
EXTENT OF INFLUENCE OF PUBLIC POLICY OVER SUBJECT-MATTER ARBITRABILITY: THE ANUPAM MITTAL CASE

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ABSTRACT

The recent case of *Anupam Mittal* has resurfaced critical debates on public policy and arbitrability in cross-border arbitration. Through analyzing arbitrability under Indian law, the role of anti-suit and anti-anti-suit injunctions, and comparative practices like Hong Kong's treatment of shareholder disputes, this paper critically examines the tension between party autonomy and sovereign regulatory interests. The case underscores the growing need to balance pro-arbitration principles with the realities of enforceability under divergent public policy frameworks across the globe. It further attempts to solve this dilemma between different arbitration policies of various countries by exploring possible solutions.

Keywords: Arbitrability, Public Policy, International Arbitration, jurisdiction

Introduction

The case of *Anupam Mittal v. Westbridge Ventures II Investment Holdings* marks an essential benchmark in developing jurisprudence for international arbitration, particularly on the question of pre-award subject-matter arbitrability.¹ At its core, the dispute presents a conflict between the public policy of one jurisdiction and the arbitration-friendly ethos of another, raising critical questions about party autonomy, the scope of anti-suit injunctions, and the extent to which foreign non-arbitrability rules should influence arbitral proceedings seated elsewhere.²

The New York Convention or the convention on recognition and enforceability of foreign arbitral award, 1958 is the most widely accepted conventions in the context of international arbitration. The aim of this convention was to provide “common legislative standards” for recognition and enforcement of foreign arbitral awards to promote international arbitration. The convention widens the scope of recognition and enforceability of arbitral awards with very few exceptions or grounds for refusal to enforce a foreign award.

One such ground to refuse the enforcement of a foreign award is public policy. Article V(2)(b) of the convention lists public policy as a legitimate ground for refusal of recognition and enforcement of a foreign arbitral award. However, there is no singular widely accepted definition of public policy. Authors, arbitrators, and judges have often referred to autonomous international standards and definitions which frequently identifies “the most basic notions of morality and justice” as constituting public policy.³ Due to such ambiguity, precedents such as *Anupam Mittal* case become significant indicators of international jurisprudence around arbitrability and public policy.

In resolving this tension, the Singapore Court of Appeal introduced the “*composite approach*”, a novel framework that demands a dispute be arbitrable under both the law governing the

¹ R. Atkinson, “*Foreign Public Policy and The Law Governing Arbitration Agreements – Reflections on Anupam Mittal v Westbridge*”, Daily JUS (Available at: <https://dailyjus.com/world/2023/06/foreign-public-policy-and-the-law-governing-arbitration-agreements-few-reflections-on-anupam-mittal-v-westbridge>).

² Michael Hwang, Gökce Uyar, et al., “*The Enka v. Chubb/Anupam Mittal v. Westbridge Controversies: Why Not the Hong Kong (Partial) Solution?*”, in Maxi Scherer (ed), *Journal of International Arbitration*, Kluwer Law International 2024, Volume 41, Issue 5), pp. 531 – 558.

³ M. Sasson, “*Public Policy: Is This Catch-All Provision Relevant to the Legitimacy of International Commercial Arbitration?*” Kluwer Arbitration Blog (Available on: <https://arbitrationblog.kluwerarbitration.com/2022/06/18/public-policy-is-this-catch-all-provision-relevant-to-the-legitimacy-of-international-commercial-arbitration/>)

arbitration agreement and the law of the seat.⁴ This decision differs from Singapore's traditionally pro-arbitration stance and reshapes transnational arbitration strategy by expanding the role of foreign public policy at the enforcement and pre-award stages interchangeably.

The dispute arose between Anupam Mittal, founder of the Indian company operating Shaadi.com, and Westbridge, a Mauritius-based private equity fund. Their Shareholders' Agreement (SHA), governed by Indian law, included an arbitration clause for ICC arbitration in Singapore. When Mittal initiated proceedings before the National Company Law Tribunal (NCLT) in India, alleging oppression and mismanagement, Westbridge sought an anti-suit injunction from Singaporean courts, which was duly granted. After this, Mittal filed an application for an anti-anti-suit Injunction in the Bombay High Court.

