

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 06.04.2011

% **Judgment delivered on: 06.06.2011**

+ **O.M.P. 92/2011 & O.M.P. 52/2011**

PREMIER HOCKEY DEVELOPMENT PRIVATE LTD. Petitioner
Through: Mr. C.A. Sundaram, Senior
Advocate, with Mr. N. Ganpathy &
Mr. Kartik Yadav, Advocates.
versus

INDIAN HOCKEY FEDERATION Respondent
Through: Mr. Arvind Nigam & Mr. D.S.
Narula, Senior Advocates, with Ms.
Manmeet Arora & Ms. Fareha
Ahmad Khan, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment? : Yes
2. To be referred to Reporters or not? : Yes
3. Whether the judgment should be reported
in the Digest? : Yes

J U D G M E N T

VIPIN SANGHI, J.

1. Original Miscellaneous Petition No.52/2011 has been preferred by the petitioner-Premier Hockey Development Private Limited (PHDPL) [earlier known as Indian Hockey Development Private Limited (IHDPL)] to seek restraints against Indian Hockey Federation (IHF), which is a registered society formed to promote, encourage, develop and

maintain general control over field hockey in India, from creating any third party interest in relation to the rights granted to the petitioner under Clause 3.2 of an agreement entered into between the IHF and the petitioner known as the "Sanction Agreement" dated 31.12.2004, and violating various clauses of the said Sanction Agreement. The petitioner also seeks a restraint against the respondent from taking steps which would tantamount to revocation, impediment, detraction from, or devaluation of the sanction granted in favour of the petitioner under Sanction Agreement till the disputes are resolved through arbitration. The petitioner also seeks a restraint that, in case the respondent, in breach of Sanction Agreement, has entered into any agreement with any third party, then the same should be enjoined from being given effect to or implemented to prevent the violation of the terms of the Sanction Agreement. O.M.P. No.92/2011 has been filed by the petitioner to seek a restraint against Indian hockey players from entering into any contract with any other league, other than the league organized by petitioner; a restraint against foreign players to attend any other league, not organized by petitioner; and a restraint against players who have already entered into agreements with third parties from playing with them. I may, at this stage itself note that in the rejoinder filed by the petitioner in O.M.P. No.52/2011, the petitioner has stated in para 7 that, *"The petitioner further submits that the petitioner is not claiming any relief against the hockey players/third parties"*. Therefore, no relief is being granted in O.M.P. No.92/2011. Even otherwise, the petitioner is seeking a diffused relief against an

indeterminate body of players, who have not been impleaded as party respondents. There is no privity of contract between the petitioner and the players, and no such relief could have been granted, in any event, to the petitioner.

2. The respondent-IHF, as noted hereinabove, is a society registered under the Societies Registration Act. It is the National Sports Federation (NSF) for the management, control and promotion of the sport of field hockey in India. Its objective is to promote, encourage and develop the sport of field hockey in India. It is recognized by the Federation of International Hockey (FIH).

3. The IHF and the ESPN Star Sports (ESS) entered into a Memorandum of Understanding (MOU) on 10.12.2004 on the basis that one Leisure Sports Management Private Limited (LSM) has been mandated by IHF to explore the initiation of domestic tournament for development of Indian hockey; that a new company shall be formed by the parties, namely, by ESS and IHF to create, organize, promote, develop, own and operate a Field Hockey League wherein ESS or its associates or affiliates shall be issued and hold 49% of the equity shares, and IHF shall be issued and shall hold 51% of the shares. This MOU contains the salient terms & conditions on which the new company shall be managed. It also set out the obligations of IHF & ESS. This new company was to be called Indian Hockey Development Private Limited (IHDPL). It was also understood between the parties that the new company shall contract out its commercial rights in the

hockey league for a term of ten years to ESS under an agreement to be called "Master Rights Agreement". The MOU also indicates the maximum consideration payable by ESS to the new company from the year 2004 up to 2013 under the Master Rights Agreement. It was agreed that LSM shall be given a contract for five years by the new company and the total amount of fee payable to LSM for services rendered under the Services Agreement to be entered into between the new company and LSM would be Rs.25 Lakhs for the first year with 10% annual escalation. Clause 8 of the MOU enlisted the definitive agreements to be entered into in pursuance of the MOU, and the same reads as follows:

"8. Definitive Agreements and steps after execution

8.1 Following the execution hereof the Parties will make good faith efforts to negotiate the terms of definitive agreements as may be necessary in relation to the arrangements contemplated herein and execute the same within the duration of this MOU. The Definitive Agreements shall include:

- (i) Subscription Agreement (between ESS/ESS Sub, IHF and NewCo);*
- (ii) Master Rights Agreement (between ESS, IHF and NewCo);*
- (iii) Sanction Agreement (between IHF and NewCo); and*
- (iv) Services Agreement (between LSM and NewCo)."*

4. It appears that IHDPL was formed, as contemplated, in the MOU. On 31.12.2004, the following agreements were entered into:

- (i) **Subscription and Shareholders Agreement** between the ESPN Software India Private Limited, the respondent-IHF and the IHDPL referred to as “the company”. Clause 2.1 of this agreement provides as follows:

“2.1 Subject to the terms of this Agreement and fulfillment of the conditions precedent mentioned in Section 3 hereinbelow, ESPN and IHF hereby agree to subscribe for, and the Company hereby agrees to allot and issue to the ESPN and IHF at Completion forty nine hundred and fifty one hundred Equity Shares respectively constituting forty nine percent (49%) and fifty one percent (51%) respectively of the Equity Share Capital of the Company (hereinafter referred to as “Subscribed Shares”).”

This agreement also provides that on completion, the company shall duly enter into the subscribed shares in the name of ESPN and IHF in the Companies Register of Members. Clause 7, inter alia, provides that company shall organize the Hockey League for which IHF shall assist the company to schedule dates for the Leagues and the dates shall be fixed in consultation with the Commercial Right Holder.

