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

Reserved on: 5 August 2024
Pronounced on: 20 August 2024

\+ O.M.P.(I) (COMM.) 214/2024 & I.A. 32362/2024, I.A. 32363/2024, I.A. 35026/2024

HONASA CONSUMER LIMITED .....Petitioner
Through: Mr. Rajiv Nayar, Sr. Advocate with Ms. Amita Gupta Katragadda, Mr. Omar Ahmad, Mr. Vikram Shah, Mr. Nayani Aggarwal, Mr. Karan Motiani, Ms. Isha Choudhary, Ms. Aashna Gupta, Mr. Manthan Nagpal and Ms. Kamakshi Puri, Advs.

versus

RSM GENERAL TRADING LLC .....Respondent
Through: Mr. Mudit Sharma, Ms. Nandini Sharma, Mr. Parvez A. Khan and Mr. Abhishek Rathi, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% 20.08.2024

A Prefatory Note

1. This is one of the worst instances of abuse of the legal process, in commercial litigation, that this Court has had the misfortune of encountering.

2. The petitioner and respondent entered into an Authorized Distributorship Agreement[1], whereunder the respondent was to distribute the petitioner's products in the Middle East and Africa. The contract specifically envisaged resolution of disputes by arbitration, to be governed by the Arbitration and Conciliation Act, 1996[2], with New Delhi as the arbitral venue. The contract separately contained a clause conferring exclusive jurisdiction, in respect of all matters relating to the contract, on courts in New Delhi. The contract also specified that it was to be interpreted in accordance with Indian law which was, therefore, both the governing and the curial law.

3. The respondent, in clear and *mala fide* breach of all these covenants, filed a suit in the Court of First Instance, Dubai[3], alleging breach of the ADA by the petitioner, and is now the holder of a decree by the Dubai Court which, applying Dubai law to the dispute, has found the petitioner guilty of breach of the ADA and mulcted the petitioner with damages of AED 25,071,991, equivalent to ₹ 57,17,65,947 (at the conversion rate of ₹ 22.80 to 1 AED as applicable today).

4. The respondent acknowledges, in its written submissions, without as much as blinking an eyelid, that, by this stratagem, it has rendered the arbitration agreement, as well as all other contractual covenants between the parties, unworkable. To quote the exact submission of the respondent:

[1] "ADA" hereinafter
[2] "the 1996 Act" hereinafter
[3] "the Dubai Court" hereinafter

> "In the present case, *there cannot be any arbitration* as there has been a determination by a Court of Law and an arbitrator cannot be Court of Appeal."
>
> (Emphasis supplied)

Thus, there is a candid acknowledgement, by the respondent, that, by approaching the Dubai Court in stark violation both of the arbitration as well as the exclusive jurisdiction clauses in the ADA, the respondent has rendered the arbitration agreement unworkable.

5. The petitioner has moved this Court under Section 9[4] of the 1996 Act, seeking an injunction against the respondent from enforcing the decree of the Dubai Court, so that it can proceed to invoke the contractually envisaged remedy of arbitration to resolve its disputes with the respondent. The respondent contends, however, that no such order can be passed under Section 9 of the 1996 Act, and that the

[4] **9. Interim measures, etc. by Court**. –
(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a Court:—
(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
(ii) for an interim measure of protection in respect of any of the following matters, namely:—
(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
(b) securing the amount in dispute in the arbitration;
(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the Court to be just and convenient,
and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.
(2) Where, before the commencement of the arbitral proceedings, a court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.
(3) Once the arbitral tribunal has been constituted, the court shall not entertain an application under sub-section (1), unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.

Court can only sit back and watch, helplessly, the brutal guillotine, by the respondent, of the right of the petitioner to invoke the contractually envisaged arbitral mechanism, to which the petitioner and respondent had, *ad idem*, appended their signatures.

6. A pointer to the *mala fides* with which the respondent acted is to be found in the wholly unnecessary impleadment, by the respondent, of certain entities situated in the UAE, and including allegations of collusion between the petitioner and the said entities, so as to justify approaching the Dubai Court. This attempt has, however, backfired, as the Dubai Court has specifically found the allegation of collusion to be unfounded, and that none of the defendants in the suit, except the petitioner, is liable towards the respondent, and has, therefore, confirmed damages only against the petitioner. This further underscores the legally abusive nature of the respondent's acts.

7. The manner in which the respondent acted, in manifest breach of the covenants of the ADA, and with the transparent intention of frustrating a possible arbitration, is shocking, to say the least.

Facts

8. <u>The contract between the parties</u>

8.1 On 30 July 2020, the petitioner and the respondent entered into an ADA. Clauses 2, 2.1, 2.2, 4.5, 15, 15.1, 15.2, 16, 16.3, 22, 22.1 (iii), 24.5(ii) and (iii) and 24.7 of the ADA read thus:

"2. **APPOINTMENT OF THE DISTRIBUTOR**

2.1 The Company hereby grants to the Distributor the right to market and distribute the Products in the Territory in compliance with the brand guidelines of the Company and all Applicable Laws including those relating to the procurement, storage, sale and advertising of the Products. The specific commercial terms are more fully set out in the **Schedule 1** hereto.

2.2 The Distributor agrees to act in such capacity and exercise its rights and perform its obligations in accordance with the terms and conditions of this Agreement. The Distributor undertakes to comply with certain conditions prescribed by the Company in relation to the distribution of the Products, which may be supplemented by the Company from time to time and shall sell and market the Products only within the Territory. Any additional/ future conditions will be implemented through mutual discussion and agreement.

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4.5 The description, quantity and price of the Products shall be set forth in the Purchase Orders. Upon execution, each Purchase Order shall be governed by the terms and conditions of this Agreement, which shall be incorporated therein by reference and the terms and conditions set out in the relevant Purchase Order. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions set out in the relevant Purchase Order, the terms and conditions of this Agreement shall take precedence to the extent of such inconsistency. Where a term in a Purchase Order which is explicitly agreed by the Company and expressly states to take precedence over a clause in the Agreement, such a term of the Purchase Order will take precedence.

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15. **LEGAL RELATIONSHIP**

15.1 During the continuance of this Agreement, the Distributor shall be entitled to use the title **"MAMAEARTH AUTHORISED DISTRIBUTOR"** but such use shall be in accordance with the Company's policies in effect from time to time. Before using such title (whether on Distributor's business stationery, advertising material or elsewhere), the Distributor shall submit to the Company proof prints and such other details as the company may require. The Company may in its own discretion grant or withhold the permission for such proposed use.

15.2 This Agreement defines the legal relationship between the Company and the Distributor and their respective responsibilities in the purchase and sale of Products and nothing in this Agreement shall render the Distributor a partner or agent of the Company. The Distributor is an independent contractor buying and selling the Products in its own name and at its own risk. The Distributor shall not bind or purport to bind the Company to any obligation nor expose the Company to any liability nor pledge or purport to pledge the Company's credit. Further no Party shall have any right, power or authority to act for or to bind or commit to assume any obligation or responsibility on behalf of any other Party.

16. **TERMINATION**

16.3 Notwithstanding anything else contained herein, this Agreement may be terminated by either Party at any time without any cause, by the giving of notice in writing to the other at least 90 (ninety) days prior to the effective date of such termination.

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22. **REPRESENTATIONS AND WARRANTIES**

22.1 Each Party represents and warrants to the other Party that:

(i) It has all legal right, power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;

(ii) The execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate and other actions and will not violate or contravene its charter documents, any material provisions or requirements of any government instrumentality or any Applicable Law or Approvals, or violate or contravene any provisions of any agreement, arrangement, document or instrument to which it is a party or by which it or its property may be bound or affected.

(iii) this Agreement constitutes the valid and binding obligation of such Party, enforceable in accordance with the terms hereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally;

(iv) no representation or warranty by such Party contained herein or in any other agreement, document or

instrument furnished by or on behalf of such Party to the other Party contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances in which it was made;

(v) there is no litigation pending or threatened to which it is a party that, if adversely determined, would have a material adverse effect on its financial condition or prospects or business or its ability to perform its obligations under this Agreement;

(vi) The representations and warranties contained in Clause 22.1 hereof are given and made on and as of the date hereof and shall survive the execution and delivery of this Agreement and no Party shall take any action or permit action to be taken which would cause any of such representations or warranties to be no longer true or correct in any respect during the subsistence of this Agreement.

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24.5(ii) Dispute Resolution

(ii) *In the event of any question, dispute or difference arising under this Agreement or in connection therewith, the same shall be referred to the sole Arbitrator, to be appointed by the managing director of the Company.* There will be no objection to any such appointment on the ground that the arbitrator has been appointed by the managing director of the Company to this Agreement. The award of the arbitrator shall be final and binding on both the Parties of the Agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the managing director of the Company shall appoint another person to act as an arbitrator in accordance with terms of the Agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

(iii) *The arbitration shall be subject to Indian Arbitration and Conciliation Act, 1996 or amendments thereof. The arbitration proceedings shall be conducted in English. The venue of Arbitration shall be New Delhi, India.*

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24.7 Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of India and shall be subject to the exclusive jurisdiction of the New Delhi courts."

(Emphasis supplied)

8.2 The ADA was amended by addendum dated 27 May 2021. Clauses 3.5 and 3.6 of the Addendum read thus:

"3.5. The provisions of Clauses 12 and 24 of the Agreement shall apply mutatis mutandis to this Amendment,

3.6. The Patties agree that this Amendment shall modify the Agreement only to the limited extent as specifically set out herein. Except as specifically and expressly amended by this Amendment all other provisions of the Agreement shall remain unchanged and in full force and effect and shall continue to remain applicable and binding on the Parties."

8.3 Thus, under the ADA, the respondent undertook to market and distribute the petitioner's product in Middle East and Africa. The ADA was executed in New Delhi on a stamp paper purchased at New Delhi. Clause 24.5 envisages the resolution of dispute arising under the ADA by arbitration, to be conducted as per the 1996 Act and fixes the venue of arbitration at New Delhi. Clause 24.7 specifies that the ADA would be governed by and would be construed in accordance with the laws of India and also confers exclusive jurisdiction in matters relating to the ADA, on Courts in New Delhi. Clause 3.5 of the addendum made these covenants applicable, *mutatis mutandis*, to the addendum as well.

9. By letter dated 17 October 2022, addressed to the respondent, the petitioner, invoking Clause 16.3, terminated the ADA w.e.f.[5] 17 January 2023. Following this, the petitioner addressed e-mails to the respondent on 18 October, 2022, 9 November 2022, 14 November 2022 and 24 November 2022, seeking full and final reconciliation of the dispute between them. These e-mails did not elicit any response form the respondent.

10. The Dubai suit

10.1 On 25 November 2022, the respondent filed Case 446/2022 before the Dubai Court, in which the order forming subject matter of dispute in the present petition has come to be passed on 16 May 2024.

10.2 The respondent included, as the second defendant in the Dubai Suit, Honasa Consumer General Trading LLC[6], a subsidiary company of the petitioner based in Dubai.

10.3 The following paragraphs, from the Dubai Suit, merit reproduction *in extenso*:

> "**Subject Matter and Merits of the Subject Case:**
>
> First: Under an Exclusive Authorized Distributor Agreement dated 30/07/2020, entered into between the Plaintiff and the First Defendant, registered with the government competent departments in India. Under this agreement, Plaintiff was entrusted with marketing, distributing, and selling cosmetics and children's products and many goods and services belonging to the First Defendant Company as its sole and exclusive distributor in the

[5] with effect from
[6] "Honasa Trading" hereinafter

United Arab Emirates, the Middle East and Africa. This is done through the private distribution and …

Second: It was agreed between the two parties that the contract term is (36) months -three years - starting from 30/07/2020, it may be terminated by both parties when the reasons stipulated in Article (16) thereof are available, provided that this termination is preceded by a notification to the party whosoever desires to do so, a term of (60) days is given to eliminate this reason and settle it, so that if that period expires and this reason remains, the termination should be made.

Third: On 27/05/2021, the previously executed approved Distribution Agreement was amended by increasing the preliminary Agreement period from three years to five years, commencing from 01/05/2021. Subsequently, in Clause (2/4) was added to it the commitment of the First…

Fourth: *In the middle of 2022, the First Defendant company breached the concluded contract with unreasonable grounds*. This is also contrary to the contract clauses and amendments thereto with non-competition, and making the matter exclusive to the Plaintiff, when it has established a company that operates under the same name and trademark as the First Defendant, which is the Second Defendant Company.

