$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(OS) 243/2025, I.A. 9723/2025 and I.A. 13166/2025**

ENGINEERING PROJECTS (INDIA) LIMITED THROUGH ITS MANAGING DIRECTOR
A COMPANY INCORPORATED UNDER THE LAWS OF INDIA
AND HAVING ITS REGISTERED OFFICE AT:
CORE-3, SCOPE COMPLEX,
7-INSTITUTIONAL AREA, LODHI ROAD,
NEW DELHI-110003, INDIA

.....Plaintiff

(Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Ajit Warrier, Mr. Angad Kochhar, Mr. Himanshu Setia, Mr. Vedant Kashyap, Mr. Sumer Dev Seth, Ms. Richa Khare and Ms. Riya Kumar, Advs.)

Versus

MSA GLOBAL LLC (OMAN)
A COMPANY INCORPORATED UNDER THE LAWS OF OMAN
AND HAVING ITS PLACE OF OFFICE AT:
PO BOX 1372, PC 130, AZAIBA,
MUSCAT, SULTANATE OF OMAN

.....Defendant

(Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Kirat Singh Nagra, Mr. Kartik Yadav, Mr. Pranav Vyas, Ms. Sumedha Chadha, Mr. Sankalp Singh, Mr. Esh Gupta and Mr. Pritesh Raj, Advs.)

% Reserved on: 16.07.2025
Pronounced on: 25.07.2025

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

I.A. 9724/2025 (Under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908)

For the convenience of exposition, this judgment is divided into the following parts:-

INDEX TO THE JUDGMENT

PRELUDE

"***Even in the most benevolent of legal orders, if adjudication is not impartial, law degenerates into mere command.***"

- ***Lon L. Fuller, The Morality of Law (1964)***

In the matters revolving around the arbitration, to intervene or not to intervene has been the most debatable question before the Courts. This question assumes a heightened significance when the superstructure of the arbitration process predicates on the foundational pillars of party autonomy, minimal judicial oversight and finality of awards. However, with the evolution of the arbitration mechanism, which has lately transcended notional national boundaries, the presumed absoluteness of such autonomy is brought into question before the aisles of the Courts. In cases where the cross-border arbitral proceedings deviate from the overarching norms of conscionability and public policy or appear to be tainted by oppression and abuse of process, the need for judicial scrutiny becomes pressing. The present case is no different and presents a significant challenge. Put succinctly, it calls upon the Court to navigate the enduring tension between judicial restraint in arbitration proceedings and the imperative to uphold impartiality in the adjudicatory mechanism.

2. It is in the aforesaid context, the Court proceed that the instant suit emanates, seeking a declaration and injunction against the continuation of arbitration proceedings before the International Chamber of Commerce *(hereinafter referred to as "ICC")* on the ground that the proceedings before the ICC are vexatious, unconscionable, oppressive, and violative of the public policy of India.

BRIEF BACKGROUND OF THE DISPUTE

3. The factual matrix of the present case would exhibit that the plaintiff is a public sector enterprise under the Ministry of Heavy Industries and Public Enterprises (Department of Heavy Industry), Government of India and the defendant is a military and security systems integrator company based out of Oman. On 29.06.2015, the Ministry of Defence, Oman, entered into an agreement with the plaintiff and appointed it as the main contractor for a supply and build project which involved *inter-alia* the design, supply, installation, integration and commissioning of the border security system at the Oman-Yemen border. Thereafter, on 21.09.2015, the plaintiff entered into a sub-contract agreement for the design, supply, installation, integration, and commission of the border security system in relation to one Engineer-3 Project, specifically covering Sections 3 and 4 on the Oman-Yemen border. The said agreement includes an arbitration clause i.e., Article 19, which stipulates that the Courts at New Delhi, India, shall have exclusive jurisdiction in respect of disputes arising out of or in connection with the contract. However, it further provides that any reference to arbitration shall be governed by, and conducted in accordance with, the Rules of Arbitration of the ICC, 2021 (*hereinafter referred to as "ICC Rules"*). For the sake of clarity, Article 19 of the Agreement, in its entirety, is extracted 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."

4. A dispute appears to have arisen *inter se* the parties concerning delays in the performance of contractual obligations under the sub-contract agreement. Pursuant thereto, the defendant invoked the arbitration clause and commenced proceedings under the aegis of the ICC, thereby nominating Mr. Andre Yeap SC as its co-arbitrator. The Secretariat of the ICC requested Mr. Yeap to submit a signed Statement of Acceptance, Availability, Impartiality and Independence as well as his *curriculum vitae* as mandated under Article 11(2) of the ICC Rules. On 20.04.2023, 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.

5. On 09.06.2023, the plaintiff nominated Hon'ble Mr. Justice Arjan Kumar Sikri (Former Judge, Supreme Court of India) as its co-arbitrator.

Subsequently, on 05.09.2023, the Arbitral Tribunal was duly constituted, comprising Mr. Jonathan Acton Davis KC as the Presiding Arbitrator, and Hon'ble Mr. Justice Arjan Kumar Sikri (Former Judge, Supreme Court of India) and Mr. Andre Yeap SC as co-arbitrators.

6. Pursuant to the first procedural hearing on 26.10.2023, pleadings and evidence in the subject arbitration were to be completed during the period between 03.11.2023 to 23.12.2024. In the interregnum, on 03.11.2023, the defendant also filed an application for urgent interim measures seeking various reliefs. The plaintiff filed a reply to the said application and the defendant also filed written submissions on 05.01.2024.

7. On 19.06.2024, the Tribunal rendered the First Partial Award on an application for interim measures filed by the defendant. The said Award was assailed by the plaintiff before the High Court of Singapore.

8. On 17.12.2024, the Tribunal fixed the dates for the evidential hearings from 20.01.2025 to 25.01.2025 in the ICC arbitration. However, in the meantime, while preparing for the evidentiary hearing scheduled in January 2025, the plaintiff became aware of Mr. Yeap's prior involvement in arbitral proceedings involving Mr. Manbhupinder Singh Atwal, who happens to be the Managing Director, Chairman, and Promoter of the defendant. This information surfaced through a judgment of the High Court of Gujarat dated 05.07.2024 in C/ARBI.P/23/2023 titled as ***Neeraj Kumarpal Shah v. Manbhupinder Singh Atwal***, disclosing Mr. Yeap's prior professional engagement in a matter concerning Mr. Atwal and his legal counsel.

9. Consequently, the plaintiff, while alleging lack of disclosure and thereby raising doubts over the independence, neutrality and impartiality of Mr. Yeap, filed a challenge application before the ICC Court on 19.01.2025 under Article 14(1) of the ICC Rules. Mr. Yeap, as well as the defendant, filed their respective responses to the challenge application.

10. Thereafter, the ICC Court, *vide* its decision dated 28.02.2025, held the challenge to be admissible but rejected it on merits. While the ICC Court acknowledged the non-disclosure to be "*regrettable*", it was of the view that the circumstances did not establish justifiable doubts with respect to Mr. Yeap's impartiality or independence.

11. Meanwhile, on or around 12.03.2025, the defendant filed an enforcement petition before this Court seeking recognition and enforcement of the First Partial Award, which was registered as O.M.P. (EFA) (COMM.) 4 of 2025.

12. Parallelly, on 27.03.2025, the plaintiff also preferred an application before the High Court of Singapore under Article 13(3) of the **United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration**, read with Section 3(1) of the **Singapore International Arbitration Act, 1994,** seeking determination on the validity of Mr. Yeap's continued participation in the arbitral proceedings.

13. It is also pertinent to note that, in or around April 2025, the defendant filed an application before the Tribunal seeking reimbursement of wasted

costs incurred due to the cancellation of the evidentiary hearing originally scheduled for January, 2025.

14. In this backdrop, the plaintiff has approached this Court by way of the instant suit seeking the following reliefs:-

> *"pass a decree of declaration in favour of the Plaintiff and against the Defendant that the Defendant is not entitled to continue with the ICC arbitration with the present quorum/constitution in view of the arbitration proceedings being rendered vexatious, unconscionable, oppressive and violative of the public policy of India including fundamental policy of Indian law, morality and justice.*
>
> *pass a decree of permanent injunction restraining the Defendant from proceeding or continuing with the ICC Arbitration No. 27726/HTG/YMK before the Tribunal with the present quorum/constitution.*
> *grant costs of the present suit in favour of the Plaintiff and against the Defendant."*

PROCEEDINGS BEFORE THIS COURT

15. The suit was first listed for hearing on 17.04.2025, when the Court directed the Registry to verify the records and submit a note confirming whether the filing was complete in all respects. Thereafter, the matter was directed to be listed on 21.04.2025. On the said date, an objection was raised on behalf of the defendant, appearing on advance notice, regarding the maintainability of the suit. However, on the same date, leaving the question of maintainability to be decided on the next date, notice was issued in I.A. 9724/2025 (*under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908*) which was accepted by Mr. Kirat Singh Nagra, learned counsel for the defendant, with liberty granted to file a reply. Both parties were also directed to file their written submissions.

16. The matter was then listed on 30.04.2025. On the even date, in view of the urgency expressed by the plaintiff regarding the impending order on the wasted cost application filed by the defendant and pending consideration before the Tribunal, the Court directed that the stand of the defendant be brought on record. Accordingly, the hearing was adjourned to enable the defendant to obtain instructions.

17. Subsequently, on 06.05.2025, further objections were raised by the defendant with respect to the maintainability of simultaneous proceedings before this Court and the High Court of Singapore. At that stage, a statement was made on behalf of the plaintiff that it would consider withdrawing the pending applications before the High Court of Singapore, and the same was recorded. The case was, thereafter, adjourned for 19.05.2025.

18. On 19.05.2025, the plaintiff submitted that an application for withdrawal of the proceedings before the High Court of Singapore has been moved, and summons in that application were directed to be issued. However, since no order was passed on the said application and the hearing was scheduled for 20.05.2025, the matter was adjourned to 26.05.2025.

19. On 23.05.2025, the plaintiff filed another application, being I.A. 13166/2025 under Order XXXIX Rule 1 and 2, and accordingly, all pending applications along with the main suit were listed for consideration on the same date. The hearing commenced on 26.05.2025 and also continued on the following day, during which the parties were extensively heard.

20. During the course of hearing, the plaintiff submitted a tabulated summary of events that transpired after 19.05.2025, which is reproduced as

below:-

S. No.	Date	Event
1.	19.05.2025	This Hon'ble Court was pleased to defer the hearing on the interim application to enable the Plaintiff to withdraw the Article 13(3) Challenge before the Singapore High Court.
2.	19.05.2025 (12:59 PM)	Shortly after the hearing on 19.05.2025, the Defendant executed an agreement with Maxwell Chambers (the designated venue of the ICC arbitration). [Document No. 12 of I.A. No. 13166 of 2025 ("I.A.")]
3.	19.05.2025 (01:30 PM IST)	The Plaintiff's counsel issued an email to the Tribunal informing it of the captioned suit's listing on 26.05.2025 (the same day the evidential hearings were set to commence) and submitted that it would be impractical to participate in the arbitration. [Document No. 5 of I.A.]
4.	19.05.2025 (01:35 PM IST)	The Defendant's counsel issued an email to the Tribunal, ignoring the Plaintiff's position, and misrepresented to the Tribunal that this Hon'ble Court had not granted any relief to the Plaintiff, despite the Plaintiff pressing for an injunction. [Document No. 6 of I.A.]
5.	19.05.2025 (01:57 PM IST)	In a subsequent email, the Defendant's counsel shared a proposed schedule with the Tribunal for the evidential hearings, disregarding the Plaintiff's

		objections to the evidential hearing. [Document No. 7 of I.A.]
6.	19.05.2025 (08:49 PM IST)	The Tribunal responded by observing that the Defendant had not directly addressed the Plaintiff's objections. The Tribunal invited both parties to respond to a proposal for conducting the hearings remotely to avoid unnecessary inconvenience. [Document No. 8 of I.A.]
7.	19.05.2025 (10:46 PM IST)	The Defendant's counsel issued another email, insisting on proceeding with the evidential hearing, alleging delay on the part of the Plaintiff in filing the discontinuance application. [Document No. 9 of I.A.]
8.	20.05.2025 (2:36 PM IST)	Despite inviting views of the parties, the Tribunal, without properly considering the submissions of the Plaintiff or even allowing it 24 hours to respond, decided unilaterally that the evidential hearings would proceed in Singapore as planned. [Document No. 10 of I.A.]
9.	20.05.2025	Pursuant to the Plaintiff issuing a letter to the Registrar, Supreme Court, Singapore to advance the hearing on the application for withdrawal of the Article 13(3), the Registrar was pleased to issue summons fixing hearing in the said application on 23.05.2025. [Documents Nos. 2 and 4 of I.A.]
10.	21.05.2025	The Defendant's counsel issued an email, calling upon

