IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 270

Originating Summons No 242 of 2021
(Summonses Nos 1119 and 2090 of 2022)

Between

WestBridge Ventures II
Investment Holdings

… *Plaintiff*

And

Anupam Mittal

… *Defendant*

JUDGMENT

[Contempt of court — Anti-suit injunction — Disobedience of order of court]
[Contempt of court — Sentencing]

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WestBridge Ventures II Investment Holdings
v
Anupam Mittal

[2022] SGHC 270

General Division of the High Court — Originating Summons No 242 of 2021
(Summonses Nos 1119 and 2090 of 2022)
S Mohan J
22 July 2022

31 October 2022 Judgment reserved.

S Mohan J:

Introduction

1 On 26 October 2021, I granted an anti-suit injunction ("ASI") *vide* HC/ORC 6040/2021 ("ORC 6040") restraining the defendant from taking certain steps in proceedings commenced by him in India. The grant of the ASI was the subject of my judgment in *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2021] SGHC 244 ("OS 242 Judgment"). The defendant has appealed the OS 242 Judgment to the Court of Appeal in CA/CA 64/2021 ("CA 64"). CA 64 has been heard and is currently pending a decision by the Court of Appeal. There is no stay of execution of the ASI pending the defendant's appeal.

2 The plaintiff claims that the defendant has breached ORC 6040. It applied for an order of committal by way of HC/SUM 1119/2022 ("SUM 1119"). In response, the defendant filed HC/SUM 2090/2022

("SUM 2090") to set aside the *ex parte* leave I granted to the plaintiff to commence committal proceedings pursuant to HC/ORC 1454/2022 ("ORC 1454"). This judgment deals with both applications.

Background facts

ORC 6040 – the permanent ASI

3 ORC 6040 lies at the heart of these proceedings. It was granted by this court on 26 October 2021 and served on the defendant's solicitors via the eLitigation portal on 1 November 2021.[1] ORC 6040 reads as follows:

> It is ordered that:
>
> 1. An injunction is granted restraining the defendant, whether by himself, his agents or otherwise, from:
>
> (a) pursuing, continuing and/or proceeding with the action commenced by the defendant by way of Company Petition No. 92 of 2021 in the National Company Law Tribunal ("**NCLT**") in Mumbai, India; and/or
>
> (b) commencing or procuring the commencement of any legal proceedings in respect of any dispute, controversy, claim or disagreement of any kind in connection with or relating to the management of People Interactive (India) Private Limited ("**People Interactive**"), or in connection with or relating to any of the matters set out in the Shareholders' Agreement dated 10 February 2006, as amended from time to time (the "**SHA**") in any other dispute resolution forum other than an arbitration tribunal constituted in accordance with the rules laid down by the International Chamber of Commerce ("**ICC**") and seated in Singapore, against the plaintiff, and/or Shobitha Annie Mani and/or Navin Mittal and/or Anand Mittal and/or People Interactive and/or any person in relation to any dispute relating to the management of People Interactive, or arising from,

[1] Statement pursuant to Rules of Court Order 52 rule 2(2) filed on 28 February 2022 ("Statement of Committal") at para 3(c); 4th Affidavit of Shobitha Annie Mani dated 16 March 2022 ("4th Affidavit of SAM") at para 13.

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> connected with or relating to any of the matters set out in the SHA.

4 For clarity, ORC 6040 may be broken down into its constituent parts in the following manner:

> 1. An injunction is granted restraining the defendant, whether by himself, his agents or otherwise, from:

Order	Action proscribed	Subject-matter
1(a)	• Pursuing, • Continuing and/or • Proceeding with	The defendant's action commenced by way of Company Petition No 92 of 2021 in the National Company Law Tribunal ("NCLT") in Mumbai, India
1(b)	• Commencing or • Procuring the commencement of	Any legal proceedings in respect of any dispute, controversy, claim or disagreement of any kind • in connection with or relating to the management of People Interactive (India) Private Limited ("People Interactive"), or • in connection with or relating to any of the matters set out in the Shareholders' Agreement dated 10 February 2006, as amended from time to time (the "SHA") in any other dispute resolution forum other than [an ICC arbitration seated in Singapore] against • the plaintiff and/or • Shobitha Annie Mani and/or

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Order	Action proscribed	Subject-matter
		• Navin Mittal and/or • Anand Mittal and/or • People Interactive and/or • any person in relation to any dispute relating to the management of People Interactive, or arising from, connected with or relating to any of the matters set out in the SHA.

ORC 1463 – the interim ASI

5 For context, ORC 6040 is not the only ASI that was granted against the defendant. When the plaintiff applied for a permanent ASI by way of HC/OS 242/2021 ("OS 242") on 15 March 2021, it also concurrently filed an application for an interim ASI in HC/SUM 1183/2021 ("SUM 1183"). SUM 1183 was heard and granted *ex parte* on the same day by Andrew Ang SJ. The interim ASI is embodied in HC/ORC 1463/2021 ("ORC 1463"). The plaintiff notified the defendant of ORC 1463 immediately after the hearing.[2]

6 ORC 1463 reads as follows:

> It is ordered that:
>
> 1. Pending final determination of the Originating Summons herein, the Defendant, whether by himself, his agents or otherwise, be restrained forthwith from:
>
> a. pursuing, continuing and/or proceeding with the action(s) commenced or to be commenced by the Defendant by way of a Company Petition in the National

[2] 3rd Affidavit of Shobitha Annie Mani dated 28 February 2022 ("3rd Affidavit of SAM") at para 5.

