English and Singaporean Courts Reject Attempts to Circumvent the Jurisdiction of the Courts of the Seat and Set Aside Arbitral Awards

Star Hydro Power Limited v National Transmission and Despatch Company Limited [2025] EWCA Civ 928 & *DLS v DLT* [2025] SGHC 139

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Introduction

In two recent decisions, the English Court of Appeal and the Singapore High Court both robustly addressed attempts by parties dissatisfied with the outcomes they had achieved in arbitration to circumvent the jurisdiction of the court of the seat and challenge the validity of those arbitrations elsewhere.

Star Hydro Power Limited v National Transmission and Despatch Company Limited [2025] EWCA Civ 928

The Underlying Arbitration

In March 2012, Pakistan's majority state-owned electricity network operator (the National Transmission and Despatch Company Limited, "NTDCL") entered a contract with Star Hydro Power Limited ("SHPL") for SHPL to build and operate a hydro-electric power plant in Pakistan. In return, NTDCL agreed to purchase electricity from that plant for 30 years, beginning when it commenced operation. The tariff rate at which NTDCL was to purchase units of electricity from SHPL's plant was to be worked out using formulas that defined the final cost of the dam when it was completed.[1]

The plant was completed in November 2017, and SHPL claimed final costs of roughly USD 420 million.[2]

NTDCL countered that although the contract contained a mechanism for working out the dam's final cost, as a matter of Pakistan's domestic law, the determination of

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1 *Star Hydro Power Limited v National Transmission and Despatch Company Limited* [2025] EWCA Civ 928 ("*Star Hydro Power*"), ¶¶ 5–6.

2 *Star Hydro Power*, ¶ 10.

electricity tariffs was in fact the exclusive responsibility of Pakistan's national electricity regulator—the National Electric Power Regulatory Authority ("NEPRA"). NTDCL therefore passed the decision on SHPL's claimed project costs to NEPRA, which concluded in July 2020 that the true cost was no more than USD 327 million, with obvious implications for the tariffs SHPL could charge NTDCL.[3]

In response, in March 2021, SHPL commenced London-seated LCIA arbitration against NTDCL under the terms of their contract (the "English Arbitration").[4] In that arbitration, SHPL sought declarations that the dam's cost under the contractual formula was USD 394 million and, as a result, the tariff payable by NTDCL was higher than NEPRA had concluded. SHPL further sought compensatory damages for the difference between the tariffs NEPRA's calculations awarded it and the tariffs it was entitled to under the contract.[5]

The English Arbitration concluded in May 2024. The sole arbitrator decided that NEPRA had an undoubted monopoly under Pakistan's domestic law over electricity tariff prices, but that made no difference to the fact NTDCL had agreed contractual terms for fixing the tariffs it was obliged to pay SHPL. If NEPRA fixed the tariffs payable to SHPL below what it was entitled to under that contract, then NTDCL was liable to make up the difference.[6] The arbitrator found the final dam cost under the contract was roughly USD 378 million (*i.e.*, some USD 72 million higher than NEPRA's figure) and awarded SHPL damages accordingly.[7] SHPL estimated those damages were worth approximately USD 90 million.[8]

NTDCL's Application in Lahore

Dissatisfied with the result of the English Arbitration, NTDCL lodged an application with the High Court in Lahore in August 2024. Importantly, this application did not challenge the validity of the award head on. Instead, NTDCL sought partial recognition of the award under the New York Convention (the "Convention"). NTDCL in fact wanted just two paragraphs of the award recognised: one which recorded that it was common ground between the parties that NEPRA had exclusive jurisdiction over electricity tariff pricing under Pakistan law and the final dispositive subparagraph

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3 *Star Hydro Power*, ¶ 11.

4 *Star Hydro Power*, ¶¶ 7–9, 12.

5 *Star Hydro Power*, ¶ 13.

6 *Star Hydro Power*, ¶¶ 16–17.

7 *Star Hydro Power*, ¶¶ 15, 18.

8 Court of Appeal hearing in *Star Hydro Power Limited v National Transmission and Despatch Company Limited* on 3 April 2025 at 7 mins 40 seconds. Available at https://www.youtube.com/live/1AvkDD1eM04.

which, as a catch-all, dismissed any claims the parties had made other than those which the arbitrator had decided in SHPL's favour.[9]

Based on those two paragraphs, NTDCL invited the Lahore High Court to conclude that because the arbitrator had recognised NEPRA's monopoly over tariff setting, it followed that the tribunal had lacked jurisdiction over the dispute, or otherwise its conclusion that NTDCL was liable to SHPL in damages usurped NEPRA's tariff-setting monopoly. Either way, NTDCL said, the award was unenforceable because it fit within one of the cases where recognition and enforcement of a foreign arbitral award can be refused under the Convention.[10]

