

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[Commercial Division]**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

AP-COM/300/2024

IA NO: GA/1/2023, GA/2/2023, GA-COM/3/2024

ANJANEE KUMAR LAKHOTIA

VS.

SHRI MARUTI MAHESHWARI AND ORS.

For the Petitioner : Mr. Abhrajit Mitra, Sr. Adv
Mr. Satadeep Bhattacharyya, Adv.
Ms. Pritha Basu, Adv.
Ms. Nailanjana Ghosh, Adv.
Mr. Debartha Chakraborty, Adv.

For the Respondent : Mr. Sabyasachi Chowdhury, Adv.
Mr. Anuj Singh, Adv.
Mr. Syed Ehteshan Muda, Adv.
Mr. Aman Agarwal, Adv.
Ms. Trinisha De, Adv.
Ms. Rupal Singh, Adv.
Ms. N. Singh, Adv

Judgment on : 25.02.2025

Ravi Krishan Kapur, J.:

1. This is an application under section 9 of the Arbitration and Conciliation Act, 1996.
2. The disputes between the parties arise out of a Memorandum of Understanding dated 17 March, 2013 (MOU) executed between the respondent nos.1 and 2 herein and the petitioner. Admittedly, the respondent no.3 is not a party *eo nomine* to the MOU. The petitioner seeks restraint orders against the respondents from acting contrary to or

inconsistent with the terms of the MOU and consequentially from transferring or dealing with any shares of a closely held family company MBL Infrastructure Limited (the company).

3. Briefly, the members of one Maheswari family decided to resolve their family disputes by entering into the MOU which *inter-alia* contemplated transfer of the shareholding in the company between the two groups by effecting sale of 55,62,790 shares belonging to the respondents in the company at an aggregate price of Rs.28.50 crores. The agreement also contemplated that the petitioner would ensure release of the personal guarantees of the respondent nos.1 and 2 by 31 July 2013. In default, the respondent nos.1 and 2 and their group were free to deal with their shares in the company.
4. Salient clauses of the MOU are as follows:

1. *Pursuant to the terms and conditions of this MOU and for the considerations set out in clause 1.2 below, the details of the shares to be transferred from each of the party of Group-1 are set out below:*

Name	Number of Shares
Mr. Ram Gopal Maheswari	22,48,750
Mr. Maruti Maheswari	24,500
Mr. Aditya Maheswari	50,000
Mr. Anuj Maheswari	50,000
Mrs. Sweta Maheswari	29,250
M/s. Prabhu International Vyapar Private Limited	31,60,290
TOTAL	55,62,790

- 1.1 *The members of Group-2 agrees and acknowledges that the First and Second Party of Group-1 have given the following personal guarantees:*
- (a) *the Consortium of Banker of the Company for securing the fund based and non-fund based working capital facilities; and*

(b) to the banker of AAP Infrastructure Limited, a subsidiary of the Company for an amount of Rs.50 crores.

- 1.2 The Group-2 shall arrange for (i) release of the personal guarantees of parties of Group-1 by or before June, 2013 or within 60 days of resignation from MBL whichever is later, (ii) pay and/or cause to be paid to the Group-1 an all-inclusive consideration of Rs.28.50 crores for the shares as set out in clause 1 above.

The parties of Group-1 shall ensure necessary transfer of shares by way of deeds, documents including transfer deed/gift deed etc to ensure that the total shares as per clause no.1 are transferred for a total consideration of Rs.28.50 crores.

The consideration may be shared/distributed between parties of Group-1 proportionately or otherwise as mutually agreed, subject however that the net aggregate consideration amount shall not be higher or lower than Rs.28.50 crores.

Group 2 shall keep Group-1 indemnified by MBL so that no liability shall accrue or arise to the First and Second Parties of Group 1 for the personal guarantees given by them.

