arbitration agreement existed between the parties.

Division Bench's reasoning under the Evidence Act

The Division Bench anchored this conclusion in Sections 91—95, Evidence Act, 1872 (Evidence Act), which governed its analysis of the contractual documents.⁵ The underlying principle was that once parties deliberately reduce their bargain to writing, the written instrument ordinarily becomes the primary evidence of the terms they chose to adopt.

In *Kamla Devi v. Takhatmal*⁶, the Supreme Court held that where contractual language is clear and applies accurately to existing facts, the words used must ordinarily be given their natural meaning. In *Roop Kumar v. Mohan Thedani*⁷, the Supreme Court explained that Section 91 embodies the principle that, once the parties reduce their agreement to writing, the document becomes the repository of their bargain and preceding expressions are displaced to the extent contemplated by law. The Division Bench also referred to earlier authorities cautioning against altering the meaning of a clear written instrument by reference to what the parties subsequently said or did.⁸

Against this background, Argo relied on *Anglo American Metallurgical Coal Pty. Ltd. v. MMTC Ltd.*⁹ to support a contextual approach to contractual interpretation. The Division Bench did not treat surrounding circumstances as irrelevant. Its emphasis was instead on the sequence of the interpretative exercise. The first question was whether the language of the document was clear and applied accurately to the existing facts. If so, effect had to be given to the text itself. Resort to wider material became relevant where the language was ambiguous or, although clear on its face, became unmeaning when applied to the facts.

There is, however, an important nuance in applying these principles to the present case. Section 92, Evidence Act refers to evidence of an “oral agreement or statement,” whereas the fixture recap was itself a written document. The exclusion of the fixture recap therefore cannot be explained by Section 92 in isolation. The Division Bench’s reasoning is better understood as resting on three points: the written contract as the primary evidence of the parties’ terms, the rules governing interpretation of that document, and the precedence clause under which the booking note prevailed over earlier arrangements.

Why *Govind Rubber* and *Trimex* did not apply

The distinction also explains why the Division Bench held that *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia (P) Ltd.*¹⁰ and *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*¹¹ did not govern the present case. In both decisions, the Supreme Court was required to determine from the parties’ correspondence whether a concluded contract and an agreement to arbitrate had come into existence. There was no later signed instrument recording a different final bargain. The correspondence therefore remained the principal source from which the parties’ consensus had to be ascertained.

The case in *SARR*¹² involved a different contractual sequence. The fixture recap was followed by a signed booking note which expressly provided that its terms would prevail over previous arrangements. The question was therefore not merely whether the earlier correspondence disclosed an agreement to arbitrate, but whether that agreement continued to form part of the parties’ bargain after execution of the booking note.

The Division Bench supported this distinction with authorities dealing with subsequent or superseding agreements. In *Union of India v. Kishorilal Gupta & Bros.*¹³, the Supreme Court explained that the survival of an arbitration clause depends on what has happened to the contract of which it forms part. In *Young Achievers v. IMS Learning Resources (P) Ltd.*¹⁴, a later comprehensive agreement was held to have superseded the earlier agreement and its arbitration clause. Similarly, in *Joshi Technologies International Inc. v. Union of India*¹⁵, the Supreme Court gave effect to an entire-agreement provision which made the executed contract the repository of the parties’ terms.

These decisions do not mean that an arbitration clause necessarily disappears whenever parties execute a later document. The question remains one of contractual intention. What matters is whether the later agreement preserves, incorporates, or supersedes the earlier arrangement. In the case of *SARR*¹⁶, the precedence clause and the express incorporation of only Clauses 20—41 led the Division Bench to conclude that the earlier agreement to arbitrate did not survive into the final bargain.

Interpretation, rectification, and the foreign authorities

Argo’s case went beyond asking the High Court to interpret the fixture recap and the booking note together. In substance, it was also that the reference to Clauses 20—41 in the booking note did not accurately record the parties’ earlier intention to include the arbitration provision in Clause 43. That brought the dispute close to rectification and explains the reliance on English and Australian authorities.

In *FSHC Group Holdings Ltd. v. GLAS Trust Corp. Ltd.*¹⁷, the English Court of Appeal explained two routes to rectification for common mistake. A written instrument may fail to give effect to a prior concluded contract, or it may fail to record a common intention shared by the parties at the time of execution. In the latter case, the common intention

must have been outwardly expressed so that each party understood the other to share it. Rectification therefore proceeds on the footing that the written instrument does not accurately record the parties' bargain or common intention. It is distinct from construing clear contractual language in a commercially preferable way.

