Delhi High Court Grants Rare Anti-Enforcement Injunction: Implications for International Disputes

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Recently, the Delhi High Court in the case of *Honasa Consumer Limited v RSM General Trading LLC* granted an anti-enforcement injunction against the execution proceedings instituted in the Dubai Court on the ground that it threatened the arbitral process in India. The Court deemed the proceedings before the Dubai Court as an attempt to frustrate a possible arbitration envisaged by the contract between the parties. The injunction was granted under S.9 of the Indian Arbitration and Conciliation Act 1996 as an "interim measure." This is a significant turning point in the intersection of arbitration and cross-border litigation in India since the remedy of anti-enforcement injunction is rarely granted by judicial authorities across jurisdictions.

Interestingly, in 2021, the same bench of the Delhi High Court granted the first-ever anti-enforcement injunction in India in *Interdigital Technology Corporation v. Xiaomi Corporation.* Here, the court defined anti-enforcement injunctions as injunctions where a court injuncts one of the parties before it from enforcing against the other *a decree or order passed by a foreign court.* Thus, the remedy of anti-enforcement injunctions is triggered when a foreign proceeding has already run its course and resulted in an unfavourable judgment. It is a remedy restraining the enforcement of a decree that is in an inconvenient forum or is in breach of the parties' contractual agreement.

By its very definition, an anti-enforcement injunction appears to be a more aggressive and exceptional form of relief. Thus, courts have traditionally been cautious in granting such injunctions, given the potential implications on international comity and judicial restraint. However, the Delhi High Court's

decision to grant one in this case marks an interesting departure from this reluctance. This article delves into the rationale behind Delhi High Court's judgment in this case and explores its implications on cross-border litigation in India.

Brief facts:

The fulcrum of the dispute concerned an Authorized Distributorship Agreement (ADA) between Honasa Consumer Limited (petitioners) and RSM General Trading LLC (respondents). The ADA included an Arbitration clause with New Delhi as the venue of arbitration and the Arbitration and Conciliation Act, 1996 declared as the governing law. The ADA also conferred exclusive jurisdiction on the courts of New Delhi for matters arising from the contract. Despite these provisions, the respondents filed a suit in the Court of First Instance in Dubai, which ruled against the petitioners and imposed damages. The petitioners challenged this decree in the Dubai Courts of Appeal.

While the appeal was pending, the petitioner approached the Delhi High Court under S.9 of the Arbitration and Conciliation Act and sought an injunction against the respondents from enforcing the Dubai Court's decree. The petitioners argued that the respondent's actions in filing the Dubai Suit was oppressive and vexatious in nature and it attempted to subvert the contractual clauses agreed upon by both the parties. The respondents, on the other hand, argued that the court's power to grant interim reliefs under S.9 of ACA does not encompass the power to grant an anti-enforcement injunction against a foreign court's decree.

Delhi High Court's Ruling:

Based on the following contentions, the Court held that the power to grant "anti-enforcement" or anti-suit injunction would also be encompassed in the power to grant interim measures. The judgment was predicated on a liberal understanding of S.9 of Arbitration and Conciliation Act, where the court owing to the legally abusive nature of the foreign proceedings, deemed it to be "just and convenient"

to pass an injunction against the respondents from enforcing the Dubai Court's decree against the petitioners.

The court arrived at this conclusion through a comprehensive analysis of three broad legal principles. First, the court analyzed the threshold of granting anti-enforcement injunctions in other jurisdictions. Second, the court considered the scope of S.9 of Arbitration and Conciliation Act, that provides for interim reliefs. Finally, the principle of international comity was discussed in detail by the court. These are discussed briefly below.

- **Court's analysis of international jurisprudence:**

In the absence of established precedent on anti-enforcement injunctions in India, the Delhi High Court analysed cases from various jurisdictions to shape its approach. The principles outlined in these cases manifest the overall outlook of courts across jurisdictions on anti-enforcement injunctions. While some courts have taken a liberal approach, other jurisdictions are wary of the sheer magnitude of the injunction in rendering the foreign judgment almost redundant.

In England, the Court of Appeal in *SAS Institute Inc v World Programming Ltd* adopted a more liberal view, focusing on the principles of justice and comity rather than imposing a high threshold of "exceptionality in granting such injunctions." The court held that an anti-enforcement injunction has developed incrementally from the same underlying principles as the anti-suit injunction. Thus, the court did not distinguish between anti-suit and anti-enforcement injunctions based on the degree of exceptionality. Instead, it lowered the threshold for the latter, placing both on the same level.

