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SANCTIONS UPDATE

Foreign Sanctions and Contractual Obligations: Delhi High Court Directs Resumption of SAP Support Services to Nayara Energy

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INTRODUCTION

The Delhi High Court, through an interim order (**Order**) in *Nayara Energy Limited v. SAP India Private Limited,* directed SAP India Private Limited (**SAP India**) to immediately restore and resume enterprise and software support services to Nayara Energy Limited (**Nayara**). The order examines the interplay between foreign sanctions, contractual obligations and the availability of contractual defences based on alleged legal or practical impossibility of performance.[1]

BACKGROUND

Nayara and SAP India entered into certain software licence and support agreements that, under their terms, were governed by Indian law and provided for the exclusive jurisdiction of the courts in New Delhi.

SAP India provided Nayara with technical and enterprise support for its SAP software licences from 2017 to July 24, 2025. The licences were non-exclusive and perpetual, while the corresponding support obligations were managed through Annual Work Orders. The last Work Order accepted by SAP India covered the period from January 1, 2025, to December 31, 2025, for which Nayara had made an advance payment.

On July 18, 2025, the EU sanctioned Nayara for actions that undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine.

It may be recalled that Rosneft, the Russian state oil company, holds a substantial stake (49%) in Nayara.

On July 24, 2025, SAP India suspended essential support services and denied Nayara access to SAP's support portal, citing the EU sanctions framework. Nayara approached the Delhi High Court, inter alia, seeking restoration of the support services.

KEY OBSERVATIONS OF THE COURT

The Delhi High Court observed as follows in its interim order:

- **Governing law and contractual obligations: Indian law as the proper law of the contracts:** The High Court observed that the agreements were governed by Indian law and contained an exclusive jurisdiction clause in favour of the courts in New Delhi. Accordingly, the contractual framework was relevant to assessing SAP India's obligations and its ability to rely on foreign sanctions as a justification for non-performance.

- **European Union sanctions were required to be pleaded and proved as foreign law:** The High Court observed that the Council Regulation (EU) No. 269/2014 and the German Foreign Trade and Payments Act constitute foreign law, and that an Indian court cannot take judicial notice of foreign law. It further observed that a party relying on foreign law must plead and prove it as a question of fact, and that this may be done through an expert opinion under Section 39 of the Bharatiya Sakshya Adhiniyam, 2023.

  While both parties placed expert opinions on record, the High Court noted that these opinions were not supported by sworn affidavits, that the experts' qualifications and specialised experience had not been established, and that the experts had not been examined or cross-examined. The High Court further noted that the opinions were not supported by authoritative commentaries, official guidance from European Union institutions, or decisions of European courts. The High Court therefore found that the applicability, jurisdictional scope, and binding effect of the European Union sanctions had not been proved at the interim stage.

[1] *Nayara Energy Limited v. SAP India Private Limited & Anr.*, CS(COMM) 1006/2025 (High Court of Delhi, September 21, 2026). [Nayara Energy Limited v. SAP India Private Limited \u0026 Anr._7536 (1).pdf]

- **Commercial impossibility and force majeure:** SAP India relied, inter alia, on the structure of its global support network and the potential difficulties of providing services from a non-sanctioned jurisdiction. The High Court observed that increased commercial difficulty, by itself, does not establish practical or legal impossibility of performance. More specifically, the High Court noted that the services were provided through a worldwide network and were not contractually required to be routed exclusively through Germany; and that the possibility of providing services from another jurisdiction might make performance more onerous but would not necessarily render it impossible. The High Court accordingly reiterated that commercial hardship cannot be equated with legal impossibility.

  The High Court also noted that the relevant force majeure provisions provided for an extension of the period for performance and did not provide for termination, discharge or frustration of the contracts.

- **Interim mandatory relief:** The High Court found that Nayara had established a strong case, showing irreparable harm and a balance of convenience in its favour. Accordingly, it directed SAP India to restore the status quo ante and to immediately resume enterprise and software support services for Nayara.

  The High Court expressly clarified that its observations were confined to the interim application and would not affect the final adjudication of the dispute on the merits. Nevertheless, we will be watching the developments; the following practical takeaways are a good housekeeping tool for foreign companies, along with their subsidiaries, directly or indirectly doing business with an Indian company to follow.

BROADER INDIAN CONTEXT

The interaction between sanctions restrictions and underlying legal or financial obligations has also arisen in Indian insolvency proceedings. In March 2026, the NCLT issued an order directing payment to a sanctioned entity.[2] Subsequently, in April 2026, the NCLAT, in proceedings arising from an appeal against the NCLT's order, kept the order in abeyance[3], following which the parties settled the dispute.[4]

Although the factual and procedural context differs from the Nayara–SAP dispute, the NCLT proceedings illustrate the need to assess the interaction between sanctions restrictions and underlying legal obligations, including the availability of legally permissible mechanisms for making payments or performing contractual obligations.