- 1.3 Schedule of payment and transfer of shares:

<i>Date</i>	<i>Amount payable (Rs. in crores)</i>
<i>By MARCH, 31, 2013</i>	<i>5.00</i>
<i>By APRIL, 30, 2013</i>	<i>7.50</i>
<i>By MAY, 31, 2013</i>	<i>7.50</i>
<i>By JUNE, 30, 2013</i>	<i>5.00</i>
<i>By JULY, 31, 2013</i>	<i>3.50</i>

- 1.4 Consideration shall be paid to Group-1 as per Schedule above and thereafter the Group-1 shall transfer the share to the Demat Account of the Group-2 and/or his nominees and/or to his order in proportion to the amounts paid, together with all records, documents and papers of the company.

- 1.5 The parties of Group-1 shall relinquish, transfer, assign and surrender all their rights, entitlements, authorities, interests, powers etc. whatsoever in relation to the company and/or its subsidiary company(ies) and/or its associate/joint venture companies in favour of the Group-2 and/or its nominees.

- 1.6 The parties of Group-1 shall transfer all their shareholdings in Prabhu International Vyapar Pvt Ltd to parties of Group-2 and resign as directors upon receipt of consideration.

2 *The Second party of Group-1 shall resign as director from MBL and MSP Infrastructures Limited – an associate Company of MBL immediately upon receipt of Rs.15.00 crores out of the total consideration of Rs.28.50 crores as recorded in Clause 1.2.*

5.1 *The parties of Group-1 jointly and severally expressly undertake that they shall not dispose off, transfer or encumber the shares in any way except as has been contemplated under this MOU. However, members of Group-1 will be free to deal as per their wish with their respective share-holding if the consideration as defined in Clause no.2 is not cleared by 31.07.2013.*

5.2 *The parties of Group-1 shall transfer/pass on all benefits, entitlements etc. (including bonus/right share entitlement and dividends) relating to the shares to the Group-2 till 31.07.2013.*

5. It is alleged on behalf of the petitioner that the petitioner has fulfilled his obligations under the MOU and paid a sum of Rs.24,96,48,396/- against transfer of 3858632 shares in the company. The guarantees given by the respondent no.1 for the loan to AAP Infrastructure Limited have also been released on 7 April, 2021 and 4 August, 2021 respectively. In such circumstances, despite the petitioner having substantially complied with his obligations, the respondents are unjustifiably refusing to perform their reciprocal obligations. Accordingly, the petitioner seeks specific performance of the MOU *inter alia* requiring transfer of the balance amount of 34,08,316 equity shares (including bonus shares) of the company upon payment of a balance sum of Rs.3.5 crores. In this background, the present application has been filed for interim reliefs with the ultimate aim of preserving the *status quo*. In support of such contentions the petitioner relies on the decisions in *Niranjan Lal Todi vs. Nandalal Todi* (2010) SCC Cal 2120, *Central Bank of India vs. Kailash Chandra Gaur* MANU/KA/6263/2019, *Sanjiv Prakash vs. Seema Kukreja* (2021) 9 SCC 732, *Indian Oil Corporation Limited vs. Shree Ganesh*

Petroleum Rejgurunagar (2022) 4 SCC 4463, Karam Kapahi vs. Lal Chand Public Charitable Trust (2010) 8 SCC 673 and Bharat Sanchar Nigam Limited vs. Nortel Networks India Private Limited (2021) 5 SCC 738.

6. On behalf of the respondents it is contended that, there is gross distortion and misrepresentation of the true and correct facts of the case. Notwithstanding, the stipulated cut off date i.e. 31 July, 2013 in the MOU, the petitioner has deliberately and fraudulently failed to perform his obligations. The respondent nos.1 and 2 have also subsequently sold certain shares out of the above 55,62,790 shares in the open market at market prices ranging from Rs.80.37 to Rs.289.50. In view of the subsequent events, the parties through their respective companies namely Prabhu International Vyapar Private Limited and MBL A Capital Limited respectively had also entered into a Memorandum of Understanding dated 30 October, 2013 pertaining to sale of 17,00,000 shares which forms the subject matter of the MOU. Hence, the MOU stood substituted. In any event, the reliefs sought for in this application are barred by limitation. The petitioner is not entitled to any relief under the MOU. Moreover, the respondent no.3 has been wrongly impleaded as a party respondent to the present application. The respondent no.3 is neither a party nor signatory to the MOU and no reliefs can be claimed against the respondent no.3. In view of the above, there are serious issues as to the maintainability of any arbitral reference under the MOU.