Fifth: On 17/10/2022, the Second Defendant sent a letter of termination to the Plaintiff without reasonable justification, pretending and relying on the third paragraph of Article No. (16) of the agreement

Sixth: *Whereas the act of the First Defendant involved breach of the duration of the contract and breaching as well all the obligations assigned to it, such as respecting the commercial nature of the contracts, and as its execution requires incurring the Plaintiff high costs*. Where the Defendant's contractual breaches came as follows:

Seventh: As a result of the breach of the First and Second Defendant, and after the Plaintiff submitted a huge investment amount, as well as, prepared and installed all the supplies of operation, marketing, selling, advertising, and concluding contracts with third parties in considering that it is an authorized distributor of the first defendant, the Plaintiff suffered huge damages. It is impossible to address such damages due to the Defendants' breach of the contract period and breaching of the contractual obligations as a result of their complicity to cause damages to the Plaintiff Company as indicated above."

10.4 The respondent raised only one final claim in the suit, which was described thus:

Final Claims	
Claim No.	**Claim Description**
1	In view of the above: We kindly request the honorable court as follows: To admit the registration of the subject case, pay its prescribed fee, and setting the nearest hearing for its examination, and notify the two Defendants to appear to hear the following judgment: **First**: Before adjudication of the case: To assign an expert specialized in the field of commercial agencies and distribution contracts to discuss the elements of the case, *the breaches and deficiencies of the Defendants to implement the contract examine the serious damages incurred against the Plaintiff.* **Second**: Regarding the subject matter of the case: To bind the two Defendants to pay the Plaintiff an amount of **AED 45,000,000** (Forty Five *Million Dirhams*) in *compensation* for the financial and moral damages incurred *as a result of the breach of the contract by the two Defendants*, in addition to the legal interest at the rate of 5% from the date of the final judgment until the full payment. Third: To bind the Defendants to pay fees, expenses, attorney's fees

(Emphasis supplied).

11. Mr. Rajiv Nayar, learned Senior Counsel for the petitioner, points out that the Dubai Suit was entirely predicated on the allegation that the petitioner had breached the ADA, resulting in the respondent being entitled to damages. This position was, in fact, conceded by Mr.

Sameer Jain, who had appeared on behalf of the respondent before this Court on 5 July 2024. Thereafter, however, the respondent has been represented by Mr. Mudit Sharma, learned Counsel, who seeks to distance himself from the concession made by Mr. Sameer Jain. According to Mr. Sharma, Mr. Jain is not correct, and there are allegations, in the Dubai suit, other than the allegation of breach of the ADA by the petitioner. This submission would be addressed presently.

12. Reply filed by the petitioner in the Dubai suit

12.1 The petitioner, on receiving notice from the Dubai Court, filed its reply to the Dubai Suit on 8 February 2023. Specific objections to the maintainability of the Dubai Suit were raised by the petitioner, *inter alia* on the ground that the ADA contained clauses envisaging resolution of disputes thereunder by arbitration, to be conducted as per the 1996 Act with the venue of arbitration fixed at New Delhi; requiring the agreement to be governed by and construed in accordance with Indian law; and conferring, on Courts in New Delhi, exclusive jurisdiction to deal with all disputes arising under the ADA. It was further contended that the inclusion of Honasa Trading as the second defendant in the Dubai Suit was a mischievous attempt at invoking, perforce, the jurisdiction of the Dubai Court, whereas, in actual fact, Honasa Trading had nothing to do with the dispute.

12.2 The petitioner, therefore, prayed before the Dubai Court, that the Dubai Suit be dismissed with costs.

13. Subsequently, on 16 March 2023, the respondent impleaded, in the Dubai Suit, two additional defendants; Mr. Tarun Aggarwal, Manager of Honasa Trading, stating that he was the person responsible for sending the termination notice dated 17 October 2022 and; M H Projects LLC, with whom the petitioner had contracted consequent on termination of the ADA with the respondent.

14. The judgment of the Dubai Court

14.1 By judgment dated 16 May 2024, the Dubai Court decreed the Dubai Suit in favour of the respondent and against the petitioner. It is unnecessary to reproduce the entire judgment. Suffice it to state that it is not disputed, even by learned Counsel for respondent, that the Dubai Court applied Dubai law to the dispute and held that, as per Dubai law, the petitioner was guilty of breach of the ADA, entitling the respondent to damages.

14.2 At the very outset of the judgment, the Dubai Court has noted the request of the respondent "to appoint an expert specialized in the field of commercial agencies and distribution contracts to investigate the elements of the case, to ascertain the Defendants' breach of contract and to examine the severe damages incurred by the Plaintiff". On merits, the Dubai Court has ruled as under:

> "On 17/10/2022, the Second Defendant issued a termination notice to the Plaintiff without justification, citing Clause three of article (16) of the agreement, despite the illegality of this action, which explicitly states: "Notwithstanding anything else contained herein, either party may terminate this agreement at any time without cause by providing written notice to the other party at least 10 days prior to such termination." The true understanding of this Clause

relates to the parties' right to terminate the agreement upon the specific conditions listed in article (16). Furthermore, this notice conflicts with the agreement's amendment, which requires a pre-termination notice and a 12-month remediation period for any breaches or violations, making the termination notice invalid and non-compliant with the agreed timelines.

Additionally, none of the conditions justifying termination were met. The First Defendant's actions constituted a breach of the contract's duration, violating all contractual obligations, which involved incurring substantial financial costs by the Plaintiff to honor the agreement. The contractual breaches by the First Defendant include: (1) colluding with the Second Defendant to undertake the same tasks and activities as the Plaintiff, violating the exclusivity Clause in Clause (4/2) of the agreement's addendum, which entails the First Defendant's *commitment not to engage commercially or communicate with any person involved in similar activities as the Plaintiff; (2) appointing other distributors in various Gulf countries during the contract period, contrary to Clause 1/2 of the agreement and 3/4 of its addendum, as evidenced by the attached correspondences, and appointing another distributor in Qatar*; (3) violating the contract duration as specified in the addendum, where the initial term is five years starting from 1/5/2021, without justification or grounds for termination, contrary to the agreed termination mechanism and the 12-month remediation period for any errors; (4) the First Defendant personally relocating stock from the Plaintiff's warehouses to a new partner and distributor, despite the purchase and full payment of those goods; (5) supplying products that did not meet the required quality standards and were expired, based on consumption standards recognized by relevant authorities."

(Emphasis supplied)

14.3 In holding that the petitioner was guilty of breach of contract entitling the respondent to damages, the Dubai Court relied on the opinion of the experts appointed by it. This reliance is reflected in the following passages from the judgment of the Dubai Court:

"In execution of the previous preliminary judgment, the appointed expert carried out their assigned task and submitted a report concluding that it was evident the First Defendant appointed the Plaintiff (the distributor) to market, distribute, and sell products using the First Defendant's trademarks according to the distribution agreement dated 20/07/2020. Subsequently, both parties agreed to

amend some commercial terms of the agreement, leading to the execution of an amendment to the authorized distributor agreement on 27/5/2021. The expert could not clearly and accurately determine whether the Plaintiff breached their obligations under the exclusive distribution agreement and its amendment mentioned above. The expert clarified that the First Defendant property terminated the agreement based on a termination notice dated 17/10/2022, in accordance with the Clause allowing for termination (16.3), confirming the validity and enforcement of the termination by the First Defendant. After reviewing the submitted documents, the expert found them unclear, making it difficult to provide a precise and clear technical opinion on the extent of the damage suffered by the Plaintiff. Based on the available documents and evidence, the expert could not provide a definitive and accurate opinion on the breaches by either party. It was not clear to the expert if either party had breached their obligations under the exclusive distribution agreement dated 20/07/2020, as amended on 27/05/2021.

On 16/10/2023, the Plaintiff's representative submitted a defense memorandum requesting the court to: first, disregard the expert's conclusions, treating them as null and void, particularly as the assigned tasks did not provide any clear information for the court to rely on the report as evidence in the case. Second, to appoint a different expert specialized in the field of commercial agencies and trademarks or appoint a specialized dual committee from the relevant authorities in the commercial agencies section of the Ministry of Economy in Dubai, with a new retainer, to re-examine the elements of the lawsuit in light of the submitted objections and all the documents previously submitted by the plaintiff in their explanatory and rebuttal memoranda. The aims were to establish: 1. The legality of terminating the distribution contract with the Plaintiff by the Defendants. 2.Whether the First Defendant adhered to the contract terms regarding termination and notified the Plaintiff of any breach and allowed a remediation period of twelve months without rectifying this breach. 3. Whether the First Defendant appointed a new distributor without adhering to the contract terms and the termination mechanism, and whether the new distributor colluded in this knowing fully of the Plaintiff's role as the distributor of those products, continuing to market, distribute, and sell the First Defendant's products labeled with the Plaintiff's name, which constitutes a blatant infringement. 4. The Plaintiff’s entitlement to the claimed compensation amount for the material and moral damages suffered due to the breach of contract terms. Additionally, the Plaintiff requested, according to Article 1/121 of Law of Evidence No. 35 of 2022, to summon the expert to discuss their report's conclusions, particularly regarding the termination's validity, and to confront them with the contractual

obligation in the contract amendment and the necessity of notification by the First Defendant of the Plaintiff's breaches and adherence to the remediation period. This was necessary since the Defendants had not presented any document proving that the First Defendant notified and adhered to the twelve-month remediation period stipulated in the contract amendment, especially since the expert explicitly stated in section 3/5 of their conclusions: "The expert clarified that based on the submitted documents and available evidence ... ". The expert cannot provide a final opinion on whether any breaches occurred by either party in the lawsuit. It was not clear to the expert if either party had breached their obligations within the scope and boundaries of the exclusive distribution agreement dated 20/07/2020 and amended on 27/05/2021. Thirdly, on the subject of the lawsuit: ruling in favor of the Plaintiffs requests as stated in their original lawsuit and their incidental requests, and ordering the Defendants to pay the fees, expenses, and attorney's fees.

On 16/11/2023, the court ruled in a public hearing, before deciding on the inclusion request, defenses, and the main issue, to reassign the task to the previously appointed expert or another expert if necessary. The expert was to examine the Plaintiffs objections detailed in their rebuttal memorandum against the final expert report, submitted to this court on 16110/2023. Accordingly, the appointed expert carried out the assigned task and submitted a report concluding that there were commercial transactions between the First Defendant and “Abu Issa Holding" (before the termination notice date), constituting a breach of the distribution agreement dated 20/07/2020 and the amended authorized distributor agreement dated 27/05/2021, which granted the Plaintiff the right to distribute and market the First Defendant's products within the agreed geographical area (Middle East and Africa). The expert clarified that the First Defendant terminated the agreement correctly and in accordance with the termination notice dated 17*I*10/2022, following the Clause allowing for termination (16.3), confirming the validity and enforcement of the termination by the First Defendant. The expert opined that the objections/violations concerning the sale of the First Defendant's product (Mama Earth) without removing the Plaintiff's label, which remains on the products to date, fall outside the scope of the agreement between the parties. The termination period expired under the notice dated 17/10/2022, making any post-termination violation an independent act requiring separate investigation and handling outside the scope of this lawsuit. Additionally, there were attached correspondences from the Plaintiff regarding administrative and organizational aspects of the relationship between the parties, which the expert did not consider to be violations or breaches of the agreement. Upon examining the documents, the expert found a letter of no objection

> dated 11/04/2022 from the First Defendant appointing M H Projects LLC (the newly included party) as the authorized distributor of the Mama Earth brand in the UAE, effective 19/01/2023, after the legal termination notice period ending on 17/01/2023. The expert left the matter of these facts for the Court's discretion. Additionally, the expert noted an email sent on 28/09/2022 by (Vijith – Plaintiff's representative), showing the email address (Plaintiff's domain rsmtrades), indicating the communication and offer originated from the Plaintiff, not the First Defendant. The company name was not "Rabha"; rather, the recipient was named "Rabha." Furthermore, there were correspondences from the First Defendant to a company in Oman (Enhance Group) and a company in Yemen (Al Jabal Group) regarding offering the First Defendant's products, and communications/understandings between the First Defendant and "Saria" regarding distribution within Saudi Arabia. According to Clause (2.4) of the amendment to the authorized distributor agreement dated 27/05/2021, "provided that the distributor fulfills its obligations under paragraph 4 of Schedule 1, the company agrees that it will not commercially engage or negotiate with any person engaging in similar activities to benefit from the services as stipulated under this agreement, and the distributor must act as the exclusive distributor of the products in the territory." The expert left the determination of the breach to the court's discretion."

Indian law, by which the ADA was contractually governed, needless to say, can never leave the determination of the existence of breach to any "expert", and any such decision would invalidate the judgment in its entirety, as suffering from serious abdication, by the Court, of its judicial function.