	(10:16 PM IST)	the Plaintiff to pay fees for the venue of the arbitration i.e. Maxwell Chambers. [Document No. 11 of I.A.]
11.	21.05.2025 (4:21 PM IST)	The Plaintiff formally objected to the Tribunal's decision to proceed with hearings without full consideration of the pendency of the captioned suit. [Document No. 13 of I.A.]
12.	21.05.2025 (4:35 PM IST)	The Tribunal responded to the Plaintiff's email of 21.05.2025, giving the Defendant 24 hours to respond. [Document No. 14 of I.A.]
13.	21.05.2025	The Defendant filed a motion for injunction before the Singapore High Court ("First Motion"), which was filed in the Challenge Application [Article 13(3)], to restrain the Plaintiff from proceeding with the captioned suit, based on an apprehension that this Hon'ble Court would pass an order, injuncting the evidential hearings. [Document Nos. 15 and 16 of I.A.]
14.	22.05.2025 (9:33 AM IST)	The Defendant's counsel issued an email, apprising the Plaintiff of its intention to mention the motion for injunction before the Duty Registrar for the said motion to be listed before the Singapore High Court on 23.05.2025. [@ Pg. 1 of the List of Documents filed on behalf of the Plaintiff ("Documents")
15.	22.05.2025 (10:22 AM IST)	The Defendant issued an email to the Tribunal insisting on proceeding with the evidential hearings. (@Pg. 2 of Documents]

16.	22.05.2025 (10:30 PM IST)	Pursuant to the Defendant filing the First Motion, the Plaintiff mentioned the matter before the Hon'ble Judge in Charge (SHC) for listing of the IA. The Judge in charge was pleased to allow listing of the IA on 23.05.2025. At this stage, as the Plaintiff while filing the IA served an advanced copy of the IA (at 11.17AM IST) on the Defendant, the Defendant was well aware of the listing of the lA before this Hon'ble Court (DHC) on 23.05.2025.
17.	22.05.2025 (11:06 AM IST)	On an objection raised on behalf of the Plaintiff that it was inappropriate to file the First Motion in the pending Article 13(3) Challenge, the Registry directed the Defendant to file a fresh Originating Application, if the Defendant so desires.
18.	22.05.2025 (3:39 PM IST)	The Tribunal issued an email to the parties, stating that the evidential hearings will commence on 26.05.2025. [@Pg. 4 of Documents]
19.	22.05.2025 (2:42 PM IST)	Despite the Defendant and its counsel being fully aware of the listing of the IA before this Hon'ble Court (DHC) on 23.05.2025, the Defendant proceeded to file its motion for injunction as a fresh proceeding before the Singapore High Court ("OA 519'). |@Pg. 5 of Documents] and informed Plaintiff's counsel of the same over email.
20.	23.05.2025	The Defendant's counsel issued an email to the

	(9:47 AM IST)	Plaintiff's counsel stating that OA 519 is fixed for hearing before the Singapore High Court on 23.05.2025 at 2.30 PM (SGT). [@ Pg. 50 of Documents]
21.	23.05.2025	The IA could not be considered as the Hon'ble Judge was on leave. In the presence of the Defendant's counsel, the IA was listed with the captioned suit on the date already fixed i.e. 26.05.2025 before this Hon'ble Court (DHC).
22.	23.05.2025	The Defendant proceeded with the hearing in OA 519 before Singapore High Court. The Defendant also objected to the Plaintiff being permitted to withdraw the Article 13(3) Challenge as that will likely be misused before this Hon'ble Court. Eventually, the Singapore High Court: i. granted the injunction prayed for by the Defendant, restraining the Plaintiff from continuing the captioned suit and initiating or continuing civil proceedings against the Defendant in other jurisdictions. ii. did not permit the Plaintiff from withdrawing the Article 13(3) challenge and indicated that it would hear the same on merits at a later date.
23.	23.05.2025 (3:53 PM	The Defendant's counsel issued an email to the Tribunal, apprising it of the developments before the

	IST)	Singapore High Court.
24.	23.05.2025	The Defendant's counsel issued a letter to the Plaintiff's counsel, informing it of the contents of the order passed by the Singapore High Court.
25.	23.05.2025 (9:56 PM IST)	The Defendant's counsel issued an email to the Tribunal, enclosing copies of OA 519, summons, supporting affidavit and the judgment dated 10.04.2025 passed by the Singapore High Court in the challenge proceedings and the bias application.
26.	23.05.2025 (10:35 PM IST)	The Defendant's counsel issued an email to the Tribunal, (i) confirming the venue and transcription arrangements made for the evidential hearings and (ii) addressing the Tribunal on examination of the parties' version of the contract.
27.	24.05.2025 (5:17 PM IST)	The Tribunal issued an email to the parties, stating that "The Tribunal is grateful for the updates." It also stated that "We will have to await developments but it might be sensible for the Claimant to have available all its witnesses of fact on Monday morning and all its expert witnesses on Monday afternoon.

21. On 27.05.2025, extensive arguments were made from both sides, and the hearing continued for the following three days. Thereafter, the matter was put for clarification, if any, on 16.07.2025, wherein the defendant

pointed out certain other factual aspects that had transpired during the course of the hearing.

SUBMISSIONS ADVANCED BY THE PARTIES

22. *Mr. Sandeep Sethi*, learned senior counsel alongwith *Mr. Ajit Warrier* appearing on behalf of the plaintiff, has assailed the continuance of the arbitration proceedings on the ground of patent procedural impropriety and breach of the rules of disclosure, independence, and impartiality of the arbitrator. He contended that the arbitral proceedings have been rendered oppressive, vexatious, and contrary to the settled principles of natural justice, owing to the material non-disclosure by Mr. Yeap, co-arbitrator appointed by the defendant, regarding his prior association in arbitral proceedings involving Mr. Manbhupinder Singh Atwal, who is the Managing Director and Promoter of the defendant. It was submitted that such non-disclosure is in 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.

23. Mr. Sethi further submitted that although the ICC Court, in its order dated 28.02.2025, acknowledged the non-disclosure to be "*regrettable*", it erroneously held that such omission was not material enough to warrant the removal of Mr. Yeap or to vitiate the proceedings. He also averred that the decision of the ICC Court against the plaintiff undermines the sanctity of arbitral impartiality and is a breach of the obligation of disclosure enshrined under Article 11(2) of the ICC Rules.

24. With respect to the question of maintainability, it was submitted by Mr. Sethi that this Court has jurisdiction to entertain the present suit under

settled principles of law and equity, particularly when the aggrieved party is being subjected to oppressive and unconscionable arbitral proceedings. He further submitted that in cases where the arbitral process is demonstrated to be violative of public policy, equity, or natural justice, it is within the jurisdiction of Indian Courts to grant anti-arbitration injunctions.

25. He, therefore, contended that the present case squarely merits the grant of an anti-arbitration injunction, to restrain further proceedings before the Tribunal in its current composition, in the interest of justice, fairness, and to prevent miscarriage thereof. It is also submitted that in his reply to the plaintiff's challenge application filed under Article 14 of the ICC Rules, Mr. Yeap did admit to his previous engagement in arbitral proceedings involving Mr. Atwal. Mr. Sethi, while taking the Court through the reply of Mr. Yeap in the challenge to his appointment under Article 14 of ICC Rules, submitted that Mr. Yeap acknowledged that, had he made the disclosure, the possibility of the plaintiff seeking to challenge his impartiality could not have been discounted.

26. In support of his submissions, reliance is placed on ***Oil and Natural Gas Commission v. Western Company of North America***[1], ***Devi Resources Limited v. Ambo Exports Limited***[2], ***McDonald's India Private Limited v. Vikram Bakshi & Ors.***[3], ***K.K. Velusamy v. N. Palanisamy***[4] and ***Union of India v. Dabhol Power Company***[5].

[1] (1987) 1 SCC 496.
[2] 2019 SCC OnLine Cal 7774.
[3] 2016 SCC OnLine Del 3949.
[4] (2011) 11 SCC 275.
[5] 2004 SCC OnLine Del 1298.

27. *Per contra*, *Mr. Rajiv Nayar*, learned senior counsel appearing on behalf of the defendant, vehemently opposed the aforesaid submissions and contended that the instant civil suit is not maintainable. He submitted that the plaintiff is seeking to derail the ongoing arbitral proceedings in a manner that amounts to forum shopping. He submitted that the present suit is not maintainable either in law or on facts, inasmuch as it directly seeks to restrain arbitration proceedings which have been commenced pursuant to a valid and binding arbitration agreement between the parties. It was submitted that once the parties have agreed to resolve their disputes through arbitration and have designated a specific seat, then the Courts at such seat alone retain supervisory jurisdiction over the arbitral process, to the exclusion of other Courts.

28. He drew the attention of the Court to Article 11.2 of the ICC Rules read with Clause 3.1.3 of the International Bar Association (IBA) Guidelines, which require disclosure by an arbitrator only if he or she has been appointed on two or more occasions in the past three years by a party or an affiliate thereof. He submitted that there has been no such repeated appointment of Mr. Yeap by the defendant or its affiliates, and thus, no obligation of disclosure arose under the ICC Rules. He further contended that the position under Indian law mirrors this principle, referring to Entry 20 of the Fifth Schedule to the **Arbitration and Conciliation Act, 1996**, (*hereinafter referred to as the "1996 Act")*, which also only contemplates prior disclosure when an arbitrator has been repeatedly appointed by a party.

29. He further contended that the plaintiff's challenge before the ICC Court has already been considered and rejected on merits, and that the ICC

Court unequivocally held the non-disclosure to be inconsequential and insufficient to displace the continued participation of Mr. Yeap. It was argued that merely because the contentions raised by the plaintiff were not accepted, it does not justify re-agitation of the same challenge before this Court, especially when a parallel challenge to the partial award and the composition of the Tribunal is already pending adjudication before the High Court of Singapore.

30. In this context, Mr. Nayar placed reliance on Article 6 and Article 13 of the Singapore International Arbitration Act, 1994, under the UNCITRAL Model Law, which, according to him, provides the exclusive remedial framework for challenging the constitution of a Tribunal seated in Singapore. It was further submitted that having elected to challenge Mr. Yeap's continuation under the said provisions before the High Court of Singapore, the plaintiff is estopped from pursuing parallel remedies before this Court, in view of the principle of election of remedies.

31. Additionally, Mr. Nayar drew the attention of the Court to Section 45 of the 1996 Act, which mandates that a judicial authority, on a *prima facie* finding of a valid arbitration agreement, must refer parties to arbitration unless the agreement is null and void, inoperative, *or* incapable of being performed. He submitted that no such plea has been raised by the plaintiff in the present suit. He further submitted that the plaintiff has an adequate remedy under Section 48 of the 1996 Act to resist enforcement of a foreign award at the appropriate stage on permissible grounds, including violation of public policy. Therefore, according to him, the present suit, which seeks to

interdict ongoing foreign-seated arbitral proceedings, is not maintainable either on law or on facts.

32. Moreover, Mr. Nayar asserted that the present suit constitutes an abuse of process and amounts to forum shopping, being filed solely to stall arbitration proceedings already underway before a duly constituted Tribunal. He further submitted that, adhering to the principle of comity of Courts, this Court should not entertain the suit as the plaintiff has already availed the remedy before the High Court of Singapore. He submitted that the High Court of Singapore has already passed the judgment *qua* the impartiality of the arbitrator and therefore, at this juncture, the plaintiff cannot reagitate the same issue.

