

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 13 of 2016**

**Dated: 04.10.2016**

**IN THE MATTER OF:**

**Mc Donald's India Pvt. Ltd.**

**.....Appellant**

**Vs.**

**Vikram Bakshi & Ors.**

**....Respondents**

**Present: Mr. Sudipto Sarkar, Senior Advocate with Mr. Rahul P.Dave, Mr. Amit Dhingra, Mr. Rahul Naraynan and Mr. Sumit Chopra, Advocates for the Appellant**

**Mr. Tejas Kalia, Advocate with Mr. Karan Mehra and Mr. Manvendra Mishra, Advocates for the Respondent No. 1**

**Mr. Rudreshwar Singh, Advocate for Respondent No. 2**

**Mr. Satyajit Sarna, Advocate with Mr. Mohit Negi, Advocates for Respondent No. 9**

**ORDER**

Issue Notice. Mr. Tejas Kalia, Mr. Rudreshwar Singh and Mr. Mohit Negi accept Notice on behalf of Respondent Nos. 1, 2 and 9 respectively. In view of the order we intend to pass it is not necessary to hear rest of the respondents.

2. This appeal has been preferred by appellant-Respondent- Mc Donald's India Private Limited against order dated 17<sup>th</sup> September 2016 passed by National Company Law Tribunal ( "Tribunal" for short ) in C.A.No. 79/C-I/2016 in C.P. No. 110/ND/2013. By the said order, the Tribunal refused to entertain the second application preferred by the appellant (Respondent No. 2 before the Tribunal) under Section 45 of the Arbitration and Conciliation Act 1996.
3. Further prayer has been made to refer the parties and/or persons claiming through or under them to arbitration pursuant to arbitration agreement contained in paragraph 40(b) of the Joint Venture Agreement dated 31<sup>st</sup> March 1995 and to vacate the Interim order passed by the then Company Law Board on 16<sup>th</sup> September 2013 which was extended from time to time.
4. The Company Petition has been preferred by the first and second respondent under Section 397 read with other provisions of Companies Act 1956 ( now Section 241 of Companies Act 2013). Therein by way of final relief the Petitioners-(Respondent No. 1 and 2 herein) sought for injunction to restrain the Respondent No. 2 to 9 of the Company Petition from interfering with the management and affairs of the company and to prohibit them from preventing the Petitioner - Respondent No. 1 from acting or holding out or representing himself to be the Managing Director of the Respondent No.3 Company - Connaught Plaza Restaurants Private Limited and some other relief for injunctions.



5. The case was heard by the Company Law Board in November 2014. Thereafter, the appellant (Respondent before the Company Law Board) proceeded with their arguments but the hearing could not be completed till 1<sup>st</sup> June 2016 when Tribunal was constituted under the Companies Act 2013. In that background fresh argument was advanced on behalf of the petitioners-(respondent No. 1 and 2 herein) followed by arguments advanced on behalf of the appellant (respondents). 17<sup>th</sup> October 2016 is the next date fixed for hearing.

6. During the pendency of the Company Petition before the Company Law Board, appellant- (respondent No. 2) filed Company Application No. 94/2013 requesting the Company Law Board to refer the matter for arbitration under Section 45 of the Arbitration and Conciliation Act, 1996. On 30<sup>th</sup> January 2014, the application was not pressed by the appellant- (Respondent No. 2) when the following order was passed by the Company Law Board:-

**"The counsel on behalf of R-2 states that R-2 does not press CA 94/2013 in view of the subsequent events, including the initiation by R-2 of the proceedings before the London Court of International Arbitration and the termination of JVA which in R-2's submissions, has rendered CP 110/2013 infructuous.**

**Responding to the same, the counsel for the petitioner side has disputed the statement given by R-2 stating withdrawal of CA 94/2013 will not make CP-110/2013 infructuous.**

**On hearing the submissions of either side, there being no objection for withdrawal of CA 94/2013, the same is hereby dismissed as withdrawn without prejudice to the rights and**

**contention of the either side in making their submissions in CP 110/2013.**

***The petitioner counsel has come up with a suggestion that company may be valued without taking the brand name of "McDonald" into consideration; thereafter provide an opportunity to buy out the company. To which, the respondent side counsel has sought time to get instructions from the respondents.***

***Hence the matter is posted to 19.03.2014, 20.03.2014 at 10.30 A.M. for reporting, if nothing is materialized by next date of hearing, the proceedings will continue.***