*Poralu Marine Australia Pty. Ltd. v. MV Dijkzgracht*¹⁸ provided a useful factual contrast. By majority, the Australian Full Court held that the recap emails had themselves concluded the contract. The later booking note had been completed by Poralu's agent and was never signed by either party. It was therefore treated as documentation of an already concluded bargain rather than as a later executed contract replacing the recap. Terms in that booking note which were inconsistent with the concluded recap could not displace the earlier contract.

The Division Bench considered the common-law approach reflected in these authorities materially different from the Indian statutory framework it was applying. Relying on *BSES Ltd. v. Fenner India Ltd.*¹⁹, it observed that foreign authority should not displace Indian law where the domestic position is clear. On that basis, the Division Bench declined to use the earlier fixture recap to rewrite the incorporation language of the signed booking note.

That conclusion should not, however, be read as suggesting that Indian law does not recognise rectification. Section 26, Specific Relief Act, 1963 expressly permits rectification where, through fraud or mutual mistake, a written instrument does not express the real intention of the parties. The law of evidence also permits proof of mistake where relief relating to the instrument is properly sought.²⁰ The point in the case of *SARR*²¹ is narrower. Antecedent negotiations could not, through interpretation alone, be used to rewrite a signed instrument which the Division Bench regarded as clear. A case for rectification must satisfy the distinct requirements of that remedy.

When absence of consent justifies an anti-arbitral injunction

The finding that no arbitration agreement existed changed the nature of the injunction inquiry. Where parties have agreed to arbitrate, principles of arbitral autonomy, competence-competence and minimal judicial interference weigh strongly against restraining the chosen process. Those principles, however, cannot themselves supply consent where no agreement to arbitrate exists.

The leading Delhi authority is *McDonald's India (P) Ltd. v. Vikram Bakshi*²². The Division Bench there distinguished an anti-arbitral injunction from an ordinary anti-suit injunction. Since arbitration is founded on party choice and an Arbitral Tribunal is competent to rule on its own jurisdiction, Indian courts should be particularly slow to interrupt arbitral proceedings. The power nevertheless exists, but is to be exercised sparingly and, in relation to foreign-seated arbitrations, where the arbitration agreement is shown to be null and void, inoperative or incapable of being performed, in line with Section 45, Arbitration and Conciliation Act, 1996 (Arbitration Act).

At the same time, *McDonald's* recognised that a different situation arises where the dispute concerns whether the parties ever consented to arbitration at all. Drawing on *Excalibur Ventures LLC v. Texas Keystone Inc.*²³ and *Dallab Real Estate and Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan*²⁴, the High Court accepted that competence-competence does not altogether deprive national courts of jurisdiction to determine whether an arbitration agreement was ever made or is a nullity.

That distinction became decisive in the case of *SARR*²⁵. The Single Judge had found a *prima facie* arbitration agreement and therefore considered whether the LMAA proceedings were nevertheless oppressive, vexatious or unconscionable. The Division Bench started from the opposite premise. Having held that Clause 43 never formed part of the final agreement, the issue was no longer whether an agreed arbitral process had become oppressive. It was whether Argo could continue an arbitration which, on the High Court's finding, lacked a consensual foundation.

Relying on the case of *McDonald's*²⁶ and *Bina Modi v. Lalit Kumar Modi*²⁷, the Division Bench held that the case fell within

the exceptional category in which anti-arbitral relief was available. Argo was accordingly restrained from continuing, pursuing or taking further steps in the LMAA arbitration.

Questions the judgment leaves open

Two aspects of the judgment merit further consideration.

The first is choice of law. The Division Bench framed the central issue as whether, “as per law applicable”, the booking note was the parties’ final agreement, but did not identify that law. The LMAA majority applied English law; the Division Bench applied Indian law and accepted that Argo’s case “may be a sound argument under the English Common law”. The choice was therefore decisive. It was also not straightforward: English law, as the law of Clause 43 and of the seat, applies only if Clause 43 was part of the contract, which was the very question in dispute, while Indian law, as the law of the forum, was not chosen by the parties at all. A reasoned Explanation of why Indian law governed the existence of the arbitration agreement would have given the conclusion firmer foundations.

The second concerns the stage at which the finding was made. The appeal arose from the refusal of interim relief, yet the Division Bench held in categorical terms that no arbitration agreement exists. In *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*²⁸, the Supreme Court favoured a *prima facie* examination under Section 45, Arbitration Act, and Section 45 now expressly directs reference unless the judicial authority “prima facie finds” the agreement null and void, inoperative or incapable of being performed.²⁹ An anti-arbitral suit is not a Section 45 application, and the Division Bench was reviewing the refusal of interim relief after the Tribunal had already ruled on its jurisdiction. Even so, the judgment would have benefited from explaining why a conclusive finding on the existence of the arbitration agreement was appropriate while the suit itself remains pending.