DATE	EVENT
03/03/21	Anupam Mittal filed oppression and mismanagement petition before NCLT, Mumbai.
15/03/21	Westbridge obtained ex parte Anti-Suit Injunction (ASI) from Singapore High Court restraining NCLT proceedings.
18/03/21	Anupam Mittal filed civil suit before Bombay High Court seeking anti-enforcement injunction against Singapore ASI.
31/03/21	Mittal applied before Singapore High Court to vacate the ex parte ASI.
26/10/21	Singapore High Court confirmed the ASI permanently (after hearing both sides).

⁴ S. Ahuja, A. Mal, A. Dash, "Tit for Tat: The Anupam Mittal saga continues with anti-anti suit injunction and anti-arbitration injunction from India" (Available on: <https://www.aoshearman.com/en/insights/ao-shearman-on-arbitration/tit-for-tat-the-anupam-mittal-saga-continues-anti-anti-suit-injunction-anti-arbitration-injunction>).

15/11/21	Mittal filed appeal before Singapore Court of Appeal against the permanent ASI.
06/01/23	Singapore Court of Appeal upheld permanent ASI; composite test formulated.
11/09/23	Bombay High Court granted Anti-ASI (restraining enforcement of Singapore ASI).
15/09/23	NCLT Mumbai stayed the ongoing Singapore-seated ICC arbitration (Anti-Arbitration Injunction).

The following litigation across Singapore and Indian forums turned into sharply contradicting judicial approaches, leading to a broader debate on arbitrability, public policy, and enforcement in international commercial arbitration.⁵

Research Methodology

This research employs a doctrinal legal methodology, primarily relying on qualitative analysis of case laws, statutory frameworks, international conventions, and scholarly commentaries to structure this research. The central framework examines how courts from different jurisdictions navigate the inconsistencies in enforcement jurisdiction across international arbitral awards while respecting the evolving contours of public policy in other jurisdictions. The focal judgment for the research was carefully chosen to be *Anupam Mittal v. Westbridge Ventures II Investment Holdings*, due to its relevance to Indian jurisprudence on the subject of enforcing pre-arbitral awards.

The study is analytical and comparative in nature. It critically analyzes judicial reasoning across different legal systems of India and Singapore, to understand their divergent approaches to arbitrability, enforcement, and public policy. The analysis also incorporates a normative

⁵ *Anupam Mittal v. People Interactive (India) Pvt. Ltd. and others*, High Court of Bombay, Interim Application No. 1010 of 2021 in Suit No. 95 of 2021, 11 September 2023.

dimension by evaluating how India can recalibrate its public policy exception to enhance its standing as a pro-arbitration jurisdiction.

The research is grounded in primary sources, including Statutes such as the Arbitration and Conciliation Act, 1996 (India), and the International Arbitration Act (Singapore), International instruments like the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Model Law, and Judicial decisions from Indian and Singaporean courts, including appellate and high court rulings. In addition, secondary sources such as academic journal articles, legal commentaries, law commission reports, and practitioner notes are used to provide context and support critical perspectives.

Issues around Public Policy

The increasing intricacy of globalization and international commercial arbitration has amplified the necessity of harmonizing party autonomy with state sovereignty, especially when enforcing arbitral rulings in jurisdictions with differing public policy standards. Singapore's courts affirmed the arbitrability of shareholder disputes, whilst Indian courts opposed enforcement based on public policy, referencing non-arbitrability under Indian law.

This jurisdictional conflict poses significant obstacles to the consistent enforcement of arbitral rulings and jeopardizes the predictability and dependability of arbitration as a method for resolving disputes. The issue is exacerbated by the broad and varied interpretations of public policy in enforcement procedures, especially in India, which has traditionally fluctuated between pro-enforcement and protectionist stances.

Consequently, it is imperative to investigate how courts ought to reconcile the execution of cross-border arbitral rulings with the necessity of maintaining shifting domestic interpretations of public policy. The Indian legal system must address the difficulty of adjusting its public policy theory to conform to global arbitration standards while preserving valid statute protections.

Research Objectives

This study aims to critically examine the extent to which courts should balance the enforcement of cross-border arbitral awards with the necessity of upholding evolving notions of public policy, while minimizing judicial interference. The research will evaluate effect of varied

public policies of different jurisdictions on the enforcement of foreign arbitral awards, with a focused analysis on India. Further, the paper seeks to explore how India can recalibrate its public policy exception in arbitration law to enhance its position as a pro-arbitration jurisdiction in the global legal landscape.