- (ii) A **Master Rights Agreement** was entered into between IHDPL and ESPN Star Sports Mauritius S.N.C. et Compagnie, whereunder the commercial rights were transferred by IHDPL in favour of the said company, and the said company became the Commercial Right Holder, i.e., CRH. Article 3 of this agreement sets out the obligation of the company, i.e., IHDPL

and states that the company shall organize the Leagues as set out in Schedule-I. Article 6 provided that in consideration, and subject to the grant of the commercial rights to CRH, it shall pay to the company the fees as set out in Annexure A to this agreement. I may note that on 01.12.2006 Annexure A to this agreement was amended to read as follows:

- “6.1.1 In respect of the Commercial Rights in 2004, the lower of the Event’s Annual Operating Costs for 2004 and RS 255 Lacs;*
- 6.1.2 In respect of the Commercial Rights in 2005, the lower of the Event’s Annual Operating Costs for 2005 and RS 275 Lacs;*
- 6.1.3 In respect of the Commercial Rights in 2006, the lower of the Event’s Annual Operating Costs for 2006 and RS 491 Lacs;”*

(iii) A **Sanction Agreement** was entered into between IHF and IHDPL. One of the objectives of this agreement was to accord official status to IHF by IHDPL. IHF, inter alia, undertook to IHDPL that *“the players shall be selected from a pool of 130 individuals who have signed their contracts with the Company (i.e., IHDPL), who are registered players with IHF or other FIH member association and who have, in the last two years, represented one of the following teams:*

3.3.4.4.1 the senior men’s Indian hockey team;

3.3.4.4.2 the junior men’s Indian hockey team;

3.3.4.4.3 the international full men's hockey team of a team appearing in the top twenty of the "FIH World Hockey Team Ranking-Men" within sixty days of the League's first Match;

3.3.4.4.4 any other players which the Company and IHF have agreed are sufficiently proficient hockey players to participate in the League; and

3.3.4.4.5 any other players who have participated in the Bombay Gold Cup, Beighton Cup, Surjeet Hockey Tournament and any other hockey tournament in the country which is approved and accredited by IHF."

- (iv) A **Service Agreement** was entered into between IHDPL and LSM, whereunder LSM agreed to provide managerial services and assistance in organizing and managing the Hockey League in payment of consideration.

5. The case of the petitioner is that the petitioner (whose name was changed to PHDPL on 18.01.2006), in terms of the Sanction Agreement organized the Indian Hockey League in the years 2005, 2006, 2007, and between December 2007 & January 2008. It is also the case of the petitioner that thereafter the petitioner could not organize the Premier Hockey League due to circumstances surrounding the respondent IHF, and on account of the fact that the status of the respondent was a subject matter of judicial proceedings before this court. It is claimed that the respondent was not in a position to provide any assistance for

scheduling the Premier Hockey League till August 2010, and thereafter did not show any interest for scheduling the Premier Hockey League. It is also claimed that Premier Hockey League was received as a successful sporting event wherein various players from other hockey playing countries also participated.

6. The petitioner claims that it was shocked to see various media reports which mentioned that the respondent jointly with M/s Nimbus Sports is proposing to organize a Hockey League during the period November/December 2011 to February 2012. It is claimed that such actions of the respondent would be in derogation and violation of the Sanction Agreement. The petitioner has placed reliance on various clauses of the Sanction Agreement and, in particular, on the following:

*“1.1.29 **“Official IHF Status”** shall mean the irrevocable recognition conferred on the Company by IHF in respect of the League in the Territory (as defined hereinafter) and includes, without limitation, the right to use such words (with or without IHF Logo or the IHF Name), which state or imply official approval by IHF of and/or in connection with the League such as, by way of illustration, “Official League” of IHF.”*

x x x x x x x x x x

“3.2 IHF grants to the Company the following rights and privileges during the Term:

3.2.1 The exclusive and unfettered right during the Term, to use IHF’s name and the IHF Logo in the League Name, the League Logo and in promotion and broadcast of the League throughout the world;

3.2.2 The Official IHF Status;

3.2.3 A non-exclusive license throughout the Term to the Company to, and to authorize third parties to, use, reproduce, publish and distribute the IHF Name, the IHF

Logo and copyright and trade marked material owned by IHF in conformity to the format provided by IHF in accordance herewith."

x x x x x x x x x x

"3.4 IHF hereby undertakes to the Company as follows:

3.4.1 The League will be the pre-eminent field hockey tournament amongst all competitions played under the authority, ambit, aegis, or recognition of IHF and/or in the Territory;

3.4.2 No other national, regional or multi-team hockey league or event(s) which could compete with or prejudice the status of the League ("Competing League") will be directly or indirectly run and/or sanctioned and/or facilitated and/or accredited by and/or affiliated to IHF or its Member Associations in their respective territories, or by the FIH in the Territory.

3.4.3 In the event that any Competing League commences in the Territory, with or without the direct or indirect sanction, facilitation or accreditation of IHF, then IHF will be obliged to take all necessary steps and actions to ensure that the Players will not participate in such a Competing League. ..."

x x x x x x x x x x

"5.3 IHF represents and warrants to the Company that:

5.3.1 it will not do anything which revokes, impedes, detracts from, or devalues the Sanction;...."

7. The submission of the petitioner is that the Sanction Agreement has not been terminated in accordance with its terms. Clause 8 of the Sanction Agreement sets out the "Term and Termination". The said Sanction Agreement is effective from 03.12.2004, and is to continue to remain in force and binding between the parties unless terminated either by mutual consent, in writing by the parties or in the event of any of the party being liquidated or wound up or discontinuing its

business or activities. It is argued that the agreement is, therefore, not terminable unilaterally by the respondent.

8. I may note that the respondent has purported to terminate the Sanction Agreement on 12.03.2011, i.e., during the pendency of this petition which was filed in January 2011. The submission of the petitioner also is that the termination letter is illegal as the agreement cannot be terminated unilaterally.

9. Upon issuance of notice to the respondent, the respondent has filed its reply. One of the primary submissions of the respondent is that the present is a proxy litigation filed on behalf of the ESS, which is also the CRH, in collusion with LSM, whose contract with the petitioner company i.e the Service Agreement dated 31.12.2004 has come to an end on 30.06.2010 by efflux of time.

10. The respondent submits that it is the respondent-IHF, which is the majority shareholder of the petitioner company. The MOU dated 10.12.2004; the subscription and shareholders agreement dated 31.12.2004; and, the sanction agreement dated 31.12.2004 - all provide and recognize the position that the respondent was to hold 51% of the shareholding, whereas ESS was to hold 49% shareholding in the petitioner company. The respondent has also placed on record the communication dated 14.07.2006 issued by LSM to the respondent, with copies to Mr. K.P.S. Gill, Mr. Vijay Rajput and Mr. K. Jyotikumaran, wherein it is recorded that 5100 shares amounting to

Rs.51,000/- of the petitioner company have been transferred in favour of IHF.