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> Company Law Tribunal in Mumbai, India, which was served on the Plaintiff on 3 March 2021; and/or
>
> b. commencing or procuring the commencement of any legal proceedings in respect of any dispute, controversy, claim or disagreement of any kind in connection with or relating to the management of People Interactive (India) Private Limited (CIN No. U72900MH2000PTC124485) ("**People Interactive**"), or in connection with or relating to any of the matters set out in the Shareholders' Agreement dated 10 February 2006 (the "**SHA**") in any other dispute resolution forum other than an arbitration tribunal constituted in accordance with the rules laid down by the International Chamber of Commerce and seated in Singapore in accordance with Clause 20.2 of the SHA and
>
> against the Plaintiff, and/or Shobitha Annie Mani (Identification No.: […]), and/or Navin Mittal (Unknown Identification No.), and/or Anand Mittal (Unknown Identification No.), and/or People Interactive and/or any person in relation to any dispute relating to the management of People Interactive, or arising from, connected with or relating to any of the matters set out in the SHA.

7 An issue arose at the oral hearing before me on 22 July 2022 as to the relevance of ORC 1463 to the present committal application, which was taken out only in relation to ORC 6040. I address this below as a preliminary issue (at [36]–[50]). In essence, what has become of this issue is that the plaintiff has decided not to pursue breaches of ORC 1463 as part of the present proceedings (without forbearing to bring future proceedings pertaining to the same).

8 Given the circumstances, I do not intend to comment further on the wording of ORC 1463, save to note that the reference in ORC 1463 to "Company Petition in the National Company Law Tribunal ("NCLT") in Mumbai, India, which was served on the Plaintiff on 3 March 2021" refers to the same petition as "Company Petition No. 92 of 2021" in Order 1(a) of ORC 6040. The latter simply reflects the petition number that was later assigned

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to those proceedings: see OS 242 Judgment at [13]. To clarify this further, I turn to outline the foreign proceedings that the ASI is concerned with.

The permanent ASI and foreign proceedings

9 The alleged breaches of ORC 6040 pertain to two sets of Indian proceedings: proceedings before the National Company Law Tribunal in Mumbai, India ("NCLT"), and proceedings before the Bombay High Court. These neatly correspond to breaches of different parts of ORC 6040: the NCLT proceedings engage Order 1(a) (as described at [4] above), and the Bombay High Court proceedings engage Order 1(b) (also as described at [4] above).

10 The parties broadly do not dispute the occurrence of the steps taken (or not taken) in the proceedings before the NCLT and the Bombay High Court.[3] The dispute centres on the legal significance of these acts and omissions.

The NCLT proceedings

11 The NCLT proceedings were commenced by the defendant on 3 March 2021, *prior to* ORC 6040 being made, and indeed, prior to the commencement of OS 242. The defendant's petition was subsequently assigned the case number Company Petition No 92 of 2021 ("the NCLT Petition") (see OS 242 Judgment at [13]–[14]). The respondents to this petition are the same persons named in Order 1(b) of ORC 6040: the plaintiff, Ms Shobitha Annie Mani ("Ms Mani"), Mr Navin Mittal, Mr Anand Mittal and People Interactive (India) Pte Ltd ("People Interactive").

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[3] Plaintiff's Written Submissions dated 18 July 2022 ("PWS") at para 46.

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12 The genesis of the NCLT proceedings has been set out more fully in the OS 242 Judgment at [9]–[13]. In essence, the dispute principally relates to two matters: the management of People Interactive (where the plaintiff and defendant are shareholders), and the rights and obligations of shareholders under a Shareholders' Agreement (or "SHA"). The defendant seeks the following reliefs in the NCLT proceedings:

(a) an injunction to restrain the plaintiff and the plaintiff's directors, employees, servants, agents and or any person claiming through or under them, from in any manner, disrupting the management and operation of People Interactive and/or conducting the affairs of People Interactive in a manner prejudicial or oppressive to any member of People Interactive or People Interactive;

(b) a declaration that the defendant's continuation as an executive director of People Interactive, pursuant to the resolution passed by the board of directors of People Interactive at the meeting held on 28 November 2019 is valid and that all actions taken by the defendant as an executive director of People Interactive shall not be invalid;

(c) an injunction to restrain the plaintiff, People Interactive and certain others, their directors, employees, servants, agents and/or any person claiming through or under them, from in any manner, whether directly or indirectly hindering and/or prohibiting the defendant from performing his functions as an executive director of People Interactive;

(d) an order to direct the plaintiff, People Interactive and certain others to initiate a process for identifying and appointing a suitable, independent, non-partisan and impartial candidate in

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the capacity as managing director of People Interactive in a time-bound manner; and

(e) certain other declarations and interim reliefs.

13 In the OS 242 Judgment, I held (at [66]–[68]) that all disputes between the parties brought before the NCLT fell within the scope of the arbitration agreement contained in the SHA. I further found that the circumstances militated in favour of granting a permanent ASI, and granted the ASI accordingly (at [69]–[93]). Relevantly, Order 1(a) of ORC 6040 is worded to restrain the defendant from pursuing, continuing and/or proceeding with the action commenced by him by way of the NCLT Petition.

