TERRITORIALITY AND EXCEPTION: RECONCILING INDIAN COURTS' ROLE IN FOREIGN-SEATED ARBITRATION DISPUTES

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ABSTRACT

This article examines the limits of Indian judicial intervention in arbitration proceedings where the juridical seat is contested or situated abroad. Using the litigation between Engineering Projects (India) Ltd. and MSA Global LLC as a focal point, it distinguishes the legal basis for jurisdiction from the exceptional circumstances that may justify an anti-arbitration injunction. It evaluates the territorial framework under the Arbitration and Conciliation Act, 1996, the significance of arbitral-seat determination, the availability of institutional and supervisory remedies, and the risks of competing judicial orders. It proposes a four-stage analytical framework requiring a recognised jurisdictional basis, particularised proof of exceptional harm, consideration of alternative remedies, and proportionate relief consistent with international comity. The article argues that allegations of procedural unfairness cannot independently create jurisdiction, and that carefully limited judicial intervention is necessary to preserve both procedural integrity and the predictability of international commercial arbitration.

Keywords: International Commercial Arbitration; Anti-Arbitration Injunctions; Juridical Seat; Territoriality; Judicial Intervention.

I. Introduction: The limits of territoriality

International commercial arbitration rests on a fundamental bargain: parties obtain a private mechanism for resolving disputes, while national courts provide support within legally defined limits. That bargain becomes difficult to maintain when a party alleges that the arbitral process itself has become oppressive and seeks an injunction from a court outside the supervisory jurisdiction of the seat.

The controversy in Engineering Projects (India) Ltd. v. MSA Global LLC (Oman)[1] brings this tension into focus. On 25 July 2025, the Delhi High Court granted an interim anti-arbitration injunction after concerns arose over an arbitrator's failure to disclose a previous professional engagement. The dispute raises a question extending beyond arbitrator impartiality: when, if ever, can an Indian court interrupt arbitral proceedings without undermining the territorial allocation of judicial authority?

This article argues that the answer requires separating two inquiries often conflated in anti-arbitration litigation: whether a court possesses jurisdiction to grant relief, and whether the circumstances justify exercising it. Territoriality should remain the starting point, but the analysis must also account for exceptional procedural abuse, available remedies and international comity. A serious allegation cannot substitute for a legal basis for intervention.

II. Territoriality and the seat-based allocation of judicial authority

The juridical seat ordinarily identifies the legal system governing an arbitration's procedural supervision. It is distinct from the venue of hearings and is central to determining which courts exercise supervisory authority.

In Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc[2], the Supreme Court affirmed the territorial framework of the Arbitration and Conciliation Act, 1996. Section 2(2) generally confines Part I to arbitrations seated in India, subject to its express proviso. That proviso extends specified provisions, including Sections 9 and 27 and Sections 37(1)(a) and 37(3), to qualifying foreign-seated international commercial arbitrations, subject to statutory conditions and the parties' agreement.

1Engineering Projects (India) Ltd. v. MSA Global LLC (Oman), Delhi High Court (July 25, 2025).
2Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 S.C.C. 552 (India).

This limited extension does not create a general power to restrain foreign arbitral proceedings. Section 5 further provides that judicial intervention in matters governed by Part I is restricted to circumstances provided for in that Part. The framework reflects Article 5 of the UNCITRAL Model Law on International Commercial Arbitration[3], which limits court intervention to instances contemplated by the Model Law.

Territoriality, however, does not resolve every question concerning civil-court jurisdiction. The issue is whether the particular relief sought is legally available, not simply whether an Indian court has connections with the dispute. The distinction between jurisdiction and its exercise is therefore essential: a court's concern about procedural unfairness cannot, without more, displace the statutory allocation of authority.

III. *EPI v. MSA Global*: When does protection become interference?

The dispute arose from an ICC arbitration concerning a subcontract for a border-security project. Engineering Projects challenged co-arbitrator Andre Yeap after discovering his previous involvement in another arbitration involving MSA Global's principal. The ICC rejected the challenge, although it acknowledged that the non-disclosure was regrettable. Engineering Projects subsequently sought an anti-arbitration injunction before the Delhi High Court.

On 25 July 2025, the Single Judge granted interim relief, finding grounds to prevent the arbitration from continuing in circumstances considered oppressive. On 12 December 2025, the Division Bench upheld the injunction, reasoning that the arbitration agreement designated New Delhi as the juridical seat, rather than Singapore, which had been selected as the place of arbitration by the ICC. The seat determination was central: if India was the seat, the jurisdictional analysis differed fundamentally from that applicable to a foreign-seated arbitration.

The Supreme Court's order of 16 March 2026[4] altered the procedural position. It set aside the Division Bench judgment and remitted the appeal for fresh consideration after Yeap resigned from the tribunal. The Court left all contentions open and expressed no opinion on the merits.

3UNCITRAL Model Law on International Commercial Arbitration art. 5 (1985, amended 2006), https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration.
4Engineering Projects (India) Ltd. v. MSA Global LLC (Oman), Supreme Court of India, Order (Mar. 16, 2026), https://api.sci.gov.in/supremecourt/2026/10810/10810_2026_1_21_69540_Order_16-Mar-2026.pdf .

Accordingly, neither the earlier Division Bench reasoning nor the interim injunction should be treated as a final Supreme Court determination of the jurisdictional issue.

