*Page 2199 - 2203* **DOI:** *https://doij.org/10.10000/IJLMH.113282*

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

**Volume 5 | Issue 3**

**2022**

# The Contrasting View of the Indian HC on Anti Arbitration Injunction

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**ABSTRACT**

*It is very common for two different High Courts to have differentiated views on the interpretation or execution of the law. In this paper, the author will present the contrasting view of Delhi High Court and Kolkata High Court on the subject of "Anti-Arbitration injunction". For the same purpose, the authors will provide case analysis of Bina Modi & Ors. v. Lalit Modi & Ors., and Balasore Alloys Ltd. v. Medima LLC.*

## I. INTRODUCTION

One of the major objects of the periodic amendments to Arbitration and Conciliation Act 1996 is to reduce the scope of judicial intervention in arbitral proceedings. It is evident that there is a trend of the Indian Judiciary which is to preserve the sanctity of arbitration agreements that parties enter voluntarily as part of their transactions. However, there is a parallel trend as well, which involves one party to seek court intervention to restrain another party from initiating or continuing arbitral proceedings, which is recognised as a remedy, and formally termed as "Anti-Arbitration Injunction".

The anti-suit injunctions are typical court-ordered injection which restrains parties from initiating or continuing litigation in foreign courts, an anti-arbitration injunction are specific orders which prohibits the parties from invoking the mechanism of arbitration for the purpose of dispute resolution. Theoretically, a court may grant this injunction when parties to dispute consent to choose another form of mechanism for the purpose of dispute resolution, but in reality, this injunctions stands in controversy as many times parties to a dispute approach judicial authority for this injunction for their own benefits, and if such injunction is passed then it only results in limiting and threatening the jurisdiction of the arbitral tribunal.

The paper will probe into the Indian Judiciary's take on the matter of "Anti-Arbitration Injection", which for the time being is contrasting as Delhi High Court holds the view different than Kolkata's High Court. Such contrasting view often leads to ambiguity for the

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 [ISSN 2581-5369]

interpretation of the subject matter and opens the door for the use of such ambiguity for the personal benefits of various parties involved in dispute resolution.

## II. CASE ANALYSIS: BINA MODI & ORS. V. LALIT MODI & ORS.

**Facts of the Case:**

A trust deed dated April 9, 2014, executed by Mr K. K. Modi as the managing trustee and Bina Modi, Lalit Modi, Charu Modi and Samir Modi as the trustees of the K. K. Modi Family Trust. Clause 36 of the trust deed provided arbitration to be a mechanism for dispute resolution if in any case, a dispute arises which will be subjected to Rules of Arbitration as per the International Chamber of Commerce (ICC), Singapore.

The dispute arose in a meeting of trustees held in Dubai in relation to the interpretation and implementation of the Restated Trust Deed, followed by Mr Lalit Modi invoking the arbitration clause and submitting for emergency matters before the International Court of Arbitration of the ICC Singapore, against the rest of the trustees (Bina Modi, Charu Modi, and Samir Modi). For the same purpose, an emergency arbitrator was appointed for the arbitral proceedings.

In the meantime, in respect of the arbitration proceedings initiated in Singapore, Bina Modi, Charu Modi, and Samir Modi (Plaintiffs) commenced anti-arbitration injunction at the Delhi HC, seeking a declaration of the arbitration proceedings to be unenforceable on the grounds of that the proceedings are contrary to the public policy. They sought a permanent injunction restraining the contesting defendant, Lalit Modi from proceeding with the arbitral proceedings. The plaintiff relayed on the Supreme Court's Decision in the case of Vimal Kishor Shah v. Jayesh Dinesh Shah, where it was held that disputes inter se trustees or between trustees on the one hand and beneficiaries on the other hand or between beneficiaries inter se, are not arbitral and are subject to the exclusive jurisdiction of courts under the Indian trust Act 1882.

**Decision:**

For the purpose of interpretation and cope of Anti Arbitration Injunction, the Delhi HC referred to SC Judgement in *Kvaerner Cementation India Limited v. Bajranglal Agarwal* and Delhi HC judgement of *Mcdonald's India Pvt. Ltd. v. Vikram Bakshi,* observed that courts in India in the recent years have refrained from dealing with or interfering in matters which falls under the jurisdiction and competence of an arbitral tribunal and instead have relegated parties to agitate the same before the respective arbitral tribunals.

