NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

232. CA/392/2023 CA/82(MB)2021
CP/92(MB)2021

CORAM:

MS. REETA KOHLI,
MEMBER (J)

MS. MADHU SINHA,
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **14.09.2023.**

NAME OF THE PARTIES: Anupam Mittal
V/s
People Interactive (India) Private Limited

Sec. 241(1), 242(4) of the Companies Act 2013

ORDER

Heard the Sr. Counsel for the parties. Appropriate orders to be passed. Reserved.

Sd/-
MADHU SINHA
Member(Technical)

Sd/-
REETA KOHLI
Member(Judicial)

/Z/

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

CA/392/2023
IN
CP/92(MB)2021

In the matter of:

Section 241 and 242 of the Companies Act, 2013 ("the Act") and the rules framed thereunder;

AND

People Interactive (India) Private Limited
(CIN: U72900MH2000PTC124485), a company incorporated under the provisions of the Companies Act, 1956

ANUPAM MITTAL
An Indian inhabitant residing at 182, Mehr Naz Co-op. Housing Society, Cuffe Parade, Mumbai – 400 005.

...Applicant/Org. Petitioner

IN THE MATTER OF,

ANUPAM MITTAL,
An Indian inhabitant residing at 182, Mehr Naz Co-op. Housing Society, Cuffe Parade, Mumbai – 400 005.

..... **Petitioner**

Vs.

1. **PEOPLE INTERACTIVE (INDIA) PRIVATE LIMITED**
   A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 2-B(2) (ii) Ground Floor, Film Centre Building, Near A. C. Market, 68 Tardeo Road, Mumbai-400034
2. **WESTBRIDGE VENTURES II INVESTMENT HOLDINGS**

A company organized under the laws of Mauritius and having its registered office at IFS Court, Bank Street, Twenty Eight, Cybercity, Ebene-72201, Mauritius.

3. **MS. SHOBITHA ANNIE MANI**
   Director of People Interactive (India) Private Limited, # G-6, Aishwarya Apartments, No. 38, Rest House Road Near Brigade Road, Shantala Nagar Ward, Bangalore-560 001, Karnataka, India.
4. **MR. ANAND MITTAL**
   Director of People Interactive (India) Private Limited, An Indian inhabitant residing at 15, Satnam Apartment, Cuffe Parade, Mumbai-400 005.
5. **MR. NAVIN MITTAL**
   An Indian inhabitant residing at 15, Satnam Apartment, Cuffe Parade, Mumbai-400 005.

…… **Respondent**

Order dated 15.09.2023

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearance:

For the Petitioner: Sr. Counsel Mr. Ravi Kadam, Sr. Counsel Mr. Sharan Jagtiani, Counsel Mr. Kunal Dwarkadas, Adv. Rahul Dwarkadas, Adv. Areez Gazdar, Adv. Nutash Kotwal, Adv. Shireen Mistri

For the Respondent No. 2: Senior Counsel Janak Dwarkadas a/w Senior Counsel Nikhil Sakhardande, Mr. Rajendra Barot, Ms. Anusha Jacob, Ms. Mrudula Dixit, Ms. Richa Borthakur

For the Respondent No. 4: Ms. Rishika Harish, Ms. Shivani Prasad

ORDER

Per: Reeta Kohli, Member (Judicial)

1. The prayer in the present application is for grant of temporary injunction restraining the Respondents to invoke arbitration at Singapore under the Rules of International Court of Arbitration during the pendency of the present petition under Section 241-242 of the Companies Act 2013 pending before this Tribunal. The urgency in this application is being pressed on the ground that the arbitration proceedings are scheduled in Singapore from 18.09.2023 to 22.09.2023. It is pertinent to state that vide an interim order dated 11.09.2023 by the Hon'ble Bombay High Court, the Applicant/Petitioner has been granted an Anti-enforcement action order restraining the Respondents/Defendants from enforcing an Anti-enforcement suit granted by the High Court of Singapore. The High Court of Singapore had restrained the Applicant/Petitioner from proceeding with the present company petition against the Respondents before the National Company Law Tribunal Mumbai raising disputes pertaining to Oppression and Mismanagement. Vide the present interim application Applicant/Petitioner is seeking an injunction restraining the Respondents from invoking arbitration against the Petitioner.
2. We have heard the Ld. Senior Counsels of the parties and with their able assistance have been able to cull out the issues as under:

    a. The case of the Applicant is that the Respondents deserved to be restrained from proceeding with the arbitration scheduled from 18.09.2023 to 22.09.2023 at Singapore because the relief being sought in arbitration is overlapping with the cause and prayers

made in the present petition, pending before the NCLT because the acts of Oppression are not arbitrable in view of Indian laws. Thus, NCLT is the only available forum to the Petitioner to deal with the Oppression and Mismanagement. The argument has also been advanced on the issue that, if the arbitration is allowed to proceed and the Respondents get an award in their favour, the enforcement of the award would be subject to the provisions of the Arbitration and Conciliation Act 1996. The award with respect to the acts of oppression is not enforceable in India. Thus, it will be an effort in futility.