11. IHF was required to make payment to Mr. Gill of Rs.50,000/-, who initially subscribed to and paid for 5000 shares of the petitioner company. Similarly, IHF was required to make payment of Rs.1000/- to Mr. Rajput, who had transferred the 100 shares, earlier held by him in the petitioner company, to the respondent. The respondent has placed on record copy of the share certificate in favour of Mr. Rajput for 100 shares bearing share certificate no.3, which has been transferred on 28.03.2005 in favour of IHF. The share certificate initially issued in favour of Mr. Gill for 5000 shares bearing share certificate no.1, also transferred in favour of the respondent IHF on 28.03.2005, has also been placed on record. The respondent has also filed a copy of its bank statement held with Punjab National Bank, Khan Market, New Delhi, which shows that on 10.03.2006, Rs.1,000/- has been transferred in the name of Mr. Rajput vide Cheque No.865223. Copies of the two cheques issued by IHF, one in favour of Mr. Gill for Rs.50,000/- and another, for Rs.1,000/- issued in favour of Mr. Rajput, both dated 27.01.2006 issued by the President, IHF have also been placed on record.

12. I may note that though the petitioner sought to throw doubt on the transfers registered on the aforesaid share certificates, as these have been signed on behalf of the petitioner by Mr. Gill as its authorized signatory, despite my requiring the petitioner to produce its

register of members during the course of hearing, the same has not been produced. Prima facie, I am, therefore, inclined to accept the position as stated by the respondent in its reply, that the respondent holds 51% shareholding i.e. controlling stake in the petitioner company, and ESS holds the remaining 49%.

13. The respondent has argued that the board of directors of the petitioner company has not passed a legally binding resolution to initiate the present proceedings against the respondent, and to authorize Mr. Rajput to act on behalf of the petitioner company in these proceedings.

14. The submission of the respondent is that under the subscription and shareholders agreement dated 31.12.2004, to which the petitioner company is also a party, it has been agreed in relation to board meetings of the petitioner company that:

“A meeting may be called by the Chairman of the Board or any Director giving notice in writing to the company secretary or Chairman specifying the date, time and agenda for such meeting. The company or company secretary or the Chairman shall upon receipt of such notice give a copy of such notice to all Directors whether in India or not of such meeting, accompanied by a written agenda specifying the business of such meeting and copies of all papers relevant for such meeting by both registered AD post and by facsimile. No business other than those mentioned in the agenda for such meeting circulated shall be transacted at any meeting of the Board unless all the Directors present agree to do so. Not less than ten (10) days notice shall be given to all Directors, provided, however, that such notice period (i) shall not apply in the case of an adjourned meeting pursuant to Clause 9.3.3 and (ii) may be reduced if approved by all of the Directors in writing. The Board shall at any meeting not adopt any

resolution covering any matter that is not specified on the agenda for such meeting unless all the Directors present agree for the same.” (Article 10.3.2)

15. In relation to the quorum, it is specifically agreed that:

“The quorum for any Board meeting shall not be satisfied unless atleast a Director nominated by IHF and a director nominated by ESPN are present and voting. If such a quorum is not present within one (1) hour from the time appointed for the Board meeting, the Board meeting shall adjourn to the same place and time seven (7) days later at which meeting the directors present shall constitute a valid quorum subject to the requirement of the Act even though a IHF or ESPN nominee director, as the case may be, is not present.” (Article 10.3.3)

16. It is argued by learned senior counsel for the respondent that the resolution relied upon by the petitioner stated to have been passed on 18.01.2011 at the board meeting of the petitioner is illegal, since the board meeting was not legally called and held, and consequently, no such legally binding resolution was passed in the said meeting.

17. According to the respondent, an undated notice for holding the board meeting on 18.01.2011 was issued by Mr. Rajput, the nominee director of ESS on the Board of Directors of the petitioner company. The same was delivered to Mr. Sabyachi Dasgupta and Mr.Jyotikumaran, two other directors only on 10.01.2011 and 09.01.2011 respectively.

18. The respondent submits that in terms of clause 10.3.2 extracted above, the directors were entitled to not less than clear ten days

notice. It is not the case of ESS that the meeting called on 18.01.2011 was an adjourned meeting pursuant to clause 9.3.3, or that the Directors of the petitioner had waived the requirement of not less than 10 days notice, in writing. Mr. Nigam also submits that the undated notice issued by Mr. Rajput did not specify the agenda for the proposed meeting. For this reason as well, the said undated notice was illegal and ineffective. The Board of Directors, in any event, could not have considered the passing of any resolution, or could not have transacted any business, for which the agenda was not circulated. There was no agreement between the Directors that the Board may take up the business of considering the filing of the present petition against the respondent, and for authorizing Mr. Rajput to file the present petition. In relation to the calling and conduct of the said Board meeting on 18.01.2011, the averments of the respondent in its reply are as follows:-

"20. That Mr. K.P.S. Gill, nominee Director of the respondent received a communication which was purportedly a notice issued by the petitioner calling for a Board Meeting of the Directors of the petitioner on 18.01.2011 at 7th floor, Tower C, Infinity Tower, DLF Phase-II, Gurgaon-122002. The said address is, admittedly, not the registered address of the petitioner but is, in fact, the address of ESS in Delhi. The purported communication calling a Board Meeting on 18.01.2011 was illegal inasmuch as the purported meeting was called at short notice thereby denying Directors of the petitioner the opportunity to participate in the meeting. Further, the agenda circulated with the purported notice was cryptic and vague and did not disclose the issues proposed to be tabled and discussed at the said Board Meeting.

21. That upon arriving at the said Board Meeting at the scheduled time and venue, Mr. K.P.S. Gill was surprised to

notice the presence of one Mr. Alope Malik at the meeting, who is not on the Board of Directors of the petitioner. Mr.K.P.S. Gill immediately objected to the presence of the said Mr. Alope Malik and categorically asserted that no business shall be conducted in the presence of persons other than the Directors of the petitioner. Mr. K.P.S. Gill also raised an objection to the conduct of the meeting without the circulation of a detailed agenda for the meeting as also of the non-presence of Mr. Jothikumaran. However, the objection with respect to the illegal quorum of the said Board Meeting was disregarded by Mr. Vijay Rajput and therefore, Mr. K.P.S. Gill, after having recorded his objection to the said illegal Board Meeting, left the venue without any business having been conducted. Mr.K.P.S. Gill, in protest, did not sign the book of the minutes of meeting, as is usually the norm followed after every Board Meeting. Therefore, no board meeting could have been conducted on the said date.