7. Clause 13 of the MOU provides as follows:

13. Governing Law and Dispute Resolution

13.1 These presents will be governed by and construed and interpreted in accordance with laws of India.

13.2 The parties shall endeavor to settle any dispute arising in connection with the interpretation or performance of these presents, or otherwise in connection with these presents, through friendly consultations and negotiations. If so settlement can be reached through consultations between the parties within 15 days of one party delivering a written notice of the dispute to the other parties then such matter shall be finally settled by binding arbitration in India in accordance with the Arbitration Act, 1996. The arbitration shall be conducted by three (3) arbitrators. The parties of Group- 1 and the Group -2 shall nominate one arbitrator each and the Two (2) arbitrators shall nominate a third arbitrator. The language to be used in the arbitral proceedings shall be English.

8. A plain reading of the MOU suggests that the respondent nos.1 and 2 alongwith the petitioner in their respective individual capacity had contemplated sale of the shareholdings in a family company on certain terms and conditions. The agreement stipulated a cut off date i.e. 31 July, 2013. Admittedly, the petitioner failed to honour his obligations within the prescribed time period. In view of the subsequent events, it *prima facie* appears that post 31 July 2013, the MOU had all for purposes been abandoned by the parties and no steps were taken by either of them to extend the same. On the contrary, the execution of the subsequent MOU dated 31 October 2013, reflects a contrary and conflicting intention not to be bound by the MOU and the terms and conditions of the same stood revised and re-negotiated. The respondent nos.1 and 2 have subsequently sold a substantial portion of their remaining shares which formed the subject matter of the MOU in the open market at prices other than the agreed price under the MOU. This was never objected to by the petitioner or any member of this group. Despite the price of the shares under the MOU being crystallized at Rs.51 per share, the respondents have sold

their shares at different prices between Rs.80.37 to Rs.289.50 per share to third parties and also to parties related to the petitioner. Thereafter, the parties had entered into the Memorandum of Understanding dated 30 October, 2013 signed by the petitioner as director of a group company.

9. The MOU dated 30 October 2013 contemplated sale of 17,00,000 shares of the company (which comprised of the subject matter of the MOU) at a price of Rs.63.75 per share. Clause 3 of the MOU dated 30 October 2013 provides as follows:

3. Consideration

3.1 Seller agrees to sell and Buyer agrees to purchase the Sale Shares at the prevailing market price as on the date of signing of this MOU i.e. at Rs. 63.75 per share.

3.2 The consideration for the deal is the price as per para 3.1 and release of personal guarantees of the directors of Prabhu International Vyapar (P) Ltd. for the fund based and non fund based working capital facilities of MBL Infrastructures Ltd. which the Seller considers very essential for smooth running of its business.

3.3 the consideration for sale shall become payable by the Buyer at or before the Seller delivering the share certificates together with the duly signed share transfer deeds in the name of the Buyer and/or transferring the dematerialized shares in the name of the Buyer. However the Seller shall have the right to demand the consideration in advance from the Buyer when it is in a reasonable position to deliver the Sale Shares.

3.4 Subject to the availability with the Seller, in case the Buyer wants to purchase additional shares of MBL from the Seller, the price of such additional shares shall be the market price as on the date of actual sale of such additional shares.