33. He placed reliance on the decision of the Supreme Court in ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.***[6]**,** to argue that the seat of arbitration operates akin to an exclusive jurisdiction clause. It was submitted that in the present case, the seat of arbitration having been fixed by agreement, the jurisdiction of other Courts, including the present forum, stands excluded by necessary implication.

34. Reliance was also placed on the Constitution Bench judgment in ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc***.[7], to argue that the 1996 Act follows the territoriality principle. It was argued that Part I of the 1996 Act is applicable only to arbitrations seated in India; and where the arbitration is seated outside India, Indian Courts have no jurisdiction to grant interim relief under Section 9 of the 1996 Act or

[6] (2017) 7 SCC 678.
[7] (2012) 9 SCC 552.

entertain civil suits seeking injunction against such proceedings. He also contended that no interim relief can be granted unless it is ancillary to a substantive prayer for final relief. According to Mr. Nayar, since the plaintiff has no legal right independent of the arbitral proceedings, the suit for an interim injunction simpliciter is barred by law. Reference was made to ***Cotton Corporation v. United Industrial Bank***[8] **and** ***State of Orissa v. Madan Gopal Rungta***[9], where the Supreme Court held that interim relief must be in aid of final relief and cannot stand alone.

35. In support of the bar under the Specific Relief Act, 1963 learned senior counsel relied on ***Oval Investment Pvt. Ltd. v. Indiabulls Financial Services Pvt. Ltd.***[10], to argue that a bare declaration of invalidity of the arbitration clause, followed by a consequential injunction, is impermissible under Section 34 of the said Act. It was further argued that the present suit is cleverly drafted to give an illusion of a cause of action, but when read meaningfully, it discloses no enforceable legal right.

36. It was also submitted that the plea of vexatious or oppressive proceedings is unfounded, and that such a ground must meet the high threshold laid down in ***Uttam Chand Rakesh Kumar v. DERCO Foods***[11] and ***McDonald's India Pvt. Ltd.,*** where the Courts have held that interference in arbitration is warranted only in exceptional circumstances, such as fraud, duress, or manifest illegality.

---

[8] (1983) 4 SCC 625.
[9] AIR 1952 SC 12.
[10] 2009 (112) DRJ 195.
[11] 2021 SCC OnLine Del 3815.

37. Learned senior counsel further argued that the conduct of the plaintiff amounts to approbation and reprobation, inasmuch as the plaintiff, having participated in the arbitration or invoked the clause previously, cannot now seek to disown it. In support of this proposition, reliance was placed on the English decision in ***MPB v. LGK***[12] which held that a party cannot simultaneously accept and challenge the jurisdiction of the arbitral forum.

38. Lastly, Mr. Nayar submitted that the suit is also barred by the doctrine of forum non conveniens and forum shopping, particularly when the seat of arbitration has been contractually fixed and the appropriate remedy lies before the Courts at the seat. Reference in this regard was made to ***Union of India v. Cipla Ltd.***[13].

39. On 16.07.2025, Mr. Nayyar pointed out that pointed out the order dated 07.07.2025 passed by the High Court of Singapore and contends that the said High Court has rejected the challenge to the order passed by the ICC. Additionally, he has also placed on record an order dated 23.05.2025, whereby, anti-suit injunction has been granted by the High Court of Singapore.

40. I have heard the learned counsel appearing for the parties at length and perused the record.

ANALYSIS

41. Before proceeding to deal with the plea of interim injunction, it is pertinent to first decide on the maintainability of the civil suit. For, the interim relief must be shown to be a necessary concomitant of the final relief

[12] [2020] EWHC 90 (TCC).

prayed in the suit and the same must be maintainable.

Maintainability of Civil Suit

42. In order to deal with the preliminary submissions *qua* maintainability of the instant suit, at this juncture, reference can be made to Section 9 of the **Code of Civil Procedure, 1908** (*hereinafter referred to as "CPC")* which reads as under:-

> *"**9. Courts to try all civil suits unless barred -***
>
> *The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*
> *Explanation [I].-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*
>
> *[Explanation II .-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 5 (w.e.f. 1.2.1977).]"*

43. A bare perusal of Section 9 of the CPC would indicate that the Civil Courts have the jurisdiction to try all civil suits except those which are expressly or impliedly barred. Notably, the ouster of jurisdiction of a Civil Court could be based on an express or implied bar. On this aspect, reference can be made to the seminal decision of the Constitutional Bench of the Supreme Court in the case of ***Dhulabhai v. State of Madhya Pradesh***[14], wherein, the Supreme Court delineated the conditions to be looked into while deciding the jurisdiction of the Civil Courts. The relevant extracts of the said decision read as under:-

---

[13] (2017) 5 SCC 262.
[14] 1968 SCC OnLine SC 40.

"(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

44. A bare perusal of this seminal decision would indicate that there exists a strong presumption in favour of the jurisdiction of the Civil Courts. It reinforces the position that where the statute confers finality upon the orders of the special Tribunals, the jurisdiction of Civil Courts must be held to be excluded, provided the statute offers an adequate remedy equivalent to what a Civil Court would grant in a suit. However, such exclusion does not apply in cases where the provisions of a particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. This clearly demonstrates that in instances where the Tribunal acts contrary to the fundamental tenets of judicial procedure or the governing statute, the Civil Courts shall retain jurisdiction.

45. Reference can also be made to the decision of the Supreme Court in the case of ***S. Vanathan Muthuraja v. Ramalingam @ Krishnamurthy Gurukkal & Ors.***[15], wherein, the Court while considering Section 9 of the CPC and the question of exclusion of Civil Court's jurisdiction, has held that when a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the Civil Courts would take cognizance of it. It is further observed in the said decision that the normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded. The rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up

[15] (1997) 6 SCC 143.

governed by the rule of law and jurisdiction of the Civil Courts is assumed. The exclusion would, therefore, normally be an exception. The relevant extract of the said decision reads as under:-

> *"Under Section 9, CPC, the courts shall, subject to the provisions contained therein, have jurisdiction to try all suits of civil nature excepting suits cognizance of which is either expressly or impliedly barred. When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil courts would tame cognizance of it. Therefore, the normal rule of law is that civil courts gave jurisdiction to try all suits of civil nature expect those of which cognizance is either expressly or by necessary implication excluded. The Rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up governed by rule of law and jurisdiction of the civil courts is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded. However, in the development of civil adjudication and abnormal delay at hierarchical stages, statutes intervene and provide alternative mode of resolution of civil disputes with less expensive but expeditious disposal. It is settled legal position that if a Tribunal with limited jurisdiction cannot assume exclusive jurisdiction and decide for itself the dispute conclusively, in such a situation, it is the court that is required to decide whether the Tribunal with limited jurisdiction has correctly assumed jurisdiction and decided the dispute within its limits. it is settled law that when jurisdiction has is conferred on a Tribunal, the court examine whether the essential principles of jurisdiction have been followed and decided by the Tribunals leaving the decision on merits to the Tribunal. It is also equally settled legal position that where a statute gives finality to the orders of the special Tribunal, the civil court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil court would normally do in a suit. Such a provision, however does not exclude those cases where the provision, of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. Where there is an express bar of jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary that the statute creates a special right or liability*

and provides remedy for the determination of the right or liability and further lays down that all questions about the said right or liability shall be determined by the Tribunal so constituted and the question whether remedies are normally associated with the action in civil courts or prescribed by the statutes or not require examination. Therefore, each case requires examination whether the statute provides right and remedy and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil court in respect thereof."

46. In view of the aforesaid, it is crystal clear that there exists a strong and statutorily entrenched presumption in favour of the jurisdiction of Civil Courts, as enshrined under Section 9 of the CPC. This provision confers upon Civil Courts the authority to adjudicate all suits of a civil nature unless such jurisdiction is expressly or by necessary implication barred by statute. The jurisprudential foundation of Section 9 of CPC affirms that exclusion of the Civil Courts' jurisdiction is not to be readily inferred; it must be clearly provided for in the concerned enactment or be deducible by compelling implication. While conducting this inferential exercise, the Courts usually take into account various factors and circumstances, such as availability of complete remedy before the Tribunal, adherence of the Tribunal to settled judicial procedures, functioning of the Tribunal in tune with the special enactment, finality of the orders of the Tribunal, nature of oversight of Civil Courts over the functioning of the Tribunal etc. There could be other factors too, in the specific context of the case at hand, and such relevant factors could not be pigeonholed. Accordingly, it could be seen that in the absence of a clear legislative intent to the contrary, Civil Courts retain plenary jurisdiction in all civil matters.

47. In this context, it becomes necessary to briefly examine the judgments cited by the defendant in support of the proposition that this Court lacks the

jurisdiction to entertain the present suit seeking an anti-arbitration injunction. The defendant places reliance on these authorities to argue that arbitral forums, once seized of a dispute, are autonomous and insulated from interference by Civil Courts. However, such reliance must be assessed in light of the settled principles governing the extent and limits of judicial intervention under 1996 Act, read with CPC.

48. The defendant first draws support from the decision of ***Indus Mobile Distribution Private Limited,*** specifically relying on paragraphs 13, 19 and 20 therein, the relevant extracts of which are set out below:-

> *"13. This Court reiterated that once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the courts which exercise supervisory powers over the arbitration.*
>
> ***
>
> *19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.*
>
> *20. It is well settled that where more than one court has jurisdiction, it is open for the parties to exclude all other courts. For an exhaustive analysis of the case law, see Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] This was followed in a recent judgment in B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd. [B.E. Simoese Von Staraburg Niedenthal v. Chhattisgarh Investment Ltd., (2015) 12 SCC 225 : (2016) 1 SCC (Civ) 427] Having regard to the above, it is clear that*

Mumbai courts alone have jurisdiction to the exclusion of all other courts in the country, as the juridical seat of arbitration is at Mumbai. This being the case, the impugned judgment [Datawind Innovations (P) Ltd. v. Indus Mobile Distribution (P) Ltd., 2016 SCC OnLine Del 3744] is set aside. The injunction confirmed by the impugned judgment will continue for a period of four weeks from the date of pronouncement of this judgment, so that the respondents may take necessary steps under Section 9 in the Mumbai Court. The appeals are disposed of accordingly."

49. It is the contention of the defendant that once the seat has been mutually designated in any contract, it is akin to an exclusive jurisdiction clause. On the force of the said contention, the defendant contends that since the seat in the present case is at Singapore, therefore High Court of Singapore has exclusive jurisdiction over the arbitration dispute, to the exclusion of all other Courts.

50. The second decision, which has been cited by the defendant, is ***Uttam Chand,*** wherein, while placing reliance on paragraph no. 13.7, it is submitted that it is incumbent upon the Courts before which an action of anti-arbitration injunction is instituted to encourage the parties to refer their disputes to the already chosen mechanism.

51. A reference has been made to the decision of the Supreme Court in the case of ***Bharat Aluminium***, to contend that in a foreign seated arbitration, no application for interim relief would be maintainable under Section 9 or any other provision of the 1996 Act, as the applicability of Part I of the 1996 Act is limited to all the arbitrations which take place in India. Similarly, no suit for interim injunction simpliciter would be maintainable in India *qua* an international commercial arbitration with a seat outside India.

52. Similarly, in the case of ***Shri Subhlaxmi Fabrics (P) Ltd. v. Chand***

Mal Baradia & Ors.[16], reliance has been placed on paragraphs 17 and 20 of the said decision to contend that where two or more Courts have jurisdiction under the CPC to try a suit or a proceeding, and there is an agreement between the parties that disputes between them shall be tried in one of such Courts, such agreement is not contrary to the public policy, and such an agreement does not contravene Section 28 of the Indian Contract Act, 1872.

53. Moreover, the defendant has also referred to the case of ***McDonald's India Pvt. Ltd.,*** which has been termed as a settled law, to contend that an anti-arbitration injunction can only be granted in cases where the Court primarily finds that there exists no valid arbitration agreement between the parties.