The English Decisions

In response, SHPL then sought an anti-suit injunction from the English courts to restrain NTDCL from pursuing its application in Lahore. Mrs Justice Dias rejected SHPL's request for an interim injunction pending the decision on a final one, but on appeal, the Court of Appeal reversed her reasoning and granted SHPL the final injunction it sought. In stages:

- *First*, Dias J found that the English courts should not be directing the courts of other countries about what arguments they could properly hear in relation to an arbitral award.[11]

  The Court of Appeal said this was wrong. When parties choose English-seated arbitration, they opt into a legal regime which only allows challenges to the validity of awards under the Arbitration Act 1996 (the "1996 Act").[12] Anti-suit injunctions to restrain foreign challenges to an English-seated award do not raise comity concerns between different national courts. All they do is hold an individual party to their agreement to arbitrate in England and the legal consequences of that agreement.[13]

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9 *Star Hydro Power*, ¶¶ 20–21.

10 NTDCL relied on articles V.2.a (non-arbitrability of the subject-matter); V.2.b (national public policy); V.1.a (invalidity of the arbitration agreement); and V.1.c (dispute/findings outside the scope of the submission to arbitration). See *Star Hydro Power*, ¶ 23.

11 *Star Hydro Power*, ¶ 40.

12 *Star Hydro Power*, ¶ 42.

13 *Star* Hydro *Power*, ¶¶ 46–47, 57–59.

- *Second*, Dias J held that pre-emptive challenges to the recognition or enforcement of foreign awards by the award debtor were in principle possible under the Convention.[14]

  The Court of Appeal disagreed: the Convention does not provide award debtors with a sword to pre-emptively challenge foreign arbitral awards, only a shield with which to resist their recognition or enforcement by the award creditor. In reaching this view, the Court of Appeal relied on the Convention's text and the approach the 1996 Act took to implementing it domestically. The 1996 Act allows parties to make free-standing challenges to English-seated awards under s.67 (substantive jurisdiction), s.68 (serious irregularity) or s.69 (appeal on a point of law) but only makes the Convention's grounds of challenge to a foreign award available as a defence to recognition or enforcement.[15]

  As a result, NTDCL was not entitled to pre-emptively challenge the English Arbitration award's validity in Pakistan—it could only do that in England.[16]

- *Third*, Dias J said that she could not decide, at the preliminary stage at which she was hearing the application for an interim injunction, that NTDCL's application for partial recognition of the English award in Lahore was in substance a "*root and branch*" or "*vexatious*" challenge to the validity of the award in "*any truly fundamental way*".[17]

  The Court of Appeal confirmed that partial recognition or enforcement was in principle permissible.[18] But it did not share her hesitation in reaching the conclusion that NTDCL's efforts in Pakistan were "*plainly*" a "*transparently false*" attempt to challenge the validity of the award in circumvention of the English court's exclusive supervisory jurisdiction.[19] If successful, NTDCL's application to the Lahore High Court would result in a finding that the English Arbitration tribunal had lacked jurisdiction. As a result, the Court of Appeal granted the anti-suit injunction which SHPL sought against NTDCL.

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14 *Star Hydro Power*, ¶¶ 37–38.

15 *Star Hydro Power*, ¶¶ 49–53. See also ¶¶ 54–55.

16 *Star Hydro Power*, ¶¶ 61–62.

17 *Star Hydro Power*, ¶¶ 39, 41.

18 *Star Hydro Power*, ¶ 56.

19 *Star Hydro Power*, ¶¶ 63–66, 69.

DLS v DLT [2025] SGHC 139

In *DLS v DLT*, the Singapore High Court rejected the claimant's attempt to disqualify an arbitrator based on apparent bias (the "Disqualification Challenge"), in a complex wider procedural context which involved prior challenges to both an interim award and the same arbitrator, as well as parallel efforts by the claimant to secure an anti-arbitration injunction in an unnamed foreign country's courts.

Background

The claimant and defendant in the Disqualification Challenge are also the two parties to an anonymised ongoing Singapore-seated ICC arbitration, which has a three-arbitrator panel. That tribunal issued its First Partial Award in June 2024.[20] In November 2024, the claimant asked the Singapore High Court to set aside two aspects of the First Partial Award (the "Partial Award Challenge"). In February 2024, the claimant sought to add apparent bias to its grounds of challenge.[21] It said one of the arbitrators had been appointed by the defendant's law firm in an earlier arbitration in which the defendant company's chairman was claimant.[22]

In late March 2025, Mr Justice Maniam rejected the entire Partial Award Challenge. Relevantly for present purposes, he refused to admit the bias argument, holding that it was "*hopeless*".[23] The defendant's chairman was claimant in the earlier case solely in his personal capacity, there was no overlap between the cases, and the earlier case took place over four years ago.[24]