Conversely, the Singapore Court of Appeals (SCA) in *Sun Travels & Tours Pvt Ltd v. Hilton International Manage (Maldives) Pvt Ltd.*, emphasized on the difference between anti-suit and anti-enforcement injunctions and held that a "greater degree of caution" should be exercised by courts while considering an anti-

enforcement application. The court reasoned this on the ground that, "*an AEI proscribes the enforcement of foreign, granting an anti-enforcement injunction is comparable to* ***nullifying*** *the foreign judgment* ***or stripping the judgment of any legal effect*** *when only the foreign court can set aside or vary its own judgment."* The SCA was cognizant of the legally aggressive nature of anti-enforcement injunctions and therefore incorporated the threshold of "exceptionality" while dealing with such applications.

The Delhi High court on the other hand, deviated from the approach taken by SCA in *Sun Travels* and subscribed to a more liberal understanding similar to the English Courts. The court while endorsing its holding in *Interdigital Technology Corporation v. Xiaomi Corporation* held that "where a court in rendering of "justice" requires an anti-enforcement injunction to be issued, then it should not hold back its hands on some perceived notion of lack of "exceptionality" in the case." By doing so, the court significantly lowered the threshold for granting anti-enforcement injunctions in India and held that rarity and exceptionality need not necessarily be a deciding factor for granting such injunctions.

- **On the scope of S.9 of Arbitration and Conciliation Act:**

On the scope of S.9 of Arbitration and Conciliation Act, the court held that that the scope of S.9 is *wide and compendious*. It stated that although the section appears exhaustive in nature as it enumerates the matters in which interim relief can be granted, clause (e) of S.9(1)(ii) provided the courts with the discretionary power to grant any such interim measure that is "just and convenient.". The court while reiterating established principles on interim measures held that while granting an injunction under S.9 of ACA, all the court has to see is whether the applicant for interim measure has a good *prima facie* case, whether the *balance of convenience* is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with *reasonable expedition*. If these requirements are fulfilled, the court stated that it is within its power to grant the requisite interim relief in the form of an injunction. In this case, the Dubai court decree was held to be oppressive and vexatious, as a result, the court granted the anti-enforcement injunction as an interim relief.

Further, the court made an interesting observation with regards to S.9 of Arbitration and Conciliation Act. In response to the respondents citing S.44 of UK Arbitration Act as a defence, the court held that S.9 of ACA combines S.44 of UK Arbitration Act and S.37 of the Senior Courts Act. S.44 of the UK Act empowers the court to pass orders in support of the Arbitral Proceedings. The court noted that the section did not contain any "just and convenient" clause similar to S.9(1)(ii)(e) of Indian ACA. Whereas S.37 of the Senior Courts Act did contain a provision that allows the courts to pass interlocutory orders as is "just and convenient." Ultimately the court concluded that S.9 of ACA does give powers to the courts to intervene in foreign proceedings where it is in the interest of justice.

- **On the issue of international comity:**

Lastly, on the issue of comity of Courts, the court held that "the principle of comity of courts can have no application where a foreign Court is manifestly acting in excess of jurisdiction." Here, the respondent in manifest disregard of the arbitration agreement contractually agreed upon by the parties, instituted a suit in the Dubai Court against the exclusive choice of Delhi High Court as the seat court. In this regard, the court held that the principle of comity of courts is not, jurisprudentially, a bar to grant of anti-suit or anti-enforcement injunction, where the facts of the case justify such grant.

Further, while disregarding the principle of comity in this case, the court buttressed on the principle of contractual supremacy and the need to hold parties accountable to their contractual commitments. It stated that adherence to contractual covenants, voluntarily executed *ad idem*, is the very life breath of commerce. Ultimately it concluded that the defence of comity cannot be pleaded by the respondents in this case since the decree of the Dubai court was *coram non judice* as per the contractual covenants.

Implications of the court's analysis :

The protection of contractual rights stands out as one of the most important themes in the Court's approach to grant anti-enforcement injunction in the present case. In this regard, the judgment has some positive implications.

For instance, while disregarding the application of international comity in this case, the court upheld the exclusive jurisdiction clause between the parties and equated it to the negative covenant in the agreement. This effectively means that judgments from non-chosen jurisdictions would be in prima facie breach of such contractual clauses and would not be enforced ideally. This is in line with the common law approach to private international law that thrives on such contractual agreements.

