

Insights

SWORD V SEAT: WHY STAR HYDRO V NTDCL IS A CASE TO WATCH

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Next week, in a two-day hearing, the UK Supreme Court will hear the appeal in *Star Hydro Power Limited v National Transmission and Despatch Company Limited*. The key question before the Supreme Court is whether the English courts' supervisory jurisdiction extends to restraining proceedings brought under the New York Convention in a foreign court that ostensibly seek partial recognition and enforcement of a London-seated arbitral award.

What began as a commercial tariff dispute over a 147 MW hydroelectric plant in Pakistan has snowballed into proceedings with significant implications for international arbitration. At its core, the case concerns the interface between the supervisory jurisdiction of the courts of the seat of arbitration and the enforcement mechanisms of the New York Convention. The decision will delineate the boundaries of English anti-suit injunctions and determine whether an award debtor can use the New York Convention pre-emptively – before any enforcement action has been brought by the award creditor – for declarations of non-recognition or non-enforcement.

Background

The dispute concerns a 30-year power purchase agreement entered into in 2012 between Star Hydro Power Limited ("**Star Hydro**"), a special purpose vehicle backed by South Korean investors, and the National Transmission and Despatch Company Limited ("**NTDCL**"), a state-owned entity that manages the transmission of electricity across Pakistan. Following increases in project costs, Star Hydro sought a tariff adjustment under the agreement. However, Pakistan's domestic regulator, the National Electric Power Regulatory Authority ("**NEPRA**"), issued a decision reducing the project cost and tariff framework.

Star Hydro commenced a London-seated arbitration under the LCIA Rules. In May 2024, the sole arbitrator issued a final award which established the adjusted project cost at \$378.3 million, verified a contractually elevated tariff rate, and ordered NTDCL to pay the financial difference.

NTDCL was dissatisfied with the award. However, instead of seeking to challenge the award in the English courts, NTDCL commenced proceedings before the Lahore High Court in Pakistan. There, NTDCL sought partial recognition of isolated paragraphs of the award by asking the Pakistani

courts to: (1) recognise and enforce the arbitrator's finding that NEPRA has exclusive jurisdiction over tariffs under the laws of Pakistan, meaning that the arbitrator did not have jurisdiction over the subject matter of the arbitration; and (2) declare that the finding as to contractual entitlement would usurp NEPRA's exclusive jurisdiction and violate Pakistani law, rendering the award unenforceable under the Convention.

Star Hydro countered by applying to the English courts for an interim anti-suit injunction to restrain NTDCL from pursuing the Lahore proceedings.

Pre-emptive Enforcement or Challenge?

The key question for the English courts was whether NTDCL was entitled to pre-emptively seek a declaration that the award was unenforceable under the New York Convention before any application had been made by Star Hydro to enforce the award in Pakistan.

The High Court initially refused the application for an injunction. The Court of Appeal reversed that decision. The Court of Appeal found that the partial enforcement proceedings were essentially an impermissible challenge to the award disguised as enforcement and designed to circumvent the supervisory jurisdiction of the English courts.

The Court of Appeal made the following findings:

- The English courts have exclusive supervisory jurisdiction over any challenges to London-seated awards.
- In exercising that supervisory jurisdiction, the courts are bound to consider whether a party is acting in breach of the arbitration agreement in a foreign jurisdiction and have jurisdiction to restrain such actions.
- To uphold said jurisdiction, the English courts will generally grant an anti-suit injunction to prevent further breach of an arbitration agreement unless there are strong reasons not to do so.
- The New York Convention is only concerned with applications for the recognition or enforcement of an award. While Article V of the Convention provides a shield which can be raised in answer to such applications, it cannot be used as a sword to make pre-emptive challenges to an award.

The Flip Side of the Argument

In granting the injunction, the Court of Appeal confirmed that English courts will not tolerate proceedings in foreign courts designed to neutralise a London-seated award. It is a decision that appears to be largely supported by the arbitration community.

However, there has been criticism that the Court of Appeal's decision exaggerates the importance of the seat of arbitration. NTDCL's pre-emptive application for a declaration of non-recognition does not seek to set aside the award. Rather, it is asking the Pakistani courts for clarity as to whether it can use the Convention as a shield in future enforcement proceedings in Pakistan. Moreover, any decision on NTDCL's jurisdictional objections is unlikely to create an issue estoppel in the English courts and will only have effect in Pakistan, where the Pakistani courts remain sovereign under the New York Convention (see MacMahon, P. (2026). *Pre-emptive challenges to recognition of foreign arbitral awards: Star Hydro v National Transmission and Despatch Co.*).

The New York Convention Framework: Shield vs. Sword

A key issue in the case is the interaction between Articles I, III and V of the Convention.

Articles I and III: The Mandate for Enforcement

Article I sets out the scope of the Convention, which applies to arbitral awards made in contracting States other than that where recognition and enforcement is sought. Article III mandates contracting States to recognise such awards as binding and enforce them in accordance with local procedural rules.

Crucially, the Court of Appeal observed that Articles I and III deal solely with the nature and extent of the obligation of the secondary jurisdiction to recognise and enforce such awards. The Convention neither imposes any other obligation nor confers any other jurisdiction with regard to foreign arbitral awards.

Article V: Defensive Shield or Offensive Weapon?

Article V outlines the narrow, exhaustive grounds upon which a court *may* refuse the recognition and enforcement of an award, including instances where the award violates the public policy of the enforcing State (Article V(2)(b)).

The Court of Appeal clarified that using the Convention to pre-emptively attack an award would entirely undermine the role of the supervisory courts as the exclusive jurisdiction for such challenges. Doing so would also contradict the way the Convention is implemented in this jurisdiction. In other words, Article V challenges can only be raised in answer to an application to recognise or enforce.

What Happens Next?

Next week's Supreme Court hearing will decide whether this strict demarcation between supervisory and enforcement jurisdictions will continue to be upheld, or whether room will be made for parties to pre-emptively seek adjudication of recognition and enforceability issues in foreign courts.

A dismissal of the appeal will formally entrench the “shield, not a sword” nature of the Convention grounds, confirming that Article V cannot be used to support a pre-emptive, free-standing challenge to an award that circumvents the exclusive jurisdiction of the English courts to hear such challenges. This outcome sends a strong signal that the English courts will uphold supervisory jurisdiction over London-seated awards.

Alternatively, the Supreme Court may decide that the English courts’ supervisory jurisdiction does not extend to restraining an application for recognition or enforcement under the Convention before the courts of a contracting State. Under this view, a party should not be prevented by an English *in personam* injunction from pursuing an application said to be for recognition or enforcement under the Convention in another State.

While such a result may be viewed as a victory for judicial comity and sovereignty, it may also trigger a wave of parallel, pre-emptive “challenges” worldwide, allowing award debtors to secure advantageous local judgments in Convention States before a winning party can even attempt international enforcement.

Given the English courts’ historical pro-arbitration stance, the likely outcome is a judgment that firmly upholds its exclusive jurisdiction over challenges to a London-seated award, reinforcing London’s position as a premier jurisdiction for international dispute resolution.

Watch this space and stay tuned for our next article, where we will be taking a closer look at the Supreme Court judgment when it is handed down.

Related Capabilities

- International Arbitration

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