b. On the other hand, the arguments advanced by the Ld. Senior Counsel for the Respondents is that before the Singapore arbitration, the relief being sought by them is of Specific Performance of contractual obligation in respect of Drag Along Rights strictly in terms of the SHA Agreement dated 10.02.2006. The Respondents also stated that the Company Petition is "dressed up" as Oppression and Mismanagement petition. The arbitration invoked by Respondent No. 2 is for breach of contractual rights under SHA, thus cannot be said to be similar or overlapping the claims under Oppression and Mismanagement petition.

c. The issue of jurisdiction of NCLT to grant such an injunction staying arbitration proceedings in Singapore has also been addressed by both the Ld. Senior Counsels.

3. Before adverting to the above stated issues raised by both the Ld. Senior Counsels, it is relevant to take notice of certain necessary facts. The Applicant/Petitioner is the founder promoter holding 30% of shareholding. Respondent No. 1 is the company. Respondent No. 2 is the investor holding 44.3% shareholding in Respondent No. 1 and has invested Rs. 165.89 Crores (as per the current exchange value). Respondent No. 4 has 13% shareholding and Respondent No. 5 has 1000 shares. Respondent No. 2 being the investor was given certain contractual rights, including exit rights in the Share Holders Agreement dated 10.02.2006 which are i) Initial Public Offering ("IPO"), within 5 years. ii)Sale of Respondent No. 2's shares to any independent third party, except a significant competitor. iii) Redemption and Buy Back option if an IPO is not held within 5 years. iv)Drag Along Right if Respondent No. 1 fails to Buy Back Respondent No. 2's shares within 180 days of exercising buy back option.

4. Certain admitted relevant facts are tabulated as under:

Date	**Event**
25.10.2004	Applicant appointed as the Managing Director of the Respondent No. 1 company
10.02.2006	A shareholder agreement entered into between the parties. **Clause 20** of SHA provides that SHA is governed by **laws of India**. The Arbitration Proceedings shall be as per International Chamber of Commerce Rules and the seat of arbitration shall be **Singapore**. The

	enforcement of the award shall be subject to the provisions of **Indian Laws**.
2019	Dispute and differences arose between the Petitioner and Respondents.
10.12.2020	Respondent No. 2 exercised the buyback option and issued a Buyback notice. Respondent No. 1 company was unable to make the full payment of Buyback within stipulated 180 days. It deserves to be mentioned that the exit route for Respondent No. 2 further entitled him the drag-along right to sell its shares to any party without any restriction.
03.03.2021	Applicant/Petitioner filed Company Petition before NCLT Mumbai.
15.03.2021	Applicant/Petitioner served with the summons of High Court of Singapore initiated by Respondent No. 2
16.03.2021	Applicant/Petitioner served with an ex-parte order restraining him from pursuing the proceedings (Anti-Suit Temporary Injunction Order) of Singapore High Court. 26.10.2021: Singapore High Court passed Permanent Injunction. 06.01.2023: Singapore Supreme Court upheld Anti Suit Permanent Injunction.

2021	Anti-Enforcement Judgment Suit No. 95 of 2021 preferred by the Applicant/Petitioner before Bombay High Court seeking declaration that NCLT is the only competent forum to hear and decide the disputes raised in the petition- Interim Application No. 1010 of 2021 filed seeking interim reliefs also filed.
01.04.2021	Respondent No. 2 informed the Bombay High Court that the EOGM would be adjourned to beyond 16.04.2021
08.10.2021	Respondent No. 2 called upon the Petitioner to give consent to the sale of Respondent No. 1 company to a "significant competitor" of Respondent No. 1
15.11.2021	Petitioner challenged anti suit permanent injunction before Supreme Court of Singapore.
17.05.2022	Respondent No. 2 invoked arbitration proceedings at Singapore.
04.04.2023	Partial arbitration award upholding the jurisdiction at Singapore.
11.09.2023	Bombay High Court granted the interim relief to the Petitioner.

