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ANTI-ARBITRAL INJUNCTIONS

DEFEATING PARTY AUTONOMY OR PREVENTING ABUSE OF ARBITRAL PROCESS?

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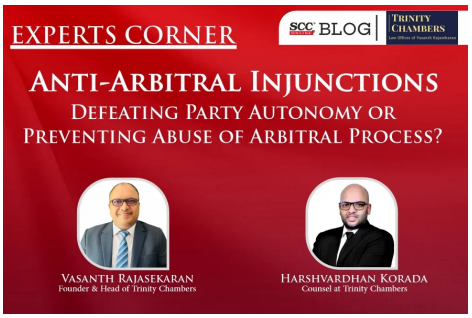
Anti-Arbitral Injunctions: Defeating Party Autonomy or Preventing Abuse of Arbitral Process?



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An anti-arbitral injunction is an injunctive relief which is granted by a court or any other competent judicial or quasi-judicial body preventing the parties, or in some instances, the Arbitral Tribunal from commencing or continuing arbitral proceedings. An anti-arbitral injunction is typically sought at any point prior to the rendering of the final arbitral award.

Anti-arbitral injunctions are used to address only a specific set of legal concerns,

and the issuance of the same introduces a delicate balance in the domain of dispute resolution. On one hand, these injunctions aid in maintaining the status quo and safeguarding the aggrieved party from the hassle of undergoing arbitral proceedings in matters which may otherwise be demonstrably non-arbitrable. On the other hand, their implementation poses a risk of curtailing the flexibility and party autonomy inherent in arbitration. Thus, the grant of anti-arbitral injunctions raises complex questions about the intersection of the principle of minimal judicial intervention in arbitration and protecting a party from being compelled to participate in vexatious arbitral proceedings which are not maintainable in the first place. In this article, we examine the relevant judicial precedents which discuss the principles that govern the grant of anti-arbitration injunctions.

Decisions of the Supreme Court of India

Kvaerner Cementation — A decade-late unveiling

In *Kvaerner Cementation India Ltd.* v. *Bajranglal Agarwal*[1], a three-Judge Bench of the Supreme Court dealt with a matter involving an anti-arbitral injunction in March 2001, less than five years since the Arbitration and Conciliation Act, 1996 (Arbitration Act) came into force. In this case, special leave petitions were filed challenging the order of a Single Judge of the Bombay High Court refusing to interfere with a civil court's order vacating an interim injunction on arbitral proceedings granted earlier.

The underlying suit before the civil court sought a declaration that no arbitration clause existed between the parties and accordingly, the ongoing arbitration proceedings lacked jurisdiction. Although the civil court had granted an interim injunction on the arbitral proceedings, eventually the said order was vacated. The Bombay High Court, while refusing to interfere with the civil court's order vacating the interim injunction opined that in view of Sections 5 and 16 of the Arbitration Act, only the Arbitral Tribunal had the power to rule on its own jurisdiction. Consequently, the civil court could not pass any injunctions against arbitral proceedings. While the Bombay High Court may not have said it in as many words, its decision, in essence reiterated the principle of competence-competence (or kompetenz-kompetenz) which recognises the power of an Arbitral Tribunal to examine and rule on challenges to its own jurisdiction.

Before the Supreme Court, the petitioners argued that the jurisdiction of a civil court ought not to be ousted by inference unless stated expressly by the statute. While rejecting this argument, the Supreme Court observed that the object of the Arbitration Act had to be borne in mind. When Section 16 of the Arbitration Act

conferred power on the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement, there could be no doubt that the civil court cannot have the jurisdiction to go into that question. Accordingly, the Supreme Court found no infirmity in the decision of the Bombay High Court.

Evidently, the Supreme Court in *Kvaerner*[2] even in the initial years of the Arbitration Act, took a straightforward approach by placing reliance on the provisions of the Arbitration Act to affirm the Arbitral Tribunal's competence in dealing with issues pertaining its powers and jurisdiction to act in a given matter. Interestingly, the judgment in *Kvaerner*[3] was reported only eleven years.

