IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1010 OF 2021
IN

SUIT NO.95 OF 2021

Anupam Mittal	…	Applicant / Plaintiff
Vs.		
People Interactive (India) Pvt. Ltd. and others	…	Respondents / Defendants

Mr. Darius Khambata, Senior Advocate a/w. Mr. Sharan Jagtiani, Senior Advocate, Mr. Kunal Dwarkadas, Mr. Rahul Dwarkadas, Mr. Abhijit Joshi, Mr.Areez Gazdar, Mr. Nutash Kotwal, Ms. Shireen Mistri, Mr. Karan Rukhana and Mr. Ammar Faizullabhoy i/b. Veritas Legal for Applicant / Plaintiff.

Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Nikhil Sakhardande, Senior Advocate a/w. Mr. Rajendra Barot, Ms. Anusha Jacob, Ms. Richa Borthakur and Ms. Mrudula Dixit i/b. AZB & Partners for Respondent No.2.

Mr. Nikhil Sakhardande, Senior Advocate a/w. Mr. Rajendra Barot, Ms. Anusha Jacob, Ms. Richa Borthakur and Ms. Mrudula Dixit i/b. AZB & Partners for Defendant No.3.

Ms. Rishika Harish a/w. Ms. Shivani Prasad i/b. TRD Associates for Defendant Nos.4 and 5.

CORAM : MANISH PITALE, J.
Reserved on : 18th AUGUST, 2023
Pronounced on : 11th SEPTEMBER, 2023

JUDGEMENT :

. The present suit is in the nature of an anti-enforcement action, whereby the plaintiff is seeking an injunction to restrain the defendants from enforcing an anti-suit permanent injunction order passed by the High Court of Singapore. By the said order, the High Court of Singapore has restrained the plaintiff from proceeding with his petition filed against the defendants before the National Company Law Tribunal (NCLT), Mumbai, raising disputes pertaining to oppression and mismanagement. In that context, the plaintiff is seeking a declaration that the NCLT is the only appropriate and competent forum to decide the disputes and

grievances raised by the plaintiff, pertaining to oppression and mismanagement against the defendants.

2. The plaintiff has filed the instant interim application in the suit, seeking interim reliefs in aid of the final reliefs sought in the suit. It is the case of the plaintiff that since disputes pertaining to oppression and mismanagement under Indian law are non-arbitrable, it would be futile for him to raise the same in an arbitration proceeding initiated by defendant no.2 at Singapore, particularly because an award passed in pursuance of such arbitral proceeding would not be enforceable in India. It is claimed that, in this backdrop, unless a temporary injunction order restraining the defendants from enforcing the anti-suit permanent injunction order is granted, the plaintiff will not be able to enforce the only remedy available to him in law, thereby rendering him remediless. It is submitted that since the final stage of the arbitration proceeding is to begin in the third week of September, 2023, there is grave urgency in the matter. The learned senior counsel appearing for the rival parties made elaborate submissions in the matter. But, before adverting to the same, it would be appropriate to refer to the chronology of events leading up to filing of the present suit and interim application.

CHRONOLOGY OF EVENTS

3. On 10.02.2006, a Shareholders Agreement (SHA) along with certain supplementary agreements were executed between the plaintiff, defendant No.1 company, defendant No.2 and defendant Nos.4 and 5. Defendant No.2 subscribed to 44.38% of the total share capital of defendant No.1 company on a fully diluted basis. It is this SHA, which has become a bone of contention between the parties. The plaintiff places his interpretation on the SHA to claim that the disputes being raised by him give rise to questions of oppression and mismanagement.

The defendants interpret the SHA to contend that the disputes between the parties pertain to contractual obligations.

4. Disputes and differences arose between the plaintiff and defendant No.2 in the year 2019, with the plaintiff before this Court alleging that the acts of defendant No.2 amounted to harassment, oppression and mismanagement and that defendant Nos.3 and 4 aided defendant No.2 in committing such acts in respect of defendant No.1 company, in the backdrop of the SHA. During the course of such disputes, between 10.12.2020 and June 2021, defendant No.2 exercised buy-back option, calling upon defendant No.1 to convert preference shares held by defendant No.2 into equity shares and to buy-back the resultant equity shares within a period of 180 days after valuation exercise was carried out. According to defendant No.2, such option was exercised as per agreed terms under the SHA. In this regard, the plaintiff has his own version of the actions undertaken by defendant No.2 in collusion with defendant Nos.3 and 4 and that the said defendants took various steps to see to it that defendant No.1 company was not able to offer the buy-back price.

5. On 05.02.2021, 1000 shares of defendant No.1 company were transferred by defendant No.4 to defendant No.5, who had already exited from defendant No.1 company in the year 2014. On 24.02.2021, defendant No.2 made a requisition along with defendant Nos.4 and 5 as shareholders of defendant No.1 company to convene an Extra-Ordinary General Meeting (EOGM). The EOGM was to be convened for appointing nominee of defendant No.2 on the board; as also to appoint one or more non-executive directors on the board; to appoint defendant No.4 as a managing director of defendant No.1 company and defendant No.5 as the founder director on the board. The plaintiff claims that all these actions gave rise to the cause of action for him to claim oppression

and mismanagement, particularly in the backdrop that the plaintiff had been the managing director of defendant No.1 company for more than 15 years.

6. In this backdrop, on 03.03.2021, the plaintiff filed a petition before the NCLT, Mumbai, alleging oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013. The plaintiff alleged that various acts of defendant Nos.2, 4 and 5 amounted to oppression and mismanagement. On this basis, various reliefs were sought in the said petition filed before the NCLT. The plaintiff claims that, due to e-filing requirements before the NCLT because of the Covid-19 pandemic and lock-down, he could not obtain final registration number for his petition despite making efforts in that regard. It is further claimed that, as a consequence of the same, the petition could not be listed for urgent ad-interim reliefs before the NCLT, although the plaintiff served a copy of the petition in advance on the defendants.

7. On 15.03.2021, the plaintiff was served with Summons No.242 of 2021, filed by defendant No.2 against the plaintiff in the High Court of Singapore and an *Ex-parte* Summons for Injunction No.1183 of 2021, also filed by defendant No.2 before the very same Court. In the said proceedings before the High Court of Singapore, defendant no.2 claimed that the disputes raised in the petition filed by the plaintiff before the NCLT were merely contractual disputes, which were arbitrable and in the light of a specific arbitration clause in the SHA, wherein the seat of arbitration is specified as Singapore, all questions, including the question of arbitrability of the disputes ought to be decided as per Singapore law. In this backdrop, defendant No.2 sought an anti-suit injunction to restrain the plaintiff from prosecuting his petition filed before the NCLT.

8. The plaintiff claims that he was served with a notice of only four

minutes before the scheduled hearing in the High Court of Singapore, as a consequence of which, he could not attend the hearing. On 16.03.2021, the advocates representing defendant No.2 in Singapore served the plaintiff with a copy of two *ex-parte* orders, both dated 15.03.2021 of High Court of Singapore, restraining the plaintiff from pursuing, continuing and / or proceeding with the said petition filed before the NCLT.

9. On 18.03.2021, the plaintiff filed the present suit seeking a permanent injunction restraining the defendants from enforcing the anti-suit temporary injunction order. In the said suit and the present interim application filed on 25.03.2021, this Court recorded the appearance of defendant No.2 through counsel under protest. It was further observed that since the *ex-parte* order dated 15.03.2021, passed by the High Court of Singapore granted liberty to apply, a statement made on behalf of the plaintiff was recorded that he would move the High Court of Singapore for vacating / modifying the *ex-parte* order.

10. Consequently, on 31.03.2021, the plaintiff filed an application before the High Court of Singapore for vacating the *ex-parte* anti-suit temporary injunction order, without prejudice to his contention that the High Court of Singapore did not have jurisdiction in the matter.

11. On 01.04.2021, in the present application, this Court recorded a statement made on behalf of defendant No.2 that the EOGM would stand adjourned to 22.04.2021. The aforesaid statement continued from time to time and on 22.11.2021, this Court passed an ad-interim order directing defendant No.2 to adjourn the EOGM until the present application was heard and decided.

12. During the pendency of the present application and the aforesaid application filed by the plaintiff before the High Court of Singapore,

wherein expert evidence on Indian Law was led by the parties, several e-mails were exchanged. According to the plaintiff, defendant Nos.2, 3 and 4 continued with their oppressive actions, jeopardizing the valuation process as also the process of audit, so that defendant No.1 company would not be able to comply with the buy-back notice, with the *mala fide* intention to exercise a drag-along right provided in the SHA.

13. Thereafter, on 08.10.2021, defendant No.2 indeed issued a drag-along notice to defendant No.1 company, the plaintiff as also defendant Nos.4 and 5. The plaintiff filed Interim Application No.569 of 2021 in the present suit on 14.10.2021 seeking urgent ad-interim reliefs to allow the plaintiff to pursue his petition before the NCLT to seek reliefs in relation to the drag-along notice and alternatively, sought an order to temporarily restrain the defendants from acting in furtherance of the drag-along notice.

14. But, during the pendency of the said application, the time to accept compliance with the drag-along notice expired on 23.10.2021 and the High Court of Singapore on 26.10.2021, passed its order confirming the anti-suit temporary injunction order granted earlier. In view thereof, the plaintiff did not press for reliefs in Interim Application No.569 of 2021.