10. Significantly, the MOU dated 30 October 2019 was also the subject matter of a prior civil suit CS No.54 of 2013 with respect to the same shares which form the subject matter of this application and had been instituted by the group of the petitioner. The suit was withdrawn without any liberty after the respondent no.3 had filed an application seeking directions for

enforcement of the obligations under the Memorandum of Understanding 30 October, 2013 and despite the plaintiff having enjoyed an interim order for over eight years. Notwithstanding, letters dated April 01, 2017, April 14, 2017 May 15, 2017, September 17, 2022 and December 26, 2022 *inter-alia* requesting the petitioner as well MBL A Capital Limited to purchase the subject shares in the company and complete the transaction in terms of the MOU dated October 30, 2013, neither did the petitioner nor the members of his group take any step to comply with the same. Such conduct negates any readiness or willingness on the part of the petitioner. It was only upon the withdrawal of CS No.54 of 2013 that, the petitioner filed the present application seeking to invoke the arbitration clause under the MOU.

11. There are serious issues as to whether the MOU had been substituted or not in view of the parties having entered into the subsequent MOU dated 30 October 2013. *Prima facie* a reading of the MOU dated 30 October 2013 would reflect that the original MOU stood altered. The correspondence exchanged between the parties also demonstrates that after a lapse of more than 10 years i.e. on 26 December 2022 did the petitioner attempt to revive the MOU. The question of whether the respondent no.3 is bound by the arbitration agreement also requires examination. In cases of family run companies, although they can be treated as assets of a family capable of division there cannot be a selective exercise. Admittedly, the respondent no.3 is neither a party nor a signatory to the MOU. The subsequent facts which have transpired after

the expiry of the cut off date i.e. 30 July, 2013 suggest that the parties had for all purposes and intent abandoned the MOU.

12. The decision in *Niranjan Lal Todi and Anr. vs. Nandlal Todi and Ors. (2010) SCC Cal 2120* is distinguishable. The MOU referred to had been executed between the member of the Todi family and contemplated all the concerned companies to be bound by its terms. The arbitration clause was wide enough to reflect the true intent of all the parties.
13. There is no quarrel with the proposition laid down in *Sanjiv Prakash vs. Seema Kukreja and Ors. (Supra)*. The question of whether an agreement stands novated or not is ultimately within the domain of the Arbitrator. However, at this stage, this is a question which requires a *prima facie* consideration in balancing the equities between the parties. The decision in *Bharat Sanchar Nigam Ltd. vs. Nortel Networks India Pvt. Ltd. (2021) 5 SCC 738* is also misplaced since in view of the glaring facts and circumstances of this case, a *prima facie* view on the question of limitation can always be taken into consideration in adjudicating upon the question of interim reliefs. Similarly, the decision in *Indian Oil Corporation Ltd. vs. Shree Ganesh Petroleum Rajgurunagar (2022) 4 SCC 463* is of no relevance since the disputes between the parties are yet to be referred to the Arbitral Tribunal.
14. In view of the above, there are serious issues of maintainability of any arbitral reference under the MOU dated 17 March 2013 which negates any *prima facie* case on merits in favour of the petitioner. The balance of convenience and irreparable injury is also against orders being passed in

favour of the petitioner. Any restraint on the sale of the shares is an unreasonable interference with the rights of the respondents *qua* shareholders. In any event, the petitioner cannot seek any restraint orders without performing their reciprocal obligations i.e. securing the entire consideration amount for the remaining shares which are fluctuating in nature. The amount of Rs.24.96 crores alleged to have been paid by the petitioner is disputed and controverted by the respondents. On behalf of the respondents it is submitted that, only a sum of Rs.3.38 crores has been received through open market sales after 31 July, 2013. The inconsistent and irreconcilable stand of the petitioner and his group insofar as the MOU is concerned also demonstrates lack of *bona fides* of the petitioner.

15. In such circumstances, AP-COM 300 of 2023 alongwith GA 1 of 2023 stands dismissed. The interim order dated 20 June 2023 stands vacated. GA 2 of 2023 filed for appointment of a Receiver and for other consequential reliefs also stands dismissed. GA-COM 3 of 2024 for vacating the interim order dated 20 June 2023 stands allowed. Needless to mention all the above findings are *prima facie* and tentative in nature.

(RAVI KRISHAN KAPUR, J.)