The *NALCO* case — Law laid in *Kvaerner Cementation* reiterated

In a civil appeal before the Supreme Court in *National Aluminium Co. Ltd.* v. *Subhash Infra Engineers (P) Ltd.*[4], an interesting proposition came to be discussed as to whether an anti-arbitral injunction could be granted in situations where one of the parties argued that the underlying contract never saw the light of the day.

In this case, the appellant a government enterprise, issued a tender notice inviting tenders for certain construction works. The respondent submitted its offer/tender which came to be accepted by the appellant. As the appellant issued a work order to the respondent, and called for a kick-off meeting, the respondent informed the appellant that the work order was not acceptable to the respondent. In response, the appellant informed the respondent that the contract work will be carried out through some other agency, the risk and cost of which would be borne by the respondent. Eventually, the appellant claimed from the respondent the sum which was purportedly expended at the respondent's cost to complete the works. As disputes emerged between the parties, the appellant invoked arbitration.

Aggrieved by the invocation of the arbitration, the respondent approached the civil court with a suit seeking, inter alia, a permanent injunction restraining the arbitration proceedings. As the civil court refused to grant any interim relief, the matter reached the appellate court of the Additional District Judge, Gurugram (ADJ's Court) which allowed the appeal and granted an injunction restraining the arbitration proceedings. Aggrieved by the decision of the ADJ's Court, the appellant (NALCO) approached the Punjab and Haryana High Court with a civil revision which came to be dismissed. Hence, the matter reached the Supreme Court.

Before the Supreme Court, the case of the appellant was that the appellant's

acceptance of the offer/tender submitted by the respondent constituted a concluded contract and gave rise to an arbitration agreement under Section 7 of the Arbitration Act. The respondent, on the other hand, argued that there was no binding agreement inasmuch as the acceptance of the tender was not unconditional. Thus, as per the respondent, no arbitral proceedings could have been initiated in the matter.

The appellant relied upon the decision of the Supreme Court in *Kvaerner*[5] to contend that even if the respondent disputed the jurisdiction of the arbitrator to decide the matter, it was open to the respondent to move an application before the Arbitral Tribunal under Section 16 of the Arbitration Act. In this regard, the suit filed by the respondent for declaration and injunction was argued to be not maintainable.

The Supreme Court while concurring with the decision in *Kvaerner*[6] observed that the respondent could raise its objections regarding the existence and validity of the arbitration agreement before the Arbitral Tribunal. Further, it was observed that the civil court rightly refused to interfere in the matter. Accordingly, the order passed by the ADJ's Court subsequently further upheld by the Punjab and Haryana High Court were set aside.

World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.

In *World Sport*[7], the Board of Control for Cricket (BCCI) initially granted media rights for broadcasting a cricket tournament to MSM Satellite (Singapore) Pte. Ltd. (MSM). Following the first year of the tournament, BCCI terminated its agreement with MSM and formed a new agreement with World Sport Group (Mauritius) Ltd. (World Sport). Subsequently, World Sport entered a facilitation deed with MSM, agreeing to surrender its media rights and assist MSM in reacquiring these rights directly from the BCCI. Acting under the facilitation deed, MSM transferred a portion of the agreed amount to World Sport as partial payment. However, sometime thereafter, MSM contended that at the time of executing the facilitation deed, World Sport's rights were about to expire, and that World Sport fraudulently misrepresented and relinquished rights that it did not possess in the first place.

MSM filed a suit in the Bombay High Court against World Sport and the BCCI, seeking a declaration that the facilitation deed was illegal and void. In the meanwhile, based on the arbitration clause in the facilitation deed, World Sport took the disputes to arbitration in Singapore. In response, MSM filed an application before the Bombay High Court for an injunction to halt the arbitration

proceedings. The Single Judge of the Bombay High Court dismissed MSM's application for temporary injunction stating that it would be for the arbitrator to consider whether the facilitation deed was void on account of fraud and misrepresentation and that a court could not intervene in matters governed by the arbitration clause. Aggrieved by the decision of the Single Judge, MSM approached the Division Bench of the Bombay High Court with an appeal. The Division Bench of the Bombay High Court allowing the appeal, granted an injunction against the arbitration in Singapore. The decision was based on the belief that the court was a more suitable forum to address matters related to public funds and allegations of fraud. Ultimately, World Sport approached the Supreme Court, urging a reversal of the Bombay High Court's decision and a referral of the matter to arbitration.