54. The defendant also referred to the decision of this Court in the case of ***Porto Emporios Shipping Inc. v. Indian Oil Corpn. Ltd***.[17] which has been heavily relied upon, wherein, after perusing the legislative scheme of the 1996 Act, this Court held that the plea of waiver of the arbitration clause falls within the domain of the Tribunal and the Courts should not interfere in it. The relevant extract of the said decision reads as under:-

> *"46. Thus, the scheme of the 1996 Act and particularly Section 5 of the 1996 Act, which starts with the non-obstante clause, clearly reflects the intention of the legislature regarding the prominence of the party autonomy and principle of minimum judicial interference, couched in the language of the 1996 Act. The 1996 Act being the special law and CPC being the general law, the doctrine of generalia specialibus non derogant i.e., the general law would give way to special legislation would emphatically be applied in the present case and Section 5 of the 1996 Act would squarely be applicable in deciding the jurisdiction of any Judicial Authority', not just Civil Courts alone."*

55. Though there is no doubt over the legal position enumerated in the

[16] (2005) 10 SCC 704.
[17] 2025 SCC OnLine Del 3288.

above-noted decisions, however, none of the cases cited above puts an unblemished embargo that the Civil Courts cannot, in any manner whatsoever, entertain a suit seeking anti-arbitration injunction. Ordinarily, when the claim before the Court does not disclose any circumstance which is indicative of any oppressive or unjust consequences for the plaintiff, the general principles of arbitral autonomy and minimum interference govern the field. However, when it is seen that denial of relief may result in grave, unjust and oppressive outcomes for one party before the Arbitral Tribunal, the legal position is conditioned differently. Thus, the legal position is more nuanced than what is projected to be by the defendant herein, as the following discussion shall reveal.

56. Therefore, in order to effectively answer this question as to whether the Civil Court has the jurisdiction to entertain a civil suit seeking anti-arbitration injunction, reference can be made to the decision of this Court in the case of ***Dabhol Power Company*** wherein, the plaintiff therein had filed a suit for permanent injunction restraining the defendant therein from proceeding with the arbitration proceedings. In the said case as well, the defendant had raised a similar contention, as arises in the present case, that since the Tribunal alone could decide on its own jurisdiction, therefore, all these issues should be left to the discretion of the Tribunal. Rejecting the said contention, the Court held that neither Section 5 nor Section 45 of the 1996 Act ousts the jurisdiction of this Court from issuing an injunction if it finds that the arbitral proceedings against the plaintiff in a foreign country are oppressive and call for interference. The relevant extract of the said decision reads as under:-

"15. Coming to the question as to whether a prima facie case is made

out or not in favor of the plaintiff for ad-interim injunction as prayed this Court finds that prima facie neither Section 5 nor Section 45 of the Arbitration and Conciliation Act, 1996 oust the jurisdiction of this Court from issuing an injunction if it finds that the arbitral proceedings against the plaintiff in a foreign country are oppressive and call for interference. The plaintiff is not asking this Court to stay the arbitral proceedings indefinitely but is merely praying that the defendant be restrained from prosecuting the arbitral proceedings till the time the Supreme Court of India returns its findings in regard to the jurisdiction of Maharashtra Electricity Regulation Commission. This submission is based on the ground that the counter guarantee furnished by the plaintiff is not a usual unconditional guarantee under which the guarantor is under an obligation to pay the demanded amount without any demur. Clause (1) of the guarantee in question specifically says that only the "amount validly due" can be demanded by defendant. A perusal of Clause (1) of the Counter Guarantee executed by the plaintiff prima facie shows that it is not an unconditional guarantee. It does not say that the guarantor will pay the amount demanded by the beneficiary without any demur or that the beneficiary/defendant would be the sole judge to determine the amount due from the plaintiff-guarantor. The Supreme Court in the case of Hindustan Construction Company Limited Vs. State of Bihar and others, while considering the question of grant of injunction against invocation of a Bank Guarantee, clearly held that in case a Bank Guarantee is found to be conditional, the beneficiary cannot have unfettered right to invoke such guarantee and Court can issue injunction against invocation of such a guarantee having regard to the terms thereof. In para 9 of the judgment, it was held that the terms of a Bank Guarantee are extremely material and since it is an independent contract between the guarantor and the beneficiary, both the parties are bound by the terms thereof. The invocation has to be in accordance with the terms or else the invocation itself would be bad."

57. Reference can also be made to the decision of the Supreme Court in the case of ***O.N.G.C. v. Western Co. of North America***[18], wherein the Court granted the injunction against a foreign party for enforcement of the Award. The Court held that to drive one party into a tight corner and oblige it to be placed in such an inextricable situation, as would arise if the other party is permitted to go ahead with the proceedings in the American Court, would be

oppressive to the second party. It would be neither just nor fair on the part of the Indian Court to deny relief to the plaintiff therein when it is likely to be placed in such an awkward situation if the relief is refused. Furthermore, the Court held that it would be unfair to refuse the restraint order in a case where the action in the foreign court would be oppressive in the facts and circumstances of the case. And in such a situation, the Courts unquestionably retain jurisdiction to grant a restraint order whenever the circumstances of the case make it necessary or expedient to do so or the ends of justice so require. The relevant extracts of the said decision read as under:-

> *"15. We are of the opinion that the appellant ONGC, should not be obliged to face such a situation as would arise in the light of the aforesaid discussion in the facts and circumstances of the present case. To drive the appellant in a tight corner and oblige it to be placed in such an inextricable situation as would arise if Western Company is permitted to go ahead with the proceedings in the American Court would be oppressive to ONGC. It would be neither just nor fair on the part of the Indian Court to deny relief to ONGC when it is likely to be placed in such an awkward situation if the relief is refused. It would be difficult to conceive of a more appropriate case for granting such relief. The reasons which have been just now articulated are good and sufficient for granting the relief and accordingly it appears unnecessary to examine the meaning and content of the relevant articles of the New York Convention for the purposes of the present appeal. All the same we will briefly indicate the questions which were debated in the context of the Convention since considerable debate has centred around the interpretation and scope of some of the articles of the Convention. Article V(1)(e) provides that recognition and enforcement of the award will be refused if the award "has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which or under the law of which that award was made".*
>
> ***
>
> *18. In the result we are of the opinion that the facts of this case are eminently suitable for granting a restraint order as prayed by ONGC. It*

[18] (1987) 1 SCC 496.

is no doubt true that this Court sparingly exercises the jurisdiction to restrain a party from proceeding further with an action in a foreign court. We have the utmost respect for the American Court. The question however is whether on the facts and circumstances of this case it would not be unjust and unreasonable not to restrain Western Company from proceeding further with the action in the American Court in the facts and circumstances outlined earlier. ***We would be extremely slow to grant such a restraint order but in the facts and circumstances of this matter we are convinced that this is one of those rare cases where we would be failing in our duty if we hesitate in granting the restraint order, for, to oblige ONGC to face the aforesaid proceedings in the American Court would be oppressive in the facts and circumstances discussed earlier.*** *But before we pass an appropriate order in this behalf, we must deal with the plea that the High Court does not have the jurisdiction to grant such a restraint order even if the proceeding in the foreign court is considered to be oppressive. Counsel for the respondent has placed reliance on Cotton Corporation of India v. United Industrial Bank [(1983) 4 SCC 625 : (1983) 3 SCR 962 : (1984) 55 Com Cas 423] in support of this plea. In Cotton Corporation case [(1983) 4 SCC 625 : (1983) 3 SCR 962 : (1984) 55 Com Cas 423] the question before the court was whether in the context of Section 41(b) of the Specific Relief Act, the court was justified in granting the injunction. The said provision runs thus:*

> *"41. An injunction cannot be granted—*
>
> *(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;"*
>
> *(emphasis added)*

This provision, in our opinion, will be attracted only in a fact-situation where an injunction is sought to restrain a party from instituting or prosecuting any action in a court in India which is either of co ordinate jurisdiction or is higher to the court from which the injunction is sought in the hierarchy of courts in India. There is nothing in Cotton Corporation case [(1983) 4 SCC 625 : (1983) 3 SCR 962 : (1984) 55 Com Cas 423] which supports the proposition that the High Court has no jurisdiction to grant an injunction or a restraint order in exercise of its inherent powers in a situation like the one in the present case. In fact this Court had granted such a restraint order in V/O Tractoroexport, Moscow v. Tarapore & Company [(1969) 3 SCC 562 : AIR 1971 SC 1 : (1970) 3 SCR 53] and had restrained a party from proceeding with an arbitration proceedings in a foreign country (in Moscow). ***As we have pointed out earlier, it would be unfair to refuse the restraint order in a case like the present one for the action in the foreign court would be oppressive in the facts and circumstances of the case. And in such a situation the courts have undoubted***

> ***jurisdiction to grant such a restraint order whenever the circumstances of the case make it necessary or expedient to do so or the ends of justice so require.*** *The following passage extracted from para 1039 of Halsbury's Laws of England, Vol. 24, at p. 579 supports this point of view:*
>
> > *"With regard to foreign proceedings, the court will restrain a person within its jurisdiction from instituting or prosecuting proceedings in a foreign court whenever the circumstances of the case make such an interposition necessary or expedient. In a proper case the court in this country may restrain a person who has actually recovered judgment in a foreign court from proceeding to enforce that judgment. The jurisdiction is discretionary and the court will give credit to foreign courts for doing justice in their own jurisdiction."*
>
> *It was because this position was fully realized that it was argued on behalf of the respondent that the action in the US Court could not be considered as being oppressive to ONGC. We have already dealt with this aspect and reached a conclusion adverse to Western Company. There is thus no merit in the submission that the High Court of Bombay has no jurisdiction in this behalf."*

58. Thus, the aforesaid decision categorically lays down a precedent for restraining a party from proceeding before a foreign-seated arbitral proceeding, provided the case is of such gravity that it warrants such extraordinary interference. It equally settles that such a restraining order could be passed by the High Court as well and Section 41(b) of the Specific Relief Act, 1963 would have no bearing on this power of the High Court. No doubt, the case indicates that such a remedy is to be provided in extraordinary and rare situations wherein the denial of this relief would effectively result into a patently unjust and unconscionable outcome for the plaintiff. It be noted that at this stage, the Court is only dealing with the preliminary question of maintainability and whether the present case calls for this extraordinary and rare relief shall form part of the subsequent discussion, as it necessarily involves a factual enquiry.

59. At this juncture, reference can be made to the decision of the Division Bench of this Court in the case of ***McDonald's India Pvt. Ltd.***, wherein, the Court held that there must be a distinction between an anti-suit injunction and an anti-arbitration injunction. The principles which apply to an anti-suit injunction will not necessarily apply to an anti-arbitration injunction. It was further observed that in the exceptional cases, arbitration proceedings could be injuncted, wherein, the attending circumstances would render continuation of the arbitration proceeding oppressive or unconscionable. Moreover, while relying on paragraph 7.01 of ***Redfern and Hunter on International Arbitration: Sixth Edition: Oxford University Press***, it has been held that the relationship between national Courts and Arbitral Tribunals swings between forced cohabitation and true partnership. Arbitration is dependent on the underlying support of the Courts, which alone have the power to rescue the system when one party seeks to sabotage it. The relevant paragraph of the said decision reads as under:-

> *"48. It is pertinent to note that this case, that is, Excalibur (supra) stresses upon the difference of approach between a normal anti-suit injunction and an injunction restraining arbitration proceedings. We are also in agreement with this view. There must be a distinction between an anti-suit injunction and an anti-arbitration injunction. The principles which apply to an anti-suit injunction will not necessarily apply to an anti-arbitration injunction. It is further important to note that the exceptional cases where arbitrations could be injuncted upon holding that the arbitration proceedings would be oppressive or unconscionable were regarded as those circumstances which would include the situation where the very issue was whether or not the parties had consented to the arbitration or where there was an allegation that the arbitration agreement was a forgery just as in the case of Albon (supra). It is clear that none of these exceptional circumstances arise in the present case."*

60. At this juncture, a useful reference can be made to the decision of this Court in the case of ***Himachal Sorang Power Private Limited v. NCC***

Infrastructure Holdings Limited[19]**,** wherein, this Court enlisted the principles to be followed in granting an anti-arbitration injunction, the relevant excerpt of which reads as under:-

> *"58. Thus, if I were to attempt an encapsulation of the broad parameters governing anti-arbitration injunctions, they would be the following:*
> *i) The principles governing anti-suit injunction are not identical to those that govern an anti-arbitration injunction.*
> *ii) Court's are slow in granting an anti-arbitration injunction unless it comes to the conclusion that the proceeding initiated is vexatious and/ or oppressive.*
> *iii) The Court which has supervisory jurisdiction or even personal jurisdiction over parties has the power to disallow commencement of fresh proceedings on the ground of res judicata or constructive res judicata. If persuaded to do so the Court could hold such proceeding to be vexatious and/ or oppressive. This bar could obtain in respect of an issue of law or fact or even a mixed question of law and fact.*
> *iv) The fact that in the assessment of the Court a trial would be required would be a factor which would weigh against grant of anti-arbitration injunction.*
> *v) The aggrieved should be encouraged to approach either the Arbitral Tribunal or the Court which has the supervisory jurisdiction in the matter. An endeavour should be made to support and aid arbitration rather than allow parties to move away from the chosen adjudicatory process.*
> *vi) The arbitral tribunal could adopt a procedure to deal with arbitration complaint (depending on the rules or procedure which govern the proceeding) as a preliminary issue."*

61. Considering the desirability of maintaining consistency in the practices and procedures of international arbitration across jurisdictions, it is of utmost relevance to note that the concept of anti-arbitration injunction is not alien to other prominent jurisdictions. Of course, the power is to be exercised sparingly, but the existence of power, especially in cases of vexatious and oppressive conduct, is not denied. In ***J. Jarvis & Sons Ltd. v.***

[19] 2019 SCC OnLine Del 7575.