14 At the time I heard parties in relation to the ASI application, the NCLT Petition had not been withdrawn. Instead, the defendant has repeatedly sought adjournments of the hearing of the NCLT Petition. Even after ORC 6040 was granted on 26 October 2021, the defendant sought at least two further adjournments, on 11 November 2021 and 19 January 2022.[4]

The Bombay High Court proceedings

15 Two weeks after he filed the NCLT Petition, the defendant filed another application on 18 March 2021, this time in the Bombay High Court. The resulting proceedings were first known as Suit 7816 of 2021, but have since been renumbered as Suit 95 of 2021 ("Suit 95"). On the same day, the defendant also applied for interim reliefs pending the final determination of Suit 95

[4] 4th Affidavit of SAM at paras 8–10.

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(Interim Application No 1010 of 2021) ("IA 1010"). The applications were served on the plaintiff's Indian solicitors, AZB & Partners, on 24 March 2021.[5]

16 Some months later, the defendant sought to, *inter alia*, amend Suit 95. On 15 November 2021, he filed Interim Application (L) No 2827 of 2021 ("IA 2827") to amend Suit 95 and the prayers sought therein.[6] His apparent reason for this was to bring on record facts and events that occurred subsequent to Suit 95 being filed. This included bringing on record ORC 6040 and affidavits filed by Indian law experts in the Singapore proceedings.

17 While much emphasis was placed on IA 2827's nature as an amendment application, there were in fact **two distinct** forms of relief sought thereunder: first, an amendment of the plaint, *and* second, the grant of a temporary injunction restraining the defendants in Suit 95 from holding a requisitioned extraordinary general meeting ("EGM", and in relation to the injunction, "EGM Injunction").[7] The prayers sought in IA 2827 were worded as follows:[8]

> 14. **PRAYERS**
>
> …
>
> (a) That the Applicant / Original Plaintiff be granted leave to amend the Plaint in terms of the Schedule;
>
> (b) That pending the hearing and final disposal of the present Interim Application, this Hon'ble Court be pleased to issue an order of temporary injunction restraining the Defendants, their agents, directors, employees, servants and/or any person claiming through or under them from, in any manner, whether

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5 Statement of Committal at para 3(f)(i).

6 Statement of Committal at para 3(f)(ii).

7 Statement of Committal at para 4; 3rd Affidavit of SAM at paras 11 and 15–19; NE p 5 ln 17 to 19.

8 3rd Affidavit of SAM, Exhibit SAM-29 at p 638; 2nd Affidavit of Anupam Mittal dated 3 June 2022 ("2nd Affidavit of Mittal"), Exhibit AM-34 at p 33.

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> directly or indirectly, taking any steps to hold the [EGM] requisitioned by notices dated 24th February 2021;
>
> (c) For any such further reliefs that this Hon'ble Court deems just and proper in the nature and circumstances of the present case.

18 To put the second relief (*ie*, the EGM Injunction) in context, the notices dated 24 February 2021 that are mentioned in para 14(b) had requisitioned an EGM to appoint additional directors and a managing director for People Interactive. The right to appoint directors is provided for in the SHA, specifically in cl 16.3 read with cl 1.1(xxvii).[9]

19 As to the first relief (*ie*, amendment of Suit 95), it would be helpful to turn to the original reliefs sought in Suit 95. The reliefs prayed for in Suit 95, both original and amended (by IA 2827), are tabulated below. The amendments are identified in bold, with deletions reflected using strikethrough, and insertions underlined.[10]

Para	Type of relief (summarised)	Wording of relief sought (from plaint in Suit 95 and IA 2827)
39(a)	Declaration of exclusive jurisdiction of the NCLT	This Hon'ble Court be pleased to declare that the National Company Law Tribunal, Mumbai Bench at Mumbai is the only appropriate and competent forum to hear and decide the disputes raised in Company Petition **~~(E-filing) No.01111 of 2021~~** **No.92 of 2021** filed by the Plaintiff against the Defendants;

9 PWS at para 55(a).

10 3rd Affidavit of SAM, Exhibit SAM-26 at pp 157–161; Statement of Committal at paras 3(f)(i) and (ii).

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Para	Type of relief (summarised)	Wording of relief sought (from plaint in Suit 95 and IA 2827)
39(b)	Permanent anti-enforcement injunction (reactive to Singapore ASI) ~~**Permanent ASI**~~ ~~**(over Singapore proceedings)**~~	This Hon'ble Court be pleased to grant a permanent injunction restraining Defendant No.2 and/or its agents, directors, employees, servants and/or any person claiming through or under it from, in any manner, whether directly or indirectly ~~**(i)**~~ enforcing the Anti-Suit **Permanent** Injunction Order dated ~~**15th March**~~ **26th October** 2021 (Annexure ~~**M**~~ **N** hereto) passed by the High Court of the Republic of Singapore; ~~**and (ii) pursuing, continuing and/or proceeding with Originating Summons No.242 of 2021 and Summons for Injunction No.1183 of 2021 in the High Court of the Republic of Singapore;**~~
39(c)	Permanent ASI (against further ASI applications by WestBridge in respect of the NCLT proceedings)	This Hon'ble Court be pleased to grant a permanent injunction restraining Defendant Nos.2 to 5 and/or their agents, directors, employees, servants and/or any person claiming through or under them from, in any manner, whether directly or indirectly, commencing or procuring the commencement of any other legal proceedings in respect of restraining / injuncting the Plaintiff from pursuing and continuing to proceed with Company Petition ~~**(E-filing) No.01111**~~ **No.92** of 2021 filed by the Plaintiff before the Hon'ble National Company Law Tribunal, Mumbai Bench, Mumbai and any proceedings relating thereto;