5. The Ld. Senior Counsel for the Applicant/Petitioner while making his arguments also referred to various judgments supporting his submission primarily on:

a) *NCLT is the only forum to deal with the issue of oppression and mismanagement raised in his petition.*
b) *NCLT has the competence to grant injunction staying the arbitration at Singapore scheduled from 18.09.2023 to 22.09.2023.*

6. The Ld. Senior Counsel to substantiate his arguments referred to the law laid down by various Hon'ble High Courts dealing with similar issues. To substantiate the arguments that only NCLT has the exclusive jurisdiction to decide the issues pertaining to oppression and mismanagement. He further stated that not getting the opportunity to agitate the issue of oppression and mismanagement before the only available forum would tantamount to oppression. Reference not only was made to the judgment rendered by Hon'ble Bombay High Court on 11.09.2023 but also to the judgment rendered by the Hon'ble Delhi High Court in ***Interdigital Technology Corporation Vs. Xiaomi Corporation and Others*** wherein it was held,

> "*Interference with the right to pursue one's legal remedies, before the forum which was competent to adjudicate thereon, amounts to "oppression", especially where there is no other forum which the litigant could approach."*

The Petitioner also referred to ***M/s. PPN Power Generating Company Limited Vs. PPN (Mauritius) Company (Madras High Court)*** wherein the Hon'ble Division Bench of the Madras High Court was pleased to hold as under:

> *"There cannot be any difficulty in accepting the proposition that the ClB is having such inherent power to grant injunction in a given case if it has jurisdiction to deal with the same."*

It was further held, "*there cannot be any doubt that order of injunction can be granted with respect to the arbitration proceedings.*"

The Ld. Senior Counsel also referred to ***Himachal Sorang Power Private Limited Vs. NCC Infrastructure Holdings Limited (High Court of Delhi)*** wherein the Hon'ble Court has been pleased to lay down the parameters for grant of Anti Arbitration Injunction which are as under:

> "127. *Thus, if I were to attempt an encapsulation of the broad parameters governing anti-arbitration injunctions, they would be the following:*
>
> *i. The principles governing anti-suit injunction are not identical to those that govern an anti-arbitration injunction.*
>
> *ii. Court's are slow in granting an anti-arbitration injunction unless it comes to the conclusion that the proceeding initiated is vexatious and/or oppressive.*
>
> *iii. The Court which has supervisory jurisdiction or even personal jurisdiction over parties has the power to disallow commencement of fresh proceedings on the ground of res judicata or constructive res judicata. If persuaded to do so the Court could hold such proceeding to be vexatious and/or oppressive. This bar could obtain in respect of an issue of law or fact or even a mixed question of law and fact.*
>
> *iv. The fact that in the assessment of the Court a trial would be required would be a factor which would weigh against grant of anti-arbitration injunction.*
>
> *v. The aggrieved should be encouraged to approach either the Arbitral Tribunal or the Court which has the supervisory jurisdiction in the matter. An endeavour should be made to support and aid arbitration rather than allow parties to move away from the chosen adjudicatory process.*
>
> *vi. The arbitral tribunal could adopt a procedure to deal with "re-arbitration complaint" (depending on the rules or*

procedure which govern the proceeding) as a preliminary issue."

7. The Ld. Senior Counsel for the Petitioner laid great emphasis on the judgment rendered by the Hon'ble Bombay High Court on 11.09.2023 in I.A. 1010/2021 to emphasize his submissions that the only forum available for the Applicant is NCLT and non-grant of injunction would render him remediless. The attention was specifically drawn to the following Paras of the judgment which are quoted as under :

"83. Hence, this Court finds that temporary injunction restraining enforcement of the anti-suit permanent injunction order needs to be granted in favour of the plaintiff. Accordingly, Temporary Injunction is granted in terms of prayer clauses (a) and (c) which read as follows:

"(a) That pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to issue an order of temporary injunction restraining Defendant No. 2 and/or its agents, directors, employees, servants and/or any person claiming through or under it from, in any manner, whether directly or indirectly, (i) enforcing the Anti-Suit Permanent Injunction Order dated 26th October 2021 (Annexure 'P' to the plaint) passed by the High Court of the Republic of Singapore; and (ii) Appeal Court Order dated 6th January 2023 (Annexure 'P-2' to the plaint) passed by the Court of Appeal of the Republic of Singapore;

(c) That pending the hearing and final disposal of this suit, this Hon'ble Court be pleased to issue an order of temporary injunction restraining Defendant Nos. 2 to 5 and/or their agents, directors, employees, servants and/or any person claiming through or under them from relying on the Anti-Suit Permanent Injunction Order dated 26th October 2021 (Annexure

'P' to the plaint) passed by the High Court of the Republic of Singapore and the Appeal Court order dated 6th January 2023 (Annexure 'P-2' to the plaint) passed by the Court of Appeal of the Republic of Singapore when the plaintiff applies for injunctive reliefs in the Hon'ble National Company Law Tribunal in connection with Company Petition (E-filing) No. 01111 f 2021.