The Supreme Court, firmly upholding its arbitration-friendly stance, set aside the Bombay High Court's decision, and asserted that the only barriers to directing parties towards foreign-seated arbitrations are confined to the stipulations in Section 45 of the Arbitration Act. This encompasses instances where the arbitration agreement is either (*i*) deemed null and void; (*ii*) rendered inoperative; or (*iii*) proven incapable of execution.

The decisions in *Kvaerner*[8], *NALCO case*[9], and *World Sport*[10] would make it clear that insofar as the general challenges to the validity and existence of the arbitration agreement and requests for anti-arbitral injunctions thereof are concerned, the courts would be circumspect in granting the injunctions. The ordinary course of action would be to pass the baton to the Arbitral Tribunal be it a case of domestic arbitration or an international arbitration.

Decisions of various High Courts

Post the decisions in *Kvaerner*[11], *NALCO case*[12], and *World Sport*[13], the High Courts across the country have given their own interpretation to the subject of anti-arbitral injunctions. In the segment that follows, the decisions of various High Court indicating their stance on anti-arbitral injunctions have been set out.

Calcutta High Court

LMJ International Ltd. v. *Sleepwell Industries Co. Ltd.*

In *LMJ International Ltd.* v. *Sleepwell Industries Co. Ltd.*[14], the Division Bench of the Calcutta High Court, while dealing with the issue of the powers and jurisdiction of a civil court to restrain a party from making a reference to arbitration, relied on

the decision of the Supreme Court in *Modi Entertainment Network* v. *WSG Cricket Pte. Ltd.*[15] , which pertained to anti-suit injunctions. Adopting the principles laid by the Supreme Court in *Modi Entertainment*[16] and the decision in *Kvaerner*[17], the Calcutta High Court opined that no exceptional case was made out for granting an interim order of injunction. The Division Bench observed that in the absence of any demonstrable injustice or harassment being caused by initiation of the arbitral proceedings and having regard to the fact that the existence of the arbitration agreement was not in dispute, no case was made out for granting an anti-arbitral injunction.

The verdict in *LMJ International Ltd.*[18], by referring to *Modi Entertainment*[19], effectively treated anti-arbitral injunctions as equivalent to anti-suit injunctions. This judicial perspective has been adhered to in subsequent rulings by the Calcutta High Court. However, it is noteworthy that the Delhi High Court does not endorse this line of legal reasoning.

Port of Kolkata* v. *Louis Dreyfus Armatures SAS

In *Louis Dreyfus Armatures SAS*[20], the matter pertained to an arbitration initiated under the arbitration rules of the United Nations Commission on International Trade Law, 1976 on the basis of a bilateral treaty agreement between the Government of India and the Government of France. The Calcutta High Court was dealing with an application praying for an injunction restraining the respondent from taking any steps in furtherance of the arbitration.

Upon examining the relevant authorities, including the decision in *Kvaerner*[21], the Calcutta High Court opined that an anti-arbitration injunction could be granted in the following circumstances:

(*i*) If an issue is raised as regards the validity of the arbitration agreement between the parties and the court is of the view that no agreement exists between the parties.

(*ii*) If the arbitration agreement is null and void, inoperative, or incapable of being performed.

(*iii*) If the continuation of foreign arbitration proceedings might be oppressive, vexatious, and/or unconscionable.

Interestingly, the first two principles are essentially taken from Section 45 of the Arbitration Act while the last point specifically caters to “foreign” arbitration proceedings.