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Para	Type of relief (summarised)	Wording of relief sought (from plaint in Suit 95 and IA 2827)
39(d)	Temporary anti-enforcement injunction (reactive to Singapore ASI) ~~**Temporary ASI**~~ ~~**(over Singapore proceedings)**~~	That pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to issue an Order of temporary injunction restraining Defendant No.2 and/or its agents, directors, employees, servants and/or any person claiming through or under it from, in any manner, whether directly or indirectly ~~**(i)**~~ enforcing the Anti-Suit **Permanent** Injunction Order dated ~~**15th March**~~ **26th October** 2021 (Annexure ~~**M**~~ **N** hereto) passed by the High Court of the Republic of Singapore; ~~**and (ii) pursuing, continuing and/or proceeding with Originating Summons No.242 of 2021 and Summons for Injunction No.1183 of 2021 in the High Court of the Republic of Singapore;**~~

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Para	Type of relief (summarised)	Wording of relief sought (from plaint in Suit 95 and IA 2827)
39(e)	Temporary ASI (against further ASI applications by WestBridge in respect of the NCLT proceedings)	That pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to issue an Order of temporary injunction restraining Defendant Nos.2 to 5 and/or their agents, directors, employees, servants and/or any person claiming through or under them from, in any manner, whether directly or indirectly, commencing or procuring the commencement of any other legal proceedings in respect of restraining / injuncting the Plaintiff from pursuing and continuing to proceed with Company Petition **~~(E-filing) No.01111~~ No.92** of 2021 filed before the Hon'ble National Company Law Tribunal, Mumbai Bench, Mumbai and any proceedings relating thereto;
39(f)	Temporary injunction preventing WestBridge from relying on the Singapore ASI (in the defendant's application for injunctive reliefs in the NCLT proceedings)	That pending the hearing and final disposal of this **Suit**, this Hon'ble Court be pleased to issue an Order of temporary injunction restraining Defendant Nos.2 to 5 and/or their agents, directors, employees, servants and/or any person claiming through or under them from relying on the Anti-Suit **Permanent** Injunction Order dated **~~15th March~~ 26th October** 2021 (Annexure **~~M~~ P** hereto) **passed by the High Court of the Republic of Singapore** when the Plaintiff applies **to** [*sic*] for injunctive reliefs in the Hon'ble National Company Law Tribunal in connection with Company Petition **~~(E-filing) No.01111~~ No.92** of 2021;

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Para	Type of relief (summarised)	Wording of relief sought (from plaint in Suit 95 and IA 2827)
39(g)	Ad-interim reliefs (in terms of the temporary injunctions sought)	For ad-interim reliefs in terms of prayer clauses (d) to (f) hereinabove;
39(h)	Costs	For costs of the present Suit; and
39(i)	Other reliefs	For such further and other reliefs as the nature and circumstances of this case may require.

20 On 22 November 2021, the Bombay High Court passed an order in IA 2827 directing the defendants in Suit 95 (which included the plaintiff in OS 242) not to take steps to hold the EGM.[11] Another order to like effect was passed on 10 January 2022, after the Bombay High Court heard arguments on IA 2827 and granted the reliefs sought.[12] The stay on the holding of the EGM was extended to the hearing and final disposal of IA 1010 on 21 March 2022.[13] For completeness, I note that the plaintiff has appealed the Bombay High Court's decision of 22 November 2021, by filing Appeal (L) No 30851 of 2021 in the same court on 24 December 2021.[14]

The present committal proceedings

21 On 28 February 2022, the plaintiff applied for leave to commence committal proceedings *vide* HC/SUM 767/2022 ("SUM 767"). It duly filed its

11 PWS at para 53(a).

12 Statement of Committal at para 3(f)(ii).

13 3rd Affidavit of SAM at para 18.

14 PWS at paras 53(c)–53(d).

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Statement of Committal on the same day, pursuant to O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC").

22 On 18 March 2022, I heard SUM 767 *ex parte* and allowed the application. This was extracted as ORC 1454. On the same day, SUM 767, the Statement of Committal, and the third and fourth affidavits of Ms Mani were served on the defendant's solicitors, Wong & Leow LLC, by way of letter.[15]

23 On 21 March 2022, the plaintiff filed SUM 1119. This is its application for the defendant to be committed to prison or fined for his alleged contempt of court, in failing and/or refusing to comply with ORC 6040. The next day, it served both ORC 1454 and SUM 1119 on the defendant's solicitors via the eLitigation portal.[16]

24 On 27 April 2022, the defendant's solicitors wrote to the plaintiff's solicitors, TSMP Law Corporation, proposing an adjournment of the hearing of SUM 1119 (which was fixed for 9 May 2022) on the basis that the defendant had given instructions to apply to set aside ORC 1454.[17] The plaintiff opposed this in its letter to the court dated 29 April 2022.[18]

25 I pause to note that 27 April 2022 was also the date of another development in the Indian proceedings. The plaintiff claims that, on that date, the defendant filed an affidavit in the Bombay High Court stating that the committal proceedings in Singapore amounted to an interference with justice.

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15 PWS at para 20.