15. On 15.11.2021, the plaintiff filed an appeal against the said order of the High Court of Singapore before the Court of Appeal at Singapore. During the pendency of the challenge, this Court passed the aforementioned order dated 22.11.2021, granting ad-interim relief directing defendant No.2 to adjourn the EOGM until the present application was heard and decided.

16. Defendant No.2 filed an appeal against the aforesaid order dated 22.11.2021. In the interregnum, the plaintiff filed an application for

amendment of pleadings in the light of the order passed by the High Court of Singapore granting permanent anti-suit injunction against the plaintiff. The defendants informed this Court that they have no objection to the amendments being permitted, subject to their rights and contentions being kept open. Accordingly, the pleadings stood amended. Defendant No.2 filed its affidavit in reply in the present application and the plaintiff filed his rejoinder affidavit.

17. On 28.02.2022, defendant No.2 filed an application before the High Court of Singapore seeking *ex-parte* leave to commence committal proceedings against the plaintiff, alleging that the plaintiff committed contempt of the anti-suit permanent injunction order by amending the plaint and the pleadings in the present proceedings and by failing to withdraw the petition filed before the NCLT. Such leave to appeal was granted on 18.03.2022 by the High Court of Singapore. On 21.03.2022, defendant No.2 filed summons in the High Court of Singapore for the plaintiff to be committed to prison or fine being imposed upon the plaintiff for contempt of court in the light of non-compliance with the anti-suit permanent injunction order. The plaintiff brought the aforesaid facts to the notice of this Court by filing an additional affidavit.

18. In the meanwhile, defendant No.2 invoked the arbitration agreement contained in the SHA and an arbitral tribunal was constituted under the Rules of the International Chamber of Commerce for considering the claims raised by defendant No.2 against the plaintiff as regards alleged breach of various clauses of the SHA. It is brought to the notice of this Court that the pleadings in the said proceedings have been completed and the final hearing of the same is scheduled in the third week of September, 2023.

19. In the backdrop of the committal proceedings alleging contempt against the plaintiff, the High Court of Singapore passed an order

directing the plaintiff to withdraw the present proceedings, as also the petition filed before the NCLT.

20. On 06.01.2023, the Court of Appeal at Singapore passed its order upholding the anti-suit permanent injunction order dated 26.10.2021, passed by the High Court of Singapore. The appeal filed by the plaintiff was dismissed. Consequently, the plaintiff filed an application before this Court to bring on record the order of the Court of Appeal at Singapore and sought suitable modification of the reliefs. The said application was allowed and the plaintiff was permitted to carry out amendments.

21. On 04.04.2023, the arbitral tribunal passed order on the pre-hearing application filed by the plaintiff and by a partial award, the arbitral tribunal held that it had jurisdiction to hear and determine the disputes raised by defendant No.2 in the arbitral proceedings. It is relevant to note that although the aforesaid pre-hearing application of the plaintiff was dismissed, but this was without prejudice to his rights to raise objections on jurisdiction at the final hearing in the arbitral proceedings after seeking prior leave of the tribunal.

22. On 17.04.2023, the Division Bench of this Court dismissed the appeal filed by defendant No.2 challenging the interim order dated 22.11.2021, passed by the learned Single Judge of this Court and the Division Bench set down the present interim application for hearing. It is in this backdrop that the present application came up for hearing before this Court. It was heard on various dates and learned counsel for both the parties impressed upon this Court that the instant application would have to be decided before the final stage of the arbitral proceedings commences sometime in the third week of September, 2023.

SUBMISSIONS

23. Mr. Darius Khambata, learned senior counsel appearing for the applicant / plaintiff invited attention of this Court to various judgements, in order to support the contentions raised on behalf of the plaintiff. He submitted as follows: -

A. The present proceedings are in the nature of an anti-enforcement action as the plaintiff seeks to resist enforcement of anti-suit injunction granted by the High Court of Singapore. It is submitted that the principles governing an anti-enforcement injunction are the same that govern grant of temporary or permanent injunctions, as such anti-enforcement injunction or action is nothing but a species of injunction. Accordingly, the plaintiff is required to demonstrate a strong *prima facie* case, grave and irreparable loss or damage that the plaintiff would suffer in the absence of such temporary injunction and the balance of convenience being in favour of the plaintiff. In this regard, reliance was placed on judgement of this Court in the case of *Modi Entertainment Network and another Vs. W. S. G. Cricket PTE Limited*, **(2003) 4 SCC 341** and judgement of Delhi High Court in the case of *Interdigital Technology Corporation Vs. Xiaomi Corporation and others* [**judgement and order dated 03.05.2021** passed in **Interim Application No.8772 of 2020 in CS (Comm) 295 of 2020**].

B. It was submitted that while demonstrating that the plaintiff indeed has a strong *prima facie* case in his favour, the enquiry would be limited to examining whether the plaintiff, as a consequence of the anti-suit injunction granted by the High Court of Singapore, would be left remediless in

connection with his grievance regarding oppression and mismanagement in the defendant No.1 company. The anti-suit injunction granted against the plaintiff, in the present case, prohibits him from pursuing his petition pending before the NCLT on the aspect of oppression and mismanagement, while as per the recognized position of law in India, the said aspect of oppression and mismanagement is exclusively within the jurisdiction of the NCLT under the provisions of the Companies Act, 2013. On the aspect of the NCLT being the only forum for deciding questions pertaining to oppression and mismanagement, reliance was placed on judgements of this Court in the case of *Rakesh Malhotra Vs. Rajinder Kumar Malhotra,* **2014 SCC OnLine Bom 1146**; *Invesco Developing Markets Fund Vs. Zee Entertainment Enterprises Limited*, **2022 SCC OnLine Bom 630** and judgement of the Delhi High Court in the case of *O. P. Gupta Vs. M/s. Shiv General Finance (P) Ltd.*, **1975 SCC OnLine Del 147**.

C. After emphasizing on the NCLT having exclusive jurisdiction to decide disputes pertaining to oppression and mismanagement, learned counsel appearing for the plaintiff submitted that as per the law in India and recognized public policy, disputes pertaining to oppression and mismanagement are not arbitrable. In support of the said proposition, the learned counsel relied upon judgement of this Court in the case of **Rakesh Malhotra Vs. Rajinder Kumar Malhotra** *(supra)* and judgements of the Supreme Court in the case of *Vidya Drolia Vs. Durga Trading Corporation*, **(2021) 2 SCC 1** and *N. N. Global Mercantile Private Limited Vs. Indo Unique Flame Limited*, **(2021) 4**

SCC 379. It was submitted that although in the said judgement in the case of **N. N. Global Mercantile Private Limited Vs. Indo Unique Flame Limited** *(supra)*, the issue pertaining to stamp duty was referred to a Constitution Bench, the subsequent judgement of the Constitution Bench did not deal with or disturb the finding in the said earlier judgement pertaining to non-arbitrability of disputes concerning oppression and mismanagement.

D. On this basis, it was further submitted that the defendants are not justified in relying upon the arbitration clause in the SHA, to contend that since the parties had voluntarily agreed to resolve all their disputes through arbitration and that too at Singapore, the disputes pertaining to oppression and mismanagement being arbitrable under Singapore law, the only forum for the plaintiff to ventilate his grievances would be the arbitral tribunal at Singapore. The learned senior counsel relied upon the arbitration clause itself to impress upon this Court that the enforcement of an award passed in pursuance of the arbitral proceedings was agreed to be subject to the provisions of the Indian Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act). According to the learned senior counsel for the plaintiff, this is a crucial aspect of the matter, for the reason that under the recognized public policy of India, disputes pertaining to oppression and mismanagement are non-arbitrable and an arbitral award deciding such disputes would be un-enforceable in India. On this basis, it was submitted that insofar as the disputes pertaining to oppression and mismanagement being raised by the plaintiff are concerned, the arbitration proceeding is not a remedy at

all. Hence, it was emphasized that, the petition filed before the NCLT is the only remedy available in law for the plaintiff to raise disputes pertaining to oppression and mismanagement.

E. On this basis, the learned senior counsel for the plaintiff submitted that if the anti-suit injunction granted by the High Court of Singapore was to be enforced, the plaintiff would be left remediless and without any access to justice. By relying upon judgements of the Supreme Court in the case of *Imtiyaz Ahmad Vs. State of Uttar Pradesh*, **(2012) 2 SCC 688** and *Anita Kushwaha Vs. Pushap Sudan*, **(2016) 8 SCC 509**, it was emphasized that the plaintiff had a fundamental right under Article 21 read with Article 14 of the Constitution of India to have access to justice and competent courts / authorities for ventilating his grievances, in this case, pertaining to oppression and mismanagement before the NCLT. As the disputes pertaining to oppression and mismanagement being raised by the plaintiff, are clearly non-arbitrable as per the law recognized in India, therefore, even if the arbitral proceedings initiated at Singapore were to reach completion and an award was to be rendered, the plaintiff would not be able to enforce the same. In this regard, reliance was placed on the judgement of the Supreme Court in the case of *Renusagar Power Co. Ltd. Vs. General Electric Co.*, **1994 Supp (1) SCC 644** and *Vijay Karia Vs. Prysmian Cavi E Sistemi SRL*, **(2020) 11 SCC 1**.