14.4 Significantly, the Dubai Court, in the following passage from its judgment, exonerated, completely, all defendants in the suit, except the present petitioner:

> "Similarly, *there is no proof that the Plaintiffs replacement was a result of collusion between the First Defendant (the principal) and the new distribution agent/second joined party (MH Projects LLC), pursuant to Article 10 of the Commercial Transactions Law. Consequently,* ***the effects of terminating and amending the exclusive distribution agreement do not extend to the second and***

third Defendants and the joined parties, but only to the first Defendant company*, which is the other party to the contractual relationship with the Plaintiff *Therefore, the second and third Defendants and the joined parties are not liable for the claimed compensation, making the objection raised by them valid. Consequently, the court rules the dismissal of the case against them for lack of proper standing, without the need to explicitly state this in the ruling."

(Emphasis supplied)

14.5 The judgment concludes thus:

> "The court ruled as follows:
>
> 1. Acceptance of the inclusion of both Tarun Agarwal Jaipur Shankar Agarwal and M H Projects LLC as parties to the lawsuit, procedurally.
>
> 2. Regarding the substance of the case and the ruling: The First Defendant is hereby obligated to pay the Plaintiff an amount totaling AED 25,071.991 as compensation for the damages incurred, along with legal interest at a rate of 5%, starting from the date of issuance of the final judgment until full payment. The First Defendant is also ordered to cover the fees, expenses, and an additional one thousand dirhams for attorney's fees, while rejecting any other requests."

14.6 Thus, even as per the Dubai Court, the inclusion of defendants other than the present petitioner in the suit was unnecessary, and none of the said defendants was liable in any manner towards the respondent -plaintiff. The petitioner alone has been found complicit in the alleged breach of the ADA, and it is the petitioner alone who has been directed to pay damages.

15. The petitioner has filed statutory Appeal 984/2024, challenging the judgment of the Dubai Court, before the Dubai Court of Appeal. The appeal is presently pending.

16. In the meanwhile, the respondent has moved the Dubai Court for executing the judgment in the Dubai Suit.

17. It is in these circumstances that the petitioner has filed the present petition before this Court under Section 9 of the 1996 Act, seeking the following reliefs:

> "It is, therefore, most respectfully prayed that, for the reasons stated hereinabove and pending the arbitration proceedings between the parties, this Hon'ble Court may be pleased to: -
>
> (a) Pass an order of injunction prohibiting the Respondent from initiating and/or continuing any and all proceedings in relation to and arising out of the Authorized Distributor Agreement before the Courts/other statutory authorities of Dubai/ United Arab Emirates;
>
> (b) Pass an order of injunction prohibiting the Respondent from initiating and/or continuing any actions or applications in connection with the enforcement or interpretation of the judgement passed by the Courts of First Instance, Dubai on May 16, 2024 (i.e., the Dubai Judgment) in India and elsewhere;
>
> (c) Pass an order of injunction prohibiting the Respondent from initiating any actions or applications in connection with the enforcement or interpretation or performance of the terms of the Authorized Distributor Agreement or any provision thereof including the termination or invalidity of the same, in violation of the Arbitration Agreement and/ or the exclusive jurisdiction clause of the Authorized Distributor Agreement;
>
> (d) Pass an order that in the event the Petitioner is directed by the Dubai Court or any other Court to deposit an amount or provide security pursuant to the Dubai Judgment, the Respondent shall, within one week of passing of the said order/ direction, secure such amount by depositing an equivalent amount with the Registrar General of this Hon'ble Court, and the Petitioner be allowed to withdraw the said amount; and
>
> (e) Pass such other order and/or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

18. *Vide* order dated 5 July 2024, this Court granted *ad interim* protection to the petitioner, by restraining the respondent from proceeding to execute the decree of the Dubai Court against the petitioner, within the territorial jurisdiction of this Court or elsewhere. That interim protection continues till date.

19. However, given the importance of the issue, the matter was finally heard with the consent of the learned counsel for the parties, after permitting the learned counsel to place on record written submissions.

20. I have heard Mr. Rajiv Nayar, learned Senior Counsel for the petitioner, and Mr. Mudit Sharma, learned counsel for the respondent, at length. I have also perused the written submissions filed by learned counsel.

Rival Contentions

21. Submissions of Mr. Rajiv Nayar for the petitioner

21.1 Mr. Nayar submits that the respondent's act of instituting the Dubai suit against the petitioner was clearly oppressive and vexatious. The suit was instituted in rank violation of Clauses 24.5(ii) and (iii) and 24.7 of the ADA, which had also been made applicable to the Addendum dated 27 May 2021. The allegation of the respondent against the petitioner, in the Dubai suit, was a breach of the ADA, and nothing else. The *lis*, therefore, fell entirely within the four corners of

the ADA, which was contractually required to be construed in accordance with Indian law. The ADA also conferred exclusive jurisdiction in matters relating to the ADA on courts in New Delhi, and envisaged resolution of disputes by arbitration, seated in New Delhi. The very institution of the suit in Dubai was, therefore, in *mala fide* breach of the ADA, and was an obvious attempt to frustrate the petitioner from seeking relief against the respondent in arbitration by presenting the petitioner with a *fait accompli*. Where the proceedings in the foreign court are *ex facie* oppressive and vexatious, an anti-suit injunction must follow, submits Mr. Nayar, relying on para 24(2) of ***Modi Entertainment Network v WSG Cricket PTE***[7] and para 30 of ***Essel Sports Pvt Ltd v BCCI***[8]**.**

21.2 In an oblique attempt to justify approaching the Dubai Court, the respondent submits Mr. Nayar, had mischievously impleaded, as defendants in the Dubai Suit, entities who had nothing to do with the dispute, as has been found by the Dubai Court itself. This is apparent from the fact that the decree that has ultimately come to be passed is only against the petitioner, and the Dubai Court has returned a specific finding that none of the other defendants before it were liable in any way towards the respondent. In support of his contention that the respondent could not, by thus impleading irrelevant parties, frustrate the arbitration agreement, Mr. Nayar relies on para 50 of the judgment of the Supreme Court in ***Booz Allen & Hamilton Inc v SBI Home Finance Ltd***[9]**,** paras 103 and 107 of ***Rakesh Malhotra v Rajendra***

[7] **(2003) 4 SCC 341**
[8] **2011 SCC OnLine Del 1629**
[9] **(2011) 5 SCC 532**

Kumar Malhotra[10] and paras 12 to 14 of ***Damco India Pvt Ltd v Samtel Glass Ltd***[11].

21.3 Mr. Nayar further submits that, even if the defendants impleaded in the Dubai Suit were to be presumed to be necessary or relevant parties, that would still not justify the respondent instituting the suit in Dubai, ignoring the arbitration clause in the ADA, as the impleading of non-signatories in arbitral proceedings is permissible, and the Arbitral Tribunal is well within its authority to allow such impleadment in an appropriate case. These decisions were required, as per the provisions of the ADA, to be taken by the Arbitral Tribunal in accordance with the 1996 Act. Mr. Nayar relies, in this context, on paras 10 and 15 of ***Sumitomo Heavy Industries Ltd v ONGC Ltd***[12], and paras 71 to 73 of ***Reliance Industries Ltd v UOI***[13]. For the proposition that the Arbitral Tribunal was possessed of the jurisdiction to decide on the issue of inclusion or exclusion of non-signatories, Mr. Nayar cites paras 169 and 170.12 of ***Cox & Kings Ltd v SAP India Pvt Ltd***[14]**,** para 14 of ***Vistrat Real Estates Private Limited v Asian Hotels North Ltd***[15], and paras 15 and 18 of ***Moneywise Financial Services Pvt Ltd v Dilip Jain***[16]**.** Even if, for any reason, the dispute raised by the respondent in the Dubai suit were to be regarded as not amenable to arbitration because of the necessity to include non-signatories, the respondent would, nonetheless, have, in view of the exclusive jurisdiction Clause 24.7 in the ADA, to pursue its remedy

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[10] **2014 SCC OnLine Bom 1146**
[11] **2013 SCC OnLine Del 446**
[12] **(1998) 1 SCC 305**
[13] **(2014) 7 SCC 603**
[14] **(2024) 4 SCC 1**
[15] **2022 SCC OnLine Del 1139**
[16] **2024 SCC OnLine Del 1896**

before the civil court in New Delhi by way of original proceedings, and not in Dubai.

21.4 The decree of the Dubai Court, submits Mr. Nayar, effectively frustrates the arbitration clause in the ADA and renders it impossible for the petitioner to seek resolution of the dispute in accordance therewith. It is, therefore, oppressive and vexatious to the petitioner, justifying grant of an anti-execution injunction by this Court. Reliance has been placed, in this context, on para 96 of the judgment of this Court in ***Interdigital Technology Corporation v Xiaomi Corporation***[17].

21.5 Mr. Nayar points out that the petitioner has, at all times, opposed the assumption of jurisdiction by the Dubai Court, over the dispute raised by the respondent in the Dubai Suit. It was pointed out, before the Dubai Court, that the ADA required disputes arising within its confines to be resolved by arbitration, seated in New Delhi, and that there was a separate exclusive jurisdiction clause in the ADA, conferring exclusive jurisdiction, in respect of all matters relating to the ADA, on courts in New Delhi. It could not, therefore, be said that the petitioner had in any way acquiesced to the proceedings before the Dubai Court.

21.6 Nor, submits Mr. Nayar, could the petitioner be said to have approached this Court after undue delay as, had the petitioner approached this Court while the Dubai suit was pending, there was every likelihood of the petitioner being told to convince the Dubai

Court that it had no jurisdiction, in the first instance. That attempt having failed, the petitioner has no option but to approach this Court.

21.7 Mr. Nayar submits that the Dubai Court judgment is inherently unsustainable in law. The Dubai Court has admittedly applied Dubai law to the dispute, in the teeth of Clause 24.7 of the ADA. There is, in fact, no reference, in the entire judgment of the Dubai Court, to Clause 24.7, which confers exclusive jurisdiction in matters relating to the ADA on courts in New Delhi. Rather, without adverting to the said clause, the judgment of the Dubai court holds that it has territorial jurisdiction, as the ADA was executed within the Dubai Emirate.

21.8 Mr. Nayar further submits that the petitioner is entitled to seek, in proceedings under Section 9 of the 1996 Act, enforcement of the arbitration clause in the ADA. Mr. Nayar has placed reliance, in this context, on the judgment of the Supreme Court in ***Bhatia International v Bulk Trading SA***[18] and submits that, applying the law declared in that case, the petitioner can invoke Section 9 for all reliefs except stay of the arbitration clause itself. He specifically refers, in this context, to the stipulation, following Section 9(1)(e), conferring, on the Section 9 Court, "the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it". Mr. Nayar further places reliance, in support of his submissions, on the decisions in ***OT Africa Line Ltd v Magic Sportswear Corp***[19]**,** ***Gray v Hurley***[20]**,** ***Deutsche Bank AG v Highland Crusader Offshore***

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[17] **2021 SCC OnLine Del 2424**
[18] **(2002) 4 SCC 105**
[19] **[2005] EWCA Civ 710**
[20] **[2019] EWHA 1972 (QB)**

Partners LP[21], ***Specialised Vessel Services Ltd v MOP Marine Nigeria Ltd***[22], ***Times Trading Corporation v National Bank of Fujairah***[23] and the judgment dated 1 November 2021 of the High Court of Bombay in ***Majmudar & Partners v Michael Marshall***[24]. Relying on paras 42 to 50 of ***Essar House Pvt Ltd v Arcellor Mittal Nippon Steel India Ltd***[25] and paras 15 to 17 of ***Supertrack Hotels Pvt Ltd v Friends Motels Pvt Ltd***[26], Mr. Nayar submits that any such interim measure of protection, as may be "just and convenient", may be granted under Section 9, if the circumstances so warrant.

21.9 The principle of comity of courts, submits Mr. Nayar, cannot inhibit grant of relief in a case such as this, where the foreign court is clearly exercising jurisdiction in violation of the terms of the agreement between the parties. Besides, where parties, by agreement, confer exclusive jurisdiction on one court, the principle of comity of courts advices effectuating the agreement and conferring jurisdiction on the court on which jurisdiction has been conferred *ad idem* by the parties. Mr. Nayar cites, in this context, para 8 of the judgment of the Court of Appeal in ***AIG Europe SA v John Wood Group PLC***[27] . He further relies on paras 96, 98 and 127 of the judgment of this Court in ***Interdigital Technology Corporation*** to submit that the principle of comity would play little part where injunction is sought against action which is oppressive to the applicant.