16 PWS at paras 21–23.

17 PWS at para 26.

18 PWS at para 27.

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The matter was listed for hearing on 27 April 2022, before being adjourned to 13 June 2022 and again to 19 July 2022, owing to paucity of time.[19]

26 Returning to the proceedings in Singapore, several weeks later, on 3 June 2022, the defendant filed SUM 2090 – his application to set aside the leave granted to the plaintiff to commence committal proceedings in ORC 1454.[20] On 8 June 2022, he filed an affidavit of jurist Shahrukh J Kathawalla, his Indian law expert.[21] The plaintiff filed its own expert's affidavit in response – the second affidavit of Ciccu Mukhopadhaya – on 29 June 2022.[22]

27 The parties do not dispute that the defendant had proper notice of ORC 6040.[23] As will become apparent below, the dispute over procedural defects relates primarily to the completeness of the Statement of Committal.

28 For ease of reference, the key summonses and orders of court referred to in this judgment are summarised below:

S/N	Name	Date	Subject-matter
1	OS 242	15 Mar 2021	Application for permanent ASI
2	SUM 1183	15 Mar 2021	Application for interim ASI
3	ORC 1463	15 Mar 2021	Grant of interim ASI
4	ORC 6040	26 Oct 2021	Grant of permanent ASI

19 PWS at para 30.

20 PWS at para 32.

21 PWS at para 33.

22 PWS at para 35(f).

23 PWS at para 47.

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S/N	Name	Date	Subject-matter
5	SUM 767	28 Feb 2022	Plaintiff's application for leave to apply for order of committal
6	ORC 1454	18 Mar 2022	Grant of leave to apply for order of committal
7	SUM 1119	21 Mar 2022	Plaintiff's application for order of committal
8	SUM 2090	3 Jun 2022	Defendant's application to set aside ORC 1454

Parties' cases

29 In SUM 1119, the plaintiff's overarching case is that ORC 6040 requires the defendant to:[24]

(a) discontinue or withdraw the NCLT Petition; and

(b) discontinue or withdraw Suit 95 and all interim applications (*ie*, IA 1010 and IA 2827) before the Bombay High Court.

The defendant's failure to discontinue or withdraw both sets of proceedings is thus a continuing and intentional breach of ORC 6040 and amounts to contempt of court.

30 In response, the defendant challenges the plaintiff's application for several reasons, including the following:

(a) In respect of the NCLT Petition, the defendant argues that ORC 6040 only *prohibits* him from pursuing, continuing and/or

[24] PWS at para 45.

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proceeding with the NCLT proceedings. It does not require the defendant to take a *positive* step in discontinuing or withdrawing proceedings.[25]

(b) In respect of Suit 95, Order 1(b) of ORC 6040 only prohibits him from "commencing" or "procuring the commencement of" legal proceedings in respect of a dispute in connection with or relating to the management of People Interactive or matters set out in the SHA. Suit 95 had already been commenced on 18 March 2021, prior to the date on which the permanent ASI was granted. After the permanent ASI was granted, all the defendant did was to apply to amend Suit 95. An application to amend a pre-existing suit does not amount to the *commencement* of any further legal proceedings.[26]

(c) Based on his Indian lawyers' advice, the amendments sought *vide* IA 2827 and the proceedings pertaining to it do not *relate* to the management of People Interactive or matters set out in the SHA.[27] Moreover, the plaintiff's decision not to raise objections in the Indian proceedings must signal its acceptance that IA 2827 and Suit 95 do not relate to the management of People Interactive or the SHA; otherwise, they would be liable for aiding or abetting the alleged contempt of court.[28]

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25 Defendant's Written Submissions in SUM 1119 dated 18 July 2022 ("DWS (SUM 1119)") at para 41.

26 2nd Affidavit of Mittal at para 24.

27 DWS (SUM 1119) at para 39; 2nd Affidavit of Mittal at para 11.

28 DWS (SUM 1119) at para 39; 2nd Affidavit of Mittal at para 15.

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(d) The purpose of IA 2827 was merely to amend the prayers sought, to account for ORC 6040, and to bring on record subsequent facts and events.[29]

(e) The plaintiff failed to object in the Indian proceedings to the amendments sought in IA 2827, even though its legal counsel attended the hearing. The Bombay High Court's 10 January 2022 Order granting IA 2827 was made on the basis that the application went unopposed.[30]

31 In respect of SUM 2090, the defendant argues that the *ex parte* leave granted to the plaintiff to commence committal proceedings ought to be set aside due to certain material non-disclosures. Specifically, the plaintiff is said to have omitted to draw the following matters to the court's attention:

(a) The plaintiff's non-opposition to the defendant's application in IA 2827.[31]

(b) The plaintiff's decision not to pursue its application under Order VII Rule 11 of the Indian Code of Civil Procedure 1908 (Act No 5 of 1908) (India) (the "Order VII application"), which was an application for the plaint filed in Suit 95 to be rejected on the ground of *res judicata*.[32]

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29 2nd Affidavit of Mittal at paras 10 and 12.

30 2nd Affidavit of Mittal at para 13. See also Exhibit AM-36 for the 10 January 2022 Order at pp 258–260.

31 2nd Affidavit of Mittal at paras 13–15; Defendant's Written Submissions in SUM 2090 dated 18 July 2022 ("DWS (SUM 2090)") at para 21(a).