Two New Parallel Challenges to the Arbitrator

The day after Maiman J refused the Partial Award Challenge, the claimant launched its standalone Disqualification Challenge before him, recycling its allegations of bias.[25] The claimant had already unsuccessfully challenged the arbitrator on the same grounds before the ICC Court (the "ICC Challenge"), as is required by Singapore's arbitration law before a court challenge is permitted.[26]

While Maiman J's hearing on the Disqualification Challenge was pending, in mid-April 2025, the claimant also commenced proceedings in an unnamed foreign country's courts, seeking declarations and injunctions that would restrain the defendant from

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20 *DLS v DLT* [2025] SGHC 139 ("*DLS v DLT*"), ¶ 2.
21 *DLS* v *DLT*, ¶ 4.
22 *DLS v DLT*, ¶ 23.
23 *DLS v DLT*, ¶ 4.
24 *DLS v DLT*, ¶ 23.
25 *DLS v DLT*, ¶ 5.
26 *DLS v* DLT, ¶¶ 6–8.

progressing the underlying arbitration while the current tribunal was in place (the "Foreign Challenge").[27] This Foreign Challenge was founded on the same bias allegations as the Disqualification Challenge. The foreign court deferred consideration of the Foreign Challenge and queried how the claimant could properly pursue overlapping remedies for the arbitrator's alleged bias before both it and Maiman J in Singapore.[28]

Maiman J Insists on His Right to Dispose of the Disqualification Challenge

Following that hearing on the Foreign Challenge, both parties returned before Maiman J in mid-May 2025. The claimant asked to discontinue the Disqualification Challenge[29] while the defendant sought an anti-suit injunction restraining the claimant from progressing the Foreign Challenge.[30] Maiman J granted the injunction and refused discontinuation. Challenges to arbitrator appointments were properly the responsibility of the supervising Singaporean court of the seat, and if he allowed the claimant to drop its Singaporean challenge, that might allow the claimant to tell the foreign court that the overlap which had given it pause was now cured.[31]

At the substantive hearing on the Disqualification Challenge, in early July 2025, the claimant, having swapped counsel, told Maiman J it had no submissions to make in support.[32] Instead, Maiman J discovered that, since May 2025, the claimant had in fact progressed the Foreign Challenge up to a reserved judgment, in violation of his anti-suit injunction.[33]

Given this, and that the claimant's grounds of alleged bias either overlapped with its ICC and Interim Award Challenges or otherwise lacked substance entirely, Maiman J felt no difficulty finding that the claimant was issue estopped from bringing the Disqualification Challenge in respect of the overlapping grounds[34] and that the remainder of the grounds should be rejected.[35]

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27 *DLS v DLT*, ¶ 10.
28 *DLS v DLT*, ¶ 11.
29 *DLS v DLT*, ¶ 12.
30 *DLS v DLT*, ¶ 13.
31 *DLS v DLT*, ¶ 15.
32 *DLS v* DLT, ¶¶ 17–18.
33 DLS v DLT, ¶ 17.
34 *DLS v DLT*, ¶¶ 22–36.
35 *DLS v DLT*, ¶¶ 37–38.

In his judgment on the Disqualification Challenge, Maiman J left open the question what consequences would follow from the claimant's pursuit of the Foreign Challenge in breach of the anti-suit injunction.[36]

Comment

The two judgments underscore a recurring theme in the enforcement landscape: the creative procedural manoeuvres employed by parties to sidestep their obligations under arbitral decisions. Whether dressed as selective enforcement applications or repeated challenges cloaked in purported novelty, such tactics often seek to find a more sympathetic ear outside the (party-selected) seat of the arbitration.

Yet, as both the English and Singaporean courts reaffirm, such tactics do not pass scrutiny, as they are indirect challenges to tribunals and awards that should be resolved exclusively by the courts of the seat. The courts' responses demonstrate a strong resolve to uphold the integrity of the arbitral process and to ensure that parties cannot, through procedural manoeuvres, do what they are barred from doing directly.

Attempts to circumvent the courts of the seat do not just threaten the finality of arbitral decisions but also divert time and resources. The anti-suit injunctions granted in the two cases were both tools to uphold jurisdictional discipline and a necessary measure to contain wasteful and improper litigation.

Ultimately, the two decisions offer a clear message: parties who agree to arbitrate in a particular seat must accept the supervisory role of that seat's courts. Courts remain alert to circumvention tactics and will not hesitate to intervene to protect the integrity and efficiency of the arbitral process.

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Please do not hesitate to contact us with any questions.

[36] *DLS v DLT*, ¶ 39.

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