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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL ARBITRATION PETITION NO.339 OF 2019**

Plus Holdings Limited ... Petitioner.  
V/s.  
Xeitageist Entertainment Group Ltd  
and ors ... Respondents

- Mr. Sandeep Ladda a/w Ms. Ishani Khanwilkar, Ms. Prerna Sethiya i/by Adnan Ansari, for the Petitioner.
- Mr. M. H. Kane and Ms. Aasif Navodia i/by W.S. Kane & Co., for respondent No.1.
- Mr. Hamid Kadiani a/w Ms. Kavisha Shah and Mr. Jayesh Bhosle i/by India Law Alliance for respondent No.2.
- Ms. Payal Chaterjee with Mr. Siddharth Rathod i/by Nishith Desai Associates, for respondent No.4.

**CORAM : G. S. KULKARNI, J.**

**DATE : 7<sup>th</sup> MARCH, 2019.**

**P.C. :**

1] Heard Mr. Sandeep Ladda, learned counsel for the petitioner, Mr. M. H. Kane, learned counsel for respondent No.1, Mr. Hamid Kadiani, learned counsel for respondent No.2 and Ms. Payal Chaterjee, learned counsel for respondent No.4. Respondent No.3, though is stated to be served, has not appeared.

2] Learned counsel for the petitioner seeks leave to amend prayer

clause (b). Leave granted. Amendment to be carried out forthwith.

3] At the outset, learned counsel for respondent No.4 would state that the licence rights in regard to the film in question "Hotel Mumbai" as granted in favour of respondent No.4, by respondent No.3, have now been terminated by respondent No.3. Statement is accepted. Hence, it is stated that respondent No.4 shall not be exhibiting the film in question, as apprehended by the petitioner. Learned counsel for respondent No.4 states that respondent No.4 shall also withdraw all publicity material in respect of the film.

4] In view of the above change in the circumstances, learned counsel for the petitioner referring to the arbitral proceeding before the Singapore International Arbitrator Centre (for short "SIAC"), namely the Emergency Arbitral Award dated 10.01.2019, as published by the learned Emergency arbitrator, would submit that the petitioner would now pray that reliefs be granted by this Court against respondent No.3, to protect the rights of the petitioner, under the said Emergency Award. It is submitted that the Emergency Arbitrator taking into consideration the material in regard to the rights of the petitioner and that of respondent Nos. 1 & 2 passed the following emergency award:-

"Pending final determination of arbitration proceedings SIAC Arbitration No.ARB363/18/CHB or earlier reconsideration, modification or vacation by the tribunal constituted in such proceedings:-

(1) The Emergency Arbitrator's preliminary order dated 28 December 2018 is discharged.

(2) Upon provision by Plus Holdings no later than 7 (seven) days from its receipt of this award of a written undertaking addressed to Xeitgeist Entertainment in the form set out at paragraph 180 of this award:

(a) Xeitgeist Entertainment shall not enter into any agreement or confer any rights on any person which may be inconsistent with, or detrimental to, Plus Holdings' rights set out in the Agreement; and

(b) Xeitgeist Entertainment shall take such lawful steps within its power to cause any person to whom it has purported to confer any rights which may be inconsistent with, or detrimental to, Plus Holdings' rights set out in the Agreement, not to (i) exercise any such conferred rights and (ii) grant any such conferred rights to another person or persons .

(3) In the even that Plus Holdings does not provide within 7 (seven) days of its receipt of thsi award a written undertaking addressed to Xeitgeist Entertainment in accordance with paragraph (2) above, the conditional award made in sub paragraphs (2) (a) and (b) shall lapse and have no force or effect.

(4) The emergency arbitrator's fees and expenses, the SIAC's administration fees and expenses and the reasonable legal and other costs of Plus Holdings associated with the EA Application shall be borne by Xeitgeist Entertainment".