32 2nd Affidavit of Mittal at paras 16–17; DWS (SUM 2090) at para 21(c); 5th Affidavit of SAM at para 34(a).

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(c) The defendant's basis for seeking an adjournment of the NCLT proceedings, namely on account of ORC 6040.[33]

(d) The fact that none of the parties who filed an appearance in the NCLT proceedings objected to the adjournment sought.[34]

32 Further, the *ex parte* application in SUM 767 was defective in certain ways:

(a) The Statement of Committal was procedurally defective as it did not particularise how the dispute in Suit 95 or the amendments sought related to a dispute, *etc*, in connection with or relating to the *management* of People Interactive, or the *matters set out in the SHA*. As such, the defendant was unable to provide a substantive response in these proceedings to the allegations made.[35]

(b) The Statement of Committal was also procedurally defective in how it made reference to additional documents (such as an order of court and cause papers filed in various proceedings) without annexing them to the Statement.[36]

(c) The plaintiff sought to rely on information outside the Statement of Committal's four corners (such as the third affidavit of Ms Mani).[37] Even if the plaintiff was entitled to rely on the said affidavit, the Statement of Committal made a blanket reference to an affidavit of

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33 DWS (SUM 2090) at para 21(b).

34 DWS (SUM 2090) at para 21(b).

35 2nd Affidavit of Mittal at para 19(a).

36 2nd Affidavit of Mittal at para 19(b).

37 2nd Affidavit of Mittal at para 19(c).

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approximately 866 pages, which was "unhelpful" as the specific portions purported to be relied upon were not particularised.[38]

33 The plaintiff's central response is that none of these non-disclosures (if they are even non-disclosures in the first place) amounts to a *material* non-disclosure. Further, the plaintiff also takes the position that the Statement of Committal is not defective. In brief, it argues that the Statement contained sufficient information for the defendant to meet the charges against him.

Issues

34 Based on the procedural history of this matter and the parties' arguments, three issues arise for my consideration:

(a) whether the grant of leave to the plaintiff to apply for an order of committal in ORC 1454 ought to be set aside (SUM 2090);

(b) if not, whether the defendant is guilty of contempt of court by failing to comply with ORC 6040 (SUM 1119); and

(c) if the defendant is guilty, what the appropriate sentence should be (SUM 1119).

35 The thrust of the dispute between the parties centres on SUM 1119. I therefore deal with the issues in SUM 1119 first (*ie*, issues (b) and (c)), before dealing with SUM 2090 (*ie*, issue (a)).

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[38] 2nd Affidavit of Mittal at para 19(d).

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My decision on SUM 1119

Preliminary issue: relevance of ORC 1463

36 As noted above at [7], while it is ORC 6040 that is squarely before the court, an issue arose at the oral hearing as to the relevance of ORC 1463 to these committal proceedings.

37 Counsel for the plaintiff, Mr Thio Shen Yi SC, initially took the position that these committal proceedings extended to breaches of the interim ASI in ORC 1463.[39] In effect, the plaintiff was seeking to extend the temporal scope of the committal proceedings to cover acts and omissions of the defendant that took place *prior to* 26 October 2021 (*ie*, the date on which ORC 6040 had been made). Mr Thio's justification for this was that ORC 6040 essentially rendered permanent the interim ASI granted on 15 March 2021; the two orders were thus inextricably linked.

38 Notably, the plaintiff took this position *even though* SUM 1119 and the Statement of Committal only referred expressly to ORC 6040, and not ORC 1463. The plaintiff sought to excuse this omission by downplaying this as a drafting issue that was capable of being cured via an amendment.[40]

39 The defendant naturally objected to this. Counsel for the defendant, Mr Nandakumar Ponniya, contended that the plaintiff had not alleged any breaches of ORC 1463 prior to the oral hearing, be it in its Statement of Committal, the supporting affidavits or even in its written submissions.[41]

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39 NE p 4 ln 12 to 29.

40 NE p 5 ln 8 to 9.

41 NE p 7 ln 19 to 20 and 27 to 31.

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Mr Nandakumar argued that this lack of notice caused the defendant prejudice and pointed to at least eight hearings that took place between March and November 2021 before the Bombay High Court which would have been relevant to assessing whether ORC 1463 was breached. Had the defendant known of the allegations based on ORC 1463, he would have put forth evidence to show what happened at each of those hearings.[42]

40 Over the course of the oral hearing, the plaintiff's position evolved. Ultimately, it was satisfied not to seek a committal order on the basis of a breach of ORC 1463, at least in the present proceedings, inasmuch as it maintained its view that there were obvious breaches of ORC 1463. Rather, Mr Thio submitted that ORC 1463 provided relevant *context* that ought to inform the court's interpretation of ORC 6040.[43]

41 Given the shift in the plaintiff's position, I need not decide whether SUM 1119 extends to breaches of ORC 1463, and if so, whether ORC 1463 was breached. It suffices for me to note that, had the plaintiff maintained its original position, its failure to reference ORC 1463 at every stage prior to the oral hearing would have given rise to cause for concern.

42 For completeness, I note that the plaintiff has cited the case of *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2018] SGHC 267 ("*Aero-Gate*"),[44] which illustrates when a court might exercise its powers under O 52 r 5(3) of the ROC to grant leave for a plaintiff to rely on grounds not set

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42 NE p 18 ln 6 to 9.

