Anti-Arbitration Injunction in Foreign-Seated Arbitrations: The Delhi High Court's Controversial Intervention in Engineering Projects (India) Limited v. MSA Global LLC (Oman)

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Introduction

On 25th July 2025, a single judge bench of the Delhi High Court delivered a judgment in *Engineering Projects (India) Limited v. MSA Global LLC (Oman)* in *CS (OS) 243 of 2025****[1]*** that has stirred considerable discourse in international arbitration circles. The fundamental question at issue in the instant case was whether an Indian Court can grant an anti-arbitration injunction to stay proceedings in a foreign-seated arbitration on grounds of the proceedings turning oppressive and vexatious due to procedural impropriety, notwithstanding internationally well-settled principles of minimal judicial intervention, party autonomy, and *lex arbitri* that govern international commercial arbitration? The Delhi High Court answered in the affirmative, holding that Indian civil courts possess inherent power under Section 9 read with Section 151 of the Code of Civil Procedure, 1908 ("**CPC**") to intervene under exceptional circumstances where the arbitral process itself becomes a vehicle of abuse.

This ruling carries profound implications for India's aspirations to position itself as a global arbitration hub. By granting relief that undermines the exclusive jurisdiction of the Courts at the Seat (Singapore in the instant case), the ruling has invited scrutiny vis a vis its alignment with the territorial principle as

elaborated upon in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*** ("**BALCO**")[2], and with internationally accepted 'best practices' which are well-settled considering that they promote predictability and finality in cross-border dispute resolution.

Facts

Engineering Projects (India) Limited ("**EPIL**"), a public sector enterprise, entered into a sub-contract agreement with MSA Global LLC (Oman) ("**MSA**") for the design, supply, installation, integration, and commissioning of a border security system at the Yemen-Oman border. The agreement contained an arbitration clause stipulating that any disputes would be resolved by way of arbitration under the rules of the International Chamber of Commerce ("**ICC**") with Oman's law being the governing law, while conferring exclusive jurisdiction upon the courts at New Delhi, India. For the sake of clarity, Article 19 of the agreement between the parties containing the aforementioned arbitration clause, is extracted in its entirety as under:

"ARTICLE 19

LAW AND ARBITRATION

19.1 *Disputes if any, arising out of or related to or any way connected with this agreement shall be resolved amicably in the First instance or otherwise through arbitration in accordance with Rules of Arbitration of the International Chamber of Commerce. The jurisdiction of the Contract Agreement shall lie with the Courts at New Delhi, India.*

19.2 *This Agreement shall be governed by, construed and take effect in all respects according to the Laws and Regulations of the Sultanate of Oman.*

19.3 *Any dispute or difference of opinion between the parties hereto arising out*

of this Agreement or as to its interpretation or construction shall be referred to arbitration. The Arbitration Panel shall consist of three Arbitrators, one Arbitrator to be appointed by each party and the third Arbitrator being appointed by the two Arbitrators already appointed, or in event that the two Arbitrators cannot agree upon the third Arbitrator, third Arbitrator shall be appointed by the International Chamber of Commerce. The place of the Arbitration shall be mutually discussed and agreed.

19.4 *The decision of the Arbitration Panel shall be final and binding upon the parties."*

In the course of performance of the contract, disputes arose between the parties concerning alleged delays in contractual performance. Consequently, MSA invoked the arbitration agreement in 2023 nominating Mr. Andre Yeap SC ("**Mr. Yeap**") as a co-arbitrator. Thereafter, on 20.04.2024, Mr. Yeap submitted his statement of acceptance, availability, impartiality and independence to the ICC, 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. EPIL nominated Hon'ble Justice Mr. Arjan Kumar Sikri (Retd.) as its co-arbitrator. The Tribunal was duly constituted on 05.09.2023 with Mr. Jonathan Acton Davis KC being appointed as the presiding arbitrator by the co-arbitrators.

In June 2024, the tribunal rendered a first partial award on MSA's application for interim measures. EPIL challenged this award before the Singapore High Court. In December 2024, in preparation of the evidentiary hearings, EPIL, through a Gujarat High Court Judgment dated 05.07.2024 titled ***Neeraj Kumarpal Shah v. Manbhupinder Singh Atwal***, discovered the Mr. Yeap had been previously appointed as an arbitrator in separate proceedings involving Mr. Manbhupinder Singh Atwal who happens to be MSA's Managing Director, Chairman, and Promoter. This prior involvement had not been disclosed when Mr. Yeap accepted his appointment. As such, on 19.01.2025, EPIL filed a challenge application before the ICC Court under Article 14(1) of the ICC Rules alleging non-disclosure