5] Learned counsel for the petitioner in support of his submission would also refer to the evidence which has come before the learned Emergency Arbitrator of the SIAC namely the witness statement of Mr. Mark Antony Montgomery, (page No.199 of the paper book), wherein according to the petitioner the said witness in paragraph Nos 9 , 10 and 11 of his cross examination has admitted, that at the time when the agreement was entered into, with the petitioner, the distribution rights of the said film in the SAARC territories were held by respondent No.1 and that on 7<sup>th</sup> November 2018, the agreement as entered between the petitioner was terminated, and thereafter the rights for the distribution of the film for the SAARC territories reverted to respondent No.3 -Hotel Mumbai Private Ltd,- the original owner of the film. Thereafter respondent No.3 entered into a licence agreement with respondent No.4 on 6<sup>th</sup> November, 2018 in respect of the film for the SAARC territories. These statements as recorded in paragraph Nos. 9, 10 and 11 of the witness statement (page No.205 of the paper book) reads thus :-

"9. Hotel Mumbai Pty Ltd ("HMPL") a company incorporated in Australia, has full ownership rights over the film. At the time when the Agreement was entered into, the rights for the distribution of the Film in the SAARC territories were held by Xeitgeist.'

10. On 7 November 2018, the Agreement with the Claimant was terminated by way of the Termination letter.

11. Shortly after the Agreement was terminated, the rights for the distribution of the Film in the SAARC territories were reverted to HMPL the original owner of the Film. HMPL then entered into a license agreement with Neiflix Global, LLC (Neflix) on 6<sup>th</sup> November, 2018 (Los Angeles time) in respect of the Film in the SAARC territories. I am not at liberty to divulge any further details in respect of the agreement between HMPL and Netflix, or disclose the agreement, as it is confidential as between HMPL and Netflix, Suffice to say that the agreement is in place, and HMPL has licensed certain rights in respect of the Film in the SAARC territories to Netflix, and Xeitgeist is powerless to stop HMPL or Netflix from acting on the agreement as between them.

6] Having heard learned the counsel for the parties and having considered the reliefs as granted by the learned Emergency Arbitrator under the Emergency Award, in favour of the petitioner, it appears that there is some substance in the contentions as raised on behalf of the petitioner. It appears that the rights of the petitioner in regard to the film in question have been sufficiently recognized in the Emergency Award, although granted against respondent No.1. In such a situation whether respondent No.1 at all had any rights to be assigned in favour of respondent No.3 and whether, can it be said that respondent No.1 would be legitimately entitled to any rights of exhibition of the film in question for the SAARC countries

would be required to be considered.

7] Accordingly issue fresh notice to respondent No.3, returnable on 4<sup>th</sup> April, 2019. The learned advocate for the petitioner is permitted to serve respondent No.3 by private service and place on record an affidavit of service to that effect.

8] In the meantime considering the facts and circumstances of the case, it would be necessary to grant an ad-interim protection to the petitioner till the adjourned date of hearing. Accordingly respondent No.3 is restrained from entering into any agreement or creating any third party rights in relation to the film "Hotel Mumbai" for the SAARC territories. Ordered accordingly.

9] At this stage, learned counsel for respondent No.4 states that as the rights as granted in favour of respondent No.4 are already terminated by respondent No.3, respondent No.4 is no more a necessary party to the present proceeding and accordingly respondent No.4 needs to be deleted. Learned counsel for the petition is agreeable to this submission as urged on behalf of respondent No.4, and seeks leave to delete respondent No.4. Petitioner is accordingly permitted to delete respondent No.4. Necessary

amendment be carried out by tomorrow.

10] Needless to observe that the above order is on a prima facie consideration of the material as placed on record and before the contesting respondents file their reply affidavits. Thus, all contention of the parties on merits of the matter are expressly kept open.

11] Stand over to 4<sup>th</sup> April, 2019.

12] Parties to act on the authenticated copy of this order.

[G. S. KULKARNI, J]