Blue Circle Dartford Estates Ltd.[20], the English Court held that the grant of anti-arbitration injunction on the ground of vexatiousness, oppression and abuse of process is permissible, however, the power is to be exercised sparingly. Further, in ***Minister of Finance (Inc) and Malaysian Development Berhad v. International Petroleum Investment Coy***[21], the English Court of Appeal granted an anti-arbitration injunction on the ground of vexatious conduct of the respondent therein. Interestingly, it was granted on the premise that the act of the respondent in trying to curtail the supervisory jurisdiction of the regular Court was 'vexatious' as the respondent tried to deflect the challenge to the arbitral award by initiating fresh arbitration during the pendency of the challenge before the regular Court. The case is relevant to understand that it is against public interest to enforce an arbitration agreement/award if the foundation of the arbitral tribunal is in question, unless the serious apprehension against the Arbitral Tribunal is decided first. For, the Courts must prevent the perpetuation of a wrong, and not advance it by turning a blind eye. Of course, the Courts must be slow in intervening, but wherever there are demonstrable and undeniable facts, the Courts are duty bound to act on equitable considerations.

62. A panoptic view of arbitration as a mode of dispute resolution would clearly evince that it is generally regarded as the preferred and consensual mechanism adopted by the parties to resolve their commercial and contractual disputes. The legislative intent under the 1996 Act, especially post the 2015 and 2019 amendments, reinforces the principle of minimal judicial interference and promotes party autonomy in choosing arbitration

[20] [2007] A.P.P.L.R. 05/14.
[21] [2019] EWCA Civ 2080.

over traditional litigation. However, this statutory preference for arbitration does not, and indeed cannot, render the jurisdiction of Civil Courts entirely nugatory. The legislative scheme does not envisage a blanket ouster of the Civil Court's jurisdiction in all cases, particularly in circumstances where the initiation or continuance of arbitral proceedings is demonstrated to be vexatious and oppressive. Ordinarily, a party which has contractually chosen arbitration as a preferred mode of adjudication ought not to be allowed to retract from its choice and to approach a Civil Court to the detriment of the mutual consent of the parties expressed in the agreement. However, for circumstances which are not ordinary, and which present an extraordinary scenario wherein the very continuation of the arbitral proceeding appears to be oppressive, vexatious and unconscionable that too at the behest of one party, the larger oversight of the Civil Courts is not excluded. For, any mode of adjudication which has the sanction of law and which deserves to be accepted within the bounds of the rule of law, cannot be permitted to be oppressive and unconscionable. To permit so would not only impeach the credibility of the private, but statutorily regulated, mechanism of arbitration but also would compromise the sanctity and plenary jurisdiction of the Civil Courts. Arbitration, as a mechanism, forms part of the 'alternate' modes of dispute resolution and in order to make it effective, we have adopted the globally recognized principle of minimum judicial interference. However, the principle requires *minimum* interference and not *negligible* interference, and this narrow window has been preserved for the interference of the Civil Courts only to ensure that a privately agreed mechanism does not turn oppressive for any party and does not operate in an unruly and unregulated manner dehors the foundational principles of judicial propriety and

procedure.

63. The judicial authority of the Civil Courts under Section 9 of the CPC and its inherent powers under Section 151 CPC remain preserved to safeguard against the misuse of the arbitral process, unless expressly barred by the statute which is not the case herein. Where the arbitral proceedings are shown to have been vexatious and oppressive in a manner calculated to harass the opposite party, the Civil Courts are not only empowered but also under a solemn duty to intervene. It would be wholly unjust to compel a party to submit to arbitration when the process itself is a vehicle of abuse, serving no legitimate adjudicatory purpose.

64. The Civil Courts are essentially the custodian of all civil rights and in such situations, to summarily relegate a party to the arbitral forum, particularly when the very institution of arbitration is being used to perpetuate unfairness, would amount to a mechanical application of statutory principles, contrary to both equity and the broader constitutional mandate of access to justice. It is in these exceptional cases that the Civil Court must act as a ***sentinel on the qui vive*** i.e., watchful guardian, ensuring that the party alleging vexation and oppression is not left remediless. The Court must, in the exercise of its judicial conscience and upon a satisfaction of procedural abuse, extend its protective jurisdiction and prevent the continuation of proceedings that are clearly unjust, thereby upholding the rule of law and preserving the sanctity of adjudication.

65. On the conspectus of the said conclusion, this Court shall now proceed to analyse whether the arbitral proceedings in the present case are *prima facie* vexatious and oppressive in nature to bring this suit within the jurisdiction of this Court.

Litmus Test to Determine Vexatious and Oppressive Proceedings

66. Before embarking on the journey of testing whether the arbitral proceedings in the present case are vexatious and oppressive in nature, it is pertinent to first ascertain the meaning of these words which assume monumental significance in the present case.

67. The term "vexatious" is consistently defined in legal dictionaries as referring to proceedings that are instituted without sufficient legal basis and primarily intended to annoy, harass, or burden the opposing party. *Black's Law Dictionary* (11th ed., 2019) defines "vexatious" as "without reasonable or probable cause or excuse; harassing; annoying," and further clarifies that a vexatious litigant is one who "habitually and persistently engages in litigation, without a reasonable ground, to harass or subdue an adversary." *Wharton's Law Lexicon* (16th ed., 2016) similarly defines a vexatious action as one "instituted maliciously and without reasonable or probable cause." According to *Words and Phrases Legally Defined* (Butterworths, 5th ed.), proceedings are vexatious if "instituted with the intention of annoying or harassing the other party, or are oppressive in manner and nature." *Stroud's Judicial Dictionary* (9th ed., 2016) adds that a vexatious proceeding is one "which has little or no basis in law and is instituted to annoy or embarrass the opponent."

68. Turning to the word "oppressive", the same dictionaries describe it as conduct that unjustly imposes harsh burdens or unfair disadvantages upon the other side. *Black's Law Dictionary* defines "oppressive" as "unreasonably burdensome or severe; unjustly harsh or tyrannical." *Wharton's Law Lexicon* explains it as conduct "which inflicts unjust hardship or exercises authority in an unfair or unjust manner." *Stroud's*

Judicial Dictionary describes "oppressive" as "that which is burdensome, unjust, or harsh to the point of being unconscionable." Finally, *Oxford Dictionary of Law* (8th ed., 2015) defines oppressive action as "one that unjustly inflicts hardship or constraint, especially in the misuse of legal authority or process". Together, these definitions establish that vexatious and oppressive conduct primarily refers to an abuse of legal process; vexatious by reason of intent and lack of merit, and oppressive by reason of undue harshness or unfair domination, which Courts are empowered to restrain in order to preserve the integrity of judicial proceedings. As a matter of deeper understanding, it could be noted that while examining the justness of a proceeding on the allegation of it being vexatious and oppressive, the end goal of the Court is to see whether the continuation of the proceeding would amount to an abuse of process. However, in doing so, the test of vexatiousness is to be applied from the point of view of the party that intends to continue the proceeding and the test of oppressiveness is to be applied from the point of view of the party that seeks restraint as it claims to bear an unduly harsh burden. There is a slight difference in the manner of application of the underlying tests; however, the end goal remains fairly clear.

69. On the touchstone of the aforesaid guiding principles, this Court shall appreciate the facts of the present case. It is pertinent to note that in the instant case, Article 11 of the ICC Rules lies at the focal point of this controversy. For the sake of convenience, the said Article is reproduced as under:-

> *"ARTICLE 11*
> *General Provisions*
> *1. Every arbitrator must be and remain impartial and independent*

of the parties involved in the arbitration.

2. Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.

3. An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.

4. The decisions of the Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

5. By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.

6. Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 12 and 13.

7. In order to assist prospective arbitrators and arbitrators in complying with their duties under Articles 11(2) and 11(3), each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration."

70. A bare perusal of the said Article would clearly indicate that it mandates that every arbitrator should, both at the time of appointment and during continuation of the arbitration proceeding, remain impartial and independent. The concepts of *independence* and *impartiality* are often used in an inter-changeable manner, however, they carry distinct meanings. Whereas, independence refers to the sense of freedom of the arbitrator from all external influences, impartiality refers to a lack of bias and aloofness from the parties as well as from the subject matter involved in the dispute. Nevertheless, for all practical purposes, the terms are used in an

interchangeable sense and are primarily meant to remove any impression of actual or apparent bias from the arbitration proceeding. Furthermore, in order to maintain impartiality, the said Article clearly mandates that before appointment or confirmation, a prospective arbitrator shall sign the statement of acceptance, availability, impartiality and independence. Additionally, the prospective arbitrator is bound to disclose in writing to the Secretariat any facts and circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality.

71. The said disclosure would then be put to the parties concerned and the Secretariat shall fix a time for inviting comments from the parties, if any. Moreover, sub-Clause (3) thereto also casts a *bonafide* duty on the arbitrator to disclose in writing any facts or circumstances that may question his/her impartiality, if they so arise during the course of the arbitration proceedings. Furthermore, sub-Clause (4) thereto would also indicate that the decisions of the ICC Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

72. Even a cursory reading of Article 11 of the ICC Rules would indicate that it provides for a mandatory mechanism that enables an arbitrator to disclose any fact that would have the potential to question his impartiality and independence in the eyes of the parties. First and foremost, this Article itself casts an unflinching and emboldened duty on the arbitrator that he shall remain impartial and independent of the parties and of the subject matter involved in the arbitration. It also casts a duty on the arbitrator to disclose any facts or circumstances that may call into question the

independence and impartiality of the arbitrator in the eyes of the parties. The fundamental significance of this procedure, coupled with the detrimental effect of flouting this Article, shall be discussed in the latter part of this judgment.

73. Having taken a brief detour from the procedure envisaged under Article 11 of the ICC Rules, this Court now examines the disclosure made by Mr. Yeap and the consequent decision of the ICC Court.

74. The defendant herein i.e., the claimant to the arbitration proceedings, while making a request for arbitration before ICC on 12.04.2023, nominated Mr. Yeap as the co-arbitrator.

75. Thereafter, on 19.04.2023, pursuant to Article 11 of the ICC Rules, Mr. Yeap made the following disclosure, which reads as under:-

> *"3. INDEPENDENCE and IMPARTIALITY*
> *(Tick one box and provide details below and/or, if necessary, on a separate sheet)*
> *In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the parties, their lawyers or other representatives, or related entities and individuals. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying inter alia relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information. In deciding which box to tick and as the case may be in preparing your disclosure, you should also consult with care the relevant sections of the Note.*
>
> *Nothing to disclose: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.*
>
> *Acceptance with disclosure: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts*

or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet."

76. A bare perusal of the said disclosure would indicate that Mr. Yeap, despite having an opportunity and being bound by the ICC Rules to fully disclose any information that could call into question his impartiality in the eyes of the parties, willingly chose not to do so and declared that no such circumstance existed. Moreover, even during the arbitration proceedings as well, Mr. Yeap had the opportunity to again disclose any information that could question his impartiality, still he willingly chose not to do so.