and raising doubts about Mr. Yeap's independence and impartiality. The ICC Court in its decision acknowledged the non-disclosure as "regrettable" but rejected EPIL's challenge on merits, finding that the circumstances did not establish justifiable doubts regarding Mr. Yeap's impartiality or independence. Subsequently, EPIL filed an application before the Singapore High Court under Article 13(3) of the UNCITRAL Model Law seeking determination on the validity of Mr. Yeap's continued participation, and also simultaneously approached the Delhi High Court by filing the instant suit seeking a declaration and permanent injunction restraining MSA from continuing the ICC arbitration with the present tribunal composition. Further complicating the matter, MSA filed an enforcement petition before the Delhi High Court for the recognition and enforcement of the First Partial Award while also obtaining an anti-suit injunction from the Singapore High Court restraining EPIL from continuing its proceedings before the Delhi High Court.

The Dispute

The crux of the legal controversy in this case was around three inter-related questions.

1. Whether an Indian Civil Court has the jurisdiction to entertain a suit seeking an anti-arbitration injunction against a foreign-seated arbitration, particularly in light of the fact that the parties had agreed to arbitrate under ICC Rules with Singapore being designated as the seat. In this respect, MSA relied upon the judgment in ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.*** ("**Indus Mobile**")[3] to contend that once parties agree to a specific seat of arbitration, it is solely the Courts at that seat that retain supervisory jurisdiction over the arbitral process to the exclusion of all other Courts. MSA further argued that the suit was barred by Section 5 and Section 45 of the Arbitration and Conciliation Act of 1996 which are the statutory embodiment of the principle of minimal judicial intervention and the territoriality doctrine affirmed in BALCO.

11. Whether the non-disclosure by Mr. Yeap rendered the arbitration proceedings vexatious, oppressive, and violative of Indian Public Policy. In this regard, EPIL argued that Mr. Yeap's failure to disclose this material information constituted a manifest violation of Article 11 of the ICC Rules, which mandates arbitrators to disclose any facts or circumstances likely to give rise to justifiable doubts as to their impartiality or independence. EPIL contended that such non-disclosure strikes at the root of party consent and procedural fairness thereby rendering the entirety of the arbitral process illegitimate. On the other hand, MSA relied upon Article 11.2 of the ICC Rules read with Clause 3.1.3 of the IBA Guidelines which mandate disclosure only if an arbitrator has been appointed on two or more occasions in the past three years by a party or one of its affiliates; MSA contends this requirement had not been satisfied in the instant case.

III. Whether EPIL was entitled to interim injunctive relief restraining the continuation of arbitral proceedings pending final disposal of the suit.

As such, this dispute was centred around reconciling party autonomy and minimal judicial intervention on one hand, with the Court's duty to prevent abuse of process and ensure procedural fairness on the other [4].

The Decision

On Maintainability

At the very outset, the Delhi High Court affirmed the strong presumption in favour of the civil court's jurisdiction as under Section 9 of the CPC, which confers authority to adjudicate all suits that are of a civil nature unless the same is expressly or through implication barred by statutory law. The Court relied on the case of ***Dhulabhai v. State of Madhya Pradesh[5]*** and held that the exclusion of civil court jurisdiction cannot be readily inferred and must be clearly provided by law. Further, the Court distinguished the rulings in Indus Mobile and

BALCO, noting that while these judgments do affirm the seat principle and the territoriality doctrine, they did not create an absolute bar on civil courts' power to grant an anti-arbitration injunction in exceptional circumstances. The Court found guidance in the ***Union of India v. Dabhol Power Company[6]*** and ***ONGC v. Western Company of North America [7],*** wherein it was held that Indian Courts do have the power to grant injunctions against foreign proceedings whenever the circumstances make the proceedings oppressive, or where such an injunction is necessary or expedient, or when the ends of justice so require; with the former specifically referring to Sections 5 and 45 of the Arbitration and Conciliation Act of 1996 and stating that neither of them oust, entirely, the jurisdiction of the Indian Courts. Additionally, the Court emphasised the distinction between anti-suit injunctions and anti-arbitration injunctions, noting that the latter require a higher threshold of oppression or vexatiousness to be met, citing examples along the lines of doubts as to the consent of the parties, allegations of forgery, or fundamental procedural impropriety which can meet the aforementioned threshold. Crucially, the Court held that the principle of minimal judicial intervention does not and must not translate into negligible interference[8], and said this crucial difference has been preserved to ensure that private dispute resolution mechanisms such as arbitration do not turn oppressive or operate in an unruly manner, which can be deemed contrary to the foundational principles of judicial propriety.