F. It was further submitted that the question as to whether the NCLT had jurisdiction to decide the disputes being raised by the plaintiff in the said petition, concerning oppression and

mismanagement, including the question as to whether the petition was a 'dressed-up' petition is also within the exclusive jurisdiction of the NCLT. It was submitted that neither this Court nor could the Courts at Singapore decide the said question of jurisdiction of the NCLT, because the power to decide the question of jurisdiction is to be exercised by the very court or tribunal whose jurisdiction is challenged. In that light, it was submitted that the question of *prima facie* case in favour of the plaintiff in the present application would have to be decided by applying the test as to whether only the NCLT is having jurisdiction to decide the very question of its own jurisdiction and also whether the petition filed by the plaintiff could be said to be a 'dressed-up' petition. Reliance was placed on the judgement of the Supreme Court in the case of *Bhatia Co-operative Housing Society Limited Vs. D. C. Patel*, **(1952) 2 SCC 355**.

G. It was further submitted that the defendants were not justified in inviting this Court to go into details of the petition filed by the plaintiff before the NCLT to decide the question as to whether the disputes raised therein pertained to oppression and mismanagement. According to the plaintiff, the present proceedings cannot be turned into a platform to examine the question as to whether the plaintiff had made out a *prima facie* case about the disputes concerning oppression and mismanagement. The arguments raised on behalf of the defendants, according to the plaintiff, about the petition filed before the NCLT being a 'dressed-up' petition and the same being agitated before this Court is wholly misplaced and it cannot become a component of the aspect of *prima facie* case being examined by this Court in

the present application. According to the plaintiff, the limited enquiry to be made by this Court is to see whether the petition, on the face of it, pertains to disputes of oppression and mismanagement and whether the NCLT has exclusive jurisdiction to decide such questions, coupled with the specific contention of the plaintiff that such disputes are non-arbitrable and if the anti-suit injunction granted by the High Court of Singapore is allowed to operate, it would lead to the plaintiff being rendered remediless.

H. In that context, it was submitted that this Court could conclude that the plaintiff had failed to make out even a *prima facie* case regarding its right to proceed before the NCLT, if the petition filed before the NCLT, on the face of it, could be demonstrated as being a petition pertaining to a subject matter having nothing to do with the disputes of oppression and mismanagement. Otherwise, according to the plaintiff, the examination of even a *prima facie* case being made out by the plaintiff on the aspect of oppression and mismanagement must be left to the NCLT, having exclusive jurisdiction in the matter. In this backdrop, learned senior counsel for the plaintiff submitted that the plaintiff was not required to labour upon the details of its contentions pertaining to the petition filed in the NCLT, but since the defendants had vehemently argued that the petition, even on a first look, could not be said to be a petition concerning disputes of oppression and mismanagement, certain submissions were required to be made on behalf of the plaintiff in that regard.

I. In this context, learned senior counsel for the plaintiff

referred to the petition filed before the NCLT, to deal with the allegations made against the plaintiff that certain key words from the relevant provisions of the Companies Act, 2013 and observations made in judgements of courts in that regard were used as incantations or *mantras*. He submitted that the plaintiff has elaborately pleaded his case pertaining to oppression and mismanagement. In that regard, reference was made to judgement of the Supreme Court in the case of *Needle Industries (India) Limited Vs. Needle Industries Newey (India) Holding Limited*, **(1981) 3 SCC 333**; *New Horizons Limited Vs. Union of India*, **(1995) 1 SCC 478**, judgement of the House of Lords in *O'Neill Vs. Phillips and others*, **1999 WL 477304** and judgement of this Court in the case of *Novartis Vaccines & Diagnostics Inc. Vs. Aventis Pharma Limited*, **2009 SCC OnLine Bom 2067**.

J. It was further submitted on behalf of the plaintiff that the contentions being raised by the defendants before this Court ought to be raised by them before the NCLT under Section 45 of the Arbitration Act. The said provision clearly stipulates that one of the parties to an arbitration agreement can request the judicial authority before whom any proceeding is initiated, that the parties be referred to arbitration. According to the plaintiff, the present proceedings cannot be used as a platform to advance such submissions and effectively short-circuit the statutory mandate of applying under Section 45 of the Arbitration Act, even if the defendants claim that the disputes raised by the plaintiff before the NCLT pertain only to contractual obligations, and therefore, the parties must be referred to arbitration. It was also indicated that while considering the

petition filed by the plaintiff before the NCLT, this court could apply a test akin to the test applied by courts while considering an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), by proceeding on the basis that the statements made in the petition are true and correct.

K. The learned senior counsel appearing for the plaintiff referred to the judgement of the Court of Appeal at Singapore to contend that findings were rendered in favour of the plaintiff, recognizing that the disputes pertaining to oppression and mismanagement could be ventilated by the plaintiff only before the NCLT in India. Yet, only on two grounds, the Court of Appeal at Singapore held against the plaintiff. It was submitted that in this context the Court of Appeal at Singapore wrongly referred to the present suit and application, while assessing the time period of about 10 years required for disposal, as the relevant time periods concerned the petition filed before the NCLT. In fact, even according to the expert evidence on record before the High Court of Singapore, if the defendants were to file an application under Section 45 of the Arbitration Act before the NCLT, it could be disposed of in 10-12 months.

L. It was submitted that the aforementioned contentions clearly demonstrate that the plaintiff has made out a strong *prima facie* case in his favour for grant of anti-enforcement injunction. In the absence of the present application being allowed, the anti-suit injunction granted by the High Court of Singapore would operate, thereby restraining the plaintiff from availing of the only remedy available before the NCLT

as regards the disputes pertaining to oppression and mismanagement, effectively rendering the plaintiff remediless. It was submitted that unless the present application is allowed, the plaintiff would suffer grave and irreparable loss, because even if he were to raise disputes pertaining to oppression and mismanagement in the arbitration proceedings, an arbitral award rendered pursuant thereto would be clearly un-enforceable in India. On this basis, it was submitted that the balance of convenience also is in favour of the plaintiff and hence, the present application deserves to be allowed in the interest of justice.

24. On the other hand, Mr. Janak Dwarkadas, learned senior counsel appearing for defendant No.2 made submissions to indicate that no attempt was made on behalf of the plaintiff to refer to the contents of the petition filed before the NCLT in order to at least *prima facie* demonstrate that it could be said to be a genuine petition raising disputes pertaining to oppression and mismanagement. He submitted, in detail, as follows: -

A. Thrust of the submissions made by the learned senior counsel was that the petition filed before the NCLT was nothing but an excuse to escape the arbitration clause under which the plaintiff himself had agreed for resolution of disputes through arbitration, with the seat of arbitration being at Singapore. By referring to the arbitration clause and the disputes between the parties, it was submitted that such disputes were purely arising from the contract and they had nothing to do with the question of oppression and mismanagement. It was submitted that the petition filed before the NCLT, on the face of it, was a ‘dressed-up’

petition and nothing but a dishonest attempt on the part of the plaintiff to avoid resolution of disputes through arbitration. This was appreciated in the correct perspective by the High Court of Singapore and the Court of Appeal at Singapore to hold against the plaintiff. In such a situation, the plaintiff was expected to open his case by showing as to how such a petition filed before the NCLT could even remotely be concerned with disputes pertaining to oppression and mismanagement.

B. The learned senior counsel appearing for defendant No.2 extensively referred to the reliefs sought in the petition filed before the NCLT, the pleadings contained therein and, on that basis, he submitted that the language used in the petition amounted to clever drafting and mere reproduction of Sections 241 and 242 of the Companies Act, 2013, with key words picked up from judgements of various courts pertaining to disputes of oppression and mismanagement. On this basis, it was submitted that this Court, while examining as to whether a *prima facie* case is made out by the plaintiff for grant of temporary injunction in the nature of an anti-enforcement injunction, has to determine whether the plaintiff's petition can be considered by the NCLT as genuinely raising disputes pertaining to oppression and mismanagement. It was emphasized that while opening arguments on behalf of the plaintiff, no such attempt was made, obviously because even a cursory look at the petition filed before the NCLT would demonstrate that it was a 'dressed-up' petition, which deserves to be thrown out at the threshold.

C. In that context, the learned senior counsel appearing for defendant No.2 specifically referred to Sections 241 and 242 of the Companies Act, 2013 and the concept of just and equitable grounds for winding up, placing reliance upon judgement of the Supreme Court in the case of *Tata Consultancy Services Limited Vs. Cyrus Investments Private Limited*, **(2021) 9 SCC 449** as also judgement of the House of Lords in *Ebrahimi Vs. Westbourne Galleries Limited*, **(1973) AC 360**. Reference was also made to the judgement of the Supreme Court in the case of *Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla*, **(1976) 3 SCC 259** to emphasize that the position of law recognized in the case of **Ebrahimi Vs. Westbourne Galleries Limited** (*supra*) was accepted and adopted by the Supreme Court of India.

D. The learned senior counsel appearing for defendant No.2 invited attention of this Court to the tests laid down in various judgements with regard to the question of oppression and mismanagement and as to in what conditions could equitable grounds be raised to claim oppression and mismanagement. In that context, reliance was placed on judgement of the Chancery Division of UK in the case of *Stanley Wootliff Vs. Martin Rushton-Turner*, **(2017) EWHC 3129 (Ch)**.