77. The plaintiff, after gaining knowledge about the prior involvement of Mr. Yeap in the defendant's earlier case, filed an application under Article 14 of the ICC Rules challenging the mandate of Mr. Yeap. In response to the said application, Mr. Yeap made the following statement:-

"(1) the Claimant in this case was a different party from Manbhupinder Singh Atwal (who was the Claimants Chairman);

(2) I had been appointed co-arbitrator by Manbhupinder Singh Atwal / DSK Legal in the previous arbitration sometime in or around November 2018 , more than 4 years prior to my signing of the Statement of Acceptance; and

(3) the aforesaid appointment by DSK Legal in the previous arbitration was my only previous appointment by DSK ;

I came to the conclusion that the circumstances concerning my appointment in the previous arbitration by Manbhupinder Singh Atwal / DSK Legal were nowhere near and indeed far away from the matters set out in the Orange List and that it was unnecessary, unwarranted and even possibly inappropriate for me to make any disclosure that I had previously been nominated / appointed arbitrator by Manbhupinder Singh Atwal / DSK Legal.

9. By the time I realized Manbhupinder Singh Atwal was the Chairman

of the Claimant, the Respondent's counsel had at least foreshadowed , if not even confirmed, that the Respondent was commencing or had commenced proceedings in the Singapore Courts to set aside the Partial Award. Had I made the disclosure, the possibility of the Respondent seeking to challenge my impartiality could not be discounted."

78. Thereafter, the ICC Court *vide* decision dated 14.03.2025, though accepted that Mr. Yeap's non-disclosure was "regrettable" but concluded that it did not give rise to any reasonable doubts over his impartiality. This conclusion exemplifies what may be termed a classic case of '***operation successful, but patient dead***'. Put differently, they '***lost the soul to save the body'***; the decision may seem to be sound on the surface and in adherence to the formal procedure, but it does not heal the substantive loss of confidence in the neutrality of the arbitral process. The relevant extracts of the said decision read as under:-

"V. COURT'S DECISION ON MERITS OF THE CHALLENGE

24. The Court considered whether the failure to disclose Mr. Atwal's appointment of Mr Yeap in the Prior Arbitration raises doubts about his impartiality and independence, such that the Challenge should be accepted on its merits.

25. The Court began by considering whether Mr Yeap should have disclosed the prior appointment. The Court concluded that, on balance, Mr Yeap should have disclosed the prior appointment after considering the following:

a. Mr Yeap acted reasonably when making inquiries prior to signing his Statement of Acceptance, Availability, Impartiality and Independence.

b. The Court accepts that Mr. Yeap became aware of the potential disclosure in or around October 2024 and he had considered at this time whether a disclosure should be made.

c. The ICC Note states at paragraph 25 that an arbitrator must disclose 'any circumstance that might be of such a nature as to call into question his or her independence in the eyes of any of the parties or give rise to reasonable doubts as to his or her impartiality. Any doubt must be resolved in favour of disclosure."

d. Mr Yeap properly considered paragraph 27 of the ICC Note,

which further requires arbitrators to make their decision on disclosure based on an assessment of the circumstances, including whether the arbitrator "acts or has acted as arbitrator in a case involving one of the parties or one of its affiliates" and the arbitrator "has in the past been appointed as arbitrator by one of the parties or one of its affiliates, or by counsel to one of the parties or the counsel's law firm." The ICC Note does not specify any specific time period for past appointments.

e. While Mr Yeap acted reasonably in considering other guidance, including the IBA Guidelines, an arbitrator's duty of disclosure under the ICC Rules is separate and distinct, and the IBA Guidelines do not override that duty.

f. Mr Yeap was entitled to consider the four-year period between the appointments in the Prior Arbitration and this arbitration, although he may also have considered that the challenge to the award in the Prior Arbitration had only concluded in July 2024.

g. The possibility that the Partial Award may be challenged by the Respondent, or that the Respondent may have sought to challenge Mr Yeap's impartiality following the disclosure, is not a relevant consideration to be taken into account when deciding whether to make a disclosure.

h. The ICC Note requires arbitrators to err on the side of disclosure. Therefore, any doubt ought to have been resolved in favour of disclosure.

26. The Court discussed whether Mr Yeap's failure to disclose the arbitration was sufficient to give rise to reasonable doubt as to his impartiality or independence. The Court found that it is not for the reasons set out below.

27. Aside from non-disclosure, there is no evidence to support reasonable doubt as to Mr Yeap's impartiality or independence. Apart from non-disclosure, Respondent relied on the fact that the arbitral tribunal rendered the Partial Award in June 2024 in favour of Claimant, as factors supporting reasonable doubt as to Mr. Yeap's impartiality or independence. The Cout was of the view that mere rendering of certain decisions by the Tribunal that did not favour the Respondent, does not justify Respondent's Challenge against Mr. Yeap.

28. Though the Court concluded that the Prior Arbitration should have been disclosed, the Court, however, does not consider that any challenge to Mr Yeap based on the Prior Arbitration (had it been disclosed) would have succeeded. This is because

a. There is no connection between the facts and subject matter of the two arbitrations nor the issues arising therein;

b. The Prior Arbitration involved Mr Atwal in his personal capacity;

c. There was a gap of more than four years between the two appointments;
d. There is no evidence of any other connection between Mr Yeap and Claimant, Mr Atwal or Claimant's counsel;
e. There are no other factors arising out of Mr. Yeap's conduct of the arbitration that raise questions about his impartiality or independence.

29. Mr Yeap decided not to disclose the Prior Arbitration after consulting relevant guidance. His decision was based on the length of time between the appointments. While this decision was open to him on the facts, the more prudent course of action would have been to err on the side of disclosure and inform the parties of the Prior Arbitration.

30. The Court concluded that Mr Yeap's failure to disclose the Prior Arbitration, while regrettable, does not give rise to reasonable doubts as to his impartiality or independence in and of itself.

31. The Court discussed Mr. Yeap's comment that making a disclosure may have led to a challenge at a time when the Partial Award was also likely to be challenged. The Court was very clear that such concerns are not an appropriate basis for nondisclosure. As noted above, whether a disclosure may prompt a challenge is not a relevant factor that the Court considers an arbitrator should take into account when deciding whether to make a disclosure. However, given that Mr Yeap confirmed that he made his decision based on the extended time period between appointments, any consideration of the risk of challenge appears to have been a factor that Mr Yeap considered only after his decision that disclosure was not warranted due to the four year time difference between the appointments.

32. Accordingly, the Court decided that the Challenge is rejected on the merits.

33. For completeness, the court also noted that this arbitration is governed by Omani law, the place of arbitration is Singapore, and Respondent is an Indian entity. Although Indian Arbitration Act not apply to arbitrations seated outside India, it contains provisions and standards for disclosure by arbitrators, which may form relevant considerations for an Indian court as potential courts of enforcement. For example, one of the grounds giving rise to j The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties", which is identical to Article 3.1.3 under the Orange List of the IBA Guidelines.

> *34. The Court noted that in the absence of any other material to demonstrate bias or partiality, Mr Yeap's non-disclosure would be inconsequential and insufficient to create justifiable doubt as to his independence or impartiality under Indian law."*

79. Against this factual matrix, it becomes imperative to underscore that the ICC Rules, particularly Article 11, cast a categorical obligation upon an arbitrator to make a full and frank disclosure of any circumstance that might give rise to justifiable doubts regarding their impartiality or independence. This obligation is not an empty exercise which may be done in a perfunctory manner, rather it comprises a foundational tenet of arbitral ethics and procedural fairness. The integrity of the arbitral process rests on the unassailable confidence of the parties in the neutrality of the arbitrator, and to that end, full disclosure cannot be said to be merely "advisable". At the threshold stage itself, it is the inalienable duty of every arbitrator to disclose *sua sponte* all facts, associations, interests, or relationships, whether direct or indirect, that could potentially call into question their impartiality, irrespective of the fact as to whether the arbitrator personally perceives them to be material or not. A failure to do so undermines not only the trust reposed by the parties but also the legitimacy of the arbitral proceedings as a whole.

80. Furthermore, a closer reading of Article 11 of the ICC Rules reveals that the standard for assessing whether a disclosure is warranted is not the arbitrator's subjective perception of bias, nor an objective standard based on a hypothetical reasonable observer. Rather, the language employed—"***in the eyes of the parties***"—places the determinative perspective squarely on the parties themselves. It is not what the arbitrator considers to be trivial or insignificant, but what the parties *may* reasonably perceive to be a cause for

concern, that forms the litmus test for disclosure. The emphasis is thus on the potential perception of bias "***from the standpoint of the parties***", who are entitled to be fully apprised of all relevant circumstances so as to make an informed decision regarding the arbitrator's suitability.

81. The test under Article 11 of the ICC Rules is a pre-emptive and precautionary one. The arbitrator cannot withhold disclosure on the ground that, in his or her view, the fact or association is benign or too remote to influence impartiality. The obligation to disclose arises when there exists even a possibility that the information, if known, might give rise to an apprehension of bias in the minds of the parties. Whether the parties ultimately choose to waive the objection or not is immaterial to the discharge of this duty. The rationale is simple - 'disclosure facilitates transparency, and transparency begets trust in the fairness of the proceedings'. The decision whether a disclosed fact is serious enough to justify a challenge belongs exclusively to the parties, not to the arbitrator. Thus, the arbitrator's failure to disclose such information at the inception of the proceedings strikes at the very root of party autonomy and procedural fairness and constitutes a deviation from the letter and spirit of the ICC Rules.

82. Even the ICC itself came to the conclusion that non-disclosure is regrettable, however, it concluded that it did not give rise to reasonable doubts over the *bona fides* of the arbitrator. This conclusion was arrived at by placing the burden upon the plaintiff to show as to how the non-disclosure actually affected Mr. Yeap's impartiality or independence. A heavy burden indeed. However, in the instant case, what is significant and holds significant importance is the deliberate concealment and non-

compliance of the mandatory disclosure requirements. It is not the case that the concerned co-arbitrator was completely unaware at the time of disclosure, as it has been admitted that he had made inquiries, but he did not find it necessary to disclose due to the lapse of four years.

83. Even during continuation of the arbitration proceedings, the concerned co-arbitrator chose not to disclose for want of necessity on his own subjective satisfaction of his own impartiality. Even in the comments of the co-arbitrator Mr. Yeap, he acknowledged that had he disclosed the aforesaid aspect, the plaintiff would have objected to the same. Thus, evidently, the non-disclosure was calculated and deliberate and was made in order to avoid any objection by the opposite party. It was completely and unequivocally in the teeth of the mandatory disclosure principles, both in their letter and spirit. For, the very essence of the said principles lies in enabling the opposite party to object to any circumstance of bias or partiality. Pertinently, the question is not whether the concerned co-arbitrator was actually partial or biased or non-neutral rather, the question is whether the plaintiff was served with the mandatory information at the time of appointment, as it was rightfully entitled to, and was afforded a reasonable opportunity to present its objections and to get them decided before embarking upon the journey of adjudication by the said co-arbitrator.

84. The fact of the matter, as on date, is that the plaintiff was deprived of its rightful opportunity to raise a challenge to the impartiality or independence of the co-arbitrator at the time of appointment and the said defect cannot be cured and the cycle cannot be reversed. The very act of non-disclosure, despite awareness and knowledge, makes one suspect in the eyes of the party and in such a scenario, the party cannot be compelled to

have its rights adjudicated by an adjudicator who has admittedly failed to comply with mandatory requirements to the detriment of the party. It is this undue burden upon the plaintiff that justifies the test of oppressiveness.

85. The aforementioned analysis clearly shows that non-disclosure of Mr. Yeap goes to the root of the matter and his non-disclosure casts doubt over the entire sanctity of the arbitration proceedings. The consent of the parties to the arbitration as well as adhering to the mandate to the particular arbitrator, rests on the *bona fide* belief that the concerned arbitration would be impartial in nature. Impartiality in any adjudicatory mechanism is the fundamental tenet that cannot, under any circumstances, be shaken. It is the foundation upon which any justice delivery system rests. More importantly, in arbitration, wherein party autonomy is crucial, and parties themselves choose an independent forum for adjudication of the disputes, the concept of impartiality underscores further significance. Though, the scheme of the 1996 Act makes judicial intervention minimal, however, when the proceedings are vexatious and oppressive, the Civil Courts cannot remain mute spectators to the harassment caused to the aggrieved party. The doors of this Court cannot be shut down by mere virtue of an arbitration clause when the proceedings itself are vexatious and oppressive, in light of the plenary jurisdiction of the Civil Courts.