84. It is relevant to note that Company Petition (E-filing) No. 01111 of 2021 has been numbered before the NCLT as Company Petition No. 92 of 2021. As noted hereinabove, by order dated 22.11.2021, this Court took note of the fact that the statement made on behalf of the defendants that they would adjourn the EOGM was continued from time to time. Thereupon, in the said order, this Court directed that the defendants would adjourn the EOGM till the instant application was heard and decided. This Court is of the opinion that since temporary injunctions have been granted in terms of the prayer clauses (a) and (c) of the instant application, as a consequence of which, the plaintiff will now be able to pursue his petition before the NCLT and also seek injunctive reliefs in the said petition, it would be appropriate that the aforesaid order dated 22.11.2021, is extended for a further period. Accordingly, it is directed that the interim order dated 22.11.2021 passed by this Court in Interim Application No. 2827 of 2021 in Suit No. 95 of 2021, shall continue to operate for a further period of eight weeks from today."

8. On the other hand, the Ld. Senior counsel for the Respondent confined himself purely on the issue of his contractual rights stating therein that in view of the Shareholders Agreement which is binding on the parties, he had every right to file the arbitration proceedings in Singapore. His contractual rights cannot be curtailed by filing the present injunction application. The

Respondent No. 2 being the investor has not been able to get the exit in terms of the agreement. Thus, as per the Clause 20 of SHA, he has rightly initiated the arbitration proceedings. He further submitted that the Petitioner has the right to raise all arguments regarding oppression during the arbitration proceedings and the Arbitrator would be able to appreciate and adjudicate upon the issues raised by the Petitioner. According to the Respondents, the petition preferred by the Petitioner before NCLT is a "dressed up petition" giving it colour of Oppression and Mismanagement. In addition, the Ld. Senior Counsel also raised the issue of NCLT not being the competent forum to grant an injunction order staying the arbitration proceedings.

9. In addition to referring the relevant Clauses of Shareholders Agreement (SHA), the emphasis was laid on the judgment rendered by the Hon'ble NCLAT in the case of ***Macquarie SBI Infrastructure Investments Pvt. Ltd. and Another Vs. K Sadananda Shetty (Applicant No. 1 in IA 445 of 2020) and others*** wherein the Hon'ble NCLAT has been pleased to hold that the powers of the NCLT under Section 241-242 of the Companies Act operate in a different realm compared to a Arbitral Tribunal under the Arbitration and Conciliation Act. The NCLAT in the peculiar facts of the case in hand held as under:

> *"Thus, the NCLT erred in holding that in the absence of either party filing an application under Section 8 of the Arbitration and Conciliation Act, it would not be able to refer the matter to Arbitration. The NCLT further held that "parties cannot be permitted to initiate arbitration; it is contrary to the settled principles of law, which mandates a judicial authority to refer the matter to Arbitration if a valid arbitration agreement existed between the parties."*

10. After having considered and duly appreciating the arguments advanced by both the Ld. Senior Counsels at length, we deem it appropriate firstly to deal with the issue, if the NCLT has the jurisdiction to grant the injunction staying arbitration proceedings. It deserves to be appreciated that NCLT is a creation of a statute and it draws its powers from Section 430 of Companies Act 2013 which is quoted as under:

> *Civil court not to have jurisdiction. authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.*

Reference may also be made to inherent powers of the Tribunal under Rule 11 of NCLT Rules, 2016 stating:

> *"Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal."*

On the perusal of the above stated provisions, the judgment of the Division Bench of Hon'ble Madras High Court and and also Hon'ble NCLAT in *Macquarie SBI Infrastructure Investments Pvt. Ltd. and Another Vs. K Sadananda Shetty and others, w*e are of the considered opinion that the observations of the Hon'ble NCLAT holding NCLT not allowing the parties to arbitrate were in view of the peculiar facts and circumstances of the case in hand. On the other hand, the Hon'ble High Court of Madras have opined broadly on the issue of jurisdiction of the Tribunal with respect to grant of injunction.