This is a refreshing approach considering the fact that Indian courts have in the past disregarded the choice of law agreements to impute the law of the *lex fori*. Just a year ago in *TransAsia Private Capital vs Gaurav Dhawan*, the Delhi High Court had recorded that Indian courts are not required to automatically apply the chosen governing law to the dispute unless the parties introduce expert evidence to that effect. The present judgment in this regard is a positive deviation from the standard "default rule" applied by Indian Courts. A logical corollary to the court's emphasis on contractual supremacy and protection of the exclusive jurisdiction clause is also the respect for parties choice of governing law. In the present case Dubai Court's application of Dubai Law was seen as a violation of the contract which stipulated Arbitration and Conciliation Act as the governing statute. The precedential implication of this is that Indian courts can now move away from the default rule and respect the principles of party autonomy which is grounded on the principle of contractual supremacy. Thus, the court rightfully asserted the principle of contractual supremacy while granting an anti-enforcement injunction.

That said, the court's attempt in lowering the threshold for anti-enforcement injunction to the same level as anti-suit injunctions may lead to uncertainty regarding its precedential value for other jurisdictions. In this regard, the judgment does suffer from certain deficiencies. *First,* setting a low standard for such injunctions can run the risk of courts frequently granting injunctions against

foreign judgments in breach of international comity. Dispensing with the requirement of "exceptionality" in cases of anti-enforcement injunctions is dangerous in India, especially when the law on exclusive choice of court agreements is still at its nascent stage. In the past, Indian courts have wrongfully granted anti-suit injunctions despite there being an exclusive choice of court clause between the parties. Reducing the threshold for anti-enforcement injunctions to the same level would pose similar risks, with courts completely disregarding the rule of comity as has been done in cases granting anti-suit injunctions.

It was imperative for the court to appreciate the difference between anti-suit and anti-enforcement injunctions. The difference between an anti-suit injunction and an anti-enforcement injunction is not one of material but of degree. There is a spectrum. This is manifested in the fact that injuncting a party from executing a foreign judgment in a foreign court is a greater interference than injuncting a party from initiating foreign proceedings that are still at an early stage. In the present case, the petitioners could have sought an anti-suit injunction while the respondents initiated a suit in the Dubai Court, rather than waiting for the court to finish proceedings and deliver its judgment. As argued by scholars, the earlier an injunction is sought, the less damage is done to international comity, since there is significant wastage of resources of the foreign court in cases of anti-enforcement injunctions.

Thus, keeping the threshold for an anti-enforcement injunction the same as an anti-suit injunction creates significant risks. Indian courts should instead adhere to the high-threshold approach taken by the SCA in *Sun Travels* while granting an anti-enforcement injunction and relegate it to "exceptional cases" where the defendants are in clear breach of their contractual obligations, as in the present case.

Second, the court's remark on the difference between S.9 of ACA and S.44 of the UK Arbitration Act is a crucial observation. Even though the UNCITRAL Model Law on International Commercial Arbitration (on which the Indian ACA is based)

under Article 9 provides for interim measures, it does not elucidate the nature of such measures or the situations where they can be granted. The inclusion of the "just and convenient" clause in S.9 gives Indian courts an extra degree of discretion that is not contemplated in other jurisdictions. In the UK, the discretionary power of the court to grant interim measures when it is "just and convenient" does not flow from the UK Arbitration Act, but rather from the Senior Courts Act, which is used exceptionally. In India, this power is enunciated in the ACA itself. This distinction is important since it highlights the degree of judicial intervention envisaged by Indian and UK legislation. Ordinarily, S.151 of the CPC does provide the requisite power to the courts to grant remedies in the interest of justice. The specific inclusion of the "just and convenient" clause within the ACA risks a higher degree of judicial intervention in arbitration. Furthermore, incorporating the power to grant an anti-enforcement injunction within the clause can set a dangerous precedent.

More prominently, without delineating specific considerations as to when such injunctions can be granted and by simultaneously reducing the threshold of rarity in granting such injunctions, the court has normalized a higher degree of judicial intervention in cases of transnational litigation. Here, although the court rightly passed an anti-enforcement injunction, it sourced its legality from S.9(1)(ii)(e) as being "just and convenient," rather than acknowledging the exceptionality of the present case and limiting such injunctions to rare circumstances. The court completely failed to recognize the risks of lowering the threshold for granting such injunctions especially in India where excessive judicial intervention has been the biggest impediment to the development of transnational litigation.