E. It was submitted that the disputes sought to be raised by the plaintiff, in the facts and circumstances of the present case, were nothing but disputes arising from contractual obligations under the SHA, which could be resolved only through arbitration at Singapore. The disputes between the

parties in pith and substance pertain only to contractual obligations and the plaintiff in his petition filed before the NCLT had simply quoted words from the relevant provisions of law and some key words from judgements of various courts pertaining to the question of oppression and mismanagement like chanting of *mantras,* in order to dishonestly claim that such questions could be decided only by the NCLT and not through the process of arbitration. Reliance was placed on judgements of the Supreme Court in the case of *Hari Shanker Jain Vs. Sonia Gandhi*, **(2001) 8 SCC 233** and *T. Arivandandam Vs. T. V. Satyapal*, **(1977) 4 SCC 467**.

F. It was submitted that existence of jurisdiction is a *sine qua non* or a condition precedent for the exercise of power by a court or tribunal and such jurisdictional fact must at least be *prima facie* established before this Court by the plaintiff. It was emphasized that the plaintiff must at least *prima facie* demonstrate that the petition filed before the NCLT is maintainable and satisfies the requirements of Section 242(1)(a) and 242(1)(b) of the Companies Act, 2013, to claim the benefit of exclusive jurisdiction of NCLT by applying Section 430 thereof. Reliance was placed on judgement of the Supreme Court in the case of *S. P. Jain Vs. Kalinga Tubes Limited*, **AIR 1965 SC 1535,** in support of the said proposition. In order to deal with the contentions raised on behalf of the plaintiff as regards the question of the petition filed before the NCLT being a ‘dressed-up’ petition, it was submitted that the issue of arbitrability need not be exclusively decided by the NCLT in an application under Section 45 of the Arbitration Act. It was submitted that

reliance placed on behalf of the plaintiff on the judgement of the Supreme Court in the case of **Bhatia Co-operative Housing Society Limited Vs. D. C. Patel** *(supra)* was misplaced, simply for the reason that in the present case, the plaintiff is seeking to demonstrate that NCLT is the only forum for the plaintiff to ventilate his grievance regarding oppression and mismanagement and therefore, the plaintiff must establish his case before this Court at least *prima facie*, to seek an anti-enforcement injunction against the anti-suit injunction obtained by the defendants from the competent courts at Singapore.

G. The learned senior counsel for defendant No.2 also referred to the judgement of this Court in the case of **Rakesh Malhotra Vs. Rajinder Kumar Malhotra** *(supra)* and sought to demonstrate that the ratio of the said judgement, in fact, inures to the benefit of the defendants. Much emphasis was placed on an observation made therein that the judgement of the Court in UK was binding on the Company Law Board (CLB) and by that logic, in the present case, on the NCLT. In that light, it was submitted that the orders passed by the Courts at Singapore were after opportunity of hearing being granted to the plaintiff and therefore, effect of such orders could not be lightly nullified, particularly in the context of comity of courts, which must be respected.

H. It was further submitted that the plaintiff was required to satisfy all the three limbs of the test for grant of temporary injunction to avoid enforcement of the anti-suit injunction granted by the Courts at Singapore. Reliance was placed on the judgement of the Supreme Court in the case of *Best*

Sellers Retail (India) Private Limited Vs. Aditya Birla Nuvo Limited, **(2012) 6 SCC 792**.

I. By placing reliance on the judgement of the Supreme Court in the case of *Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited*, **(2017) 7 SCC 678**, it was submitted that the moment the parties agreed upon seat of arbitration being Singapore, the Courts at Singapore were vested with exclusive jurisdiction for the purpose of regulating arbitration proceedings and therefore, the plaintiff could not be permitted to pursue parallel proceedings before the NCLT. In that light, it was submitted that the anti-suit injunction was correctly granted by the Courts at Singapore and not even a *prima facie* case was made out by the plaintiff to resist enforcement thereof.

J. It was further submitted that this Court, while considering the present application, was entitled to examine as to whether the petition filed before the NCLT was really a petition raising disputes pertaining to oppression and mismanagement and that this Court could certainly apply the test of substance over form. In that context, it was submitted that the plaintiff could not claim that the test to be applied would be the test pertaining to rejection of a plaint under Order VII, Rule 11 of the CPC. The aspect of the petition being a 'dressed-up' petition could certainly be examined by this Court while rendering a finding on the question as to whether the plaintiff was entitled for a temporary injunction order restraining enforcement of the anti-suit injunction granted by the Courts at Singapore.

25. Mr. Nikhil Sakhardande, learned senior counsel appearing for

defendant No.3 supported the contentions raised by the learned senior counsel appearing for defendant No.2 and submitted as follows: -

A. The learned senior counsel submitted in detail as to how the judgements on which the plaintiff had placed reliance were distinguishable in the facts and circumstances of the present case. Each judgement was referred to and submissions were made, to indicate that the plaintiff could not take benefit of the said judgements and instead the material on record was sufficient to demonstrate that the petition filed before the NCLT was nothing but a ruse to avoid the arbitration proceedings validly instituted in the agreed seat of arbitration i.e. Singapore.

B. It was further submitted that the Courts at Singapore had taken into consideration each and every contention raised on behalf of the plaintiff and upon cogent reasoning, it was held that the arbitration proceedings could not be avoided by emphasizing on the petition filed before the NCLT. It was submitted that when the plaintiff, in the present suit, is seeking a declaration that NCLT is the only appropriate and competent forum to decide the disputes pertaining to oppression and mismanagement, until this Court reaches such a conclusion upon trial, no case is made out for resisting enforcement of the anti-suit injunction granted by the Courts at Singapore.

C. The learned senior counsel appearing for defendant No.3 had sought leave from this Court to place further written submissions on record, in order to deal with some judgments relied upon by the learned senior counsel appearing for the plaintiff while arguing in rejoinder. This Court has perused

the said submissions as also sur-rejoinder submissions, wherein apart from dealing with the said judgments, the case of defendant No.3 was summarized, giving response to the submissions made on behalf of the plaintiff. It was reiterated that the plaintiff is not justified in contending that only the NCLT could consider submissions pertaining to the question as to whether the petition filed by the plaintiff was a 'dressed-up' petition, nothing to do with disputes between the parties having the colour of oppression and mismanagement. It was also reiterated that the disputes between the parties were purely contractual in nature, which had to be resolved through arbitration, as agreed between the parties, to be conducted at Singapore.

D. The learned senior counsel for defendant No.3 dealt with each of the judgments referred to on behalf of the plaintiff in rejoinder and distinguished the same, by contending that in the present case, the real nature of disputes and grievances of the plaintiff pertain to contractual obligations under the SHA and statements were made in the petition filed before the NCLT by using words and phrases from Sections 241 and 242 of the Companies Act, 2013 and key words from the judgments relevant for the aspect of oppression and mismanagement, in the absence of any factual substratum being pleaded as regards equitable considerations relevant for disputes concerning oppression and mismanagement. On this basis, the learned senior counsel appearing for defendant No.3 sought dismissal of the present application.

26. Ms. Rishika Harish, learned counsel appearing for defendant Nos.4 and 5 relied upon the submissions made on behalf of defendant

Nos.2 and 3 and also prayed for dismissal of the present application.

QUESTIONS FOR CONSIDERATION

27. In the light of the chronology of events narrated hereinabove and the rival submissions made on behalf of the parties, the following questions arise for consideration: -

(i) Whether grant of an anti-enforcement order during pendency of the suit, being in the nature of a temporary injunction to resist an anti-suit injunction, requires the applicant/plaintiff to satisfy the three-pronged test of *prima facie* case, grave and irreparable loss being suffered in the absence of such temporary injunction and balance of convenience?

(ii) Whether examination of *prima facie* case of the plaintiff in the factual background of the present case, requires this Court to consider the strength of the case of the plaintiff as regards allegations pertaining to oppression and mismanagement raised in the petition filed before the NCLT?

(iii) Whether the aspect of *prima facie* case would entail only the examination of the factors highlighted on behalf of the plaintiff i.e. the NCLT being the only forum for the plaintiff to ventilate his grievances regarding oppression and mismanagement and in the absence of a temporary anti-enforcement order being granted, he would be rendered remediless?

(iv) In that context, whether the factor pertaining to non-arbitrability of disputes pertaining to oppression and mismanagement, as per settled law in India, assumes

significance while determining the question of *prima facie* case to be made out by the plaintiff?

(v) Whether the said aspect of non-arbitrability of disputes pertaining to oppression and mismanagement can be considered to be a matter of public policy of India, indicating that an arbitral award in the present case, would be unenforceable and hence, a crucial factor for examining *prima facie* case made out by the plaintiff?

(vi) Whether this Court, while considering the present application, must necessarily go into the question as to whether the petition filed before the NCLT is a 'dressed-up' petition, to avoid the arbitration proceedings initiated by the defendants, or is it to be examined only by the NCLT while exercising its exclusive jurisdiction?