Analysis

Recognition of Public Policy

Other global arbitration laws as well as Indian laws recognize Public policy as one of the most crucial grounds for challenging the enforceability of awards⁶. Section 34 of The Arbitration and Conciliation Act⁷ allows domestic awards to be set aside if they are found to be in conflict with India's public policy. Similarly, Section 48⁸ provides that a foreign arbitral award may be denied enforcement on the same grounds. Article 36 of the UNCITRAL Model Law⁹ also states that a state can refuse enforcement of an award if it violates public policy.

The contours of "*public policy*" were judicially clarified in the landmark case of *Renusagar Power Co. Ltd. v. General Electric Co.*¹⁰, where the Supreme Court identified three specific grounds on which enforcement may be refused- if it contradicts-

- (i) the fundamental policy of Indian law,
- (ii) the interests of India, or
- (iii) justice or morality.

Singapore's stance

Singapore's pro-arbitration framework is designed to enhance its reputation as a hub for international arbitration. However, its judgment in this case inadvertently undermines the

⁶ Martin Gebauer, Felix Berner, "*Public Policy*", Max Planck Encyclopedia of Public international law <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1448?prd=MPIL>; Margaret Moses, "*Public Policy: National, International and Transnational*", <http://arbitrationblog.kluwerarbitration.com/2018/11/12/public-policy-national-international-and-transnational/>.

⁷ § 34, The Arbitration and Conciliation Act No. 26 of 1996.

⁸ § 48, Supra note (6).

⁹ United Nations, 1985, *UNCITRAL model law on international commercial arbitration* (A/40/17, annexe I), United Nations Commission on International Trade Law (UNCITRAL) Yearbook 1985.

¹⁰ *Renusagar Power Plant Ltd. v. General Electric Co.*, AIR 1994 SC 860.

enforceability of arbitral awards by failing to account for India's public policy considerations, where the award is intended to be enforced.¹¹ It placed reliance on *Tomulgen Holdings case*¹², where it was held that such disputes are arbitrable under the Singapore Act¹³.

However, the rationale in *Tomulgen* was grounded in the specific statutory context of the Singapore Companies Act. Whether the same reasoning can be extended to entities not governed by that statute remains a matter of debate¹⁴. This case raises the issue of whether an arbitral award on a subject matter that is considered non-arbitrable under the enforcement State's law must be denied enforcement on the grounds of public policy.

India's perspective

Disputes involving oppression and mismanagement under Section 241¹⁵ are not arbitrable in India since these proceedings are inherently in the nature of actions in rem. They affect not only the disputing parties but also the rights of other stakeholders, such as shareholders and creditors. Because arbitration is a consensual and private dispute resolution mechanism, it is unsuitable for matters involving rights *in rem*, which are traditionally reserved for adjudication by public forums¹⁶.

The Bombay High Court's judgement noted that arbitral awards dealing with Oppression and Mismanagement disputes would be contrary to Indian public policy and thus unenforceable under Section 48¹⁷. This was supported by the arbitration clause in the shareholders' agreement, which expressly made enforcement subject to the provisions of the Indian Arbitration Act. Accordingly, the Court held that the applicant's only appropriate forum for redress was the NCLT¹⁸.

¹¹ Anupam Mittal v Westbridge Ventures II Investment Holdings, [2023] SGCA 1.

¹² Tomulgen Holdings Ltd and another v Silica Investors Ltd and other appeals, [2015] SGCA 57.

¹³ Singapore Companies Act, 29 December 1967.

¹⁴ Darren Low Jun Jie, 'The Composite Approach to Issues of Non-Arbitrability at The Pre-Award And Post-Award Stage: Anupam Mittal V. Westbridge Ventures II Investment Holdings', [2023] SGCA, (2023), 19, Asian International Arbitration Journal, Issue 1, pp. 83-94, <https://kluwerlawonline.com/journalarticle/Asian+International+Arbitration+Journal/19.1/AIAJ2024003>.

¹⁵ § 241, The Companies Act, Act no. 18 of 2013.

¹⁶ Yash Pathak and V. Harini, "*The Public Policy Exception: Sword or Shield in Indian Arbitration*", October 28, 2024, NLIU Law Review, <https://nliulawreview.nliu.ac.in/blog/the-public-policy-exception-sword-or-shield-in-indian-arbitration/>.

¹⁷ § 48, Supra note (6).

¹⁸ Anupam Mittal v. People Interactive (India) Pvt. Ltd. & Ors, IA No. 1010/2021 in Suit No. 95/2021.