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[21] **[2009] EWCA Civ 725**
[22] **[2021] EWHC 333 (Comm)**
[23] **[2020] EWHC 1078 (Comm)**
[24] **10-CARBPL-24347-2021**
[25] **2022 SCC OnLine SC 1219**
[26] **2017 SCC OnLine Del 11662**
[27] **[2022] EWCA Civ 781**

22. Submissions of Mr. Mudit Sharma for the respondent

22.1 Responding to the submissions of Mr. Nayar, Mr. Mudit Sharma, learned Counsel for the respondent, advances a preliminary objection to the maintainability of the present petition. He submits that, as the Court exercising jurisdiction under Section 9 does not enjoy the power of a civil court, it cannot grant an anti-enforcement injunction, injuncting the enforcement of a decree passed by a foreign court. He relies, for this purpose, on ***Fuerst Day Lawson Ltd v Jindal Exports Ltd***[28], which declares the 1996 Act to be a self-contained code. He also relies on Section 5[29] of the 1996 Act, which specifically proscribes intervention, by any judicial authority, save and except as provided in Part I thereof. The court exercising jurisdiction under Section 9 cannot, therefore, act *ex debito justitiae*, beyond the confines of the jurisdiction that Section 9 confers.

22.2 Orders passed under Section 9 have, moreover, he submits, to be in aid of the final claim in the arbitral proceedings. The anti-enforcement injunction that the petitioner seeks is not in aid of any final claim in any proposed arbitral proceedings. Para 10 of the notice dated 25 July 2024, issued by the petitioner to the respondent under Section 21 of the 1996 Act reads thus:

> "10. In view of the aforesaid facts and circumstances, it is clear that, RSM, is in breach of the following terms of the Agreement:
>
> a. Clause 16.3 whereby either party to the Agreement had

[28] **(2011) 8 SCC 333**

[29] **5. Extent of judicial intervention**. – Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

the right to terminate the Agreement at any time without cause, by giving due notice;

b. Clause 24.5(i) whereby the parties had a good faith obligation to resolve the dispute by way of mutual discussion;

c. Clause 24.5(ii) and Clause 24.5(iii) whereby the parties agreed that in the event the disputes are not resolved through mutual discussion, the disputes were to be settled through arbitration which is subject to the Arbitration Act and the venue of the arbitration is New Delhi; and

d. Clause 24.7 whereby the parties expressly agreed that the Agreement will be governed by Indian laws and shall be subject to the exclusive jurisdiction of the New Delhi courts."

The reliefs that the petitioner seeks, submits Mr. Sharma, are enumerated in para 10 of the above notice, and the anti-enforcement injunction that the petitioner was seeking cannot be said to be in aid of any of the said reliefs.

22.3 In any case, submits Mr. Sharma, there can be no question of any arbitration at this stage, as the *lis* between the parties stands adjudicated by the Dubai Court, competently acting within its jurisdiction, and an appeal, against the said decision, at the instance of the petitioner, is pending. Any re-agitation of the issue already decided by the Dubai Court would be barred by constructive *res judicata*.

22.4 Pointing out, further, that Section 17 of the 1996 Act confers, on the arbitral tribunal, the same powers as may be exercised by the court under Section 9, Mr. Sharma submits that, if Section 9 were to be regarded as empowering the court to stay the enforcement of the

decree passed by the Dubai Court, the same power would be available with an arbitrator under Section 17 which, obviously, would be a legally unacceptable consequence.

22.5 In support of these submissions, Mr. Mudit Sharma places reliance on paras 43, 46, 48, 56, 60 and 61 of the judgment of the UK Supreme Court in ***Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP***[30].

22.6 Mr. Sharma further submits that Article 8 of Federal Law (6) of 2018, governing arbitration in the UAE[31], which is conceptually similar to Section 8[32] of the 1996 Act, has been taken into consideration by the Dubai Court in its judgment, as an application under the said Article had been filed by the petitioner before it. Article 8(2) of the UAE Arbitration Act does not preclude a party from commencing arbitration during the pendency of the suit or the Article 8 application. There was, therefore, submits Mr. Sharma, no embargo on the petitioner commencing arbitral proceedings even

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[30] **[2011] EWCA Civ 647**

[31] For the sake of convenience referred to as "the UAE Arbitration Act"

[32] **8. Power to refer parties to arbitration where there is an arbitration agreement**. –

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

while the Dubai suit was pending, if it was being subjected to such great prejudice. Having not chosen to do so, the petitioner cannot now seek to interdict enforcement of the Dubai decree.

22.7 The circumstances in which a foreign judgment can be regarded as not conclusive, submits Mr. Sharma, are exhaustively enumerated in Section 13[33] of the Code of Civil Procedure, 1908[34]. Section 44A[35] of the CPC deals with execution of a decree passed by a superior court in a reciprocating territory. Dubai, he submits, is a reciprocating territory, and the Dubai Court is a "superior court" within the meaning of Section 44A of the CPC. Grant of the relief sought by petitioner in this petition would, therefore, result in this Court, in exercise of the jurisdiction vested in it by Section 9 of the 1996 Act, usurping the

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[33] **13. When foreign judgment not conclusive**. – A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except –

(a) where it has not been pronounced by a Court of competent jurisdiction;
(b) where it has not been given on the merits of the case;
(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
(d) where the proceedings in which the judgment was obtained are opposed to natural justice;
(e) where it has been obtained by fraud;
(f) where it sustains a claim founded on a breach of any law in force in India.

[34] "the CPC"

[35] **44-A. Execution of decrees passed by Courts in reciprocating territory**. –

(1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in [80][India] as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of Section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the court that the decree falls within any of the exceptions specified in clauses (a) to (f) of Section 13.

Explanation 1.—"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.—"Decree" with reference to a superior court means any decree or Judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or Judgment.

jurisdiction otherwise vested in the executing Court by Sections 13 and 44A of the CPC.

22.8 The submissions of the petitioner, in fact, points out Mr. Sharma, directly invoke clauses (c) and (f) of Section 13 of the CPC. The pre-emptive decision on the enforceability of the decree passed by the Dubai Court, as sought by the petitioner, would amount to a finding by this Court under Section 13 of the CPC, while exercising jurisdiction under Section 9 of the 1996 Act. This is impermissible. Once a verdict stood rendered by the Dubai court, its enforceability has to be decided on the anvil of Sections 13 and 44A of the CPC. To that extent, the stage at which the present petition has been preferred by the petitioner is also of relevance. The petitioner cannot use Section 9 of the 1996 Act to stymie proceedings for execution of the decree passed by the Dubai court.

22.9 Mr. Sharma also invokes the principle of comity of courts which, he submits, would militate against grant of the reliefs sought by the petitioner. Mr. Sharma places reliance, in this context, on the judgment of the US Court of Appeal in ***Chevron Corporation v Hugo Gerardo Camacho Naranjo, Ja***[36].

22.10 Mr. Sharma disputes Mr. Nayar's submission that the *lis* in the Dubai suit fell entirely within the corners of the ADA, or the arbitration clause contained therein. According to Mr. Sharma, the dispute in the Dubai suit travelled beyond mere performance or non-performance of the ADA. It was not, therefore, as though by

instituting the suit in the Dubai Court, the respondent was agitating an issue which was squarely within the four corners of the ADA. Reliance is placed, in this context, on following passages from the decree of the Dubai Court:

> "Considering that the actions of the first defendant constituted a breach of the contract for the entire duration of the agreement and a violation of all its obligations, which include respecting the commercial nature of these contracts and the financial costs incurred by the plaintiff, *it is stated that the contractual breaches committed by the first defendant are as follows: (1) The first defendant, in collusion with the second defendant, agreed for the latter to perform the same tasks and functions as the plaintiff, which constitutes a violation of the exclusivity clause in executing the contract, as stated in clause (2/4) of the agreement appendix.* This clause includes the first defendant's undertaking not to engage commercially or communicate with any person involved in a similar activity to the plaintiff. (2) The first defendant, during the contract period, appointed other distributors in multiple locations in the Arabian Gulf region, in violation of paragraph 2/1 of the agreement and 2/4 its appendix, as evidenced by the attached correspondence, and appointed another distributor in the state of Qatar. (3) Violation of the contract term as stipulated in its appendix, which states that the initial period is 5 years starting from 01/05/2021, without any justified reason or basis for termination, contradicting the agreed-upon termination mechanism and a remedial period of 12 months if an error occurs. (4) The first defendant, on a personal basis, transferred the inventory of goods existing in the plaintiff's warehouses to a new partner and another distributor, despite purchasing those goods and paying their full dues. (5) The first defendant supplied products that did not meet the required quality standards and were expired, according to the recognized consumption standards and requirements of the relevant authorities in this regard. Since the plaintiff has made a significant investment and has prepared and arranged all the necessary operational, marketing, sales, advertising, and contractual requirements with third parties based on its status as an authorized distributor of the first defendant, *This has led to significant damage to the plaintiff that cannot be rectified, due to the breach committed by the first and second defendants regarding the contract duration and the violation of contractual obligations, resulting from their collusive actions causing harm to the plaintiff. The damages that warrant compensation are outlined in the*

attached statement of the account number (7) and as mentioned in the statement of the case.

The third defendant has been implicated based on their contract with the plaintiff and the negotiations related to the concluded and implemented contract. *Subsequently, they established the second defendant company in Dubai, which involved fraudulent and deceptive actions that make them personally liable for paying the compensation owed to the plaintiff.*

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And whereas, on the dates of 16/3/2023 and 24/4/2023, the plaintiff's attorney submitted two defence memoranda, requesting the inclusion of Tarun Agarwal Gowry Shankar Agarwal as a new litigant in the case, on the grounds that he is the director of the second defendant company and actively manages it. *It is stated that he was the party responsible for sending the termination letter and that he communicated with one of the plaintiff company's employees, instigating him to provide the plaintiff's customer lists and all marketing and distribution plans, which caused damage to the plaintiff company*.

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And whereas, on the date of 21/6/2023, *the plaintiff's attorney submitted a defence memorandum, requesting the inclusion of MH Enterprises LLC as a new litigant in the case. They also requested an urgent division, based on the fact that the latter replaced them and became the party agreed upon by the first and second defendants as a new distributor responsible for marketing, distributing, and selling the products of the first defendant after terminating the contract with the plaintiff, without a valid reason, making them subject to the consequences of terminating the exclusive distribution contract* and obligating them to compensate for the damages suffered, justifying their inclusion based on the Commercial Agency Law. In conclusion, their memorandum requests the following;: first: accepting the inclusion request formally, and second: urgently issuing an order for the imposition of a precautionary attachment on all products sold by the first and second defendants and currently in possession of the newly included defendant, *with a label bearing the name of the plaintiff, to prevent any future legal disputes, and to obligate the intervened to refrain from doing so, and to compel him to remove any infringement that has occurred and remove the plaintiff's name from the products being marketed and sold by them*, and to instruct the...

In the presence of the litigants, the court issued the following verdict, firstly: *accepting entering Tarun Agarwal Gowry Shankar Agarwal and MH Enterprises in the case in form.*

> Secondly: concerning the case subject and entering: the first defendant shall pay the plaintiff an amount of AED 25,071,991, as a compensation of any damage effected the latter, besides the legal interest of 5%, as of the date of the final verdict issued come into force, until full payment. The first defendant shall pay all fees and expenses of a thousand Dirhams in consideration of the fess of the attorney at law, other than that was rejected."
>
> (Emphasis supplied)

Thus, the respondent had, in the Dubai Suit, made out a clear case for proceeding against the defendants, impleaded in the said suit, who were not parties to the ADA.

22.11 Mr. Sharma submits that the petitioner is effectively seeking enforcement of the arbitration agreement contained in the ADA, and, therefore, specific performance of the ADA, which cannot be sought in Section 9 proceedings. Reliance is placed, in this context, on para 17 of the judgment of the Division Bench of this Court in ***Bharat Catering Corporation v Indian Railway Catering and Tourism Corporation Ltd***[37].

22.12 Finally, submits Mr. Sharma, an anti-enforcement injunction is an extreme relief, which can be granted only in exceptional circumstances. The petitioner has not been able to make out a case justifying a prayer for grant of an anti-enforcement injunction of the decree passed by the Dubai court.

23. <u>Further written submissions by the petitioner</u>

[37] **2009 (113) DRJ 435 (DB)**

23.1 Post reserving of judgment in this petition, the petitioner has filed short additional written submissions. While several of the earlier submissions have been reiterated, the petitioner seeks to distinguish the decisions in ***Ust-Kamenogorsk*** and ***Bharat Catering Corporation***, on which Mr. Sharma has sought to place reliance. ***Ust-Kamenogorsk***, it is submitted, was a case in which no arbitral proceedings were contemplated, whereas, in the present case, the petitioner has addressed a notice under Section 21 of the 1996 Act to the respondent, thereby initiating arbitral proceedings. ***Bharat Catering Corporation*** is sought to be distinguished by submitting that the petitioner is not, in the present case, seeking specific performance of the ADA, but is merely seeking an injunction restraining the respondent from enforcing the Dubai court decree.