(vii) Whether the NCLT has exclusive jurisdiction to consider the question of disputes being raised by the plaintiff pertaining to oppression and mismanagement and any findings rendered by this Court on the said aspect of the matter, would trench upon the exclusive jurisdiction of the NCLT and pre-empt the findings on the said aspect of the matter?

(viii) Whether the defendants are justified in contending that once the plaintiff agreed for resolution of disputes through arbitration with the seat of arbitration being chosen as Singapore, he cannot be permitted to raise disputes before any other forum, including the NCLT as even the disputes pertaining to oppression and mismanagement are arbitrable under Singapore law?

(ix) Whether this Court can refer to and take into consideration

the findings rendered by the Courts at Singapore in the proceedings initiated between the parties?

CONSIDERATION AND FINDINGS

28. At the outset, this Court is of the opinion that while deciding the present application, whereby the plaintiff seeks temporary injunction to restrain defendant No.2 from enforcing the anti-suit permanent injunction order dated 26.10.2021 passed by the High Court of Singapore, the well-established three-pronged test of *prima facie* case, grave and irreparable loss being suffered in the absence of temporary injunction and balance of convenience, will have to be examined. This is because a prayer for grant of such temporary injunction amounting to an anti-enforcement action is nothing but a species of injunction, since such a relief is an equitable relief. This has been observed in the case of anti-suit injunctions by the Supreme Court in **Modi Entertainment Network and another Vs. W. S. G. Cricket PTE Limited** (*supra*). This Court is of the opinion that an anti-enforcement temporary injunction order is in a sense an anti- antisuit injunction and hence, the same concept ought to apply. Question (i) is answered accordingly.

29. This Court is conscious of the position of law and the principles laid down in the said judgment, in the case of **Modi Entertainment Network and another Vs. W. S. G. Cricket PTE Limited** (*supra*), particularly when parties have agreed to submit to a foreign Court or forum for resolution of disputes. In such circumstances, as in the present case, the plaintiff seeking to restrain proceedings before such chosen foreign Court or forum, has to make out an exceptional case to satisfy the test of a strong *prima facie* case being made out for grant of an anti-enforcement order. In such a case, the plaintiff is also required to satisfy a high threshold of the three-pronged test.

30. The Delhi High Court, in the case of **Interdigital Technology Corporation Vs. Xiaomi Corporation and others** (*supra*), had an occasion to consider factors that would be relevant when a court is called upon to issue an anti-enforcement injunction, as in the present case. The Delhi High Court held that certain principles could be kept in mind while issuing or refusing anti-suit injunctions or anti-enforcement injunctions. In that light, it was observed as follows: -

> "(i) An anti-suit injunction should be granted only in rare cases, and not for the mere asking. The Court should be mindful of the fact that even an injunction in *personam* interferes with the functioning of a sovereign forum, not subject to the writ of the court granting the injunction.
>
> (ii) An anti-suit injunction could only be granted by a Court possessing "sufficient interest" in the *lis* forming subject matter of the proceedings which it intends to injunct. In other words, qua the said *lis*, the Court was required to be the natural forum.
>
> (iii) The possibility of palpable and gross injustice, were injunction not to be granted, remains a definitive test. In doing justice in accordance with law, the Court will try and preserve the subject matter of the *lis* so that the beneficiary of the final verdict can enjoy the fruits thereof.
>
> (iv) 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.
>
> (v) In patent infringement matters, it was the right of the patent holder to choose the patents which it desired to enforce. The only practical relief available to an SEP holder was by way of anti-infringement action. The right to seek legal redressal, against infringement, was a fundamental right. A proceeding or an order, which resulted in divesting the patent holder of the authority to exercise this fundamental right, was *ex facie* oppressive in nature. Protection of the jurisdiction of the Court is also a guiding factor.

(vi) Comity, as a concept, was grating to the ear, when it proceeded from a court of justice. 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. 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 or customary international law. Comity, in any event, was a two-way street.

(vii) There was no reason to treat anti-execution injunction applications as "exceptional", to the extent that, even if grounds for grant of injunction were made out, the Court would hesitate.

(vii) Some instances in which anti-enforcement injunction is would be justified are

(a) where the judgment, of the execution of which injunction was sought, was obtained too quickly or too secretly to enable the applicant (seeking injunction) to take pre-emptive remedial measures, including by way of applying for anti-suit injunction while the proceeding was pending,

(b) where the order, of the execution of which injunction was sought, was obtained fraudulently,

(c) where the applicant seeking anti-enforcement injunction had no means of knowing of the passing of the judgment or order against, until it was served on him. ***Sun Travels & Tours***, on which Mr. Kaul relied, in fact, even while opining that anti-enforcement injunctions could be granted only in exceptional cases, recognised these three circumstances as justifying grant of anti-enforcement injunction as, in these circumstances, "the equities of the case (lay) in favour of grant of anti-enforcement injunction."

31. The Delhi High Court, in the said judgment, before identifying the

aforementioned general principles, has made an observation, with which this Court agrees, that when the ends of justice are predominant, there can never be any hard and fast rule or guidelines cast in iron. Hence, each individual case has to be dealt with on its own facts and circumstances, while applying principles that have been developed by Courts of law over a period of time, dealing with similar or identical situations.

32. In this backdrop, this Court proposes to consider the rival submissions to apply the well-established three-pronged test to consider whether the plaintiff has made out a *prima facie* case for restraining defendant No.2 from enforcing the anti-suit permanent injunction order dated 26.10.2021, passed by the High Court of Singapore.

33. At the heart of the matter concerning the aspect of *prima facie* case, lies the question as to what factors the plaintiff needs to demonstrate before this Court. There is clear divergence in the submissions made on behalf of the plaintiff on the one hand and the defendants on the other, as to the nature of enquiry to be conducted by this Court, the factors to be taken into consideration and the various aspects that can be gone into and bundled together for arriving at a finding as regards the assertion of *prima facie* case made on behalf of the plaintiff.

34. It is the case of the plaintiff that the settled position of law, as applicable in India, leaves no forum for the plaintiff for adjudication of his disputes pertaining to oppression and mismanagement, except the NCLT. It is submitted that although the plaintiff had agreed for resolution of disputes through arbitration with the seat of arbitration being chosen as Singapore, a proper reading of the arbitration clause would show that enforcement of any award in pursuance of such arbitration proceedings, would be under the Arbitration Act. It is

contended that the position of law in India is well-settled that disputes pertaining to oppression and mismanagement are non-arbitrable and hence, the award that may be rendered in pursuance of arbitration proceedings already initiated by the plaintiff at Singapore, would be unenforceable in India. On this basis, it is urged that unless the plaintiff is permitted to pursue his petition filed before the NCLT to raise disputes regarding oppression and mismanagement and unless the anti-suit permanent injunction order dated 26.10.2021, passed by the High Court of Singapore is stayed, the plaintiff would be left remediless. According to the plaintiff, this is the limited area in which this Court can examine the question of *prima facie* case made out by the plaintiff for an anti-enforcement order. It is on the basis of this very argument that the plaintiff contends that the aspect of grave and irreparable loss and hence, the balance of convenience being in his favour, can be examined by this Court.

35. As opposed to this, the defendants claim that mere filing of the aforesaid petition before the NCLT, in itself, cannot lead to this Court holding that unless the plaintiff is permitted to pursue the said petition, he would be left remediless. It is submitted that this Court is necessarily required to examine the question as to whether the plaintiff has raised disputes genuinely pertaining to oppression and mismanagement, or that the petition filed before the NCLT is merely a ruse to avoid arbitration. According to the defendants, the question of the said petition filed before the NCLT being a 'dressed-up' petition, is subsumed within the aspect of *prima facie* case to be examined by this Court, for grant or refusal of the anti-enforcement order sought by the plaintiff.

36. It is settled law that if the plaintiff fails to make out a *prima facie* case, examination of questions pertaining to grave and irreparable loss, as also balance of convenience, are rendered meaningless.

37. Thus, in such a situation, this Court is called upon to first determine as to what are the factors to be taken into consideration while answering the question as to whether the plaintiff has indeed made out a *prima facie* case in his favour for allowing the present application. In order to arrive at a conclusion on the said aspect of the matter, some of the established positions of law need to be adverted to.

38. The question as to whether the NCLT has exclusive jurisdiction to decide disputes pertaining to oppression and mismanagement, has arisen before Courts and after much deliberation, it has been found that only the NCLT has exclusive jurisdiction to decide such disputes. No Court, including a Civil Court, can go into such disputes. In this regard, Sections 241, 242 and 430 of the Companies Act, 2013 are relevant.

39. Section 241 of the Companies Act provides for filing of an application before the NCLT for relief in cases of oppression etc. Section 242 thereof specifies the powers of the NCLT, when such an application is filed under Section 241. These two provisions clearly specify that the NCLT has power to consider disputes pertaining to oppression and mismanagement, as also the procedure and powers to be exercised by the NCLT while considering and deciding such disputes. Section 430 of the Companies Act specifically provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter that the NCLT is empowered to determine under the Companies Act, 2013 or any other law for the time being in force. For the sake of further clarity, it would be appropriate to refer to Section 430 of the Companies Act, which reads as follows: -

> "**430. Civil Court not to have jurisdiction.** -No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be

> granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under his Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

40. Thus, it is clear that even this Court in the present proceedings, cannot go into the question of the disputes pertaining to oppression and mismanagement raised by the plaintiff against the defendants. Apart from the fact that the aforesaid provisions of law are very clear, this Court has specifically held that the NCLT indeed has exclusive jurisdiction in such matters. In the case of **Invesco Developing Markets Fund v/s. Zee Entertainment Enterprises Limited and another** (*supra*), a Division Bench of this Court relied upon judgment of Madras High Court, in the case of *Selvarathnam v/s. Standard Fire Woods* (**passed in C.R.P.(PD)(MD) No.775 of 2017**), with reference to Section 430 of the Companies Act, to hold that the NCLT has exclusive jurisdiction in such matters and no Civil Court can grant an injunction in respect of any action taken or to be taken by the NCLT in pursuance of the powers conferred under the Companies Act, 2013.