A Divergent View on Public Policy

The legal framework seeks to reduce judicial interference in arbitral proceedings and preserve the autonomy of parties and arbitral proceedings. However, Courts often rely on public policy as a ground to intervene or delay enforcement. This scrutiny, although designed to uphold the essential legal standards, can undermine the efforts to streamline ADR and position India as a preferred seat of arbitration for International Commercial Arbitration.

The **Law Commission** has repeatedly emphasised limiting the scope of public policy as a ground for setting aside arbitral awards to promote India's standing in global arbitration. A more constrained application of this doctrine is expected to ease the burden on parties seeking to enforce arbitral awards. Thereby enhancing India's appeal as a preferred seat for conducting arbitration.

However, the public policy exception must not be interpreted so broadly that it threatens the very efficacy of arbitration. Historically, courts have faced criticism for using this concept in unpredictable ways, as famously mentioned in *Richardson v. Mellish*¹⁹, where public policy was described as an "**unruly horse**." Such expansive and inconsistent use can result in arbitrary decisions and jeopardise the reliability of the arbitral process.

The **246th Report of the Law Commission**²⁰ highlighted that frequent challenges to arbitral awards on public policy grounds could lead to excessive court interference and undermine arbitration. The report criticised decisions such as ONGC case²¹ and Associate Builders case²², where the courts broadened the interpretation of public policy, thereby weakening the autonomy of arbitral proceedings. The Commission advocated that Section 34 should be applied narrowly, focusing strictly on procedural fairness and not on re-evaluating the merits of the dispute.

On the other hand, there are a few progressive judgments²³ that considers the international nature of the dispute. This reflects the necessity for a differentiated approach to arbitrability in

¹⁹ *Richardson v. Mellish*, (1824) 130 Eng. Rep. 294, 303.

²⁰ Government of India, Law Commission of India, Report No. 246.

²¹ Oil and Natural Gas Corporation Ltd. Vs. Western GECO International Ltd., (Civil Appeal No. 3415 of 2007).

²² Associate Builders v. Delhi Development Authority, 2014 (4) ARBLR 307(SC).

²³ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).

cross-border matters.

The *Anupam Mittal* matter illustrates this complex dynamic. One increasingly pertinent example is the treatment of intellectual property (IP) disputes. Many leading commercial jurisdictions are now acknowledging the arbitrability of IP-related matters. This shift reduces the likelihood of enforcement. Moreover, even where public policy objections persist, enforcement may still be granted in cases where the award involves monetary relief, such as a payment obligation under a licensing agreement, provided that the enforcing jurisdiction does not treat such awards as contrary to its public policy.²⁴

Such awards may thus be described as “**limping awards**”, partially enforceable in jurisdictions that accept the arbitrability of the subject matter, while unenforceable in others.²⁵ Nevertheless, these awards retain practical utility in jurisdictions where the award-debtor has attachable assets and where the award does not violate public policy. For instance, an IP-related award may be enforced in countries that do not object to such disputes being resolved through arbitration, even though enforcement in countries like India, where the arbitrability of IP matters remains unsettled, may be difficult. Therefore, as legal systems continue to modernise and adapt to the needs of international commerce, there is potential for greater harmonisation in treating these disputes.

Conclusion

The *Anupam Mittal* case offers a significant perspective for analysing the changing dynamics of arbitrability, public policy, and enforcement within the realm of international commercial arbitration. This highlights the essential conflict between the principles of party autonomy and judicial oversight, especially in instances where the enforcement of awards involves public interests or statutory remedies. Singapore's “composite approach” aims to ensure enforceability by taking into account the laws of both the seat and the governing jurisdiction. However, it inadvertently introduces a layer of uncertainty, particularly when the public policy of the enforcement jurisdiction diverges significantly from that of the arbitral seat.

²⁴ Malhotra, O.P. (2007) “*The Scope of Public Policy under the Arbitration and Conciliation Act, 1996*,” National Law School of India Review, Vol. 19: Issue 2, Article 2.

²⁵ *Supra*, at (2).

The reliance of India on public policy to preclude the arbitrability of shareholder disputes exemplifies a judicial approach that prioritizes the protection of domestic corporate governance issues. Nonetheless, the recurrent reference to public policy as an impediment to enforcement poses a risk of undermining India's ambition to establish itself as a globally recognized, arbitration-friendly jurisdiction. In order to address this issue, it is imperative for India to adopt a more focused, internationally harmonized interpretation of public policy, as informed by the 246th Law Commission Report and the evolving practices observed globally.

Ultimately, enhanced convergence in the comprehension and implementation of public policy across jurisdictions has the potential to restore predictability and bolster confidence in cross-border arbitration.