22. That Mr. K.P.S. Gill further recorded his objection in writing in the letter dated 20.01.2011 sent to Mr. Vijay Rajput bringing to his attention the illegal manner in which the Board Meeting was convened by Mr. Vijay Rajput on 18.01.2011. The illegalities committed by Mr. Vijay Rajput, at the instance of ESS, were duly communicated by Mr.K.P.S. Gill in the said letter of 20.01.2011 in the light of which, it was categorically stated by Mr. K.P.S. Gill that no valid and legal Board Meeting was held on 18.01.2010. The said letter was duly sent to Mr. Vijay Rajput through registered post."

19. The respondent submits that in the so called Board meeting held on 18.01.2011, an unauthorized person viz. Mr. Alope Malik was present. Mr. Jyothi Kumaran, one of the Directors was not present, as sufficient notice was not given. Mr. Sabyasachi Dasgupta, the Managing Director of LSM was present, though he did not represent the respondent IHF. The respondent submits that LSM, like ESS, had opposed the agreement entered into by the respondent with Nimbus Sports and had sent a letter dated 28.12.2010 in this respect. Therefore there was no member in the so-called board meeting held on

18.01.2010, who could represent the interest of IHF. Mr. Dasgupta had a conflict of interest with the respondent, and could not represent the interest of the respondent in the said board meeting.

20. The respondent argues that the petitioner has not disclosed the fact that the respondent is 51% shareholder in the petitioner. The petitioner has also withheld its own incriminating email dated 14.03.2008 which discloses the real reason for Premier Hockey League not being held after January 2008 till date. It is submitted that the present petition deserves to be dismissed on the ground of suppression of relevant and material facts.

21. On merits, the respondent claims that ESS has failed to perform its obligation to provide the sponsorship and funding for the organisation of the Premier Hockey League by the petitioner since the year 2008, and there is complete abandonment of the agreements by the CRH, which was to act in the name of the petitioner, to organize the Premier Hockey League. The respondent has placed reliance on the e-mail communication dated 14.03.2008, as aforesaid, received from Rathindra Basu of ESS addressed, inter alia, to IHF and LSM which shows that ESS was no longer interested in organizing the Premier Hockey League after 2008. The same reads as follows:

“Dear Mr. Gill/Benuda/Jothi,

I am sending this mail to give all of you an update on a review meeting on the future of PHL we had in Singapore earlier this month.

As you are aware, PHL started with much fanfare in 2005 but over the years the increasing lack of interest from sponsors has slowly snowballed into a problem of large proportions. Though we have been funding the last 4 editions of the League, it has now been decided that for future editions of the league to happen, adequate sponsorship support needs to be generated to meet the cost of the entire event (operations plus production) as a minimum requirement.

The cut-off date fixed for this achievement is September 1, 2008. In case this requirement is not achieved within the target date, we will have to look at postponing future editions till a time when such sponsorship support does come up.

Look forward to your thoughts and plans on how to make PHL deliver- time is running out on this.

Rgds

Rathin"

22. The respondent also submits that after issuance of the said e-mail communication, there was complete silence over the years on the part of the ESS, and no effort whatsoever was made to organize the Premier Hockey League after January 2008. The petitioner became defunct as ESS stopped providing the finances to the petitioner, as per their obligations. No board meeting of the petitioner company was held between the years 2008 and 2011, until the illegal meeting held on 18.01.2011, called by Mr. Vijay Rajput. The respondent submits that the excuse given by ESS/petitioner in the petition, for not organizing the Premier Hockey League, is merely an afterthought and factually not true. It is submitted that the aforesaid communication was issued in March 2008, whereas the Indian Olympic Association illegally suspended the Governing Council of the IHF, and appointed an ad-hoc

committee for administering the affairs of IHF, only on 28.04.2008. Therefore, when the aforesaid e-mail was sent on 14.03.2008, the IHF was being governed by its Governing Council. In the said e-mail communication dated 14.03.2008, ESS could not have taken, and did not take the ground, now sought to be urged in the petition for pulling the shutters down on Premier Hockey League after January 2008. It is also submitted that the aforesaid set of agreements, were agreements with IHF, which is a registered society. Even if its Governing Council had been suspended, the respondent did not cease to exist, and the ad-hoc committee appointed by the Indian Olympic Association was still in existence to administer the affairs of IHF. The agreements entered into by IHF could have been enforced by or against it. The respondent submits that, pertinently, the FIH had not, at any stage, derecognized or suspended the membership of IHF.

23. Under Clause 16.1.2 of the Subscription and Shareholders Agreement, one of the warranties given by the IHF was that FIH shall not derecognize IHF or alter, cancel, withdraw or suspend IHF's membership of FIH. The respondent submits that the said warranty has never been breached. It is argued that the suspension of the Governing Council of the IHF by the Indian Olympic Association; the appointment of the ad-hoc committee; the decision of the Union of India taken on 07.05.2008 temporarily withdrawing the recognition of the IHF, and; the order dated 10/11.08.2009 passed by the Ministry of

Youth Affairs and Sports derecognizing the IHF were all eventually quashed by this Court.

24. The respondent further submits that the petitioner is in breach of the sanction agreement, as it has failed to make payment of the service fee to IHF in terms of Clause 2.2 of the Sanction Agreement. The petitioner, therefore, cannot seek to enforce the said agreement.

25. The petitioner has filed a short rejoinder to the reply of the respondent. It is submitted that the sanction agreement itself gives the right to ESS to postpone the holding of the Premier Hockey League for financial reasons, and there is no question of abandonment of the Sanction Agreement by the petitioner. However, various other averments made by the respondent with regard to the undated notice for calling the Board Meeting of the petitioner on 18.01.2011; the lack of sufficient notice; the absence of a specific agenda; the lack of quorum for the said meeting; the suppression of the email dated 14.03.2008, have not been met or specifically denied. Though no averment has been made in the rejoinder, vis-à-vis Alope Malik in the rejoinder, it has been argued that he was a Director of the petitioner company, nominated by ESS.

26. Having heard learned counsels for the parties; perused the documents relied upon; considered the various decisions cited by the parties, reference to which is made later, I am of the considered view

that the petitioner has failed to make out a prima facie case for grant of any interim measures of protection as prayed for in this petition.