A separate enforcement proceeding must not be conflated with this appeal. On 17 April 2026, the Delhi High Court refused enforcement of the partial award in *MSA Global LLC (Oman) v. Engineering Projects (India) Ltd.*[5], under Section 48 of the Arbitration Act. That decision concerned objections to enforcement, not the remanded appeal over the anti-arbitration injunction. The distinction matters because pre-award restraint and post-award enforcement involve different statutory questions.

The case exposes a genuine difficulty. Arbitrator non-disclosure may undermine confidence in the process, but allowing every serious challenge to trigger parallel litigation would weaken arbitration's procedural autonomy. The decisive question is not whether an allegation deserves attention, but which forum is legally competent to address it and whether an injunction is necessary.

IV. The doctrinal boundary: jurisdiction, statutory limits and alternative remedies

Indian law does not treat anti-arbitration injunctions as conceptually impossible. In *Himachal Sorang Power Pvt. Ltd. v. NCC Infrastructure Holdings Ltd.*[6], the Delhi High Court recognised that courts should be slow to halt arbitration, while acknowledging that relief may be justified where proceedings are vexatious or oppressive. The decision emphasises the importance of supporting the chosen adjudicatory process and considering whether the arbitral tribunal or supervisory court can address the complaint.

That principle does not, however, establish an unrestricted exception to territoriality. The existence of a civil suit, or reliance on Sections 9 and 151 of the Code of Civil Procedure, 1908, does not automatically overcome the statutory framework governing arbitration. Section 9 CPC recognises civil jurisdiction unless barred; Section 151 preserves inherent powers. Neither should be assumed to authorise relief that circumvents the Arbitration Act's limits.

The distinction is between an exceptional remedy and an independent source of jurisdiction.

5Engineering Projects (India) Ltd. v. MSA Global LLC (Oman), Supreme Court of India, Order (Mar. 16, 2026), https://api.sci.gov.in/supremecourt/2026/10810/10810_2026_1_21_69540_Order_16-Mar-2026.pdf .
6Himachal Sorang Power Pvt. Ltd. v. NCC Infrastructure Holdings Ltd., Delhi High Court, 2019 SCC OnLine Del 7575.

Vexatiousness or oppression may support the exercise of an existing power; those labels cannot themselves create one. Equally, a challenge to an arbitrator's disclosure is not automatically proof that the entire arbitration is legally untenable. Institutional procedures and remedies before the supervisory court must be considered before another court intervenes.

V. A proposed four-stage test for anti-arbitration injunctions

The following framework is a proposed analytical test, not a statement of settled Indian law.

First, establish the seat and jurisdictional basis**.** The court must interpret the arbitration agreement to determine the juridical seat and identify the specific legal source authorising the relief. The seat question must precede any assessment of exceptional circumstances.

Second, demand particularised evidence of exceptional harm. The applicant must demonstrate conduct that seriously compromises the integrity of the proceedings or renders their continuation oppressive. A disputed procedural decision or a bare allegation of bias should not suffice.

Third, examine alternative remedies. The court should assess institutional challenge mechanisms, procedures available before the tribunal and relief from courts at the seat. Intervention should not become a means of obtaining a second opinion on an issue already entrusted to the arbitral framework.

Fourth, apply necessity, proportionality and comity. Any injunction must be no broader than necessary to address demonstrated harm, account for prejudice to the opposing party and respect the supervisory role of the seat. Where legally permissible, targeted relief should be preferred to halting the arbitration altogether.

The sequence is critical. Exceptional circumstances may explain why relief is desirable, but they cannot replace the prior requirement of jurisdiction. This framework seeks to preserve a narrow avenue for protection without converting anti-arbitration litigation into routine parallel supervision.

VI. Comparative insight and the case for measured reform

Comparative law reinforces the need for restraint. Article 5 of the UNCITRAL Model Law

limits judicial intervention to circumstances it contemplates, while Article II(3) of the New York Convention[7] requires courts to refer parties to arbitration, subject to its stated exceptions. Neither instrument independently supplies Indian courts with a general power to restrain foreign-seated proceedings.

In *MSA Global LLC (Oman) v. Engineering Projects (India) Ltd*.[8], the Singapore High Court granted relief against continuation of the Indian proceedings. The decision illustrates how parallel litigation can generate competing judicial responses, but it cannot determine the limits of Indian jurisdiction.

The immediate need is judicial clarification of the legal basis and threshold for anti-arbitration relief, particularly where the seat itself is disputed. Legislative reform should follow only if uncertainty persists. Any reform must preserve access to justified remedies without eroding the territorial structure of international arbitration.

VII. Conclusion

EPI v. MSA Global illustrates why procedural fairness and territoriality must be reconciled through legal principle rather than broad appeals to justice. The seat ordinarily allocates supervisory authority, while exceptional abuse may warrant scrutiny. But an allegation's seriousness cannot itself establish jurisdiction or justify an injunction.

A principled approach should require a recognised legal basis, demonstrable exceptional harm, consideration of alternative remedies and proportionate relief. Such a framework would preserve the possibility of judicial protection while maintaining the predictability and autonomy on which international commercial arbitration depends.

7Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II(3), June 10, 1958, 330 U.N.T.S. 3, https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards .
8MSA Global LLC (Oman) v. Engineering Projects (India) Ltd., [2025] SGHC 199 (Sing.), https://www.elitigation.sg/gd/s/2025_SGHC_199 .