Mc Donalds India (P) Ltd. — Vikram Bakshi dispute

Single Judge's decision

In *Vikram Bakshi* v. *Mc Donalds India (P) Ltd.*[22], the plaintiffs filed an application seeking an interim injunction against the arbitration proceedings initiated by the defendant before the London Court of International Arbitration (LCIA). The plaintiffs argued that the suit was maintainable and relied upon the decisions of the Supreme Court in *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*[23] and *Devinder Kumar Gupta* v. *Realogy Corpn*.[24]. The defendant, while placing heavy reliance on the kompetenz-kompetenz rule, contended that the only remedy available to the plaintiffs was to appear before the Arbitral Tribunal and not before the civil court to challenge the validity of the arbitration agreement.

The plaintiffs argued that the underlying arbitration agreement was inoperative, and incapable of being performed because certain disputes amongst the parties were already pending before the Company Law Board which had admittedly passed an order of status quo to be maintained by the defendants. The plaintiffs also invoked the doctrine of forum non conveniens and explained that the plaintiffs were based in India, so was the case for the defendants. The parties were working or operating in India and governed by Indian law. Further, the cause of action had also arisen in India. Therefore, the plaintiffs argued that holding arbitral proceedings in London is forum non conveniens. As a counter to the argument of forum non conveniens, the defendant argued that the plaintiffs had expressly agreed to the seat of the arbitration being London. The defendant submitted that once the parties entered into an agreement with open eyes, they are presumed to have incurred the inconvenience inherent in the deal.

The Single Judge opined that the plaintiffs were able to satisfy the three requirements for grant of an interim injunction i.e. a prima facie case, balance of convenience, and the possibility of suffering irreparable loss. Further, in addition to satisfying the aforesaid requirements, the Single Judge was of the view that the arbitration agreement was indeed inoperative or incapable of performance on account of the fact that the plaintiff had already filed a suit for oppression and mismanagement in the Company Law Board in India which had directed the defendants to maintain status quo. Lastly, the Single Judge also concurred that the disputes sought to be raised before the Arbitral Tribunal were suffering from forum non conveniens on account of the fact that all parties except one of the

defendants was carrying out business in India. In view of the above, the Single Judge restrained the defendants from pursuing arbitral proceedings until the status quo order of the Company Law Board was not vacated.

Division Bench's decision

Aggrieved by the decision of the Single Judge, Mcdonald's approached the Division Bench of Delhi High Court by way of an appeal in *Mcdonald's India (P) Ltd.* v. *Vikram Bakshi*[25].

At the outset, the Division Bench dealt with the argument on forum non-conveniens. In this regard, the Division Bench relied on a host of authorities[26] to suggest that the doctrine can only be invoked where the court deciding not to exercise jurisdiction, has jurisdiction in the strict sense, but comes to the conclusion that some other court, which has jurisdiction, would be the more convenient forum. The Division Bench observed that the principle applied where there were competing courts, each of which has jurisdiction to deal with the subject-matter of the dispute.

Further, the Division Bench was of the view that the principle would have no application to the case at hand for the following reasons:

(*i*) There was no competing court rather, a court and an Arbitral Tribunal (which is certainly not a court).

(*ii*) The subject-matter of the dispute before the court was different from that before the Arbitral Tribunal. The subject-matter before the court was the plea of an anti-arbitral injunction and the subject-matter before the Arbitral Tribunal was the substantive dispute amongst the parties.

(*iii*) The forum of arbitration consciously chosen by the parties as an alternative forum of dispute resolution could not be regarded as an inconvenient forum.

(*iv*) The place/seat of arbitration consciously chosen by the parties could not be regarded as an "inconvenient place".

As regards the principles which governed anti-arbitral injunctions, in a remarkable departure from the line of reasoning adopted by the Calcutta High Court, the Division Bench of the Delhi High Court was of the view that the principles governing anti-arbitral injunctions could not be the same as those governing an anti-suit injunction. This was in view of the overall nature of arbitration as a process, especially considering the principles of autonomy of arbitration and kompetenz-kompetenz.