27. I may first deal with the respondents' preliminary objection that the present petition has not been filed by a duly authorized representative, and that there is no valid resolution of the board of directors of the petitioner company, thereby resolving to initiate the present litigation.

28. The respondent has placed reliance on Article 10.3.2 of the Subscription and Shareholders Agreement entered into on 31.12.2004 between ESS, the respondent IHF and the petitioner company. To repel the said reliance placed by the respondent on Article 10.3.2 and 10.3.3 of the said agreement, the petitioner has contended that these Articles have not been incorporated in the Articles of the petitioner company, and consequently cannot be enforced against the petitioner.

29. To advance this proposition, the petitioner has sought to place reliance on the decision of the Supreme Court in **V.B. Rangaraj v. V.B. Gopalakrishnan & Others**, (1992) 1 SCC 160. In this case, the privately held company had two groups of shareholders, namely, two brothers of the joint family, each holding 50% shareholding in the company. There was an oral agreement between the two brothers that each of their branches of the family would always continue to hold equal number of shares, and that if any member in either of the branches wishes to sell his share(s), he would give the first option of purchase to the members of that family, and only if the said offer is not

accepted, the shares would be sold to others. Article 13 of the Articles of Association of the said company, however, provided differently. It provided that no new member shall be admitted, except with the consent of the majority of the members. On the death of any member, his heir or heirs or nominee shall be admitted as member. If such heir, heirs or nominee is/are unwilling to become a member, such share capital shall be distributed at par among the members equally or transferred to any new member with the consent of the majority of the members.

30. After the death of the original two shareholders, one of the sons sold the shares to the heirs of the other branch, contrary to the aforesaid oral agreement. When the oral agreement was sought to be enforced, the Supreme Court resisted the same, and held that Articles of Association are regulations of the company which bind the company and its shareholders. Therefore, the only restrictions on transfer of the shares of the company were as laid down in its Articles, if any. A restriction which is not specified in the Articles is not binding either on the company or on the shareholders. The vendee of the shares could not be denied the registration of the shares purchased by him on a ground other than that stated in the Articles.

31. The Supreme Court held that the agreement between the two original shareholders, which imposed a restriction on the living members to transfer their shareholding only to the branch of the family to which the shareholder belongs, imposes restrictions which are not

stipulated in the Article. This agreement imposes additional restriction on the member's right to transfer his shares "*which are contrary to the provisions of the Article 13. They are, therefore, not binding either on the shareholders or on the company.*" (see para 18)

32. The decision in **Rangaraj** (supra) has subsequently been considered by the Supreme Court in **M.S. Madhusoodhanan & Another v. Kerala Kaumudi (P) Ltd. & Others**, (2004) 9 SCC 204, and the Supreme Court in this decision has distinguished the judgment in **Rangaraj** (supra). In atleast two other decisions of this Court, the first being in the case of **Spectrum Technologies USA Inc. v. Spectrum Power Generation Company Ltd.**, 2000 (56) DRJ 405 (DB), and the second being that of a learned Single Judge of this Court in **Modi Rubber Ltd. v. Guardian International Corporation**, 2007 (2) Arb.LR 133 (Del), the decision in **Rangaraj** (supra) has been distinguished.

33. In **Madhusoodhanan** (supra), the Supreme Court took notice of **Shanti Prasad Jain v. Kalinga Tubes Limited**, AIR 1965 SC 1535, wherein it had been held that "***while it is imperative that the company should be a party to any agreement relating to the allotment of new shares, before such an agreement can be enforced, it is not necessary for the company to be a party in any agreement relating to the transfers of issued shares for such agreement to be specifically enforced between the parties to the transfer.***" (emphasis supplied)

34. Therefore, even if the company is not a party to the shareholders agreement, that by itself, does not prevent the shareholders, inter se, from enforcing their agreement in relation to the transfer of shareholding. At the same time, the court recognized the position that, if the company is a party to an agreement relating to allotment of new shares, the said agreement can be enforced against the company. The Supreme Court observed that the decision in ***Shanti Prasad Jain*** (supra) does not, in any way, hold that the transfer of shares agreed to between the shareholders, inter se, does not bind them or that it cannot be enforced like any other agreement. The Supreme Court held that the decision in ***Rangaraj*** (supra) was entirely distinguishable on facts, as in the shareholders agreement in the case of ***Madhusoodhanan*** (supra), described as *karar*, did not impose restrictions of the kind found in the case of ***Rangaraj***, on the transferability of shares.

35. The Division Bench of this Court in ***Spectrum Technologies*** (supra) repelled the reliance placed on ***Rangaraj*** (supra) by observing that in ***Rangaraj*** (supra), there was no agreement to which the company was a party, and which provided that the company would amend its Articles of Association to bring them in conformity with the promoters agreement.

36. Pertinently, the position in the case in hand is materially different from that before the Supreme Court in ***Rangaraj*** (supra). The petitioner company is a party to the Subscription and Shareholders

Agreement dated 31.12.2004. The other two parties to the agreement are ESS and IHF. The said agreement provides in Article 3.1 that “*the obligation of the parties to complete the subscription for the subscribed shares is subject to the fulfillment, prior to and simultaneously at completion (or at time specified below) of the following conditions, any one or more of which may be waived by the parties in writing*”. Article 4 defines the expression “Completion”, and Article 4.1 states that completion shall take place at New Delhi, or such other time and place as the party may mutually agree in writing. Article 4.2, inter alia, states that at completion, the company shall:

“4.2.4 *call for an Extraordinary General Meeting to cause the amendment of existing Articles to incorporate the relevant provisions contained in this Agreement in a form acceptable to the Parties.*”

37. Therefore, in the present case, the petitioner company was bound to amend the existing articles to incorporate the relevant provisions contained in the Subscription and Shareholders Agreement, which would include Articles 10.3.2 and 10.3.3.

38. In **Modi Rubber** (supra), this Court held that the shareholders agreement in that case did not place an absolute restriction on the transfer of shares. The said agreement only binds the parties to that agreement. The prohibition contained in the shareholders agreement was not rendered illegal or unreasonable, because of any provision of the Companies Act, or any clause of the Articles of Association. It was

also held that the agreement was not rendered void or not binding for the reason that it was not incorporated in the Articles of Association of the joint venture company. The covenant between the contracting parties is not prohibited under any other statutory provision, and the same was entered into for the benefit of the joint venture company. It was held that these issues had not been raised before the Supreme Court in the case of **Rangaraj** (supra). The Court, therefore, held that the restriction contained in the shareholders agreement would bind the parties to the agreement, even if the clause was not contained in the Articles of Association of the joint venture company.