***Accordingly, CA 94/2013 is hereby disposed of."***

7. It appears that the Petitioners (Respondent No. 1 and 2 herein) subsequently filed an application under Section 403 of the Companies Act 1956 read with Regulation 44 of the Company Law Board Regulation 1991. Prayer was made therein to direct Respondent No. 1 Company to carry out valuation in accordance with the laws applicable in India and to appoint independent internationally reported values with further prayer to direct the respondents to cognate and provide all necessary data information. No decision was taken on such petition for Interim Relief and the Company Law Board by an order dated 25<sup>th</sup> August 2015 observed that "the relief can be granted only at the time of passing final order". Having noticed the averments made by Petitioners (Respondent No. 1 and 2 herein) in the said Company Petition, the respondent filed another (second) Petition under Section 45 of the Arbitration & Conciliation Act 1996 for referring the matter to an Arbitrator.



8. It was contended on behalf of the appellant that principal relief sought for in the company petition was limited to re-election of Petitioner No. 1 as the Managing Director of the Company. Such reliefs sought for alleging oppression by the company and the Directors of the Company which is under dispute. Learned Senior Counsel for the appellant submitted that the dispute arose consequent to the termination of the JV Agreement, is distinct and separate claim for which arbitration proceedings has already been initiated in the "London Court of International Arbitration, London". The appellant has also filed a petition under Section 9 of Arbitration Act before the Delhi High Court in OMP No. 1196 of 2013 and has been granted Interim Relief in aid of the Arbitration proceedings on 2<sup>nd</sup> December 2013 as per undertaking given by Petitioner-Respondent.

9. The Tribunal by impugned order dated 17<sup>th</sup> September 2015 has noticed that the petition filed by the appellant - (Respondent Nos. 1 and 2 before the Tribunal) under Section 45 of the Arbitration and Conciliation Act 1996 is the second application preferred for the same cause of action. The earlier application had already been withdrawn on 30<sup>th</sup> January 2014 as noticed above. In that background the Tribunal held that "it is a well settled principal of law deducible from the provisions of Order XXIII Rule 1(4) that where an application for withdrawal of the Suit has been allowed without any permission to refile the Suit on the same cause of action, then no further Suit would be permissible".

10. The Tribunal while dismissing the application by the appellant - (Respondent No. 1 and 2 before the Tribunal) made following observation:-

“13. A perusal of the aforesaid prayers would show that there is no relief claimed in the form of valuation of the assets of the company. Therefore, it is open to the parties to address arguments which are cognate to or associated with the prayers made in the Company Petition (supra) or other pleadings.”

11. Mr. Sudipto Sarkar, Learned Senior Counsel for the Appellant made similar submissions as was advanced before the Tribunal. According to him the pleading made by the petitioners in their subsequent petition cannot be adjudicated by the Tribunal in a Petition under Section 397 of Companies Act 1956 (presently Section 241 of the Companies Act 2013). It is submitted that the Tribunal at paragraph 13, as quoted above, has rightly observed that it is open to the parties to address the arguments which are cognate or associated with the prayer made in the Company Petition but the word “other pleadings” mentioned therein gives an idea that Petitioners (Respondent Nos. 1 and 2 herein) can raise the other dispute as has been raised before the “London Court of International Arbitration”.

12. Learned counsel appearing on behalf of the Respondent Nos. 1 and 2 (Petitioner before the Tribunal) submits that the averment made in the subsequent petition is based on record to highlight subsequent continuous oppression made by the Directors and the company. It is submitted that Tribunal can notice the subsequent act of oppression.

13. We have heard learned counsel for the parties and perused the record.



14. Having heard leaned counsel for the parties, we are of the opinion that no interference is called for with the impugned order passed by the Tribunal as the Tribunal has taken care that the arguments which are cognate to or associated with prayers made in the Company Petition can be argued by the parties. The word "other pleadings" made therein is to be read harmoniously means pleadings which has been made by the petitioners with regard to continuous oppression, if any made by the Respondent s to the Company Petition. It cannot be presumed that the Tribunal will decide the issues which are pending consideration before the London Court of Arbitration, London.

15. The parties are directed to conclude their arguments at an early date without asking for unnecessary adjournment to enable the Tribunal to pass final order at an early date.

16. This appeal is disposed with aforesaid observation. However, there shall be no order as to cost.

(Justice S.J.Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)