86. It must be underscored that arbitration, as a mode of alternate dispute resolution, does not operate as a substitute for the jurisdiction of Civil Courts but rather as a consensual mechanism designed to supplement traditional judicial forums for expeditious and efficient resolution of disputes. While the autonomy of the parties and the procedural flexibility of arbitration are often cited as its strengths, these attributes cannot come at the

cost of compromising the core principles underlying a justice delivery system, most fundamentally, the impartiality and independence of the Tribunal.

87. The expectation of fairness and neutrality that inherently governs the judicial proceedings in a Civil Court is not diminished in arbitration; if anything, it assumes even greater significance. In conventional litigation, a party apprehending bias in a Judge has well-established procedural recourses, be it recusal, appeal, or administrative redress etc. In contrast, the structure of arbitration, being private, contractually limited, and procedurally narrow, does not always afford equivalent institutional safeguards. Therefore, the obligation upon the arbitrator to disclose any circumstance that may give rise to justifiable doubts as to their impartiality or independence becomes not merely procedural but foundational to the legitimacy of the process.

88. Arbitration is anchored in the doctrine of party autonomy**,** and this autonomy is meaningful only when it is exercised in the context of informed consent. Such consent, whether at the stage of entering the arbitration agreement or in proceeding with the constitution of the Tribunal, presupposes a forum that is free from even the slightest taint of bias. Once impartiality is questioned, especially in the absence of full and fair disclosure, it strikes at the very root of that consent and renders the process otiose. A consent which is based on an illusion of full and fair disclosure is no consent. It stands vitiated once deliberate concealment, for whatever reason, becomes apparent. Moreover, the reasons in the instant case, as also noted by the ICC Court in its verdict, do not inspire confidence.

89. Undeniably, the legal architecture of arbitration permits no latitude for

ambiguity when it comes to neutrality. There must be zero tolerance for any instance, apprehension, or perception of partiality. The arbitral forum is not empowered by coercive authority but by the trust reposed by parties, trust that is contingent upon the Tribunal maintaining an unimpeachable posture of fairness. A Tribunal that is not, or is not perceived to be, neutral ceases to draw legitimacy from the parties' consent and thereby renders the entire proceeding liable to collapse. The sanctity of arbitration depends on an unwavering adherence to this principle; the moment impartiality is compromised, the entire edifice of alternate dispute resolution stands on perilous ground. Moreover, a system which is being termed as an alternative of the conventional adjudication system must abide by the prescribed standards of judicial propriety, impartiality and fairness in order to truly qualify as a legitimate and deserving alternative.

90. Therefore, in a system where party's consent is the fulcrum and procedural safeguards are limited, the duty of disclosure and the appearance of impartiality are non-negotiable. Any breach is not curable by procedural convenience or post hoc justification**,** and must be treated with the seriousness it demands, lest the confidence in the arbitral process itself be irreversibly eroded. To compel the plaintiff to remain subservient to an adjudication based on an erroneous foundation and one that is liable to meet a certain fate because of an incurable foundational fallacy, would be nothing but unreasonably harsh, burdensome, devoid of reason and justness. And thus, oppressive for the plaintiff.

91. At this juncture, it is quintessential to highlight the conduct of the defendant throughout these proceedings to understand the vexatious nature of the litigation net in which the defendant has thrown over and entangled

the plaintiff.

Vexatiousness Discernible from the Conduct of the Defendant

92. In the present case, as soon as the ICC Court rejected the plaintiff's challenge to Mr. Yeap's appointment, the defendant started pressing for the evidentiary hearing before the Tribunal. Even after the intimation by the plaintiff that they were in the process of filing an appeal against the ICC's decision, the defendant still pressed for the evidentiary hearing before the Tribunal. Despite the plaintiff's objection, the Tribunal fixed the hearing on 12.03.2025.

93. On the same day, the defendant filed an enforcement petition seeking enforcement of the First Partial Award before this Court. Thereafter, on 17.03.2025, the Tribunal, despite the objections of the plaintiff, directed that the evidential hearing would take place in Singapore from 26.05.2025 to 31.05.2025. Parallelly, on 01.04.2025, the defendant issued an email to the ICC and communicated its intention to file an application for seeking a Partial Final Award on purported wasted costs on account of adjournment of the evidential hearings in the month of January, 2025. On 03.04.2025, the ICC responded to the request for information lodged by the defendant and informed that (i) the defendant's request for the fees and expenses disbursed by the ICC to the members of the Tribunal towards the cancelled hearings in January, 2025 stands rejected, and (ii) ICC will fix the costs of the arbitration upon conclusion of the arbitration.

94. However, still on 02.04.2025, the defendant moved a wasted costs application before the Tribunal. On 07.04.2025, the plaintiff requested the Tribunal to defer the arbitration proceedings, including the wasted costs application. Thereafter, on 10.04.2025, the High Court of Singapore

rendered the grounds of the decision of the challenge to the First Partial Award and on 15.04.2025, the plaintiff filed the instant suit. While defending the said suit before this Court, the defendant wrote to the Tribunal seeking to close the Plaintiff's right to file a reply to the wasted costs application, since it failed to file reply within the stipulated time.

95. Thereafter, on 23.04.2025 the plaintiff issued a letter through its Singapore Counsel, expressing its intent to withdraw its appeal by 07.05.2025, before Supreme Court at Singapore against the First Partial Award decision by the High Court of Singapore. Meanwhile, consequent to the defendant's request, the Tribunal observed that despite giving multiple opportunities to the plaintiff for purpose of filing its substantive response to the wasted costs application, the plaintiff has failed to do so. The Tribunal further observed that it will consider the wasted costs application, either during or after the evidential hearing.

96. On 05.05.2025, the plaintiff filed a Notice of withdrawal before the Supreme Court at Singapore thereby seeking to withdraw the appeal unconditionally. On 16.05.2025, the plaintiff also filed an application before the High Court of Singapore seeking withdrawal of the challenge to the ICC Court's decision. On 19.05.2025, the plaintiff requested the Tribunal for the deferment of the evidentiary hearing on the ground of pendency of this suit. However, when the Tribunal asked for the defendant's consent, the defendant *vide* email dated 19.05.2025 stated that the evidential hearing should proceed as planned physically. Consequently, on 20.05.2025, the Tribunal wrote to both the parties observing that the evidential hearing will proceed as planned in Singapore.

97. Interestingly, on 21.05.2025, defendant filed a motion before the

Singapore High Court in the ICC Court's order challenge proceedings seeking restraint against the plaintiff from maintaining and/or continuing with the captioned suit. On the same day, the defendant wrote to the Tribunal to press for the evidential hearing and moreover, when the plaintiff again requested the Tribunal for deferment of the hearing, thereafter defendant *vide* email dated 22.05.2025, again pressed for the evidential hearing, citing that this Court has not stayed the same. Consequently, on 22.05.2025, the Tribunal directed that the evidential hearing would commence from 26.05.2025.

98. Meanwhile, on 23.05.2025, the High Court of Singapore granted an *ex-parte* interim anti-suit injunction against the plaintiff restraining it from continuing with the captioned suit and also rejected the plaintiff's withdrawal application. On 26.05.2025, the evidentiary hearing continued before the Tribunal and on 27.05.2025 it concluded while closing the evidentiary hearing in the arbitration proceedings.

99. A bare perusal of the sequence of events that have transpired during the course of the present proceedings unmistakably reveals a concerted and calculated attempt by the defendant to entangle the plaintiff in vexatious, coercive and strategically manipulative litigation. The conduct of the defendant, when examined holistically, demonstrates a clear pattern of abuse of process intended not to resolve disputes in good faith, but rather to subject the plaintiff to procedural hardship and jurisdictional entanglement. Quite apparently, the defendant has been unrelenting in pressing for the continuation of arbitral proceedings before the Tribunal, despite having full knowledge of the pending challenges both before the High Court of Singapore and before this Court. Such persistence, in the face of concurrent

judicial scrutiny by competent fora, reflects a wilful disregard for judicial comity and procedural fairness.

100. Simultaneously, the defendant went further to oppose the plaintiff's application for withdrawal before the High Court of Singapore, thereby obstructing an attempt at disengagement from the arbitral process. It was coupled with the defendant's own fresh motion seeking an anti-suit injunction, yet another tactical step designed not to resolve the underlying dispute, but to suppress the plaintiff's recourse to legal remedies and to preclude judicial examination of the legitimacy of the arbitral process. The totality of this conduct unequivocally suggests a *mala fide* and oppressive litigation strategy, one which is intended to exhaust, delay, coerce and manoeuvre the plaintiff by compelling it to defend itself across multiple legal forums simultaneously, irrespective of the merits of the dispute. Alongside, it is intended to prevent the plaintiff from pursuing any legitimate claim before the judicial fora despite the plaintiff having legitimate apprehensions *qua* the ongoing arbitration proceeding.

101. Such tactics, which are neither fair nor in consonance with the objectives of arbitration or civil litigation, amount to a weaponisation of the judicial process for collateral purposes. The evident abuse of legal machinery to harass the plaintiff and frustrate its access to justice cannot be countenanced by a Court of law. For, the Courts in this country are not passive observers; they are duty-bound to intervene when a party is subjected to sustained harassment and procedural manipulation under the guise of lawful process. To allow the defendant to continue with such vexatious proceedings would be to permit the very erosion of judicial integrity and to allow civil process to become an instrument of oppression.

This Court, therefore, cannot remain a silent spectator where one litigant has clearly been subjected to undue procedural torment by another under the pretext of arbitration, that too when the arbitration proceeding in question is itself based on the foundation of a grave and incurable error of non-disclosure giving rise to legitimate doubts in the mind of the plaintiff *qua* the fairness, impartiality and independence of the entire arbitration proceedings.

102. In the present case, the only impediment which is highlighted by the defendant is the existence of an arbitration mechanism. The arbitration mechanism is agreed upon between the parties, and, therefore, needs to be respected. However, what is more important is whether the proceedings of arbitration have turned vexatious and oppressive, and if the answer to this question is in the affirmative, this Court cannot shy away from its duty to intervene in the exercise of its civil jurisdiction. The non intervention by this Court would not only amount to perpetuating a wrong at the hands of the Court but would also compel the plaintiff to participate in a dead wood exercise, as no just and sustainable outcome could result from an adjudicatory exercise whose fairness itself is under question.

103. So long as the plaintiff does not desist from participating in the arbitration proceedings as per the arbitration mechanism, subject to the same being in accordance with the fundamental principle of fairness, there is no question of entertaining any grievance pertaining to the arbitration mechanism. However, in cases where the plaintiff reasonably establishes that the arbitration proceedings are vexatious and oppressive, the Courts in India are not powerless to interdict such proceedings and to protect the litigant from victimisation.

104. In view of the aforesaid and in the peculiar facts and circumstances of

the case, it is crystal clear that the suit for grant of an anti-arbitration injunction is maintainable before this Court as the arbitration proceedings are *prima facie* vexatious and oppressive in nature.

105. After deciding on the question of maintainability of the civil suit, this Court shall decide the application under Order XXXIX Rule 1 and 2 CPC filed by the plaintiff for grant of an interim injunction.