39. In the present case as well, there is no Article pointed out by the petitioner, in the Articles of Association of the petitioner company, which conflicts with Articles 10.3.2 and 10.3.3 of the Subscription and Shareholders Agreement. The said articles are also not in contravention of any legal provision in the Companies Act or Rules. Merely because the Companies Act does not prescribe a minimum period for which a notice for calling a board meeting should be given, it does not mean that the promoter shareholders (who are the only shareholders of the private limited company), and the company, cannot agree between themselves with regard to the minimum period for which the notice for calling a board meeting should be given; the requirement that the agenda should specifically set out the business to be transacted in the meeting; and that no business, not specifically set out in the agenda, shall be considered in the board meeting, without

the consent of the members of the board of directors. Such an agreement would clearly bind not just the shareholders, but also the company, as the company is also a party to the Subscription and Shareholders Agreement.

40. Pertinently, the promoter shareholders were obliged to call an extraordinary general meeting of the petitioner company to amend the existing Articles of the Articles of Association, so as to incorporate the relevant provision contained in the Subscription and Shareholders Agreement. The completion of the subscription under the Subscription and Shareholders Agreement was dependant on, inter alia, amending the existing Articles of the company to bring them in conformity with the Subscription and Shareholders Agreement. Even if the said meeting has not been called, the same shall be taken to have been called, because to treat it otherwise would cut at the very root of, not only the subscription and shareholders agreement, but even the other agreements entered into between the petitioner, IHF, ESS and LSM. These agreements put together constitute a legal framework for the operation of the Premier Hockey League and they cannot be viewed independently or in isolation. They are interdependent on each other and the rights and obligations of the parties appear to be interlinked.

41. It is clear from the pleadings of the respondent, which have not been rebutted by the petitioner, that Mr. Rajput did not give “*not less than ten (10) days notice*” to all the directors. The respondent has placed on record the proof of delivery of the said notice on Mr.

Dasgupta and Mr. K. Jyotikumaran on 10.01.2011 and 09.01.2011 respectively. As the meeting was scheduled for 18.01.2011, neither of them got sufficient notice, in terms of Article 10.3.2 of the Subscription and Shareholders Agreement. Even if it were to be assumed that Mr. Dasgupta waived the said infirmity by attending the said meeting, the same cannot be said for Mr. Jyotikumaran. Pertinently, this aspect was raised by Mr. Gill in his communication dated 20.01.2011.

42. The notice for calling a board meeting issued by Mr. Rajput simply reads as follows:

"Dear Sir,

*The board meeting of the Company will be held on January 18, 2011 at 11:30 a.m. at 7th Floor, Tower C, Infinity Tower, DLF Ph-2, Gurgaon. **The agenda for the meeting will be circulated at the board meeting.***

Kindly make it convenient to attend the meeting.

Yours sincerely,

Vijay Rajput

Director". (emphasis supplied)

43. From the aforesaid, it is evident that no agenda for the said meeting was circulated by Mr. Rajput while calling the board meeting. This is in clear contravention of Article 10.3.2 of the Subscription and Shareholders Agreement, which specifically requires that the notice shall be accompanied by a written agenda specifying the business of such meeting. It prohibited the conduct of any business not mentioned in the agenda, unless all the directors present agree to do so. It is not

even the case of the petitioner that all the directors present at the said meeting had indeed agreed to consider the aspect of filing of the present petition, or to authorise Mr. Rajput to pursue this petition on behalf of the petitioner, and against the respondent. This appears to be another serious infirmity in the board meeting called by Mr. Rajput.

44. With regard to the appointment of Mr. Alope Malik as a director of the company, nominated by ESS, the respondent has filed the Form-32 filed before the ROC by the petitioner on 12.01.2011. This Form-32 shows that, it was claimed that Mr. Alope Malik was appointed as a director on 03.12.2010. However, it is not even the case of the petitioner that any board meeting was held by the directors of the petitioner on 03.12.2010. How then, Mr. Alope Malik could have been appointed as a director is unclear. His presence in the meeting called on 18.01.2011 has been admitted. Prima facie, it was unauthorized. The conduct of Mr. Gill in walking out of the said meeting was, therefore, not unjustified.

45. The petitioner has placed on record, what is claimed to be, the certified true copy of the resolution passed in the board meeting of the petitioner company on 18.01.2011. This resolution purports to authorize Mr. Rajput to do, inter alia, the following things on behalf of the company:

"b) To commence, institute and prosecute and/or defend compromise suit(s), Petition(s), Appeal(s), Review(s), Revision(s) and such other legal proceedings for and/or against the Company."

46. Even if the petitioner's case that a valid board meeting was indeed held on 18.01.2011 were to be accepted, there is no specific resolution passed by the company, whereby the petitioner company resolved to institute and commence present action against the respondent. The resolution relied upon by the petitioner, at best, authorizes Mr. Rajput to "*commence, institute and prosecute and/or defend, compromise suits such other legal proceedings for and/or against the company.*" In this regard, reference may be made to the decision of this Court in ***Nibro Limited v. National Insurance Company Ltd.***, 41 (1990) DLT 633. The Court analysed the various judgments considered by it and held as follows:

"23. On the analysis of the judgments, it is clear that Order 29 Rule 1 of the Code of Civil Procedure does not authorize persons mentioned therein to institute suits on behalf of the corporation. It only authorize them to sign and verify the pleadings on behalf of the corporation.

24. In my view, the provisions of Companies Act, 1956 and particularly Sections 14, 26, 28 Schedule I, Table A and Section 291 are very clear.

25. It is well-settled that under Section 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting—in all others cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard.