Furthermore, the Division Bench held that the finding of the Single Judge that the arbitration agreement was incapable of performance on account of the pendency of proceedings before the Company Law Board was out of line. Accordingly, the Division Bench concluded that an anti-arbitral injunction could not have been granted in the present case inasmuch as the underlying arbitration agreement was neither null or void, inoperative, or incapable of being performed. The Division Bench went on to suggest that the relationship between national courts and Arbitral Tribunals was found in cohabitation and partnership. It was observed that courts should be mindful of the trend of minimising interference in the arbitral process, and thus, while a court may have the power to injunct arbitral proceedings, the same must be done rarely and only on the principles found in Sections 8 and 45 of the Arbitration Act, as the case may be.

Bina Modi — Lalit Modi family trust dispute

Single Judge's decision

In *Bina Modi* v. *Lalit Modi*[27], the plaintiffs filed suits seeking a declaration that the arbitration agreement contained in a restated trust deed (trust deed) was null and void, inoperative, unenforceable, and contrary to the public policy of India. Essentially, these suits were in the nature of anti-arbitral injunction suits and prayed for permanent injunction restraining the defendant from continuing with the arbitral proceedings seeking emergency measures from the International Chamber of Commerce (ICC).

At the very outset, the Single Judge of Delhi High Court, observed that the issue was governed by the settled position in *Kvaerner*[28] wherein the Supreme Court had already taken a view that bearing in mind the object of the Arbitration Act, disputes including issues pertaining to the powers and jurisdiction of the Arbitral Tribunal to rule on a given subject-matter must be submitted to arbitration. The Single Judge of the Delhi High Court also referred to the *NALCO case*[29] wherein the Supreme Court while placing reliance on in *Kvaerner*[30] reiterated that if the plaintiff intended to raise an objection with regard to the existence and validity of the arbitration agreement, it was open for it to move an application before the arbitrator but such plea could not be posed by way of a suit for declaration and anti-arbitral injunction.

Thereafter, the Single Judge refused to deviate from a catena of decisions[31] passed by the same Bench wherein it was held that suits such as the one filed by the plaintiffs seeking a declaration to the effect that an arbitration clause/ agreement was invalid or seeking to injunct arbitration proceedings whether

under Part I or Part II of the Arbitration Act were not maintainable.

Lastly, the Single Judge of the Delhi High Court observed that the Arbitration Act was a complete code in itself[32] and courts could not interfere with the arbitral process by exercising jurisdiction in place of the Arbitral Tribunal. Accordingly, the Single Judge observed that there was no occasion for the Delhi High Court to adjudicate the present plea and the anti-arbitral suits did not lie. Based on these findings, the suits were dismissed as not maintainable.

Division Bench's decision

Aggrieved by the decision in *Bina Modi* v. *Lalit Modi*[33], *the plaintiffs therein filed appeals before the Division Bench of the Delhi High Court. The Division Bench of the Delhi High Court noted that the underlying suits concerned an application for emergency measures in an arbitration initiated before the ICC in relation to what is called the 'K.K. Modi Family Trust' (Trust) established under the Trusts Act, 1882 (Trusts Act) and administered under the trust deed.*

The appellants argued that it is a well settled position in India, that any dispute inter se between (*i*) the trustees; or (*ii*) the trustees on one hand and the beneficiaries on the other are not arbitrable. The rationale for the non-arbitrability of the disputes is that such disputes are subject to the exclusive jurisdiction of the courts defined under the Trusts Act which is a complete code in itself.

The appellants also argued that the subject-matter of the emergency arbitration proceedings before the ICC were covered by the decision of the Supreme Court in *Vimal Kishor Shah* v. *Jayesh Dinesh Shah*[34] and *Vidya Drolia* v. *Durga Trading Corpn.*[35] which have declared that disputes pertaining to trust, trustees, and beneficiaries arising out of a trust deed under the Trusts Act are non-arbitrable in nature, notwithstanding the existence of an arbitration agreement. The appellants submitted that the respondent's filing of an application seeking emergency arbitral measures was an attempt to recharacterise the claim as one based in contract in contravention of the public policy enshrined in *Vimal Kishor Shah*[36].