Hence, it is held that the Tribunal has the jurisdiction and competence to deal with the issue of grant of injunction.

11. Now coming to the crucial issue, if the Applicant deserves to be granted the relief being sought i.e. staying the arbitration proceedings in Singapore? It is incumbent upon us to keep in mind the basic settled principles enunciated for of grant of temporary injunctions:

(a) Prima facie case.
(b) Balance of convenience.
(c) Irreparable loss or injury.

12. In the facts and circumstances of the present case, if the Respondent is allowed to continue with the arbitration proceedings and he gets an award in his favour of getting to exercise Drag Along rights. It may cause an irreparable loss to the Applicant. This fact itself the Hon'ble Bombay High Court has been pleased to appreciate in Para 80 of the judgment which is reproduced as under:

> *"80. The aspect of grave and irreparable loss to the plaintiff in the absence of such temporary injunction, becomes evident in the light of the finding given hereinabove that the plaintiff would be left remediless if the anti-suit permanent injunction order of the High Court of Singapore is allowed to operate. It cannot be countenanced that the plaintiff would stand restrained from pursuing the only remedy available to him before the NCLT, while the arbitration at Singapore would continue and the award that may be rendered therein would be unenforceable in India. Therefore, on the aspect of grave and irreparable loss also, the plaintiff has made out a case in his favour."*

Regarding the balance of convenience also the Hon'ble Bombay High Court has been able to opine as under:

> *"81. As regards balance of convenience, this Court finds that if the temporary injunction sought by the plaintiff is not granted, as noted hereinabove, the plaintiff shall stand restrained from pursuing the only remedy available to him as regards the disputes of oppression and mismanagement, while if such temporary injunction is granted, the plaintiff would be able to pursue such a remedy. At the same time, the defendants could certainly invoke Section 45 of the Arbitration Act to move the NCLT for referring the parties to arbitration. It is not as if the defendants would not be able to assert their claim before the NCLT that the petition filed by the plaintiff is a 'dressed-up' petition and that the disputes raised therein are not genuine oppression and mismanagement disputes, instead being disputes purely contractual in nature. Hence, the balance of convenience is also in favour of the plaintiff."*

It deserves to be emphasized that the Hon'ble Bombay High Court was dealing with the present parties and their issues only. Hence the observations of the Bombay High Court attain much significances the Tribunal thus is unable to hold any other view but to agree with the findings recorded above.

13. On the other hand, even though we are conscious of the fact that invoking of Arbitration proceedings is a contractual right given to the Respondent under SHA. The Applicant is signatory to the same. By initiating the arbitration proceedings in Singapore, the Respondent is seeking specific performance of his contractual rights under SHA. We may principally agree to the contentions raised by the Ld. Senior Counsel with respect to exercising the contractual rights by the Respondent but looking through the prism of irreparable loss being caused to the Applicant/Petitioner, we are constrained not to accept the arguments advanced at this stage. At present we are confining ourselves only on the issue of irreparable loss for grant of relief of temporary injunction.

14. We are conscious of the fact that Applicant/Petitioner has a partial Award of arbitration regarding jurisdiction against him dated 04.04.2023 but that itself may not affect his rights before the Indian Courts. More particularly the issue before at present is only of grant of injunction.

15. We are constrained to admit that the able assistance rendered by both the Ld. Senior Counsels have made it a herculean task for us to dismiss any of the arguments advanced. But since we are confining ourselves to the issue of grant of interim injunction in the facts of the present case, there; we deem it appropriate to hold that the Respondent may still have a remedy of invoking Section 45 of Arbitration and Conciliation Act, 1996 during the pendency of the Company Petition before NCLT. But on the other hand, the continuation of arbitration proceedings in Singapore and getting the exit rights of sale of shares by respondent will render the Petitioner remediless and the present petition infructuous.

16. Therefore, in view of the above stated peculiar facts, circumstances and the settled law, we are of the considered opinion that the Applicant deserves to be granted the relief of interim injunction and the arbitration proceedings scheduled from 18.09.2023 to 22.09.2023 deserve to be stayed.

17. It further deserves to be mentioned that none of the observations made above be taken as an expression on the merits of the Company Petition of oppression and mismanagement. In view thereof, the present application is allowed.

Sd/- Sd/-

MADHU SINHA
Member (Technical)

MS. REETA KOHLI
Member (Judicial)

Shubham