Conclusion

The *SARR case*³⁰ does not dilute the courts’ restraint towards arbitration. Where an agreement to arbitrate exists, questions of jurisdiction ordinarily remain for the Tribunal in the first instance, and anti-arbitral relief remains exceptional. What the decision clarifies is the point at which that restraint begins. Deference to the arbitral process presupposes consent, and whether such consent exists is a question of contract, answered by ordinary principles of contractual interpretation and formation rather than by a policy preference for arbitration.

The decision also draws an important distinction between agreements formed through correspondence and cases where negotiations are followed by a signed instrument which is expressly to prevail over what came before. In the latter situation, the executed document assumes primacy in identifying the parties’ final bargain. A term agreed during negotiations cannot simply be carried into the final contract where the later instrument does not preserve or incorporate it. If the contention is that the signed instrument has incorrectly recorded the parties’ true bargain, the appropriate enquiry is one of rectification, not a more expansive interpretation of otherwise clear contractual language.

Party autonomy works in both directions. It requires courts to hold parties to an agreement to arbitrate where one exists. It equally protects a party from being required to arbitrate on the strength of a term that did not survive into the contract it signed. In the case of *SARR*, the anti-arbitral injunction was the consequence; the real controversy was about the contract.

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1. [2026 SCC OnLine Del 7230](#).

2. [2026 SCC OnLine Del 1293](#).

3. [\(2015\) 13 SCC 477](#) : (2016) 1 SCC (Civ) 733.
4. [\(2010\) 3 SCC 1](#) : (2010) 1 SCC (Civ) 570 : (2010) 1 ITCC 255.
5. The [Evidence Act, 1872](#) has been repealed by the [Sakshya Adhiniyam, 2023](#), in force from 1-7-2024. The corresponding provisions are Ss. [94—98](#), [Sakshya Adhiniyam, 2023](#).
6. [1963 SCC OnLine SC 131](#).
7. [\(2003\) 6 SCC 595](#).
8. *Ottoman Bank of Nicosia v. Ohanes Chakarian*, [1937 SCC OnLine PC 79](#); *Ganga Saran v. Ram Charan Ram Gopal*, [1951 SCC 1053](#).
9. [\(2021\) 3 SCC 308](#) : (2021) 2 SCC (Civ) 77.
10. [\(2015\) 13 SCC 477](#) : (2016) 1 SCC (Civ) 733.
11. [\(2010\) 3 SCC 1](#) : (2010) 1 SCC (Civ) 570 : (2010) 1 ITCC 255.
12. *SARR Freights Corpn. v. Argo Coral Maritime Ltd.*, [2026 SCC OnLine Del 7230](#).
13. [1959 SCC OnLine SC 6](#).
14. [\(2013\) 10 SCC 535](#) : (2013) 4 SCC (Civ) 788.
15. [\(2015\) 7 SCC 728](#) : (2015) 374 ITR 322.
16. *SARR Freights Corpn. v. Argo Coral Maritime Ltd.*, [2026 SCC OnLine Del 7230](#).
17. 2020 Ch 365 : (2020) 2 WLR 429 : 2019 EWCA Civ 1361.
18. 2023 FCAFC 147.
19. [\(2006\) 2 SCC 728](#) : (2006) 130 Comp Cas 8.
20. [Specific Relief Act, 1963](#), S. 26; [Evidence Act, 1872](#), S. 92 proviso (1). See also [Sakshya Adhiniyam, 2023](#), S. 95 proviso (1).
21. *SARR Freights Corpn. v. Argo Coral Maritime Ltd.*, [2026 SCC OnLine Del 7230](#).
22. [2016 SCC OnLine Del 3949](#).
23. 2011 EWHC 1624.
24. (2011) 1 AC 763 : (2010) 3 WLR 1472 : 2010 UKSC 46.
25. *SARR Freights Corpn. v. Argo Coral Maritime Ltd.*, [2026 SCC OnLine Del 7230](#).
26. *McDonald's India (P) Ltd. v. Vikram Bakshi*, [2016 SCC OnLine Del 3949](#).
27. [2020 SCC OnLine Del 1678](#).
28. [\(2005\) 7 SCC 234](#) : (2005) 127 Comp Cas 97.
29. [Arbitration and Conciliation Act, 1996](#), S. 45, as amended by the [Arbitration and Conciliation \(Amendment\) Act, 2019](#).
30. *SARR Freights Corpn. v. Argo Coral Maritime Ltd.*, [2026 SCC OnLine Del 7230](#).