43 NE p 16 ln 21 to 27.

44 PWS at para 80(b); PBOA Tab 4.

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out in the Statement of Committal at the committal hearing. O 52 r 5(3) of the ROC provides that:

> **Provisions as to hearing (O. 52, r. 5)**
>
> **5.—**
>
> …
>
> (3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under Rule 2.
>
> The foregoing provision is without prejudice to the powers of the Court under Order 20, Rule 8.

The "statement under Rule 2" in O 52 r 5(3) refers to the Statement of Committal.

43 The other provision referenced in O 52 r 5(3) – namely, O 20 r 8 – states:

> **Amendment of certain other documents (O. 20, r. 8)**
>
> **8.**—(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
>
> (2) This Rule shall not have effect in relation to a judgment or an order.

44 In *Aero-Gate*, the respondents were accused of breaching a *Mareva* injunction by disposing of various corporate assets. In what was acknowledged by Vinodh Coomaraswamy J to be "very unusual circumstances" (at [65]), the court in *Aero-Gate* decided to proceed to hear and determine seven charges

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against each of the two respondents, although not all were contained in the statement of committal in that case.

45 Given that the plaintiff's ultimate position was not to seek an amendment to include ORC 1463 in these proceedings, strictly speaking, I did not have to decide on the applicability or effect of *Aero-Gate*. However, assuming this were necessary, I would have formed the view that the present case is distinguishable from *Aero-Gate*. The court in *Aero-Gate* had expressly based its decision on three distinctive features of the case:

(a) First, the court considered that none of the charges would have taken either respondent by surprise. These charges had been referenced or addressed in four ways: (i) the charges were advanced in the plaintiff's written submissions; (ii) the court put the respondents on notice that all charges were being pursued; (iii) the respondents then addressed the court on all charges; and (iv) the respondents agreed that the court may consider all charges against them (at [59]).

(b) Second, the court did not consider itself lacking in any factual material relevant to either respondent's defence. The respondents had been cross-examined on their affidavits, with the plaintiff's case on all charges put to them. Any prejudice was limited to a missed opportunity to adduce one item of evidence – this being evidence which would have been relevant only to mitigation and irrelevant to the issue of liability anyway (at [60]–[62]).

(c) Third, the court observed that even if the charges were dismissed on a purely procedural basis, the plaintiff could have immediately applied afresh for leave to commence committal proceedings, while relying on new statements of committal. It would have been contrary to

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> the respondents' interests and the interests of justice to compel the plaintiff to pursue this course given that the existing proceedings were already protracted (at [63]–[64]).

46 Returning to the present case, it is plain that neither the first nor second reasons in *Aero-Gate* applies to the present facts.

47 In relation to the first reason (at [45(a)]), the court in *Aero-Gate* identified *four* cumulative procedural features for finding that there was no surprise: the inclusion of the charges in the plaintiff's written submissions, the notice from the court, the response from the respondents, and the agreement of the respondents. In the present case, there was no reference in the written submissions, no notice from the court, and no agreement between the parties, to say the least. As to the defendant's response at the oral hearing, Mr Nandakumar's response was focused on the defendant's *inability* to respond meaningfully and adduce evidence that would address the alleged breaches of ORC 1463.

48 The second reason (at [45(b)]) also does not apply. As Mr Nandakumar submitted, had it been alleged that the seeking of adjournments before the Bombay High Court amounted to breaches of ORC 1463, the defendant would have prepared and given evidence of what had transpired in each of the eight or so hearings in Bombay between March to November 2021, to demonstrate that the plaintiff had effectively waived any breaches.[45]

49 Finally, while the third reason (at [45(c)]) carries some force, the court in *Aero-Gate* could not have intended for it to be a sufficient reason *in and of*

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[45] NE p 18 ln 6 to 9.

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itself warranting the grant of leave under O 52 r 5(3) *in every case*. This is for good sense: the third reason would readily apply in many committal applications. Applicants would almost always be able to file fresh committal proceedings. Applicants would almost always expend some amount of time and cost in pursuing their (abortive) committal applications. Accepting such a readily available reason risks making recourse to O 52 r 5(3) too easy and frequent, and would unduly undermine the central role played by the Statement of Committal, as articulated in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*") at [61]–[62] (see below at [129]).

50 Therefore, had it been necessary for me to reach a view on *Aero-Gate* and O 52 r 5(3), I would have found that *Aero-Gate* supplies insufficient reason for me to grant the plaintiff leave under O 52 r 5(3) in the present case, which stands on a different factual footing. The upshot is that only ORC 6040 remains in play in these proceedings.

Preliminary points on ORC 6040 and the contempt proceedings

51 An intentional breach of an order of court amounts to a contempt of court, under s 4(1) of the Administration of Justice (Protection) Act 2016 (Act 19 of 2016) ("AJPA"):

> **Contempt by disobedience of court order or undertaking, etc.**
>
> **4.**—(1) Any person who —
>
> (*a*) *intentionally disobeys or breaches* any judgment, decree, direction, *order*, writ or other process of a court; or
>
> (*b*) intentionally breaches any undertaking given to a court,
>
> commits a contempt of court.
>
> [emphasis added]

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52 As the Court of Appeal explained in *Mok Kah Hong* (at [56]), there are two stages to the committal of a non-complying party. The first stage is the leave application to commence committal proceedings against the respondent. This was the subject of SUM 767 and ORC 1454 (see [22] above). The second stage involves the actual application for an order of committal against the respondent. This is the subject of SUM 1119.