The Division Bench of the Delhi High Court while placing reliance upon the decision in *Mcdonald's India (P) Ltd.* v. *Vikram Bakshi*[37] opined that a Court would have the jurisdiction to grant anti-arbitral injunction where a party seeking the injunction can demonstrably show that the agreement is null and void, inoperative, or incapable of being performed. The Division Bench held that the Single Judge had erred in failing to exercise the jurisdiction vested in the Court

which statutorily required him to adjudicate, whether the disputes between the parties, in relation to the trust deed, were per se arbitrable.

While holding that disputes under the Trusts Act were prima facie incapable of being submitted to arbitration, the appeals were allowed and the Single Judge's common judgment was set aside.

Himachal Sorang Power (P) Ltd.* v. *NCC Infrastructure Holdings Ltd.

In *Himachal Sorang Power (P) Ltd.* v. *NCC Infrastructure Holdings Ltd.*[38], a Single Judge of the Delhi High Court culled out the following parameters governing anti-arbitral injunctions:

(*i*) The principles governing anti-suit injunctions are not identical to those that govern anti-arbitral injunctions.

(*ii*) Courts are slow in granting an anti-arbitral injunction unless they conclude that the proceedings initiated are vexatious or oppressive.

(*iii*) The court that has supervisory jurisdiction or even personal jurisdiction over parties has the power to disallow the commencement of fresh arbitral proceedings on the grounds of res judicata or constructive res judicata. If persuaded to do so, the court could hold such proceedings to be vexatious and/or oppressive. This bar could be obtained in respect of an issue of law or fact or even a mixed question of law and fact.

(*iv*) The fact that in the court's assessment, a trial would be required to determine the fate of the injunction application would weigh against the grant of an anti-arbitral injunction.

(*v*) The aggrieved should be encouraged to approach either the Arbitral Tribunal or the court which has supervisory jurisdiction in the matter. An endeavour should be made to support and aid arbitration rather than allowing parties to move away from the chosen adjudicatory process.

As may be noted from the above, while determining matters pertaining to grant of anti-arbitral injunctions, the High Court of Delhi has weighed upon the test of prima facie arbitrability of subject matter and cases where the arbitration agreement is null and void, inoperative, or incapable of being performed.

Madras High Court

The Madras High Court in *ADM International Sarl* v. *Sunraja Oil Industries (P) Ltd.*[39], had the opportunity to discuss the principal conditions for granting an anti-arbitral injunction. In the said matter, two companies Sunraja Oil (P) Ltd. (Sunraja)

and Gem Edible Oil (P) Ltd. (Gem) entered into two separate contracts to acquire Crude Sunflower Oil (CSFO) of edible grade from ADM International Sarl (ADM), a Swiss-based company.

Disputes arose amongst the parties, prompting Sunraja and Gem to file separate suits against ADM and the Federation of Oil Seeds and Fats Association (FOSFA). The suits sought a declaration that the arbitration proceedings initiated by ADM were void and contrary to public policy of India. Additionally, the suits also prayed for a declaration that the contracts entered between Sunraja and Gem with ADM were null and void. Lastly, Sunraja and Gem sought a permanent injunction against the arbitral proceedings invoked by ADM along with damages. While Sunraja and Gem agreed that there was an arbitration clause in their respective contracts entered with ADM, the same were argued to be mired with bias and illegality. It was submitted that the arbitral institution FOSFA was an organisation which was fully controlled by prominent sellers of oil seeds such as ADM. Further, the rules of FOSFA did not permit a party to be represented by an advocate.