41. In the case of **Rakesh Malhotra v/s. Rajinder Kumar Malhotra and others** (*supra*), the learned Single Judge of this Court, held in respect of *pari materia* provisions of the Companies Act, 1956 i.e. Sections 397, 398 and 402, to hold that the disputes pertaining to oppression and mismanagement were exclusively within the jurisdiction of the Company Law Board (which was exercising powers similar to the NCLT, under the Companies Act, 2013).

42. In fact, the defendants have not been able to dispute the said position of law that questions pertaining to oppression and mismanagement are within the exclusive jurisdiction of the NCLT and that jurisdiction of all Courts and other authorities, is barred.

43. The contention of the plaintiff is that since the anti-suit permanent injunction order issued by the High Court of Singapore, restrains him from pursuing his petition filed before the NCLT, he is effectively rendered remediless. This is further based on the assertion that as per Indian law, such disputes pertaining to oppression and mismanagement are non-arbitrable. This aspect has also been dealt with in various cases in Courts of law in India and the Supreme Court has also confirmed the said position of law.

44. In the case of **N. N. Global Mercantile Private Limited v/s. Indo Unique Flame Limited and others** (*supra*), the Supreme Court categorically held as follows:

> "42. The broad categories of disputes which are considered to be non- arbitrable are penal offences which are visited with criminal sanction; offences pertaining to bribery/ corruption; matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody and guardianship matters, which pertain to the status of a person; testamentary matters which pertain to disputes relating to the validity of a will, grant of probate, letters of administration, succession, which pertain to the status of a person, and are adjudicated by civil courts.
>
> 43. Certain categories of disputes such as consumer disputes; insolvency and bankruptcy proceedings; oppression and mismanagement, or winding up of a company; disputes relating to trusts, trustees and beneficiaries of a trust are governed by special enactments."

45. There is substance in the contention raised on behalf of the plaintiff that even though certain questions in the case of **N. N. Global Mercantile Private Limited v/s. Indo Unique Flame Limited and others** (*supra*), were referred to a Constitution Bench, the same pertained to adequacy of stamp duty on the agreement containing the arbitration clause. Even though subsequent Constitution Bench

judgment has come, the said aspect of non-arbitrability of disputes pertaining to oppression and mismanagement has not been discussed in the judgment of the Constitution Bench.

46. In the case of **Vidya Drolia and others v/s. Durga Trading Corporation** (*supra*), the said position of non-arbitrability of such disputes, has been reiterated. In the case of **Rakesh Malhotra v/s. Rajinder Kumar Malhotra and others** (*supra*), this Court, after taking into consideration rival submissions, held as follows:

> "85. In my view, Mr. Chinoy's submissions demand acceptance. The first question for determination must be answered in his favour. The disputes in a petition properly brought under Sections 397 and 398 read with Section 402 are not capable of being referred to arbitration, having regard to the nature and source of the power invoked."

47. As noted hereinabove, the disputes pertaining to oppression and mismanagement were relatable to Sections 397, 398 read with Section 402 of the Companies Act, 1956 and therefore, the position of law clarified in the above quoted paragraph, applies to such disputes of oppression and mismanagement raised under Sections 241 and 242 of the Companies Act, 2013, before the NCLT. Thus, this Court finds that the disputes pertaining to oppression and mismanagement under Indian law, are not arbitrable and only the NCLT has exclusive jurisdiction to decide such disputes.

48. In this context, the defendants have argued that since the plaintiff himself agreed for resolution of all disputes with the defendants through arbitration and the place of arbitration was chosen as Singapore, the law of Singapore would apply to the disputes between the parties. Since the law in Singapore holds that disputes pertaining to oppression and mismanagement are arbitrable, the plaintiff cannot rely upon non-arbitrability of such disputes under Indian law, to claim that the only

remedy available is before the NCLT. In this context, the arbitration clause of the SHA assumes significance. It reads as follows:

> "20. GOVERNING LAW AND ARBITRATION
>
> 20.1 This Agreement and its performance shall be governed by and construed in all respects in accordance with the laws of the Republic of India. In the event of a dispute relating to the management of the Company or relating to any of the matters set out in this Agreement, parties to the dispute shall each appoint one nominee/representative who shall discuss in good faith to resolve the difference. In case the difference is not settled within 30 calendar days, it shall be referred to arbitration in accordance with the Clause 20.2 below.
>
> 20.2 All such disputes that have not been satisfactorily resolved under Clause 20.1 above shall be referred to arbitration before a sole arbitrator to be jointly appointed by the Parties. In the event the Parties are unable to agree on a sole arbitrator, one of the arbitrators shall be appointed jointly by the Founders and the second arbitrator will be appointed by WestBridge and the third arbitrator will be appointed by the other two arbitrators jointly. The arbitration proceedings shall be carried out in accordance with the rules laid down by International Chambers of Commerce and the place of arbitration shall be Singapore. The arbitration proceedings shall be conducted in the English language. The parties shall equally share the costs of the arbitrator's fees, but shall bear the costs of their own legal counsel engaged for the purposes of the arbitration.
>
> 20.3 The award of the arbitral tribunal shall be final and conclusive and binding upon the Parties, and the Parties shall be entitled (but not obliged) to enter judgement thereon in any Court of competent jurisdiction. The Parties agree that such enforcement shall be subject to the

provisions of the Indian Arbitration and Conciliation Act, 1996 and neither Party shall seek to resist the enforcement of any award in India or elsewhere on the basis that award is not subject to such provisions. The award rendered shall apportion the costs of the arbitration.

20.4 The Parties agree that the relevant courts of competent jurisdiction shall have the jurisdiction to entertain any proceedings for interim relief related to this Agreement whether during pendency, or after expiry or termination.

20.5 The Parties further agree that the arbitrators shall also have the power to decide on the costs and reasonable expenses (including reasonable fees of its counsel) incurred in the arbitration and award interest upto the date of the payment of the award.

20.6 When any dispute is referred to arbitration, except for the matters under dispute, the Parties shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Agreement.

20.7 The provisions of this Clause 20 shall survive the termination of this Agreement."

49. A perusal of the above quoted clause indeed shows that the agreed seat of arbitration is Singapore and that the arbitration proceedings are to be carried out in accordance with rules laid down by the International Chamber of Commerce. But, clause 20.3, quoted hereinabove, specifically stipulates that the enforcement of award of the arbitral tribunal constituted under the said arbitration clause, shall be subject to provisions of the Indian Arbitration Act. There is a specific stipulation that neither party would seek to resist the enforcement of the award in India or elsewhere on the basis that the award is not subject to such provisions.

50. This Court finds that even though the place of arbitration is chosen as Singapore, since enforcement of the award of the arbitral tribunal is to be in terms of the provisions of the Indian Arbitration Act, the fact that disputes pertaining to oppression and mismanagement are non-arbitrable under Indian law, assumes significance. In such a situation, it cannot be said that since the disputes pertaining to oppression and mismanagement are arbitrable under Singapore law, the plaintiff has the forum of arbitration in the chosen seat at Singapore to ventilate his grievances pertaining to such disputes. What use would be the findings of the arbitral tribunal at Singapore on the question of oppression and mismanagement, when the award consisting of such findings, can never be enforced in India?

51. In the light of the specific stipulation in the above-quoted arbitration clause that the arbitral award would be enforceable only under the provisions of the Indian Arbitration Act, the position of law clarified in the case of **Renusagar Power Company Limited v/s. General Electric Company** (*supra*) and **Vijay Karia and others v/s. Prysmian Cavi E Sistemi SRL and others** (*supra*), becomes relevant. In the case of **Renusagar Power Company Limited v/s. General Electric Company** (*supra*), the Supreme Court held that the expression 'public policy' in Section 7(1)(b)(ii) of the Foreign Awards Act pertains to the doctrine of public policy as applied by the Courts in India, thereby indicating that enforcement of a foreign award could be resisted, if it falls foul of public policy as applied by the Courts in India.

52. Subsequently, in the case of **Vijay Karia and others v/s. Prysmian Cavi E Sistemi SRL and others** (*supra*), the Supreme Court categorically held as follows:

> "58. When the grounds for resisting enforcement of a foreign award under Section 48 are seen, they may be classified into three groups- grounds which affect the

> jurisdiction of the arbitration proceedings; grounds which affect party interest alone; and grounds which go to the public policy of India, as explained by Explanation 1 to Section 48(2). Where a ground to resist enforcement is made out, by which the very jurisdiction of the Tribunal is questioned such as the arbitration agreement itself not being valid under the law to which the parties have subjected it, or where the subject-matter of difference is not capable of settlement by arbitration under the law of India, it is obvious that there can be no discretion in these matters. Enforcement of a foreign award made without jurisdiction cannot possibly be weighed in the scales for a discretion to be exercised to enforce such award if the scales are tilted in its favour."