23.2 The principle of comity of courts, it is submitted, is not affected by the relief sought by the petitioner, which is directed against the respondent, and not against the Dubai court or its decree. Rather, by seeking that the parties uphold the bargain into which they entered by way of the ADA, the petitioner, it is submitted, is enforcing the principle of comity of courts.

24. Further written submissions by the respondent

24.1 The respondent, too, has filed written submissions post reserving of judgment by this Court. They essentially deal with some of the decisions cited by Mr. Nayar. ***Gray***, it is submitted, is a case in which anti-suit injunction, as sought, was *refused*, and the petitioner merely seeks to place reliance on certain observations made by the

Court while referring to the earlier decision in ***Deutsche Bank***. ***Deutsche Bank***, the respondent submits, actually advocates *against* grant of indiscriminate anti-suit injunctions, which are destructive of the principle of comity of courts. It is further stated, in the said decision, that "the stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention". ***OT Africa*** was a case in which the anti-suit injunction was sought within a month of institution of the suit in the foreign court. ***Bhatia International*** stands overruled in ***Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc***[38]; nonetheless, it is submitted that para 29 of ***Bhatia International*** supports the respondent. ***Majmudar & Partners*** was a decision passed by the Vacation Bench of the High Court of Bombay before any proceedings had been instituted in the foreign court.

24.2 Finally, the respondent places reliance on the decisions of the Supreme Court in ***Alcon Electronics Pvt Ltd v Celem SA of FOS 34320 Roujan***[39] and of this Court in ***Transasia Private Capital Ltd v Gaurav Dhawan***[40].

Analysis

25. The law is at times likened to a well known quadriped – unfairly both to the law and to the quadriped – but it cannot be made a spectacle of ridicule, which requires the Court to sit back and helplessly tolerate brutalization of the legal process by an

[38] **(2012) 9 SCC 552**
[39] **(2017) 2 SCC 253**

unscrupulous litigant.

26. Not an iota of *bona fides* can be attributed to the respondent's decision to sue the petitioner before the Dubai court; nor, consequently, can the respondent be permitted to capitalize on the outcome of the said decision. Allowing the respondent to do so would not only amount to condoning breach of the ADA with impunity, but would also permit the respondent to reap a windfall from the consequence of such breach.

27. Re. the plea of the *lis* in the Dubai suit not being restricted to the ADA

27.1 Mr. Sharma's contention that the *lis*, in the Dubai suit, was not restricted to breach of the ADA, is obviously devoid of substance. The *only cause of action pleaded in the Dubai suit was breach, by the petitioner, of Clauses 4/2, 1/2 and 3/4 of the addendum to the ADA, by allegedly allowing others to distribute the petitioner's products in the UAE.* The dispute, therefore, was entirely confined within the four corners of the ADA and its covenants, and was obviously a dispute which was arbitrable in terms of Clause 24.5(ii) thereof.

27.2 The respondent, in an obviously desperate attempt to escape the reference of the dispute to arbitration by the petitioner, impleaded, without any justification whatsoever, Honasa Trading and, later, Mr. Tarun Aggarwal, manager of Honasa Trading and M H Project LLC. It is obvious, even to a person unschooled in the niceties of the law

relating to necessary and proper parties to a *lis*, that the impleadment of these additional defendants was without any justification whatsoever. The termination notice dated 17 October 2022 was issued by the petitioner, from its Gurgaon office. It makes no reference either to Honasa Trading or to Tarun Aggarwal, and the allegation that it had been issued at the instance of Honasa Trading, or was issued by Tarun Aggarwal, was obviously false, with a view to justify approaching the Dubai Court. The Dubai Court has, significantly, rejected, in no uncertain terms, the said allegations, and has held the added defendants to be in no manner responsible to the petitioner. Damages have, therefore, entirely been foisted on the petitioner and, by seeking to execute the Dubai decree, the respondent, too, acknowledges that it had unnecessarily impleaded the additional defendants. It is a matter of regret, therefore, that the respondent has the temerity, even before this Court, to again seek to justify the filing of the suit in Dubai on the ground that the additional defendants were necessary parties, merely because of unfounded and baseless allegations of collusion by which the respondent sought to embellish the suit, and which even the Dubai Court has not accepted.

27.3 The plea that the *lis* in the Dubai suit was not restricted to breach of the ADA by the petitioner is, therefore, unhesitatingly rejected.

28. Re. Sections 13 and 44A of the CPC

28.1 The reliance, by Mr. Sharma, on Sections 13 and 44A of the CPC is fundamentally misplaced on facts as well as in law. There are

at least four reasons why the submissions of Mr. Sharma, predicated on these provisions, are liable to be rejected.

28.2 Firstly, Sections 13 and 44A of the CPC are not even applicable at this point, as they pertain to the executability of foreign decrees in India, and the respondent has not moved any Indian court for executing the Dubai decree. In fact, having moved the Dubai court for execution against the petitioner, it defeats comprehension as to how the respondent is citing Sections 13 and 44A of the CPC as a defence to the present petition. Even on facts, therefore, the reliance is both misplaced, and mistimed.

28.3 Secondly, the submission is predicated on a principle, unknown to the law, that, against one impugned action, there can be only one remedy. Law knows no such doctrine. Were the respondent to seek to execute the Dubai judgment and decree in India, the petitioner would unquestionably have the right to oppose the execution by all means known to law, which would include the grounds enumerated in Section 13 of the CPC. The existence of that right, at that stage, where occasion to so arise, does not serve, by any theory known to law, to disentitle the petitioner to seek protective interim orders under Section 9 of the 1996 Act.

28.4 Thirdly, Section 9 of the 1996 Act, and Sections 13 and 44A of the CPC, cater to different circumstances, and operate in distinct spheres. Section 9 is in the nature of a protective provision, to protect the arbitral corpus and the arbitral process so that arbitration, when contractually envisaged as the mode of resolution of disputes between

the parties, is allowed to continue to its final culmination, and the award, as and when rendered, is not defeated before rendition. Sections 13 and 44A of the CPC deal with execution of foreign decrees, and the circumstances to be borne in mind by a Court before whom a foreign decree is brought for execution. They are, therefore, as alike as chalk and cheese, and the question of the right under Section 9 being in any way prejudiced by Sections 13 and 44A of the CPC cannot, therefore, arise.

28.5 Fourthly, there is no legal proscription even against a plurality of legal remedies being available against the same impugned action, at one time and one stage. In such a case, the only restraint that the law imposes is one of election, by requiring the challenger to elect the mode of challenge which he desires to adopt.[41] That situation does not, however, obtain here, as, firstly, the stage for application of Section 13 or 44A of the CPC has not arisen – and may never arise, as the respondent has chosen to seek to enforce the Dubai decree in Dubai itself – and, secondly, as already noted, the two remedies cater to different situations, and are available at different stages.

28.6 Mr. Mudit Sharma sought to submit that, by the present petition, the petitioner is seeking to pre-empt the exercise of a competent executing Court under Section 13 of the CPC. The submission is truly surprising, being advanced on behalf of a respondent who has elected not to pursue execution proceedings in India, but to proceed for execution in Dubai. There does not arise, therefore, any occasion for any executing Court in India to exercise

jurisdiction under Section 13, so that no question of pre-empting such exercise can arise either.

28.7 The submission is, moreover, misguided in law as well. Once it is understood that the right to seek pre-arbitral interim relief under Section 9 and to assail the enforceability of the Dubai court decree are *independently* available to the petitioner, the possibility of findings or observations returned by the Court adjudicating the Section 9 application having relevance even while deciding objections to the enforceability of the decree under Section 13 of the CPC – should such occasion arise – is a live possibility. That possibility cannot, however, operate as an inhibiting factor to grant of relief under Section 9 of the 1996 Act, if the conditions for grant of such relief are met.

28.8 Sections 13 and 44A of the CPC, therefore, do not, in any way, affect the authority of this Court to grant relief, as sought by the petitioner, in the present petition under Section 9 of the CPC. The reliance, by Mr. Sharma, on Sections 13 and 44A of the CPC is, therefore, clearly misguided.

29. Scope of Section 9

29.1 Mr. Sharma lays great stress on what he perceives to be the somewhat limited scope of Section 9 of the 1996 Act. He submits that Section 9 cannot be used to enforce the arbitration clause in the ADA and, further, that the Court has no jurisdiction to pass an order of anti-

[41] Refer **Bihar State Co-operative Marketing Union Ltd v Uma Shankar Sharan, (1992) 4 SCC 196**

enforcement injunction of a decree passed by a foreign court under Section 9. For the submission that an anti-enforcement injunction of a foreign decree cannot be granted under Section 9, Mr. Sharma cites ***Ust-Kamenogorsk*** and, for the proposition that Section 9 cannot be used for enforcing the arbitration clause or for seeking specific performance of a contract, he relies on ***Bhatia International*** and ***Bharat Catering Corporation***.

29.2 Plainly read, Section 9 does not admit of any such limitations. Its scope is wide and compendious. While it is true that the use of the expression "any of the following matters, namely" in Section 9(1)(ii) results in the enumeration of the "matters", which follows, being exhaustive rather than illustrative, clause (e) of Section 9(1)(ii) covers "such other interim measure of protection as may appear to the court to be just and convenient". The words "just and convenient", once again, are wide and compendious in their import. The scope of Section 9 is broadened still further by the stipulation, which follows, that "the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it". In other words, apart from "preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement" [covered by clause (a) of Section 9(1)(ii)], "securing the amount in dispute in the arbitration" [covered by clause (b)], "detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration… authorising, for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may

be necessary or expedient for the purpose of obtaining full information or evidence" [covered by clause (c)], "interim injunction" [covered by clause (d)] and "appointment of a receiver" [covered by clause (d)], Section 9 further empowers the Court to order any other such interim measure of protection as may appear to it to be just and convenient, and also clothes it with all the powers to pass interim orders, available to a Court in respect of matters before it. This last stipulation would cover, within it, the entire panoply of powers to grant interim relief, and pass interlocutory orders, available to a civil Court.

29.3 Section 9 is absolute in its application. It is not made subject to any other provision in the 1996 Act or elsewhere. Dealing with the scope of Section 9, the Supreme Court, in ***Essar House Pvt Ltd v Arcellor Mittal Nippon Steel India Ltd***[42] held:

> "39. In deciding a petition under Section 9 of the Arbitration Act, the Court cannot ignore the basic principles of the CPC. At the same time, the power Court to grant relief is not curtailed by the rigours of every procedural provision in the CPC. In exercise of its powers to grant interim relief under Section 9 of the Arbitration Act, the Court is not strictly bound by the provisions of the CPC.
>
> 40. While it is true that the power under Section 9 of the Arbitration Act should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in the CPC, the technicalities of CPC cannot prevent the Court from securing the ends of justice. It is well settled that procedural safeguards, meant to advance the cause of justice cannot be interpreted in such manner, as would defeat justice.
>
> 41. Section 9 of the Arbitration Act provides that a party may apply to a Court for an interim measure or protection *inter alia* to (i) secure the amount in dispute in the arbitration; or (ii) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for

[42] **2022 SCC OnLine SC 1219**

making orders as it has for the purpose of, and in relation to, any proceedings before it.

42. As argued by Mr. Kaul, besides the specific power of securing the amount in dispute, the Courts have been empowered to pass any interim measure of protection, keeping in view the purpose of the proceedings before it. The said provision confers a residuary power on the Court to pass such other interim measures of protection as may appear to be just and convenient.

43. Many High Courts have also proceeded on the principle that the powers of a Court under Section 9 of the Arbitration Act are wider than the powers under the provisions of the CPC.