On the question of whether a case was made out for the grant of an anti-arbitral injunction, the Madras High Court relied on the decision in *Mcdonald's India (P) Ltd.* v. *Vikram Bakshi*[40] to state that the threshold tests for an anti-arbitral injunction was more exacting than that applicable for an anti-suit injunction. In this regard, the Madras High Court observed that the principal considerations would be those underpinning Section 45 of the Arbitration Act i.e. (*i*) whether there is an arbitration agreement; (*ii*) whether the said arbitration agreement is null and void; and/or (*iii*) whether the said arbitration agreement is inoperative or incapable of being performed.

The Madras High Court observed that although Sunraja and Gem had argued that the arbitral institution was biased and lacked neutrality, no actionable material in this regard was placed on record. Upon examining the facts of the matter, the Madras High Court opined that Sunraja and Gem failed to demonstrate that the arbitration agreement is null and void, inoperative, or incapable of being performed. In light of the same, it was observed that there was no reason to continue the anti-arbitral injunction.

Bombay High Court and NCLT, Mumbai

In January 2023, the Singapore Court of Appeal upheld an anti-suit injunction (Singapore Court's injunction) restraining Anupam Mittal from continuing the oppression and mismanagement proceedings before the National Company Law

Tribunal in light of the arbitration clause in the shareholder's agreement (SHA) between the parties. The Singapore Court of Appeal was of the view that oppression and management related disputes, such as in the present case, may be arbitrated under the Singapore law.

Aggrieved by the decision of the Singapore Court's injunction, Anupam Mittal approached the Bombay High Court by way of an anti-enforcement action in *Anupam Mittal* v. *People Interactive (India) (P) Ltd.*[41] The Bombay High Court issued a temporary anti-enforcement injunction restraining the defendants from enforcing the Singapore Court's injunction.

Soon after the decision of the Bombay High Court, the National Company Law Tribunal, Mumbai (NCLT) issued an anti-arbitral injunction[42] to stay the arbitral proceedings seated in Singapore and administered by the ICC.

The NCLT's decision was based on two key determinations:

(*i*) The NCLT asserted its authority to grant an anti-arbitration injunction under Section 430 of the Companies Act, 2013, and Rule 11 of the NCLT Rules, 2016.

(*ii*) In the present case, the NCLT justified the anti-arbitration injunction by acknowledging Anupam Mittal's establishment of a prima facie case, demonstrating irreparable harm, and showcasing a favourable balance of convenience. In reaching this conclusion, the NCLT echoed the considerations made by the Bombay High Court in its grant of the anti-enforcement injunction.

Conclusion

In conclusion, the jurisprudence surrounding anti-arbitral injunctions in India reflects a delicate equilibrium between upholding the autonomy and flexibility of arbitration and preventing abuse of the arbitral process. Upon analysing the key decisions from the Supreme Court and various High Courts of India, a discernible pattern emerges. The Supreme Court, as exemplified in cases like *Kvaerner*[43], and *NALCO case*[44], has consistently emphasised on the principle of kompetenz-kompetenz, affirming the Arbitral Tribunal's authority to rule on its own jurisdiction. These decisions underline the limited role of courts in intervening with the arbitral process.

However, the approach of the High Courts reveals nuanced perspectives. While the Delhi High Court, in *Mcdonald's India (P) Ltd.* v. *Vikram Bakshi*[45], underscored

the distinction between anti-arbitral and anti-suit injunctions and upheld the autonomy of arbitration, the Calcutta High Court, in *LMJ International Ltd.*[46] appears to have treated anti-arbitral injunctions akin to anti-suit injunctions. This divergence highlights the evolving nature of judicial interpretations on this subject. The recent Bombay High Court and NCLT decisions, concerning *Anupam Mittal case*,[47] exemplify the complexity inherent in cross-border disputes and the challenge of harmonising decisions across jurisdictions.

In summary, jurisprudence evolving on anti-arbitral injunctions in Indian legal landscape is marked by a constant conflict between respecting the autonomy of arbitration and safeguarding against potential abuse. As the jurisprudence evolves, it is crucial for courts to strike a delicate balance, ensuring that anti-arbitral injunctions are granted judiciously and in alignment with the overarching principles of arbitration law.