On Vexatiousness and Oppressiveness of the Proceedings

The Court began the discussion in this regard by defining "vexatious" as proceedings instituted in the absence of sufficient legal basis and primarily intended to annoy, harass, and/or burden the opposing party, and "oppressive" as conduct that unjustly imposes harsh burdens or unfair disadvantages upon a party to the proceedings. Thereafter, in reference to the ICC Rules, the Court noted that Article 11 therein casts a categorical obligation upon arbitrators to make full and frank disclosure of any circumstance that might give rise to justifiable doubts regarding their impartiality or independence. It was emphasised that this obligation must be assessed from the perspective of the parties as is clear from the language of the provision insofar as it says "in the eyes of the parties", rather than from an arbitrator's subjective perception of bias. Further, it was noted that the arbitrator cannot withhold disclosure on the ground that the fact appears

benign or remote in lieu of the fact that the obligation arises when there exists even a possibility that the information, if known to the parties, might give rise to an apprehension of bias in the parties' minds.

The Court found that Mr Yeap's non-disclosure was deliberate and calculated. Even though Mr. Yeap admitted in his response to the initial challenge application that he had made enquiries and was aware of the potential need for disclosure, he chose not to do the same based on his subjective assessment that four years had passed since the prior appointment in the matter concerning MSA's Chairman. Moreover, Mr. Yeap had acknowledged in the initial proceedings that "had I made the disclosure, the possibility of the Respondent seeking to challenge my impartiality could not be discounted". The Court viewed this statement as evidence of the fact that the non-disclosure was intentional and aimed at avoiding objection. Further, the Court held that the ICC Court's decision on the challenge, while acknowledging the non-disclosure as "regrettable", erroneously misplaced the burden on EPIL to demonstrate actual bias rather than focusing on the breach of the mandatory disclosure requirement, thereby noting that the decision was a classic case of *operation successful, but patient dead*. The logic behind this was that, while the ICC Court's decision may seem sound on the surface and in compliance with the formal procedure, it did not address the substantive loss of confidence in the arbitral process's neutrality.

On Interim Injunction

As such, applying the triple test of (i) prima facie case, (ii) balance of convenience, and (iii) irreparable harm for interim injunction as under Order XXXIX Rules 1 and 2 of the CPC, the Court found that all three conditions were satisfied and accordingly stayed the ICC arbitral proceedings until final disposition of the suit and restrained both parties from participating in the arbitration with the tribunal's present composition.

Concluding Remarks

While the judgment articulates laudable concerns about procedural fairness and impartiality, the approach that has been adopted raises serious questions about jurisdictional overreach, inconsistency with India's pro-arbitration legislative intent, potential damage to India's credibility as an arbitration-friendly jurisdiction.

Firstly, the most fundamental flaw in the judgment lies in its erosion of the seat principle which is unarguably a cornerstone of international arbitration law[9]. The UNCITRAL Model Law, which forms the very basis of India's Arbitration and Conciliation Act, is predicated on the seat principle, which has also been unequivocally affirmed by the Indian Supreme Court in cases such as BALCO. By granting an anti-arbitration injunction in this matter, the Delhi High Court effectively usurped the supervisory jurisdiction of the Singapore courts. The Singapore Court had already considered and rejected EPIL's challenge to Mr. Yeap's appointment, yet the Delhi High Court substituted its own judgment on the same issue. This created an untenable situation of conflicting judicial orders: the Singapore High Court granted an anti-suit injunction restraining the Delhi proceedings on 23 May 2025, while the Delhi High Court proceeded to grant an anti-arbitration injunction on 25 July 2025. Judicial conflicts of such nature undermine the predictability and finality that parties seek when choosing arbitration, not to mention the violation of principles of comity between courts. Additionally, it's not as if EPIL was rendered remedy-less before the seat courts at Singapore. There were multiple appeals available to Singapore High Court's decision on the challenge to Mr. Yeap's impartiality. The Delhi High Court's position could still have been appreciated had EPIL had no remedy left at the seat courts except to continue with vexatious and oppressive arbitral proceedings, but this was not the case. Further, the judgment's reliance on ***Dabhol Power Company*** and ***ONGC v. Western Company*** were misplaced considering that those cases involved enforcement of foreign awards or bank guarantees, and not the question of intervening in ongoing foreign-seated arbitrations with active supervisory courts. Not to mention that the judgment's characterisation of MSA's conduct as vexatious appears rather selective and outrightly ignores EPIL's own forum shopping tendencies, i.e., filing parallel challenges before ICC, Singapore Courts, and Delhi Courts simultaneously.