44. In ***Ajay Singh v Kal Airways Pvt Ltd***[43] the Delhi High Court correctly held:

> *"…Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines - therefore, the analogy of Orders 38 and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles…"*

45. In ***Jagdish Ahuja v Cupino Ltd***[44], the Bombay High Court correctly summarised the law in Paragraph 6 extracted hereinbelow:—

> *"6. As far as Section 9 of the Act is concerned, it cannot be said that this court, while considering a relief thereunder, is strictly bound by the provisions of Order 38 Rule 5. As held by our Courts, the scope of Section 9 of the Act is very broad; the court has a discretion to grant thereunder a wide range of interim measures of protection "as may appear to the court to be just and convenient", though such discretion has to be exercised judiciously and not arbitrarily. The court is, no doubt, guided by the principles which civil courts ordinarily employ for considering interim relief, particularly, Order 39 Rules 1 and 2 and Order 38 Rule 5; the court, however, is not unduly bound by their texts. As this court held in* ***Nimbus Communications Ltd v BCCI*** [45] *(per D.Y. Chandrachud J, as the learned Judge then was), the court, whilst exercising*

[43] **2017 SCC OnLine Del 8934**
[44] **2020 SCC OnLine Bom 849**
[45] **2012 SCC OnLine Bom 287**

power under Section 9, "must have due regard to the underlying purpose of the conferment of the power under the court which is to promote the efficacy of arbitration as a form of dispute resolution." The learned Judge further observed as follows:

> *"Just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Code of Civil Procedure 1908, the rigors of every procedural provision in the Code of Civil Procedure 1908 cannot be put into place to defeat the grant of relief which would subserve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case."*

46. In ***Valentine Maritime Ltd v Kreuz Subsea Pte Ltd***[46], the High Court held:—

> *"88. …It is now a well settled legal position, that at least with respect to Chartered High Courts, the power to grant temporary injunctions are not confined to the statutory provisions alone. The Chartered High Courts had an inherent power under the general equity jurisdiction to grant temporary injunctions independently of the provisions of the Civil Procedure Code, 1908…"*
>
> *****
>
> *95. Insofar as judgment of this Court delivered by the Division Bench of this court in case of* ***Nimbus Communications Limited v. Board of Control for Cricket in India*** *(supra) relied upon by the learned senior counsel for the VML is concerned, this Court adverted to the judgment of Hon'ble Supreme Court in case of* ***Adhunik Steels Ltd v Orissa Manganese and Minerals (P) Ltd***[47]*, and held that in view of the decision of the Supreme Court in case of* ***Adhunik Steels Ltd****, (supra) the view of the Division Bench in case of* ***National Shipping Company of Saudi Arabia*** *(supra) that the exercise of power under section 9(ii)(b) is not controlled by the provisions of the Civil Procedure Code, 1908 cannot stand. This court in the said judgment of* ***Nimbus Communications Ltd*** *(supra) held that the exercise of the power under section 9 of the Arbitration Act cannot be totally independent of the basic*

[46] **2021 SCC OnLine Bom 75**
[47] **(2007) 7 SCC 125**

principles governing grant of interim injunction by the civil Court, at the same time, the Court when it decides the petition under section 9, must have due regard to the underlying purpose of the conferment of the power upon the Court which is to promote the efficacy of arbitration as a form of dispute resolution.

96. This court held that just as on the one hand the exercise of the power under Section 9 cannot be carried out in an uncharted territory ignoring the basic principles of procedural law contained in the Civil Procedure Code, 1908, the rigors of every procedural provision in the Civil Procedure Code, 1908 cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of justice. A balance has to be drawn between the two considerations in the facts of each case. The principles laid down in the Civil Procedure Code, 1908 for the grant of interlocutory remedies must furnish a guide to the Court when it determines an application under Section 9 of the Arbitration and Conciliation Act, 1996. The underlying basis of Order 38 Rule 5 therefore has to be borne in mind while deciding an application under Section 9(ii)(b) of the Arbitration Act.

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*104. The Division Bench of this court in case of **Deccan Chronicle Holdings Limited v L & T Finance Ltd**[48], after adverting to the judgment of Supreme Court in case of **Adhunik Steel Ltd** (supra), judgment of the Division Bench of this court in case of **Nimbus Communications Ltd** (supra) held that the rigors of every procedural provision of the Code of Civil Procedure cannot be put into place to defeat the grant of relief which would sub-serve the paramount interests of the justice. The object of preserving the efficacy of arbitration as an effective form of dispute resolution must be duly fulfilled. This would necessarily mean that in deciding an application under Section 9, the Court would while bearing in mind the fundamental principles underlying the provisions of the Code of Civil Procedure, at the same time, have the discretion to mould the relief in appropriate cases to secure the ends of justice and to preserve the sanctity of the arbitral process. The Division Bench of this Court in the said judgment did not interfere with the order passed by the learned Single Judge directing the parties to furnish*

[48] **2013 SCC OnLine Bom 1005**

security so as to secure the claim of the original petitioner in arbitration by applying principles of Order 38 Rule 5 of the Code of Civil Procedure. …"

47. In ***Srei Infrastructure Finance Limited v. Ravi Udyog Pvt Ltd***[49], the Calcutta High Court, speaking through one of us (Indira Banerjee, J.), as Judge of that Court, said:—

> "An application under section 9 of the Arbitration & Conciliation Act, 1996 for interim relief is not to be judged as per the standards of a plaint in a suit. If the relevant facts pleaded, read with the documents annexed to the petition, warrant the grant of interim relief, interim relief ought not to be refused by recourse to technicalities…"

48. Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good *prima facie* case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.

49. If a strong *prima facie* case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC."

(Underscoring supplied; italics in original)

29.4 This Court had, in its decision in ***Hindustan Cleanenergy Ltd v MAIF Investments India 2 Pte Ltd***[50], attempted to analyse the scope and ambit of Section 9, after a study of the precedents in ***Arcelor Mittal Nippon Steel v Essar Bulk Terminal Ltd***[51], ***Adhunik Steels***, ***Arvind Constructions Co (P) Ltd v Kalinga Mining Corporation***[52],

[49] **A.P. No. 522 of 2008**
[50] **(2022) 1 Arb LR 337**
[51] **2021 SCC OnLine SC 718**
[52] **(2007) 6 SCC 798**

Firm Ashok Traders v Gurmukh Das Saluja[53] as well as several decisions of Division Benches of this Court. Finally, this Court concluded:

> "93. In ***Avantha Holdings***[54], this Court has taken a stock of the decisions of the Supreme Court in ***Adhunik Steels***, ***Arvind Constructions*** and ***Firm Ashok Traders***, though these decisions were rendered at the time when Section 17 was in its pre-amended form. Among other things, these decisions of the Supreme Court hold that (i) the demonstration of irreparable or, perhaps, substantial, harm, were interim protection not granted, is necessary for relief to be granted under Section 9, (ii) the interim relief granted under Section 9 may, to some extent, overlap with the final relief sought in the arbitral proceedings and (iii) grant of interim relief under Section 9 of the 1996 Act would also be subject to the restrictions governing Section 9 of the Specific Relief Act, 1963. This Court has also relied on the following observations of the Division Bench of the High Court of Madras in ***V. Sekar v Akash Housing***[55], as authored by Banumathi, J (as she then was), expounding on the scope of Section 9(1)(ii)(e) of Section 9, which is in the nature of a residual clause, empowering the Court to grant such interim protection as may be "just and convenient":
>
> "The purpose of Section 9 is to provide an interim measure of protection to the parties to prevent the ends of justice from being defeated. *Section 9(2)(e) vests the Court with the power to grant such interim measures of protection as may be just and convenient. The jurisdiction under the "just and convenient" clause is quite wide in amplitude, but must be exercised with restraint. Interim measures are to be granted by the Court so as to protect the rights in adjudication before the arbitral tribunal from being frustrated. It does not allow the Court the discretion to exercise unrestrained powers and frustrate the very object of arbitration.*"
>
> 94. In my decision in ***CRSC Design***[56] (which was affirmed in appeal by the Division Bench[57]), I have attempted to delineate the following three criteria, cumulative satisfaction of which is necessary, before interim protection can be granted under Section 9:

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[53] **(2004) 3 SCC 155**
[54] **(2020) 272 DLT 664**
[55] **AIR 2011 Mad 110: (2011) 3 Arb LR 327 (DB)**
[56] **(2020) 274 DLT 89**
[57] **2020 SCC OnLine Del 1526**

(a) the existence of an arbitration clause, and manifest intent, of the Section 9 petitioner, to invoke the said clause, and initiate arbitral proceedings,

(b) the existence of a *prima facie* case, balance of convenience and irreparable loss, justifying such grant of interim relief to the applicant, and

(c) the existence of emergent necessity, so that, if interim protection is not granted by the Court, even before arbitral proceedings are initiated and the chance to approach the arbitral tribunal under Section 17 manifests itself, there is a possibility of the arbitral proceedings being frustrated or rendered futile."

29.5 In ***Bharat Aluminium***, the Supreme Court held that "so far as the Indian law is concerned, it is settled that the source "of a court's power to grant interim relief is traceable to Section 94[58] and in exceptional cases to Section 151[59] CPC". This enunciation is of considerable significance, as it saves the inherent power of the Court "to make such orders *as may be necessary for the ends of justice or to prevent abuse of process of the Court", as envisaged by section 151*.

29.6 Proceeding sequentially through the various clauses of Section 9(1)(ii), one finds the power to grant interim injunctions specifically figuring in clause (d), even before one reaches clause (e). This power,

[58] **94. Supplemental proceedings**. – In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—
(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;
(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;
(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

[59] **151. Saving of inherent powers of Court**. – Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to

juxtaposed with the clarification, which follows in Section 9(1)(ii), that the Court, exercising Section 9 jurisdiction would have the same powers to make orders as it would have for the purpose of, and in relation to, proceedings before it, is by itself sufficient to include, in the powers conferred by Section 9(1)(ii)(d), the power to grant anti-suit or anti-enforcement injunctions. One need actually look no further.

29.7 *Though* one, as noted, need actually look no further, the power to grant an anti-suit, or anti-enforcement, injunction, would also be encompassed in the power to grant interim measures of protection as may be "just and convenient", and would in any case be included in the power to pass orders to secure the ends of justice or to prevent abuse of the process of the Court, conferred by Section 151 of the CPC.

29.8 Where, therefore, proceedings in a foreign Court, or any order or decree passed by a foreign Court, threatens to prejudice or derail the arbitral process which may competently be instituted in India, the Section 9 Court is amply possessed of the power to injunct the party who has instituted the foreign proceedings from further proceeding with them, or from enforcing the potentially threatening order or decree passed therein. If a civil Court, dealing with a civil suit, can do so, so can a Section 9 Court seized with the task of protecting the arbitral process from being derailed or hijacked – or, as in the present case, guillotined.

29.9 *Ust-Kamenogorsk*

29.9.1 Mr. Sharma cited ***Ust-Kamenogorsk***, from which he relied on the following passages:

> "34 It is in these circumstances that the question now arises whether it is consistent with the 1996 Act for the English court to determine whether there is a valid and applicable arbitration agreement covering the subject matter of actual or threatened foreign proceedings and, if it holds that there is, to injunct the commencement or continuation of the foreign proceedings. JSC points to sections 32 and 72 of the Act as the means by which a challenge to the jurisdiction may, under certain conditions, be pursued during an arbitration and to section 67 as the means by which an award may be challenged for lack of jurisdiction. It submits, that, if AESUK convoked an arbitral tribunal, the arbitrators could rule on their jurisdiction under section 30, their ruling could be tested under sections 32, 67 and/or 72 and the court could in the meantime be asked to give interim relief under section 44.
>
> *****
>
> 43 Similarly, the court's powers listed in section 44 are exercisable only "for the purposes of and in relation to arbitral proceedings" and depend on such proceedings being on foot or "proposed": see section 44(3). That alone is sufficient in my opinion to lead to a conclusion that section 44 has no bearing on the question whether section 37 empowers the court to restrain the commencement or continuation of foreign proceedings in the light of an arbitration agreement under which neither party wishes to commence an arbitration.
>
> *****
>
> 46 Section 44(2) is the modern successor to the First Schedule to the Arbitration Act 1934 and section 12(6) of the Arbitration Act 1950-section 44(2)(e) corresponds with paragraph 8 of the First Schedule to and section 12(6)(h) of the 1950 Act. The matters listed in section 44 are all matters which could require the court's intervention during actual or proposed arbitral proceedings. The power to grant an interim injunction is expressed in general terms, but is limited, save in cases of urgency, to circumstances in which either the tribunal permits an application to the court or all the other parties agree to this in writing. There is no power to grant a

final injunction, even after an award. There is authority (not requiring review on this appeal) that section 44(3) can include orders urgently required pending a proposed arbitration to preserve or enforce parties' substantive rights—eg an order to allow inspection of an agent's underwriting records or to submit a proposed transfer to a central bank: see ***Hiscox Underwriting Ltd v Dickson Manchester & Co Ltd***[60]; ***Cetelem SA v Roust Holdings Ltd***[61] . Such orders can be said to be "for the purposes of and in relation to arbitral proceedings". But orders restraining the actual or threatened breach of the negative aspect of an arbitration agreement may be required both where no arbitration proceedings are on foot or proposed, and where the case is not one of urgency (and so not within section 44(3)). They enforce the negative right not to be vexed by foreign proceedings. This is a right of a different character both to the procedural rights with which section 44 is mainly, at least, concerned, and to the substantive rights to which the ***Hiscox*** and ***Cetelem*** cases hold that it extends.