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1. (2012) 5 SCC 214.
2. (2012) 5 SCC 214.
3. (2012) 5 SCC 214.
4. (2020) 15 SCC 557.
5. (2012) 5 SCC 214.
6. (2012) 5 SCC 214.
7. (2014) 11 SCC 639.
8. (2012) 5 SCC 214.
9. (2020) 15 SCC 557.
10. (2014) 11 SCC 639.
11. (2012) 5 SCC 214.
12. (2020) 15 SCC 557.
13. (2014) 11 SCC 639.
14. 2012 SCC OnLine Cal 10733.
15. (2003) 4 SCC 341.
16. (2003) 4 SCC 341.

17. (2012) 5 SCC 214.
18. 2012 SCC OnLine Cal 10733.
19. (2003) 4 SCC 341.
20. 2014 SCC OnLine Cal 17695.
21. (2012) 5 SCC 214.
22. 2014 SCC OnLine Del 7249.
23. (2014) 11 SCC 639.
24. 2011 SCC OnLine Del 3050.
25. 2016 SCC OnLine Del 3949.
26. *Black's Law Dictionary*; *Sim v. Robinow* (1892) 19 K. 665; *Mayar (HK) Ltd.* v. *Vessel MV Fortune Express*, (2006) 3 SCC 100; *Spiliada Maritime Corpn.* v. *Cansulex Ltd.*, 1987 AC 460 : (1986) 3 WLR 972 : (1986) All ER 843; *Tehrani* v. *Secy. of State for the Home Department*, 2006 UKHL 47; *Gulf Oil Corpn.* v. *Gilbert*, 1947 SCC OnLine US SC 46 : 91 L Ed 1055 : 330 US 501
27. 2020 SCC OnLine Del 901.
28. (2012) 5 SCC 214.
29. (2020) 15 SCC 557.
30. (2012) 5 SCC 214.
31. *Roshan Lal Gupta* v. *Parasram Holdings (P) Ltd.*, 2009 SCC OnLine Del 293; *Spentex Industries Ltd. v. Dunavant SA*, 2009 SCC OnLine Del 1666 [(RFA(OS) No. 69/2009 preferred was dismissed on 29 August 2009]; *Shree Krishna Vanaspati Industries (P) Ltd.* v. *Virgoz Oils & Fats Pte. Ltd.*, 2009 SCC OnLine Del 1665; *M. Sons Enterprises (P) Ltd.* v. *Suresh Jagasia*, 2011 SCC OnLine Del 82; and *Ashok Kalra* v. *Akash Paper Board (P) Ltd.*, 2013 SCC OnLine Del 3299.
32. *Morgan Securities and Credit (P) Ltd.* v. *Modi Rubber Ltd.*, (2006) 12 SCC 642; *Fuerst Day Lawson Ltd.* v. *Jindal Exports Ltd.*, (2011) 8 SCC 333; and *Pam Developments (P) Ltd.* v. *State of W.B.*, (2019) 8 SCC 112.
33. 2020 SCC OnLine Del 901.
34. (2016) 8 SCC 788.
35. (2019) 20 SCC 206.
36. (2016) 8 SCC 788.
37. 2016 SCC OnLine Del 3949.

38. 2019 SCC OnLine Del 7575.
39. 2021 SCC OnLine Mad 16535.
40. 2016 SCC OnLine Del 3949.
41. 2023 SCC OnLine Bom 1925
42. *Anupam Mittal* v. *People Interactive (India) (P) Ltd.*, CA/392/2023 in CP/92(MB)2021
43. (2012) 5 SCC 214.
44. (2020) 15 SCC 557.
45. 2016 SCC OnLine Del 3949.
46. 2012 SCC OnLine Cal 10733.
47. *Anupam Mittal* v. *People Interactive (India) (P) Ltd.*, 2023 SCC OnLine Bom 1925; *Anupam Mittal* v. *People Interactive (India) (P) Ltd.*, CA/392/2023 in CP/92(MB)2021.