53. Thus, it becomes abundantly clear that when the subject matter of dispute, as in this case pertaining to oppression and mismanagement, is incapable of settlement through arbitration under the law of India, the Court cannot have any discretion in such matters and enforcement of such a foreign award becomes an impossibility. Hence, there is substance in the contention raised on behalf of the plaintiff that in the light of the said public policy of Indian law, as recognized by the Courts in India pertaining to non-arbitrability of disputes concerning oppression and mismanagement, even if the said questions were gone into in the arbitral proceedings at Singapore, the award pursuant thereto would be incapable of enforcement in India under Section 48 of the Arbitration Act.

54. This can lead to no other conclusion, but holding that the plaintiff, can seek redressal of his grievance on the aspect of oppression and mismanagement, only in his petition filed before the NCLT. This being the only remedy available to the plaintiff, the anti-suit permanent injunction granted by the High Court of Singapore prevents him from exercising his right to such a remedy, thereby rendering him remediless.

55. The Supreme Court, in the case of **Imtiyaz Ahmed v/s. State of**

Uttar Pradesh and others (*supra*), held that access to justice is vital for rule of law and that it is a universally recognized right. In the case of **Anita Kushwaha v/s. Pushap Sudan** (*supra*), the Supreme Court reiterated that access to justice is a valuable right recognized by Courts universally, including in India. In fact, such a right of access to justice is elevated to the status of right to life, under Article 21 of Constitution of India and also right of equality guaranteed under Article 14 thereof. The Supreme Court, in the said judgment, held as follows:

> "31. Given the fact that pronouncements mentioned above have interpreted and understood the word "*life*" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of Article 21 of the Constitution of India. If "*life*" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "access to justice" will not affect the quality of human life so as to take access to Justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before courts and tribunal and adjudicatory fora where law is applied and justice administered. The citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory

> mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well."

56. In this context, the above quoted general principles recognized by the Delhi High Court in the case of **Interdigital Technology Corporation and others v/s. Xiaomi Corporation and others** (*supra*), with which this Court agrees, are of relevance, particularly because they pertain to issues arising when a plaintiff seeks an anti-enforcement injunction. In the above-quoted portion of the said judgment, one of the principles recognized is that if the right of a person to pursue legal remedies before the forum competent to adjudicate such rights, is interfered with, it amounts to oppression, particularly when there is no other forum available to the litigant to ventilate his grievances. The principle of comity of Courts is well recognized, but the said principle cannot override the aforesaid valuable right of a litigant to access of justice, particularly when an injunction, as in this case, an anti-suit injunction, is issued by a foreign Court having the effect of interference with or preventing the plaintiff from pursuing the only legal remedy available in the facts and circumstances of the case. If such an injunction of the foreign Court is offensive to the domestic public policy, enforcement of the same can be resisted and the principle of comity of Courts cannot be used as a weapon to leave a litigant completely remediless. Such an oppressive situation for a litigant cannot be countenanced under any circumstances. This Court is of the opinion that in the light of the said position of law recognized by Courts in India, in the present case, the plaintiff has been able to make out a strong *prima*

facie case for issuance of an anti-enforcement temporary injunction during the pendency of the suit.

57. The position of law clarified by the Supreme Court, as far back as in the case of **Smt. Satya v/s. Shri Teja Singh** (*supra*) in the year 1975, supports the aforesaid finding as it was laid down that foreign law must not offend public policy of India. This was recently reiterated in the case of **Modi Entertainment Network and another v/s. W.S.G. Cricket Pte. Ltd.** (*supra*), wherein it was held that where proceedings are oppressive or vexatious, such injunction can be granted, particularly when refusal to grant such an injunction, would defeat the ends of justice and injustice would be perpetuated. On the touchstone of the aforesaid position of law, the plaintiff has indeed made out a strong *prima facie* case in his favour.

58. But, in view of the elaborate submissions made on behalf of the defendants that examination of *prima facie* case must include an exercise on the part of this Court to peruse the petition filed before the NCLT and to examine whether a genuine case of oppression and mismanagement is made out by the plaintiff, this Court is called upon to determine the extent to which such an exercise can be carried out.

59. It is the specific stand of the defendants that the test of *prima facie* case in the light of the facts and circumstances brought on record, subsumes within itself, the requirement of this Court embarking upon the exercise of testing the true nature of the petition filed before the NCLT. This Court must cautiously tread on such a path, lest it trenches upon the jurisdiction of the NCLT, which is the only forum of exclusive jurisdiction to render findings on the aspect of oppression and mismanagement. If this Court travels beyond a point on such a path, upon which the defendants invite this Court to travel, it will amount to pre-empting the exercise of exclusive jurisdiction by the NCLT and it

would have the tendency of hurting the interests of either party to the present proceedings or all of them.

60. This Court is of the opinion that only a very limited exercise can be undertaken while perusing and considering the petition filed by the plaintiff before the NCLT. This would be limited to examining as to whether such a petition at all pertains to disputes concerning oppression and mismanagement under Sections 241 and 242 of the Companies Act. If it is found that the petition has nothing to do with the aspects of oppression and mismanagement, in the sense that the subject matter of the petition is wholly foreign to the disputes that can be adjudicated under the Companies Act, 2013 and particularly, under Sections 241 and 242 thereof, a finding could be rendered on the aspect of *prima facie* case against the plaintiff. For instance, if the body of the petition pertains to disputes that have nothing to do with the SHA, or only a set of papers have been given the title of a petition under Sections 241 and 242 of the Companies Act, 2013, to be placed before the NCLT, this Court could reach a conclusion that even a bare look at the petition itself shows that mere filing of the same before the NCLT cannot *ipso facto* lead to the plaintiff claiming anti-enforcement order against the defendants herein.

61. In other words, this Court, while looking at the petition filed before the NCLT, would not go into the depth of claims and counter-claims made by the parties about the true nature of the disputes of oppression and mismanagement raised therein. At this juncture, the aspect of the petition filed before the NCLT being a ‘dressed-up’ petition, becomes relevant. This Court is of the opinion that examining whether the petition filed before the NCLT can be said to be a ‘dressed-up’ petition, would necessarily require a detailed exercise to be carried out by this Court to render findings either way. This would clearly

impinge upon the exclusive jurisdiction of the NCLT in deciding such a question.

62. The learned senior counsel appearing for the defendants went to great lengths in referring to the pleadings in the petition filed before the NCLT, to claim that reference therein was made only to Sections 241 and 242 of the Companies Act, 2013; that key words of the provision were stated in the form of incantations or *mantras* and that key phrases of judgments pertaining to the concept of oppression and mismanagement, were mechanically quoted in the pleadings. On this basis, it was submitted that the plaintiff had prepared a 'dressed-up' petition, only to avoid arbitration in Singapore and that the real nature of disputes pertained to contractual obligations.

63. This Court perused the petition filed before the NCLT from this angle and it is found that certain claims have been made by the plaintiff as regards relationships between the parties in the context of the SHA and after setting up such a case, the plaintiff has claimed that there has been oppression and mismanagement. On a bare look of the petition filed before the NCLT, without entering into any exercise in detail, this Court is of the opinion that the vehement submissions made on behalf of the defendants, cannot be accepted. This does not mean that this Court has accepted whatever is stated in the petition filed before the NCLT as gospel truth, but it cannot be said that the petition does not pertain to the subject matter of oppression and mismanagement at all. This Court is not entering into the question as to whether the petition filed before the NCLT is a 'dressed-up' petition or not. That clearly would be a question within the exclusive jurisdiction of the NCLT to decide.

64. This Court is also of the opinion that the question as to whether the claims made by the plaintiff in the said petition can be said to be only contractual disputes to be resolved by arbitration, is also a question

that can be decided only by the NCLT. This is because the defendants are entitled to invoke Section 45 of the Arbitration Act, which provides for a power to a judicial authority (in this case, the NCLT) to refer the parties to arbitration. The defendants can certainly file such an application under Section 45 of the Arbitration Act before the NCLT and make out a case for referring the parties to arbitration.

65. Any exercise involving detailed examination of the petition filed before the NCLT, at the hands of this Court, would be hazardous as it would amount to deciding the question that lies exclusively within the jurisdiction of the NCLT itself. After all, a Court or an authority has the jurisdiction to decide the very question as to whether it has jurisdiction to entertain the proceeding or not. This is a settled principle of law and reliance placed upon judgment of the Supreme Court, in the case of **Bhatia Co-operative Housing Society Limited v/s. D. C. Patel** (*supra*) rendered as far back as in the year 1952, is apposite. The Supreme Court, in the said judgment, categorically held that a Court has inherent power to decide the question of its own jurisdiction, although as a result of its enquiry, it may turn out that it has no jurisdiction over the proceeding. Thus, in the facts and circumstances of this case, only the NCLT has the jurisdiction to decide the question as to whether it has jurisdiction to entertain and decide the petition filed by the plaintiff and/ or whether the disputes being contractual in nature, are arbitrable and the parties are to be referred to arbitration.