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48 *The better view, in my opinion, is that the reference in section 44(2)(e) to the granting of an interim injunction was not intended either to exclude the court's general power to act under section 37 of the 1981 Act in circumstances outside the scope of section 44 of the 1996 Act or to duplicate part of the general power contained in section 37 of the 1981 Act. Where an injunction is sought to restrain foreign proceedings in breach of an arbitration agreement—whether on an interim or a final basis and whether at a time when arbitral proceedings are or are not on foot or proposed—the source of the power to grant such an injunction is to be found not in section 44 of the 1996 Act, but in section 37 of the 1981 Act. Such an injunction is not "for the purposes of and in relation to arbitral proceedings", but for the purposes of and in relation to the negative promise contained in the arbitration agreement not to bring foreign proceedings, which applies and is enforceable regardless of whether or not arbitral proceedings are on foot or proposed.* Colman J in ***Sokana Industries Inc v Freyre & Co Inc***[62] was correct on this point when he held that the court's power to make orders "for the purpose of and in relation to a reference" in section 12(6) of the Arbitration Act 1950 did not include the granting of relief consisting of either a final or an interim injunction to restrain an alleged breach of a London Chamber of Commerce arbitration agreement consisting in the commencement of proceedings in Florida.

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[60] **[2004] 2 Lloyd's Rep 438;**
[61] **[2005] 1 WLR 3555**
[62] **[1994] 2 Lloyd's Rep 57**

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> 56 Section 37 is a general power, not specifically tailored to situations where there is either an arbitration agreement or an exclusive choice of court clause. To adopt words of Lord Mustill in the ***Channel Tunnel case***[63], with reference to the relationship between section 37 and the previous arbitration legislation (the Arbitration Act 1950):
>
> > "Under section 37(1) by contrast the arbitration clause is not the source of the power to grant an injunction but is merely a part of the facts in the light of which the court decides whether or not to exercise a power which exists independently of it."
>
> The court may as a result need to be very cautious: "in the exercise of its general powers under section 37 so as not to conflict with any restraint which the legislature may have imposed on the exercise of the new and specialised powers": (p 364B–C). However, it is, in my opinion, entirely understandable that Parliament should not have thought to carve out from section 37 of the Senior Courts Act or to reproduce in the 1996 Act one aspect of a general power conferred by section 37. It cannot be deduced from the fact that it did not do so that it intended that the general power should never be exercised in any context associated with arbitration."
>
> (Emphasis supplied)

These passages, in my view, do not hold, in any manner of speaking, that no order restraining a plaintiff from pursuing a manifestly oppressive and vexatious proceeding in a foreign judicial forum, contrary to the contract with the defendant, can be passed under Section 9 of the 1996 Act.

29.9.2 It is interesting to note, however, one significant difference between Section 44 of the Arbitration Act 1996 applicable in the UK[64], with which the Supreme Court was concerned, and Section 9 of the 1996 Act. Sub-sections (1) and (2) of Section 44 of the UK

[63] **[1993] AC 334, 360E–F**

Arbitration Act, which para 45 of the report sets out *in extenso*, read thus:

> "44 **Court powers exercisable in support of arbitral proceedings**
>
> (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.
>
> (2) Those matters are – (a) the taking of the evidence of witnesses; (b) the preservation of evidence; (c) making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings – (i) for the inspection, photographing, preservation, custody or detention of the property, or (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property; and for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration; (d) the sale of any goods the subject of the proceedings; (e) the granting of an interim injunction or the appointment of a receiver."

Section 44 of the UK Arbitration Act did not, therefore, contain any "just and convenient" clause equivalent to Section 9(1)(ii)(e) of the 1996 Act. As against this, Section 37 of the Senior Courts Act, 1981 *did* contain such a provision, which read:

> "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so."

29.9.3 In para 48 of the report in ***Ust-Kamenogorsk***, the Supreme Court holds that, where the arbitration agreement contained a negative covenant not to proceed outside the UK, a proceeding initiated in a foreign country in violation of the negative covenant *could be*

"the UK Arbitration Act" hereinafter

injuncted from being prosecuted, though the power to grant such an injunction would flow, not from Section 44 of the UK Arbitration Act, but from Section 37 of the Senior Courts Act. Section 9 of the 1996 Act applicable in India combines the features of Section 44 of the UK Arbitration Act and Section 37 of the Senior Courts Act; ergo, ***Ust-Kamenogorsk*** would, contrary to what Mr. Sharma submits, actually hold that the Section 9 court *does possess the power to grant an anti-enforcement injunction where the foreign proceedings are violative of the exclusive jurisdiction clause in the contract between the parties – which is equivalent to the negative covenant in the agreement with which the Supreme Court was concerned in that case – and not that it does not.*

29.10 In any event, this Court has not been called upon, by the petitioner, to stay the Dubai court decree, or its enforcement, as, indeed, this Court cannot. What it intends to injunct, by this order, is *the prosecution of the enforcement proceedings, by the respondent, in Dubai*. The injunction is, therefore, against the respondent; certainly not against the Dubai court.

29.11 Indeed, it is precisely *because* this Court *cannot* restrain the Dubai court from proceeding, and can only restrain the respondent, that the Court is constrained to pass a protective order of deposit against the respondent and in favour of the petitioner, in the event that the Dubai court decides to proceed with the enforcement, despite the respondent being injuncted by this Court from so doing.

29.12 Mr. Sharma also seeks to contend that the petitioner is, by this petition, seeking to enforce the arbitration clause, which cannot be granted under Section 9. He relies on para 17 of the judgment of the Division Bench of this Court in ***Bharat Catering Corporation*** and para 29 of the report in ***Bhatia International***.

29.13 Para 17 of ***Bharat Catering Corporation*** reads thus:

> "17. Apart from merits, even otherwise, in our view, the scope and ambit of Section 9 do not envisage the restoration of a contract which has been terminated. The learned Single Judge, in our view, rightly held that if the petitioner is aggrieved by the letter of termination of the contract and is advised to challenge the validity thereof, the petitioner can always invoke the arbitration clause to claim damages, if any, suffered by the petitioner. It is not open to this Court to restore the contract under Section 9, which is meant only for the sole purpose of preserving and maintaining the property in dispute and cannot be used to enforce specific performance of a contract as such. A bare glance at the said Section will suffice to show that pending arbitration proceedings, the Court and the Arbitral Tribunal have been vested with the power to ensure that the subject matter of the arbitration is not alienated or frittered away."

The decision in ***Bharat Catering Corporation***, plainly, does not, in any manner, support Mr. Sharma's contention that Section 9 cannot be used to seek enforcement of an arbitration clause in a contract. Indeed, the submission strikes at the very ethos of Section 9 which, as the decisions cited earlier clearly hold, has, as its very *raison d'etre*, the protection and preservation of the arbitral corpus *and the arbitral process*, and aims at ensuring, among other things, that the arbitration clause is not reduced to a redundancy – which the respondent, with possibly unintended Freudian candidness, admits to have done. This is conceptually, and jurisprudentially, entirely distinct from seeking specific performance of a contract which stands terminated. ***Bharat***

Catering Corporation does not, therefore, help Mr. Sharma in his endeavours.

29.14 Para 19 of ***Bhatia International*** – though subsequently overruled on another point by ***Bharat Aluminium*** – reads:

> "29. We see no substance in the submission that there would be unnecessary interference by courts in arbitral proceedings. Section 5 provides that no judicial authority shall intervene except where so provided. Section 9 does not permit any or all applications. It only permits applications for interim measures mentioned in clauses (i) and (ii) thereof. Thus there cannot be applications under Section 9 for stay of arbitral proceedings or to challenge the existence or validity of the arbitration agreements or the jurisdiction of the Arbitral Tribunal. All such challenges would have to be made before the Arbitral Tribunal under the said Act."

It is well settled that a judgment of a Court is an authority only for what it says, and not for what may logically seem to flow from it[65], and para 29 of ***Bhatia International*** certainly does not say that an arbitration clause cannot be enforced in a Section 9 proceeding. Rather, it recognizes that the Section 9 Court *can* grant all interim measures envisaged by clauses (i) and (ii) of Section 9 and *excludes*, specifically, stay of arbitral proceedings, a challenge to the existence or validity of arbitration agreements, and a challenge to the jurisdiction of the Arbitral Tribunal. There is, therefore, no known proscription, in the law, for an order under Section 9 of the 1996 Act enforcing the arbitration agreement executed between the parties, by which they have bound themselves. If either party acts in derogation of the clause, the Court is not only empowered, but also duty bound to

[65] Refer **UOI v Chajju Ram, (2003) 5 SCC 568**

interfere and injunct continuance of the derogation, in exercise of its Section 9 jurisdiction.

29.15 Mr. Sharma's submission that, in exercise of the jurisdiction vested in it by Section 9 of the 1996 Act, this Court cannot grant the reliefs sought in the petition is, therefore, rejected.

30. Re. submission that relief sought by petitioner is not in aid of final relief in arbitration

Mr. Sharma's submission that the relief sought by the petitioner is not in aid of the final relief proposed in the arbitral proceedings has obviously merely to be urged to be rejected. The question of obtaining any final relief in the arbitral proceedings can arise only if the arbitral proceedings are permitted to continue, and it is the respondent's own contention, in its written submissions, that there can now be no question of arbitration, in the light of the Dubai court decree. The petitioner has manifested its intention to resort to arbitration as envisaged in the ADA – unlike the respondent who seems to regard the ADA and its covenants as totally dispensable and the Dubai court decree having admittedly resulted in the petitioner being incapacitated from doing so, the petitioner is entirely justified in invoking Section 9 of the 1996 Act to seek a restraint against the respondent from enforcing the decree against the petitioner.

31. Re. Section 17 of the 1996 Act

31.1 Mr. Sharma also contended that, if Section 9 were to be interpreted as permitting the Court to grant an anti-enforcement injunction of a decree passed by a foreign Court, that power would also *ipso facto* be available to an Arbitral Tribunal under Section 17, as the powers of the Arbitral Tribunal under Section 17 and the power of the Court under Section 9 are co-equal. This, he submits, is obviously impermissible, and indicates that Section 9 can never be read as empowering a Court to grant an anti-enforcement injunction of a foreign decree.

31.2 The logical error in the argument is apparent. It is the Arbitral Tribunal which, under Section 17, has been invested with the jurisdiction to pass orders which a Court can pass under Section 9, and not vice versa. Law is not arithmetic. The principle that, if a equals b, b must equal a, may not apply in law, with the same inflexibility with which it applies in arithmetic. It is the jurisdiction of the Arbitral Tribunal, when called upon to exercise powers under Section 17, which may have to be tested *vis-à-vis* the jurisdiction of a Court under Section 9, and not vice versa. That occasion does not arise in the present instance, and this Court is not, therefore, called upon to deliberate on the jurisdiction of an Arbitral Tribunal under Section 17. Section 9 is not statutorily, or otherwise, subject to Section 17. What the Court is to identify is its jurisdiction under Section 9. That identification is required to be undertaken on the basis of Section 9 and its various sub-sections or clauses, and not by examining whether an Arbitral Tribunal, under Section 17, would, or would not, be able to pass a similar order. If, within the parameters of the statute, and the words used by it, a Court can, under Section 9 of the 1996 Act, grant

an anti-suit, or anti-enforcement, injunction of foreign proceedings, that is the end of the matter, insofar as the aspect of competence of the Court is concerned. As to whether, if such an occasion were to arise before an Arbitral Tribunal under Section 17, a similar order could be passed by it, is a bridge to be caused when the occasion arises. That occasion has not arisen in the present case.

31.3 This Court is not required, therefore, either to deliberate or to pronounce on whether an Arbitral Tribunal can, under Section 17, grant an anti-suit or anti-enforcement injunction of proceedings in a foreign jurisdiction. To the knowledge of this Court, there is no precedent on the issue. The question may involve a fascinating analytical exercise, but that exercise has to be left for another forum to undertake, should it be called upon to do so.

31.4 Suffice it, therefore, to dispose of this submission of Mr. Sharma by reiterating that Section 9, in its scope and sweep, as delineated by judicial authorities over the years, clearly empowers the Court to grant the reliefs sought in this petition, and Section 17 cannot inhibit it from doing so.

32. Re. Section 5 of the 1996 Act

Mr. Sharma also sought to rely on Section 5 of the 1996 Act, which proscribes Courts from intervening, save and except as provided in Part I thereof. Suffice it, in this regard, to state that, as this Court is convinced that the power and authority conferred on it by Section 9 extends to grant of the reliefs sought in the present petition, doing so

cannot be said to infract, in any way, the proscription contained in Section 5.