PRACTICAL TAKEAWAYS

The Order highlights the relationship between contractual structure and the ability to suspend or terminate particular obligations. The High Court distinguished between the principal and supplementary agreements when examining the basis for withdrawing support services. Against this background, businesses should revisit existing arrangements to assess whether they adequately address sanctions-related risks and provide workable mechanisms for lawful continuity, suspension or exit:

- **Mapping the jurisdictional exposure**: Before drafting, map every nexus that could pull a regime in. Nexus is broader than governing law. Consider the following: Parties to the contract, Transaction Features and Parties involved and their jurisdiction.
- **Contractual pointers:**
  - **Consolidated or standalone contracts**:
    - The review should assess whether the commercial relationship is better addressed through a

[2] CJ Shah & Co. v. Flint Group India Private Limited, C.P. (IB) No. 35/AHM/2026 with I.A. No. 456/AHM/2026 (National Company Law Tribunal, Ahmedabad Bench, March 26, 2026), paras. 56–57.
[3] Flint Group India Pvt. Ltd. v. CJ Shah & Co., Company Appeal (AT) (Ins) No. 617 of 2026 (National Company Law Appellate Tribunal, Principal Bench, April 6, 2026), pp. 3–4
[4] Flint Group India Pvt. Ltd. v. CJ Shah & Co., I.A. No. 4666 of 2026 in Company Appeal (AT) (Ins) No. 617 of 2026 (National Company Law Appellate Tribunal, Principal Bench, July 15, 2026), paras. 3–5.

consolidated contractual framework or through appropriately segregated obligations in view of the parties registered or operating in the jurisdictions where the sanctions regulations are said to be complied with.

  - **Define "Sanctions"**: List the regimes expressly (UN, EU, UK, US, and any others). Wording matters, and courts will not stretch vague language in either direction. Consider whether the definition covers only designations or also sectoral measures, export controls and anti-circumvention provisions.

- **Representations and warranties:** Make these representations recurring, tested at each order, delivery or payment, not only at signing.
  - **Undertakings:** Undertakings should be clear, transparent and continuing, taking into consideration no traces of any risk that may impact the contract, including collection of historical, lifetime of the contract and in some cases continuing depending upon the nature of the transaction.
  - **Periodic review of contracts:** Review the existing contracts, work orders and supplementary agreements together to identify gaps or inconsistencies in the allocation of sanctions-related risks.
  - **Contractual architecture:** Clearly define which obligations are affected and how the different agreements/ work orders interact.
  - **Sanctions triggers and remedies:** Specify when performance can be suspended, when termination is permitted, and what happens to unaffected obligations.
  - **Termination:** Risk-based triggers are commercially valuable but more contestable, so tie them to objective criteria such as written advice of counsel or a bank's refusal to process.
  - **Force majeure, drafted in parallel:** Do not rely on force majeure alone. Include sanctions expressly in it, but keep the standalone sanctions clause, because force majeure clauses usually require unforeseeability and mitigation.
  - **Prove the sanctions position:** If relying on foreign sanctions, be prepared to establish the foreign law properly, including through properly supported expert evidence.
  - **Assess lawful alternatives:** Before treating sanctions as making performance impossible, assess whether lawful alternative means of performance exist, including availing any general licenses issued by the concerned Western country.
  - **Prepare for disputes:** Maintain contemporaneous evidence of the sanctions assessment, contractual obligations and alternative performance options.

- **Governing law and forum:**
  - **Governing law:** Consider whether it is English, Singapore, UAE or Swiss law that will give you predictability and a developed body of sanctions case law. So, choosing a law does not "switch off" sanctions. It changes how they are treated.

- **Dispute resolution**
  - **Place of seat:** Arbitration at a neutral, sanctions-literate seat (Singapore, London, Paris, Geneva) is usually preferable to litigation.
  - **Institution:** Check that the institution can administer a case involving a sanctioned party. Institutions and arbitrators may need licences to receive fees from designated persons, and SIAC, the ICC and the LCIA have all dealt with this.

ELP COMMENT

In light of the Order and the increasing use of sanctions across jurisdictions, a designation may affect the parties to a contract differently. One party may face compliance concerns, while the other experiences an interruption in an agreed service or payment. At the interim stage, the High Court examined the contract, the evidence of foreign law and how support services could be delivered when assessing SAP India's withdrawal of support. The Order also brings contingency planning into focus: the availability of a lawful alternative may affect how sanctions bear on a particular obligation.

Economic Laws Practice (**ELP**) has been assessing sanctions laws and regulations in several jurisdictions and regularly advising clients of any potential exposure to such regulations on account of their potential business engagements. ELP also has a global reach through its extensive network of foreign lawyers and consultants, who in turn work closely with regulators and government authorities in their respective jurisdictions.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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