26. Chapter IV of the Delhi High Court (Original Side) Rules deal with the question of presentation of suits. Under this Rule, suit can be presented by a duly authorised agent or by an advocate duly appointed by him for the purpose. **This authorization, in my view, in the case of a company can be given only after a decision to institute a suit is taken by the Board of Directors of the company. The Board of Directors may in turn authorise a particular director, principal officer or the secretary to institute a suit.**

27. **The plaintiff has not placed on record any resolution passed by the company authorising Shri G. Jhajharia to institute the suit.** Shri G. Jhajharia did not come forward to make a statement that he was in a position to depose to the facts of the case. In the plaint signed by him, he claims to be a principal officer and director, but there is no evidence on record to indicate that he had the authority to institute the suit. The Memorandum and Articles of Association of the plaintiff company are also not placed on record. Even after the suit was instituted by Shri G. Jhajharia, no resolution was passed by the company ratifying this action. No such decision of the Board of Directors is placed on record in the present case. The plaintiff has examined Shri Ashok Kumar Jhajharia. He has placed on record Ext. PW 2/1 which is the resolution of the Board of Directors re-appointing Shri G. Jhajharia as the Director **but this resolution does not empower Shri G. Jhajharia as a Director to institute the present suit.** Shri Ashok Kumar Jhajharia has stated that he was handling day-to-day management of the plaintiff company including the insurance part of it. He however, does not state that Mr. G. Jhajharia was handling day-to-day management or was incharge of the insurance claim." (emphasis supplied)

47. Reliance placed by the petitioner on **Shri Parmeshwari Prasad Gupta v. Union of India**, AIR 1973 SC 2389 to submit that an invalid Board Resolution can be rectified in a subsequent meeting is neither here nor there because, in this case, it is not the petitioner's submission that a subsequent board meeting of the petitioner was held, to rectify the defects in the board meeting called for 18.01.2011.

48. The submission of the petitioner that Mr. Dasgupta was a nominee of the respondent and represented the interest of the

respondent in the said board meeting held on 18.01.2011 also does not appeal to me. According to the respondent, the agreement with LSM, of which Mr. Dasgupta is the Managing Director, had come to an end on 30.06.2010. Mr. Dasgupta had sent a communication on 28.12.2010 to IHF expressing its concern at IHF contemplating the launching of a National Hockey League along with Nimbus Communication Limited. Mr. Dasgupta in the said communication stated as follows:

"We invite your attention that it is a subsisting contractual commitment of your Association whereby not only we have successfully acted as your Event Manager but have the option of renewal thereof for further terms.

In the light of the aforesaid, it is an obligation of your Association not only to hold all such events jointly with us but also to disclose your Plans in advance so that necessary arrangement can be made by us on that behalf as your Event Manager. Indeed, we regret that your above acts definitely tend to infringes our valuable commercial and/or legal rights."

49. From the aforesaid, it is clear that Mr. Dasgupta was, firstly, asserting the rights of LSM under an agreement which, according to the respondent, had come to an end by efflux of time. Secondly, this letter shows that Mr. Dasgupta was opposed to the respondent collaborating with Nimbus Communication for holding a National Hockey League. There was clear conflict of interest between the respondent on the one hand, and ESS and LSM on the other hand.

50. Prima facie, it appears that Mr. Dasgupta, did not represent the interest of the respondent in the said board meeting, and could not be

considered to be a representative of the respondent at the said meeting. It is not even the case of the petitioner that apart from Mr. Gill and Mr. Dasgupta, there was any other representative of IHF present at the board meeting held on 18.01.2011. Mr. Gill had contemporaneously issued a communication on 20.01.2011, stating that he had walked out of the meeting and had not participated in the said meeting as one Mr. Alope Malik, who is not even a Director of the petitioner company, was present in the said meeting.

51. Prima facie, it appears to me that the quorum prescribed in Article 10.3.3 of the Subscription and Shareholders Agreement was not complete, as there was no director nominated by IHF present, and voting, at the said meeting. Pertinently, the requirement of quorum is not merely “presence”, but also of “voting”. It is not even the petitioner’s case that when the resolutions were sought to be passed, as relied upon by the petitioner, Mr. Gill was present and did vote one way or another, on those resolutions. Prima facie, on account of the lack of a valid quorum, the said meeting could not have been held, and should have been adjourned in terms of Article 10.3.3.

52. In the light of the aforesaid discussion, I am, prima facie, of the view that this petition is not maintainable at the instance of Mr. Rajput, as the petitioner does not appear to have passed any resolution to institute this petition against the respondent. The mere authorization of Mr. Rajput in the said meeting generally to commence, institute or prosecute or defend etc. or other legal proceedings is wholly

insufficient. The said meeting also does not appear to have been validly called or held, for the reasons discussed above.

53. Now, I turn to the issue whether the sanction agreement has been abandoned by the petitioner, as claimed by the respondent. The respondent has produced the aforesaid email communication dated 14.03.2008 sent by ESS, inter alia, to the respondent. Pertinently, this communication was not produced by the petitioner. A perusal of the said communication leaves no manner of doubt that by the said email, the ESS decided *“that for future editions of the league to happen, adequate sponsorship support needs to be generated to meet the cost of the entire event (operations plus production) as a minimum requirement In case this requirement is not achieved within the target date, we will have to look at postponing future editions till a time when such sponsorship support does come up.”* Consequently, the petitioner evinced its intention not to hold the Premier Hockey League on the ground that it was not able to muster sufficient sponsorship support for holding the future editions of the Premier Hockey League. Pertinently, the petitioner does not dispute the respondents’ statement that after 2008, no fee has been paid by the CRH ESS under the Master Rights Agreement to the petitioner. There is no denial of the allegation that ESS has also not paid the players their dues under their respective contracts for the earlier years.

54. The explanation furnished by the petitioner for making no attempts to hold the Premier Hockey League after January 2008 does

not appear to be convincing. It is claimed that on account of the acts of Indian Olympic Association and the Government of India, the Indian Hockey Federation was in a state of suspension and not in a position to fulfill its obligations under the sanction agreement.

55. Firstly, there is no document placed on record to show that the ESS or the petitioner were, at any point of time, under any such impression or delusion. On the contrary, the email communication dated 14.03.2008 reveals a completely different reason for the decision of ESS not to hold the Premier Hockey League and to keep it under suspension. Even after the action of the Indian Olympic Association in suspending the governing council of IHF, IHF by itself did not cease to exist. IHF is a registered society having its own juristic identity. The Indian Olympic Association had entrusted an ad-hoc committee appointed by it with the task of administering the affairs of IHF. There is nothing to show that ESS or the petitioner at any point of time approached even the ad-hoc committee to require the IHF to fulfill its obligations under the sanction agreement. If there was any failure on the part of the IHF acting through its ad-hoc committee in not fulfilling its obligations under the sanction agreement, ESS or the petitioner could have enforced the same. Far from enforcing its rights, there is no communication either by ESS or the petitioner to even assert its rights under the sanction agreement, after the suspension of the governing council of IHF. Therefore, the reason given by the petitioner for not taking any steps to hold the premier hockey league

after January 2008 appears to be an afterthought, and does not appear to be the real and genuine reason.