33. The principle of comity of courts

33.1 Mr. Sharma also pressed into service the hallowed principle of comity of courts, which requires a Court to respect exercise of jurisdiction by another Court situated outside its territory. Grant of the reliefs sought in this petition, according to him, would be destructive of this principle.

33.2 The principle of comity of courts can have no application where a foreign Court is manifestly acting in excess of jurisdiction. Though it is true that the authority of a court in one jurisdiction cannot extend to interfering with, or undoing, a decision taken by a Court in a another jurisdiction, right or wrong, the former Court, when called upon to remedy the effect of the decision taken by the foreign Court on citizens within its own jurisdiction and their legal and constitutional rights, has to address the question of whether the foreign Court can be said, in any manner of speaking, to have acted within jurisdiction. The simplest example would be the present case itself. If the respondent, in manifest disregard and breach not only of Clause 24.5 of the ADA, but also of Clause 24.7, which specifically requires disputes under the ADA to be decided by Courts in New Delhi, and to be decided in accordance with Indian law, approaches a foreign Court and obtains a decree against the petitioner on alleged breach of the ADA, as would completely paralyze the petitioner from exercising its legal rights against the respondent in the manner

envisaged and contemplated by the ADA, is the Court to fold its hands and plead helplessness to come to the aid of the petitioner, citing the principle of comity of courts? The answer, in my considered opinion, has resoundingly to be in the negative, if Courts in this country are to retain their status as upholders of the legal rights of its citizens.

33.3 Save and except the intent to jeopardize the right to avail legal remedies, as envisioned in the ADA, to which it, with its eyes open, appended its signatures, the respondent has not been able to provide a scintilla of a justification for having petitioned the Dubai Court. The entire enterprise was unholy not only from its inception, but from its conception. If such adventurism is to be allowed, commercial contracts would lose all sanctity, and rights and liabilities envisaged in commercial contracts would become dispensable at the will of the contracting parties. No principle of comity of courts can, in the opinion of this Court, stand in the way of judicial redressal of the damage that such misadventure entails.

33.4 The highest that the doctrine of comity of courts can demand in such a case is circumspection while examining a plea for grant of anti-suit or anti-enforcement injunction. The principle of comity of courts is not, jurisprudentially, a bar to grant of anti-suit or anti-enforcement injunction, where the facts of the case justify such grant. The authoritative decision on grant of anti-suit injunction remains the judgment of the Supreme Court in ***Modi Entertainment Network***, and para 10 of the report in that case merits reproduction in this context:

> "The courts in India like the courts in England are courts of both law and equity. *The principles governing grant of injunction — an equitable relief — by a court will also govern grant of anti-suit injunction which is but a species of injunction.* When a court restrains a party to a suit/proceeding before it from instituting or prosecuting a case in another court including a foreign court, it is called anti-suit injunction. It is a common ground that the courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. This is because courts of equity exercise jurisdiction *in personam*. However, *having regard to the rule of comity, this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another court*."
>
> (Emphasis supplied)

The principles that the Supreme Court ultimately laid down, in para 24 of the report, are of classical significance:

> "(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:
>
> (a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;
>
> (b) *if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated*; and
>
> (c) the principle of comity - respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained - must be borne in mind.
>
> (2) *In a case where more forums than one are available*, the court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (*forum conveniens*) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a *forum non-conveniens.*
>
> (3) *Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true*

interpretation of the contract on the facts and in the circumstances of each case.

(4) A court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a *vis major* or force majeure and the like.

(5) Where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to the non-exclusive jurisdiction of the court of their choice which cannot be treated just as an alternative forum.

(6) A party to a contract containing the jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot *per se* be treated as vexatious or oppressive nor can the court be said to be *forum non-conveniens.*

(7) The burden of establishing that the forum of choice is a *forum non-conveniens* or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same."

The principle of comity of courts, as also other considerations which are required to be borne in mind while granting anti-suit or anti-enforcement injunction, therefore, essentially call for application

where the respondent has approached a Court of competent jurisdiction which, as per the contract between the parties, was approachable. There is no scope for application of the principle of comity of courts, where the parties are contractually agreed to be subjected to the exclusive jurisdiction of one Court, and one of the parties, in stark and mala fide breach of the agreement, petitions another Court and obtains an order from it.

33.5 Following a thorough analysis of the law in this country as well as in foreign jurisdictions, on grant of anti-suit and anti-enforcement injunctions, this Court, in ***Interdigital Technology Corporation***, culled out the definitive principles which apply. On the aspect of comity of courts, and the extent to which it operates as a relevant factor in such cases, this Court found the legal position to be as under:

> "Comity, as a concept, was grating to the ear, when it proceeded from a court of justice.[66] Where the proceeding or order, of which injunction was sought, was oppressive to the applicant seeking injunction, comity was of relatively little importance, as a factor telling against grant of such injunction. Even if grant of injunction, in such circumstances, was likely to offend the foreign Court, that consideration could not operate as a factor inhibiting against such grant.[67] Considerations of comity were, moreover, subject to the condition that the foreign law, or the foreign proceeding or order was not offensive to domestic public policy[68] or customary international law. Comity, in any event, was a two-way street.[69]"

33.6 No principle of comity of courts can tolerate, much less condone, breach, by a party, of an exclusive jurisdiction clause in a

[66] Refer **Satya v Teja Singh, (1975) 1 SCC 120**
[67] Refer **SAS Institute v World Programming Ltd, [2020] EWCA Civ 599**
[68] Refer **SAS Institute, Ecobank Transnational Inc v Tanoh, (2016) 1 WLR 2231**
[69] Refer **SAS Institute**

contract. ***Gray*** quotes, with approval, in this context, the following statement of the law, as contained in the judgment in ***Deutsche Bank***:

> "An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract."

Indeed, the principle is so self-evident that reference to judicial authorities almost appears superfluous. Adherence to contractual covenants, voluntarily executed *ad idem*, is the very life breath of commerce. No party can be permitted to obtain an order from a judicial forum which, as per the contractual covenants, is *coram non judice* and, on the opposite party raising the issue in Court, plead comity as a defence. It is for this reason that the Supreme Court has, in ***Satya***, observed that the principle of comity is, at times, "grating to the ear". ***Gray*** goes on to declare the legal position thus:

> "5. It is well recognised that a party who has made a contractual promise to bring a claim in England will usually be held to that promise, and an anti-suit injunction will usually be granted to restrain any breach of that promise."

This enunciation of the law applies, to the present case, with full force.

34. Other contentions raised by the respondent

34.1 Though the submissions of the respondent have, in one way or the other, been addressed by the foregoing discussion, one may briefly touch on certain aspects which Mr. Sharma sought to emphasize.

34.2 It was sought to be pointed out that Dubai is a reciprocating territory within the meaning of Section 44A of the CPC and that, therefore, Courts in this country are required to execute decrees passed by Dubai Courts, rather than obstruct their execution. No occasion arises for this Court to pronounce on the submission, as no execution, of the decree passed by the Dubai Court, has been moved in India by the respondent. In the event that such execution is moved, the executing court would have to bear in mind the considerations enumerated in Section 13 of the CPC, if invoked by the petitioner. In any event, the fact that Dubai is a reciprocating territory can have no impact on the entitlement, of the petitioner, to protective relief under Section 9 of the 1996 Act, or on the power and authority of this Court to grant such relief.

34.3 Mr. Sharma also sought to raise pleas of acquiescence, by the petitioner, to the jurisdiction of the Dubai Court, and of delay, on the petitioner's part, in approaching this Court, both of which have already been addressed.

34.4 It was also sought to be contended that, consequent on the decree passed by the Dubai Court, a Precautionary Seizure Order has been passed by the Dubai Court. The Precautionary Seizure Order has been passed only in aid of enforcement of the decree of the Dubai Court, and, therefore, cannot impact the decision of the Court regarding the entitlement, of the petitioner, to an injunction against the respondent enforcing the said decree. To repeat, the injunction is being granted, not against the Dubai Court, but against the respondent. The seizure being in aid of enforcement, the injunction against

enforcement being granted today might impact the executability of the Precautionary Seizure Order, but that is merely a legal consequence of the order passed by this Court, and no occasion arises for this Court to hazard any comment in that regard.

35. Entitlement of the petitioner to relief, and relief to be granted

35.1 The foregoing discussion is sufficiently comprehensive, and discloses that a clear case for grant of an injunction, restraining the respondent from enforcing, against the petitioner, the decree passed by the Dubai Court, is made out. The proceedings instituted by the respondent in Dubai were, *ab initio*, oppressive and vexatious of the rights of the petitioner under the ADA. They were wholly *mala fide*, with the sole intent of rendering the arbitration clause in the ADA unworkable and jeopardising the right of the petitioner to seek resolution of disputes by arbitration. Were the interim relief sought by the petitioner, pending arbitration, not granted, the arbitration clause in the ADA would be reduced to a nullity, and this position stands admitted by the respondent in para 4 of its written submissions dated 26 July 2024, extracted in para 4 *supra*. No better case for grant of an injunction, restraining the respondent from enforcing, against the petitioner, the decree passed by the Dubai Court, can exist.

35.2 The matter does not, however, end there. As already noted, this Court does not possess the jurisdiction to injunct, or restrain, any judicial authority in Dubai, from proceeding. Even if the respondent were to be injuncted from prosecuting the Dubai proceedings, or enforcing the decree passed by the Dubai Court, the issue of whether

the Dubai Court would condescend to permitting the respondent to withdraw the execution proceedings instituted by it, is entirely in the realm of speculation and conjecture. This Court cannot predict the Course of action that the Dubai Court may adopt. The requirement of rendering substantial justice makes it necessary, therefore, for this Court to insulate the petitioner against any possible order of enforcement of the decree passed by the Dubai Court. The only way in which this can be ensured, is by directing the respondent to deposit, with this Court, the damages awarded by the Dubai Court, so as to restitute the petitioner, should it be compelled, by the Dubai Court, to disgorge the awarded damages. The deposit would, however, be subject to the right of the respondent to withdraw the amount deposited, on the respondent producing, before this Court, evidence to indicate that it has withdrawn the execution proceedings instituted by it in Dubai.

Conclusion

36. The petitioner is, therefore, entitled to succeed.

37. The present petition is, therefore, allowed in the following terms:

> (i) The respondent is directed, forthwith and within a period of two weeks from pronouncement of this judgment – a copy of which shall be emailed by the Registry to learned Counsel for both sides – to withdraw the execution proceedings instituted by it in Dubai, seeking execution of the judgment and decree

dated 16 May 2024 passed by the Dubai Court in Case 46 of 2022 (***RSM General Trading LLC v Honasa Consumer Ltd & others***), and to file proof of such withdrawal of the execution proceedings with the Registry of this Court.

(ii) Till then, the *ad interim* order dated 5 July 2024, passed by this Court in the present proceedings, shall continue to operate.

(iii) The respondent shall also deposit, with the Registry of this Court, the damages awarded by the Dubai Court against the petitioner, which, at the existing AED to Rupee conversion rate, is quantified as ₹ 57,17,65,947. The deposit shall be made within three weeks of a copy of this judgment being emailed to learned Counsel for the respondent.

(iv) The aforesaid amount, when deposited, shall be retained by the Registry of this Court in an interest-bearing fixed deposit, subject to further orders to be passed by this Court or by the Arbitral Tribunal, as and when it is constituted.

(v) In the event of any order of execution of the decree passed by the Dubai Court being passed by it, the aforesaid amount deposited by the respondent would be released to the petitioner forthwith, along with any interest that the amount may have earned.

(vi) In the event of the respondent producing satisfactory proof of the execution proceedings instituted in the Dubai Court having been withdrawn by it, the Registry shall release, to the respondent, the aforesaid deposited amount, along with any interest which may have been earned thereon.

(vii) The respondent shall respond to the notice dated 25 July 2024, issued by the petitioner to the respondent, within ten days from the date of pronouncement of this judgment. In the event that the parties are unable to arrive at a consensus regarding arbitration, or regarding the constitution of the Arbitral Tribunal which would arbitrate on the dispute, it shall be open to either party to approach this Court to constitute the Arbitral Tribunal.

(viii) It is clarified that the observations and findings in this judgment are only intended to dispose of the present petition under Section 9 of the 1996 Act, and would not be binding on the Arbitral Tribunal in adjudicating on the rival stands of the parties, as and when the occasion may arise to do so.

38. In view of the fact that this Court is directing deposit as aforesaid, the Court refrains from awarding costs.

C. HARI SHANKAR, J.

AUGUST 20, 2024
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Click here to check corrigendum, if any