Accordingly, the Delhi HC, held that under section 16 of Arbitration and Conciliation Act, an arbitral tribunal had competence and jurisdiction to decide questions of the validity of the

 [ISSN 2581-5369]

underlying arbitration agreement. The HC further held civil courts ought not to restrain an arbitral tribunal from exercising its statutory jurisdiction under Section 16 of the Arbitration Act in such cases. Further, the HC held that anti-suit injection cannot be applied to anti-arbitration injunction suits, since the autonomy of the tribunal to deal with a challenge to its jurisdiction under s/16 (the principle of Kompetenz-Kompetenz). While differentiating between an anti-suit injunction and anti-arbitration injunction, the court reiterated the principle of party autonomy under the Act and held that since the parties were from business backgrounds and had knowingly entered into executed the trust deed, they are obliged to be bound by the terms which include the arbitration clause. Further, the court also applied s/41(h) of Specific Relief Act, 1963 barred courts from granting any injunctions in cases where an equal and efficient remedy could be obtained through any other mode of proceedings, like proceedings under s/16 of Arbitration and Conciliation Act, in the present case.

Lastly, the HC held that the amended s/8 of the Arbitration and Conciliation Act did not change the bar on the Indian Courts to interfere in arbitrational matters and therefore, would not permit a judicial authority to decide the existence of the valid arbitration agreement, the power to check the validity falls upon the arbitral tribunal.

## III. *CASE ANALYSIS:* BALASORE ALLOYS LTD. V. MEDIMA LLC

**Facts of the case:**

The dispute arose between an Indian Company "Balasore Alloys Ltd." and a US company "Medima LLC", thus the matter of dispute was international in nature and the matter was directed towards International Commercial Arbitration. These two company in 2017 entered into an arrangement for the sale of high carbon ferrochrome manufactured by Balasore and the distribution for the same to be done exclusively by Medima LLC in the territories of Canada and US. When the dispute arose, the parties decided to address the same through arbitration. Following the same, the parties to dispute came to difference on the seat of arbitration. The difference was whether the seat of the arbitration is to be in India or before the International Chambers of Commerce in the United Kingdom. In accordance to the clause of the agency agreement of 2018 the jurisdiction for the arbitrations falls under the ICC but the terms and conditions of the purchase orders required application of Indian arbitration law with Kolkata as the venue for arbitration.

When the US company Medima LLC initiated arbitration proceedings at ICC, UK, the Balasore Alloys Ltd. approached the Calcutta HC for seeking to restrain on the UK arbitration and injunction against the foreign seated arbitration.

 [ISSN 2581-5369]

**Decision:**

The judgement passed by Hon'ble J. Shekhar B Saraf states "*courts in India have the power to grant anti-arbitration injunctions. However, this power is to be used sparingly with abundant caution, a caveat once previously stated in Devi Resource Ltd. (supra) by the learned division bench of this court. It is only under the circumstances enumerated in and exhaustively discussed in paragraph 24 of Modi Entertainment Network (supra) …. Which world merit the grant of anti-arbitration injunction and therefore, it's rare and controlled usage*."

To arrive at this conclusion, the court rejected the precedent of Bina Modi case by stating that the case did not have precedential values as it had not considered the SC ruling in SBP & Co. v. Patel Engineering.

## IV. CONCLUSION

The contrasting view on the subject matter of anti-arbitration injection by the two different schools of thoughts of Calcutta and Delhi HC accordingly only creates more ambiguity inside the subject matter. The personal opinion of the author is that the arbitral tribunal should have the competency of deciding the validity of an arbitral clause within a parent contract. This ambiguity might be exploited by the major corporate heads or further the delay in a dispute resolution. The purpose of arbitration is to provide a much flexible procedure for dispute resolution in comparison to traditional litigation. With most of the businesses going into the international spectrum, there will be an increase of arbitration clause, as it is much more preferred way of dispute resolution in the matters of International Commercial Disputes. The interference of the judicial authorities can backfire on the whole business growth as it will set a precedent of judicial authority interfering into an arbitral procedure which aimed to resolve a dispute. With resolution, in the long term, it will only add more damages to the contracting parties. As stated at the beginning of the article, the aim of the periodic amendments of the Arbitration and Conciliation Act 1996 is to sustain the independence of Arbitral Tribunal and to lessen the interference of judicial authorities.

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 [ISSN 2581-5369]

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