Question of Interim Injunction

106. Under the said application, the plaintiff prays for the following reliefs:-

> *"(a) restraining the Defendant from taking any steps in pursuance to, or in furtherance of, the ICC Arbitration No. 27726/HTG/YMK pending before the Tribunal with the present quorum/constitution; and*
>
> *(b)pass such other and further order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper."*

107. Needless to state, the contours of the remedy contemplated in Order XXXIX Rule 1 and 2 CPC are no longer opaque or *res integra*. The Court, therefore, deems it appropriate to first reiterate the well-settled legal principle that no injunction can be granted unless the three essential conditions are satisfied, namely, existence of a *prima facie* case, the *balance of convenience* in favour of the applicant, and the likelihood of *irreparable injury* that cannot be compensated in monetary terms if the interim relief is denied. Furthermore, it is trite law that the failure to establish any one of these conditions disentitles a party from seeking an injunction, and the Court would be justified in refusing the relief of injunction. On this aspect, reference can be made to the decision of the Supreme Court in the case of

Hazrat Surat Shah Urdu Education Society v. Abdul Saheb[22]. The relevant portion of the said decision reads as under:-

> *"No doubt the District Judge held that there was no prima facie case in the respondent's favour but he further recorded a positive finding that even if the plaintiff respondent had prima facie case there was no balance of convenience in his favour and if any injury was caused to him on account of the breach of contract of service he could be compensated by way of damages in terms of money therefore he was not entitled to any injunction. The High court failed to notice that even if a prima facie case was made out, the balance of convenience and the irreparable injury were necessary to exist. The question whether the plaintiff could be compensated by way of damages in terms of money for the injury which may be caused to him on account of the breach of contract of service was not considered by the High court. No temporary injunction should be issued unless the three essential ingredients are made out, namely:*
> *(i) prima facie case,*
> *(ii) balance of convenience,*
> *(iii) irreparable injury which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the injunction and the court will be justified in declining to issue injunction. In the instance case the respondent plaintiff was claiming to enforce the contract of service against the management of the institution. The refusal of injunction could not cause any irreparable injury to him as he could be compensated by way of damages in terms of money in the event of his success in the suit. The respondent was therefore not entitled to any injunction order. The District Judge in our opinion rightly set aside the order of the Trial Court granting injunction in favour of the plaintiff respondent. The High court committed error in interfering with that order."*

108. The aforesaid principle has been relied upon by this Court consistently in ***Hari Krishan Sharma v. MCD***[23], ***I.K. Mehra v. Wazir Chand Mehra***[24] and ***B.M.L. Garg v. Lloyd Insulations (India) Ltd***[25]. In light of this well-settled legal position, it is evident that an applicant seeking an injunction must establish all three essential ingredients, i.e., *prima facie*

[22]JT 1988 (4) SC 232.
[23]1987 SCC OnLine Del 286.
[24]1997 SCC OnLine Del 356.

case, balance of convenience and irreparable injury. These ingredients must be satisfied concurrently, and the inability of the applicant to establish even one would render the applicant ineligible for obtaining the discretionary injunctive relief.

109. The cardinal principles for grant of a temporary injunction were further considered in ***Dalpat Kumar v. Prahlad Singh***[26], wherein the Supreme Court observed as follows:-

> *"5…Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."*

110. The Court further held in ***Dalpat Kumar***, that the phrases *"prima facie case", "balance of convenience" and "irreparable loss"* are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by ingenuity in the given facts and

---

[25] 1992 SCC OnLine Del 447.
[26] (1992) 1 SCC 719.

circumstances of each case. These principles are to be applied with judicial discretion, such that, the relief granted aligns with the ends of justice.

111. The legal position revolving around Order XXXIX Rules 1 and 2 CPC has been reiterated and reaffirmed by the Court by holding that in order to grant an injunction, all three contingencies, namely, *prima facie* case, *balance of convenience* and *irreparable loss*, are *sine qua non*. To fructify the discussion, a useful reference can be made to the decision of this Court in the case of ***Rashmi Saluja v. Religare Industries***[27], wherein, the Court held as under:-

> *"26. Furthermore, this Court in the case of T.A. George & Anr. v. Delhi Development Authority8 has held that injunctions are a form of equitable relief and have to be adjusted in aid of equity and justice to the facts of each particular case. Furthermore, it was also held that all three conditions are sine qua non for the grant of temporary injunction and injunction cannot be granted as a matter of course unless all three conditions are met. Pertinently, this Court further observed that these three golden principles are not exhaustive and the party seeking an injunction bears the burden of establishing its bona fides as well.*
>
> *27. Accordingly, keeping in mind the established legal position, the Court may first examine the element of irreparable injury. Irreparable injury refers to an injury of such a substantial nature that it cannot be adequately remedied or compensated by monetary damages. The term irreparable injury signifies harm that is incapable of being repaired or atoned for through pecuniary compensation, thereby warranting the extraordinary remedy of an injunction. Reference can be made to the decision of the Madras High Court in the case of Multichannel (India) Ltd. v. Kavitalaya Productions (P) Ltd .*
>
> *28. If there exists an acceptable standard for ascertaining the actual damages likely to be caused, such damages can be awarded at the stage of final adjudication, and in such cases, the grant of an injunction should be refused. Theoretically, when the monetary value of the claim can be precisely determined, there may be no irreparable injury, as compensation in terms of money would suffice. However, it is not merely the actual impossibility of computing compensation that determines irreparable injury; rather, the key consideration is whether monetary compensation alone would be sufficient to*

[27] 2025 SCC OnLine Del 692.

redress the harm caused by the denial of injunction. This assessment is inherently case-specific and must be made in light of the particular facts and circumstances of each case. Reference can be made to the decision in the cases of GMNCO Ltd. v. Ravi Gupta and Som Datta Bukders Ltd. v. Kanpur Jal Sansthan."

112. Therefore, on the conspectus of the settled position of law, it is crystal clear that all three conditions are *sine qua non* for attracting the rigors of Order XXXIX Rules 1 and 2 CPC.

113. In view of the aforesaid, this Court shall now analyse each of these three factors as delineated below.

Prima Facie Case

114. It has already been established above that the arbitration proceedings in the present case are *prima facie* vexatious and oppressive in nature. It stands confirmed by the ICC Court decision itself that the ICC Rules mandatorily require full and fair disclosure, to the extent that any doubt was to be resolved in favour of disclosure. The non-compliance on the part of the concerned co-arbitrator is also evident and admitted. In such a scenario, whether the said non-disclosure is meaningless or otherwise could only be decided once the suit proceeds further. The clauses relied upon by the defendant at this point in time would have no relevance as the aforesaid mechanism was to be honoured and complied with at the time of appointment of the arbitrator and no amount of justification could reset that clock, that too when the non-disclosure was deliberate and in defiance of the relevant Rules. Had he disclosed the necessary information regarding his prior appointment by the defendant and despite so, if the ICC would have held the opinion that he could still be appointed as a co-arbitrator, after considering the objections of the plaintiff in accordance with the Rules, the

position would have been different.

115. However, in the instant case, what is significant is the deliberate concealment of the mandatory disclosure. Even in the comments of the co-arbitrator Mr. Yeap, he acknowledges that had he disclosed the aforesaid aspect, the plaintiff would have objected to the same. This would clearly mean that the disclosure was capable of ousting him from being appointed as co-arbitrator, not just in the eyes of the parties but also in the eyes of the concerned co-arbitrator himself. Thus, the aforesaid facts, at this stage, are sufficient to indicate that plaintiff has a *prima facie* case for grant of an interim injunction.

Balance of Convenience

116. Insofar as the issue of *balance of convenience* is concerned, the continuation of the arbitration proceedings at this juncture would not only cause serious and irreparable prejudice to the plaintiff but would also be contrary to the larger interests of both the parties. The potential harm that would ensue from permitting the arbitral proceedings to proceed under a cloud of contested impartiality far outweighs any speculative inconvenience that may arise from their temporary suspension. If the arbitration proceedings were to continue without first addressing the plaintiff's legitimate apprehensions regarding the neutrality of the arbitrator, the resultant Award would be susceptible to challenge, thereby rendering the entire exercise futile and causing multiplicative delays and costs. Across the world, it is an accepted jurisprudential position that failure to disclose any element of potential bias could not only lead to a challenge against the arbitrator but could also lead to the annulment of the Award.

117. Moreover, the arbitration process in the present matter would

inevitably entail substantial expenditure of public funds and administrative resources, given that the plaintiff is a public sector undertaking. It is well-recognised that arbitral proceedings involve considerable financial outlay and institutional engagement. To proceed with such expenditure while a foundational objection concerning the impartiality of the Tribunal remains unresolved would not be prudent. Accordingly, the balance of convenience tilts overwhelmingly in favour of the plaintiff, whose interests are aligned with public accountability and fiscal responsibility.

118. Moreover, no demonstrable prejudice shall be caused to the defendant if the arbitration is deferred pending adjudication of the present proceedings. The plaintiff, being a public sector body, is subject to strict statutory and internal controls regarding its assets and functioning, and there is neither any allegation nor any material suggesting any apprehension of dissipation of assets or malafide conduct on its part. In the absence of any such risk, the equitable considerations favour a temporary restraint on the arbitration so as to preserve the sanctity and finality of the arbitral process and prevent an unnecessary consumption of public resources in a potentially voidable proceeding.

Irreparable injury

119. Moreover, grave and irreparable harm would be caused to the plaintiff if the arbitral proceedings are permitted to continue during the pendency of the present suit, particularly if the suit is ultimately decreed in favour of the plaintiff. Allowing the arbitration to proceed in parallel would not only render the outcome of this suit otiose but may also create a situation where the arbitral tribunal concludes the proceedings and renders an award before this Court can adjudicate upon the threshold issue of the arbitrator's

impartiality and jurisdiction. Such a scenario would undermine the very purpose of this suit and result in a multiplicity of proceedings, entailing considerable hardship, especially given the resources and time involved in institutional arbitration. The trajectory of the arbitral process over the past few days itself demonstrates an undue haste on the part of the Tribunal, owing to the continuous insistence of the defendant, raising the legitimate apprehension that the arbitration may reach a conclusion before the legal challenge pending before this Court is meaningfully adjudicated.

120. The conduct of the defendant across various forums further fortifies the apprehension of *mala fides* and tactical manipulation. The defendant has shown an unusual sense of urgency in seeking relief before the Singapore Court, has vehemently opposed the plaintiff's decision to withdraw its own anti-suit application before that Court, and has simultaneously pressed ahead with the arbitral proceedings in a manner that appears calculated to defeat the jurisdiction of this Court. The cumulative effect of these actions discloses a strategic attempt to short-circuit the legal process and to pre-empt the plaintiff's right to have its objections heard in an appropriate forum.

121. It is rightly submitted that if the injunction is not granted at this stage, the plaintiff would be placed in an untenable position; firstly, of being compelled to participate in an arbitral proceeding before a Tribunal whose impartiality is in serious doubt; and secondly, of being forced to submit to the jurisdiction of the High Court of Singapore, despite seeking withdrawal of the said proceedings. Such coercion would not only violate the principle of party autonomy but also severely prejudice the plaintiff's ability to defend its position in a fair and neutral environment. The very essence of injunctive

relief, namely, to prevent irreparable harm and preserve the subject matter of the suit, is clearly attracted in the facts of the present case. In view of the aforesaid, an irreparable injury would be caused if the interim injunction is not granted at this stage.

CONCLUSION

122. In view of the foregoing analysis, this Court has the jurisdiction to entertain this civil suit as the arbitration proceedings are *prima facie* vexatious and oppressive in nature. Moreover, since all three pre-conditions i.e., *prima facie* case, balance of convenience and irreparable injury, tilt in favour of the plaintiff, therefore, it is a fit case to grant an interim injunction.

123. Accordingly, the proceedings of the Arbitral Tribunal shall stand stayed till the pendency of the suit and the parties are injuncted from participating in the same.

124. In view of the aforesaid, the injunction application i.e. I.A. 9724/2025 stands disposed of.

CS(OS) 243/2025, I.A. 9723/2025 and I.A. 13166/2025

125. The plaint be registered as a suit. Issue summons. Mr. Kirat Singh Nagra, learned counsel on behalf of the defendant, is present. He confirms the receipt of the suit paperbook and waives the right of formal service of summons.

126. Written statements be filed within thirty days from the date of receipt of the suit paperbook. The defendant shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statements shall not be taken on record.

127. The plaintiff is at liberty to file replication thereto within thirty days

after the filing of the written statement. The replication shall be accompanied by an affidavit of admission/denial in respect of the documents filed by the defendant, failing which the replication shall not be taken on record.

128. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

129. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

130. List before the concerned Joint Registrar for completion of service and pleadings, marking of exhibits and admission/denial of documents on 06.10.2025.

PURUSHAINDRA KUMAR KAURAV, J

JULY 25, 2025/NC/@m