Secondly, while the Court correctly emphasised the importance of arbitrator disclosure, the underlying principles were applied in a problematic manner. The Court failed to consider that four years had passed since Mr. Yeap's prior appointment, and neither the ICC Rules nor the IBA Guidelines mandate disclosure of appointments separated by such a temporal gap unless it can be demonstrated that the same constitutes a pattern of repeated appointments; this standard is akin to Entry 20 of the Vth Schedule to India's 1996 Act. The ICC Court's decision carefully considered these standards and concluded that while disclosure would have been prudent, a failure to do the same did not give rise to justifiable doubts about Mr. Yeap's impartiality or independence. The Delhi High Court's characterization of this reasoned decision as *operation successful, but patient dead* is rather dismissive, fails to engage with the substantive reasoning, and fails to also take into account the fact that international arbitration institutions like the ICC possess expertise in assessing arbitrator conflicts; it is a clear case of 'due process paranoia' [10]. Domestic courts ought to be cautious about second-guessing such determinations, especially when institutional rules provide clear mechanisms and standards for such challenges. Further, the judgment entirely conflates two distinct issues: whether disclosure was required, and whether non-disclosure renders the arbitrator actually biased.

Lastly, the present judgment runs counter to India's objective to become an arbitration-friendly jurisdiction, as expressed in the Law Commission's 264th Report. By allowing a non-seat court to stay a foreign-seated arbitration based on alleged procedural impropriety, the decision sends a troubling signal to international parties i.e., choosing India as a contracting party, even with a foreign seat, exposes you to unnecessary intervention by Indian Courts; this is precisely what the BALCO regime sought to eliminate[11]. The judgment also creates a dangerous precedent for other jurisdictions. If Indian courts can intervene in Singapore-seated arbitrations, what is to stop Chinese courts from intervening in London-seated arbitrations, or vice versa? The result would be a race to obtain competing injunctions, undermining the entirety of the international arbitration framework.? Beyond doctrinal concerns, this is also a clear case of practical ineffectiveness. The ICC tribunal and Singapore courts are not bound by the Delhi High Court's judgment and have continued to recognise the arbitration's validity. Singapore subsequently issued a permanent anti-suit

injunction against EPIL on 18.09.2025, and initiated contempt proceedings when EPIL obtained yet another ex parte injunction from the Delhi courts restraining MSA from participating in the Singapore contempt proceedings. This cycle of competing injunctions serves neither party's interests and brings both judicial systems into disrepute, which is a massive concern, especially when this ordeal was wholly avoidable considering that under the New York Convention, any award rendered in this arbitration would have ultimately been enforceable in India only through the procedures in Part II of the 1996 Act, at which point EPIL could have raised objections under Section 48, including alleged violation of public policy. The availability of this post-award remedy also undermines the necessity for pre-emptive intervention.

A better approach would have been for the Court to (i) recognise that the seat court in Singapore has exclusive supervisory jurisdiction, (ii) acknowledge that EPIL has adequate remedies through the ICC challenge process and challenges before Singapore courts under Article 13 of the UNCITRAL Model Law, along with post-award resistance to enforcement, and (iii) decline jurisdiction on *forum non conveniens* grounds while allowing EPIL to pursue its remedies before the aforementioned appropriate fora.

[1] 2025 SCC OnLine Del 5072.

[2] (2012) 9 SCC 552.

[3] (2017) 7 SCC 678.

[4] See https://www.scconline.com/blog/post/2022/10/20/party-autonomy-or-the-choice-of-seat-the-essence-of-arbitration/ for a discussion.

[5] 1968 SCC OnLine SC 40.

[6] 2004 SCC OnLine Del 1298.

[7] (1987) 1 SCC 496.

[8] See https://disputeresolution.cyrilamarchandblogs.com/2025/08/delhi-high-court-clarifies-scope-of-anti-arbitration-injunctions-in-foreign-seated-proceedings/ for a discussion.

[9] See https://indiacorplaw.in/2025/09/08/jurisdictional-overreach-and-the-illusion-of-equity-a-critique-of-the-delhi-high-courts-intervention-in-epi-v-msa-global/ for a discussion.

[10] See https://forum.nls.ac.in/nlsir-online-blog/arbitrator-non-disclosure-before-the-delhi-high-court/ for a discussion.

[11] See https://legalblogs.wolterskluwer.com/arbitration-blog/a-shield-of-justice-or-a-sword-through-the-seat-the-delhi-high-courts-contentious-anti-arbitration-injunction/ for a discussion.