The concerns raised above become more prominent considering the absence of a specific legal framework governing the grant of such injunctions. The court's move to lower the threshold could significantly impact decisions in other jurisdictions, given the lack of a uniform procedural law on this issue. To further contextualize this concern, I will briefly discuss the international framework—or rather, the lack thereof surrounding anti-enforcement injunctions and the concerns that arise due to this legal lacunae.

Which law governs Anti-Enforcement Injunctions?

There is no explicit domestic or international procedural framework that gives the court the power to grant such injunctions. S.9 of the Arbitration and Conciliation Act adopts Article 9 of the UNCITRAL Model Law on International Commercial Arbitration (**Model Law**) that allows courts to grant interim measures at the request of a party. The Model Law does not provide for an express provision authorising the grant of an anti-enforcement injunction in aid of arbitration.

In the absence of such express provision, the question that arises here is "whether the scope of Article 9 is broad enough to encompass the power to grant anti-enforcement injunctions?" At this juncture, there seems to be no definitive answer to this. Whether Article 9 is broad enough to restrain enforcement of a foreign court decree in aid of arbitration is a matter of conjecture. Model Law's silence with respect to this has already lead to inconsistent judgments in domestic courts of States that have adopted it, as demonstrated by jurisprudence in Singapore and India. Thus, the need to incorporate a procedural framework with respect to such injunctions becomes important.

Another concern that arises is the potential conflict between anti-enforcement injunctions and laws related to recognition and enforcement of foreign judgments. *Earlier* in this blog, the US Court of Appeal for the Second Circuit's decision on anti-enforcement injunction was discussed. The court here held that the Recognition Act of the US does not allow pre-emptive anti-enforcement injunctions and the court granting such injunctions are in overreach of their powers. The court reasoned this on the ground that anti-enforcement injunctions preclude the normal operation of New York's Laws on recognition and enforcement of foreign judgment. A party can challenge such judgments at the Enforcement stage according to the laws of the enforcing court but cannot sought an injunction against a party to initiate such enforcement proceedings altogether. The respondents in this case gave a similar argument on S.13 of CPC which deals with executability of foreign judgments in India. They argued that the court cannot grant "pre-emptive" Injunction against enforcement as the same will be

against S.13 of CPC.

The Hague Convention of the Recognition and Enforcement of Foreign Judgments does not contemplate the pre-emptive restrain against the enforcement of a judgment either. Article 7(1)(d) of the Convention states that recognition and enforcement of a judgment maybe refused if the proceedings were contrary to an Agreement. Thus, although the remedy of refusal of enforcement is available, both domestic and international law is silent on an anti-enforcement injunction as a pre-emptive relief. Unlike the US courts that explicitly disallowed the power to grant anti-enforcement injunctions, the Delhi High Court in this case rooted it in S.9 of Arbitration and Conciliation act as an interim relief. Thus, without any international legal standard, domestic courts are free to interpret the legality of anti-enforcement injunctions in their jurisdictions. While a complete bar on courts to grant anti-enforcement injunction is not the correct approach, a liberal approach in granting it is dangerous as well. Presently, such injunctions can only be incorporated as an interim relief. This significantly lowers the exceptionality threshold. Anti-enforcement injunctions are inherently hostile and aggressive in nature, thus there is a need for an international procedural framework to address such injunctions.

Conclusion:

While the judgment provides much-needed protection of contractual rights, it falls short of addressing the existing lacuna in the law. The court could have taken this opportunity to delineate specific guidelines for granting such injunctions, granted since this was only the second instance when it was granted in India. By failing to do so, the reduced threshold for granting anti-enforcement injunctions becomes even more dangerous. The present case fits into the rare and exceptional category as the respondents were in clear breach of the contract. Thus, the courts attempt in lowering the threshold for granting anti-enforcement injunctions was not needed. Anti-enforcement injunctions raise serious concerns of comity and they interfere significantly with foreign legal systems. It is therefore necessary to determine the relevant factors that necessitate the grant of an anti-enforcement injunction.

The court’s approach in this case highlights the need for clearer guidelines. A more defined framework for when and how anti-enforcement injunctions can be granted will help ensure that domestic courts adhere to certain standards set by the Model Law. The current silence of the Model Law on such injunctions is causing a patchwork of interpretations across different jurisdictions, leading to uncertainty and inconsistency. Establishing clear international standards would help courts manage these complex legal issues more effectively, paving the way for more predictable decisions in the future.