56. It is also pertinent to note that this Court revived the organizing committee of the IHF as early as on 21.05.2010 when it allowed the Writ Petition filed by IHF being W.P.(C.) No.3713/2008. Even thereafter, there was no step taken by ESS, or the petitioner, to hold the premier hockey league in the year 2010.

57. The submission of learned counsel for the petitioner that the CRH, namely the ESS and the petitioner company had the right to seek suspension of the premier hockey league for such period as it encounters difficulty in raising sponsorship or other avenues to hold the premier hockey league, by placing reliance on Article 6.3 cannot be accepted for various reasons. Articles 6.3 and 6.4 of the Sanction Agreement read as follows:

“6.3 The Parties acknowledge that in the event that the CRH encounters difficulties in raising sponsorship or other revenues as it requires during any year of the Term, the CRH shall have the right to require the Company to suspend the League during such year of the Term, and the CRH shall have the right to require that the Company provide to it the Commercial Rights in relation to League seasons which shall take place in a number of years immediately subsequent to the Term hereof which is equivalent to the number of years of the Term in which the League is so suspended, at no additional consideration to that set out in the Master Rights Agreement. Consequently and on provision of written notice to IHF by the Company, the Company shall have the right and obligation to suspend the League during such year of the Term, and the Company shall have the right to require that IHF provide to it the Sanction in relation to League seasons which shall take place in a number of years immediately subsequent to the Term hereof which is equivalent to the number of

years of the Term in which the League is so suspended, at no additional consideration to that set out herein.

6.4 The Parties acknowledge that in the event that the Company and/or the Commercial Rights Holder, and/or any licensee thereof is unable to acquire appropriate approvals for televising and live uplinking of any audio-visual signal in respect of the League during any year of the Term, the CRH shall have the right but not the obligation to require the Company to suspend the League during such year of the Term, and the CRH shall have the right to require that the Company provide to it the Commercial Rights in relation to League seasons which shall take place in a number of years immediately subsequent to the Term hereof which is equivalent to the number of years of the Term in which the League is so suspended, at no additional consideration to that set out in the Master Rights Agreement. Consequently and on provision of written notice to IHF by the Company, the Company shall have the right and obligation to suspend the League during such year of the Term, and the Company shall have the right to require that IHF provide to it the Sanction in relation to League seasons which shall take place in a number of years immediately subsequent to the Term hereof which is equivalent to the number of years of the Term in which the League is so suspended, at no additional consideration to that set out herein."

58. Firstly, apart from the communication dated 14.03.2008 expressing difficulty in raising sponsorship for holding of the next editions of the premier hockey league upto 01.09.2008, there is no other communication issued by CRH to either the company or the respondent. It is not the petitioner's case that the CRH every year, and constantly, made an attempt to raise sponsorship for the said event. No averment has been made in this regard and no document has been placed on record. It appears that after the issuance of the said email communication dated 14.03.2008, ESS went into a state of slumber and evinced no intention to hold the premier hockey league. The CRH

showed no interest in exploiting the rights obtained by it under the master rights agreement.

59. Secondly, there is no communication placed on record, ever issued by the petitioner to IHF, in terms of Article 6.3 of the sanction agreement. By taking refuge under Article 6.3 or 6.4, ESS or the petitioner could not have held the IHF to ransom for an indefinitely long period. IHF is obliged to take steps to promote the cause of field hockey in India. Merely because the aforesaid set of agreements had been entered into with the ESS as the CRH, who is the sole provider of funding for the premier hockey league, it cannot mean that CRH will not make any meaningful efforts to hold the premier hockey league on its own by providing the requisite funds/sponsorship for years on end, and not allow any other party to hold the same in collaboration with the respondent. An interpretation of the agreement, which would give absolute rights to ESS, without any corresponding obligations, prima facie, would be opposed to public policy and public interest and would, prima facie, to be void and unenforceable not only under Section 23 of the Contract Act, but also on account of lack of consideration. It would also hinder the promotion of the national sport, i.e. field hockey in the country. It appears, ESS has woken up only after learning of the agreement entered into between the respondent and Nimbus Sports, and did not evince any interest after the issuance of the aforesaid communication dated 14.03.2008 to hold the premier hockey league. It is not disclosed as to what steps were taken by ESS, or the

petitioner, for the last three years, for the purpose of holding the premier hockey league in the country.

60. Prima facie, in my view, to enforce its rights under Article 6.3 and 6.4, CRH/ESS and the company would have to plead and prove that, from their side, there was a constant and untiring effort to garner resources and sponsorships to hold the premier hockey league year after year. In the present case, neither there is any pleading nor any evidence to that effect placed on record.

61. From my aforesaid discussion, it appears that the present petition has not been instituted by the petitioner by validly passing a Board resolution to institute the same in a validly held board meeting. The filing of this petition on behalf of the petitioner by Mr. Rajput appears to be unauthorized and without proper authority. It also prima facie appears to me that the petitioner has abandoned the sanction agreement, and is in breach thereof. The Supreme Court in the case of **M/s. Gujarat Bottling Co. Ltd. and others V. Coca Cola Company and Others**, AIR 1995 SC 2372, has held that:

"Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest."

62. In my view the petitioner is also guilty of suppression of relevant documents from the Court. The petitioner should have emailed the

communication received from ESS on 14.03.2008 whereby ESS evidenced its intention to suspend the Premier Hockey League on the ground that it was not able to garner sufficient sponsorship for the event. This is another ground why the petitioner cannot be granted any interim relief as prayed for in this petition. The interpretation to Articles 6.3 and 6.4 of the sanction agreement advanced by the petitioner cannot be accepted as that, prima facie, would render the said agreement void on the ground of it being opposed to public policy and without consideration.

63. For all the aforesaid reasons, I dismiss this petition with costs quantified at Rs.One lakh. Needless to state that I have examined the issues raised before me only at a prima facie stage and my discussion is limited for the purpose of considering the present petition under Section 9 of the Act. My observations shall not be binding on the arbitral tribunal which may be constituted to determine the inter se disputes between the parties, and the Tribunal shall arrive at its own findings on the basis of the pleadings of the parties and the evidence led before it.

(VIPIN SANGHI)
JUDGE

JUNE 06, 2011
'BSR'/SR