66. This Court cannot enter into a detailed examination and enquiry, as it would encroach upon the exclusive jurisdiction of NCLT on the question of the nature of disputes raised by the plaintiff, being concerned with oppression and mismanagement. The defendants are not justified in inviting this Court to enter into such a detailed exercise, claiming it to be necessary and an integral part of examining as to whether the plaintiff

had made out a *prima facie* case for grant of anti-enforcement order to restrain the anti-suit permanent injunction order granted by the High Court of Singapore. Thus, the factors constituting the scope and extent of *prima facie* case, cannot include an exercise to be carried out by this Court pertaining to the aspect of the petition filed before the NCLT being a 'dressed-up' petition or otherwise.

67. During the course of arguments, it was submitted by learned senior counsel appearing for the plaintiff that while examining *prima facie* case of the plaintiff from the angle as to whether the petition filed before the NCLT can be said to be a petition raising disputes of oppression and mismanagement, principles akin to those governing consideration of an application under Order VII, Rule 11 of the CPC, could be applied. It was submitted that this Court may simply peruse the petition pending before the NCLT and while accepting the averments made therein, verify as to whether it deserved to be thrown out at the threshold.

68. This has been vehemently opposed on behalf of the defendants on the basis that while considering an application under Order VII, Rule 11 of the CPC, the Court has to proceed on a demurrer, to examine as to whether a petition makes out a cause of action or not, on the assumption that all the facts stated in the petition are true. It is submitted that in the present case, this Court cannot apply the said test and on the other hand, it will have to satisfy itself as to whether genuine disputes of oppression and mismanagement are made out by the plaintiff with reference to Sections 241 and 242 of the Companies Act, 2013.

69. As regards the aforesaid submissions made on behalf of the rival parties, this Court is of the opinion that the focus has to be on the question as to whether only the NCLT has exclusive jurisdiction to entertain and consider such a petition, pertaining to disputes of

oppression and mismanagement. When the aspect of *prima facie* case is viewed from this angle, the detailed submissions made on behalf of the rival parties on applying principles akin to those governing an application under Order VII, Rule 11 of the CPC, appear to be inapposite, and therefore, this Court refrains from rendering any detailed findings thereon.

70. In view of the above, the fact that the plaintiff has been able to show that if the anti-suit permanent injunction order granted by the High Court of Singapore is enforced, he will be rendered remediless, is enough to make out a strong *prima facie* case in his favour.

71. In this backdrop when the contentions raised on behalf of the defendants are considered, it comes to light that they have emphasized on the law pertaining to the disputes of oppression and mismanagement. A major emphasis is placed on trying to demonstrate that the petition filed before the NCLT does not raise genuine disputes of oppression and mismanagement, indicating that the petition is itself a 'dressed-up' petition. In view of the finding rendered hereinabove, that this Court will not cross the line and examine the petition filed before the NCLT in great detail, consideration and discussion on such detailed submissions made on behalf of the defendants is unnecessary. A perusal of the judgements relied upon by the learned senior counsel appearing for the defendants would show that the aspects of oppression and mismanagement have been discussed and elaborated in such judgements, including judgements in the case of **Tata Consultancy Services Limited Vs. Cyrus Investments Private Limited** *(supra)*, **Ebrahimi Vs. Westbourne Galleries Limited** *(supra)*, **Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla** *(supra)*, **Stanley Wootliff Vs. Martin Rushton-Turner** *(supra)* and **Best Sellers Retail (India) Private Limited Vs. Aditya Birla Nuvo Limited** *(supra)*.

72. These judgements lay down as to the contours of disputes pertaining to oppression and mismanagement, which show that the grievances in this category may not arise from contractual obligations of the parties but on just and equitable grounds, indicating the structure of the company being in the nature of a quasi-partnership, giving rise to certain legitimate expectations in the concerned parties. There can be no quarrel with the position of law laid down in the said judgements.

73. Similarly, the learned senior counsel appearing for the plaintiff, without prejudice to the principal argument, referred to some judgements laying down the law concerning oppression and mismanagement. These included judgements in the case of **New Horizons Limited Vs. Union of India** *(supra),* **O'Neill Vs. Phillips and others** *(supra),* **Invesco Developing Markets Fund Vs. Zee Entertainment Enterprises Limited** *(supra)* and **Novartis Vaccines & Diagnostics Inc. Vs. Aventis Pharma Limited** *(supra)*, wherein similar principles of equitable considerations, written and unwritten obligations and implied contracts indicating that the company is in the nature of a partnership, have been elaborated. Again, there can be no quarrel with the propositions laid down therein.

74. But, this Court is of the opinion that discussion on these aspects and consideration of the said judgements relied upon by the rival parties is not necessary while deciding the present application, for the reason that such detailed arguments would have to be advanced before the NCLT in the petition filed by the plaintiff. If the defendants choose to file an application under Section 45 of the Arbitration Act, to claim that in the real sense, the grievances and disputes raised by the plaintiff are purely contractual in nature, due to which the parties must be referred to arbitration, such detailed arguments would also have to be advanced before the NCLT itself. This Court cannot cross the line and trench upon

the exclusive jurisdiction of the NCLT in such matters. Hence, questions (ii) to (viii) framed hereinabove in paragraph 27 are answered accordingly.

75. In this context, it becomes relevant as to whether this Court can refer to the judgements and orders passed by the Courts in Singapore in the proceedings initiated by defendant No.2, leading to the anti-suit permanent injunction order passed against the plaintiff. As noted hereinabove, the principle of comity of Courts has to be respected, but only a limited enquiry can be undertaken by this Court to examine as to whether continuing the effect of such an anti-suit permanent injunction order would offend public policy of India. Findings in this regard have already been rendered hereinabove, but since the learned senior counsel appearing for the rival parties did refer to the judgement of the Court of Appeal at Singapore in great detail, this Court deems it appropriate to only refer to the same.

76. Upon perusal of the judgement dated 06.01.2023 of the Court of Appeal at Singapore, this Court finds that rival submissions were considered and findings were rendered. This Court is conscious that no comments can be made on the merits of the findings rendered by the Court of Appeal at Singapore, as evidently this Court is not sitting in appeal over the said judgement. It would be rather discourteous for this Court to make any comments on merits about the findings rendered by the Court of Appeal at Singapore.

77. Nonetheless, it is relevant to note that the Court of Appeal at Singapore has also taken into consideration the aspect of non-arbitrability of disputes pertaining to oppression and mismanagement under Indian law and reference is also made to the pending petition filed by the plaintiff before the NCLT. In fact, the Court of Appeal at Singapore notes that the judgement of this Court in the case of **Vijay**

Karia Vs. Prysmian Cavi E Sistemi SRL *(supra)* categorically holds that the disputes pertaining to oppression and mismanagement are non-arbitrable under Indian law.

78. Yet, two reasons have been assigned for not interfering with the anti-suit permanent injunction order passed by the High Court of Singapore. The first reason pertains to the expected timeline for disposal of the present suit and the instant interim application before this Court. The plaintiff has pointed out that in the expert evidence led before the High Court of Singapore, concerning timelines for disposal of proceedings, reference was made to the time period that NCLT would take to decide an application that may be filed by the defendants under Section 45 of the Arbitration Act. The expert witness specifically stated that such an application would be finally disposed of within 10 to 12 months. There is substance in the contention raised on behalf of the plaintiff that this timeline ought to have been placed before the Court of Appeal at Singapore in the context of the first reason assigned, while confirming the anti-suit permanent injunction order of High Court of Singapore. This Court leaves it at that. The second reason assigned by the Court of Appeal at Singapore was that it was too speculative to conclude that arbitration would be a fruitless exercise just because of the possibility that the award would not be enforceable in India. This, despite having taken note of the categorical position in Indian law as manifested in the aforesaid judgement of the Supreme Court in the case of **Vijay Karia Vs. Prysmian Cavi E Sistemi SRL** *(supra)* that when the subject matter is found to be non-arbitrable under Indian law, the enforcement of an award pertaining to such a subject matter would be against the public policy of India and hence unenforceable under Section 48 of the Arbitration Act. But, this Court is referring to the said aspects of the judgement of the Court of Appeal at Singapore, only for the reason that the learned senior counsel for the rival parties did advance

detailed submissions in that regard.

79. It is absolutely clear that while examining as to whether the plaintiff has made out a strong *prima facie* case in his favour, the rival submissions and the entire material on record have been analyzed and considered by this Court independent of any findings that have been rendered by the Courts at Singapore. This Court is applying the well-established three-pronged test for considering as to whether temporary injunction, as claimed in the present application, can be granted. The factors that need to be considered while examining such *prima facie* case have been identified hereinabove and it is reiterated that the plaintiff has been able to make out such a *prima facie* case in his favour for grant of temporary injunction in the form of an anti-enforcement order. Question (ix) framed in paragraph 27 hereinabove is answered accordingly.

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.

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.

82. Thus, this Court finds that the plaintiff has made out all the three parameters for grant of temporary injunction to resist enforcement.

ORDER

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 of 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 and hence, the interim injunctions granted in terms of prayer clauses (a) and (c) above apply in the context of 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.

85. The interim application is disposed of in above terms.

(MANISH PITALE, J.)