53 At this second stage, it is well-established that the criminal standard of proof (*ie*, beyond a reasonable doubt) applies: see *Mok Kah Hong* at [85] and s 28 of the AJPA. In assessing whether the respondent has committed a contempt of court by intentionally disobeying an order, a two-step approach is adopted (see *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 ("*PT Sandipala* (2018)") at [46]):

> (a) First, the court will decide what exactly the order of court required the alleged contemnor to do. The court will interpret the plain meaning of the language used in the order, and resolve any ambiguity in the respondent's favour.
>
> (b) Second, the court will determine whether the requirements of the order of court have been fulfilled. In this regard, the complainant has to show that in committing the act complained of or omitting to comply with an order of court, the respondent had the necessary *mens rea*.

54 The parties do not dispute that the defendant remains legally bound to comply with ORC 6040.[46] It is also undisputed that this court has jurisdiction over a contemnor even where the disobedience or failure to comply occurs outside Singapore. This is apparent from s 11(4) of the AJPA:

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[46] PWS at para 64(a); DWS (SUM 1119) at paras 2 and 21–43.

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> **Jurisdiction over certain publications, acts and omissions outside Singapore**
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> **11.**—(1) Without prejudice to the jurisdiction and power conferred under this Act or any other written law, a court has jurisdiction to try any contempt of court and to impose the full punishment under this Act in the circumstances specified in subsections (2) to (5).
>
> …
>
> (4) Where the person who commits contempt of court under section 4 is legally bound to obey or comply with the judgment, decree, direction, order, writ or other process of a court or an undertaking given to a court, regardless of whether the disobedience or failure to comply occurred in Singapore or elsewhere.
>
> …

55 Furthermore, s 12(6) of the AJPA provides that "[t]o avoid doubt, the court may, if the interests of justice so require, find a person guilty of contempt of court and impose the punishment under this section even though the person is absent". These provisions apply squarely to the defendant.

The first breach: the NCLT proceedings

Overview

56 To recapitulate, the first breach relates to the NCLT proceedings (described at [11]–[14] above) and Order 1(a) of ORC 6040. Order 1(a) reads:

> It is ordered that:
>
> 1. An injunction is granted restraining the defendant, whether by himself, his agents or otherwise, from:
>
> (a) pursuing, continuing and/or proceeding with the action commenced by the defendant by way of Company Petition No. 92 of 2021 in the National Company Law Tribunal ("**NCLT**") in Mumbai, India; and/or

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57 It is beyond dispute that Order 1(a) seeks to restrain the defendant in relation to the NCLT proceedings in some way. The nub of the dispute between the parties is whether the defendant's *failure to withdraw* the NCLT Petition amounts to "pursuing, continuing and/or proceeding with" his action in the NCLT.

Parties' arguments

58 Mr Thio interprets Order 1(a) as effectively requiring the defendant to withdraw or discontinue the NCLT proceedings.[47] This is so despite the order being framed as a prohibitory injunction (expressly restraining the defendant from "pursuing, continuing and/or proceeding with" the NCLT proceedings) rather than a mandatory one (expressly requiring the defendant to positively withdraw or discontinue the proceedings). Mr Thio argues that as long as the case remains live, it is "proceeding" and "continuing".[48] The plaintiff does not go so far as to suggest that the case is also being "pursu[ed]" (the third limb).

59 Mr Nandakumar rejects this interpretation, although he does not offer an alternative construction of "proceeding" or "continuing". He contends that Order 1(a) is not framed in positive terms as a mandatory order requiring the defendant to withdraw the NCLT Petition.[49] Instead, he argues that the defendant's continued seeking of adjournments in fact *secures* compliance with ORC 6040, since it pushes any substantive hearing further into the future.[50] These adjournments were moreover not opposed, which must be construed as a

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47 PWS at para 11(a).

48 NE p 3 ln 29 to p 4 ln 2.

49 DWS (SUM 1119) at para 41; NE p 11 ln 4 to 7.

50 DWS (SUM 1119) at para 42; 2nd Affidavit of Mittal at para 25.

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form of waiver by the plaintiff.[51] The defendant also seeks to justify his actions as a means to prevent prejudice. He argues that since the decision in the OS 242 Judgment to grant the permanent ASI is presently on appeal in CA 64, he ought not be made to withdraw the NCLT Petition. Otherwise, should he succeed on appeal, he would not be in a position to continue with the (withdrawn) NCLT proceedings.[52]

60 In response, the plaintiff does not deny the fact that adjournments were sought,[53] but argues that the mere seeking of adjournments does not change the reality that the case remains live and is thus still "proceeding" and "continuing". These proceedings were only adjourned "because of paucity of time, and not because of any agreement by the parties"; this means that "when the case comes up for hearing, the matter could go on that day".[54] As to the defendant's concerns with prejudice, the plaintiff argues that such concerns should properly be addressed by the defendant applying for a stay pending appeal or an *Erinford*-type injunction (referring to the injunction granted in *Erinford Properties Ltd and another v Cheshire County Council* [1974] Ch 261).[55] The plaintiff also submits that the law is clear that an appeal to the Court of Appeal does not ordinarily operate as a stay of execution or enforcement: s 60C(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed).[56]

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51 NE p 7 ln 20 to 25.

52 DWS (SUM 1119) at para 42; 2nd Affidavit of Mittal at para 26.

53 Statement of Committal at para 3(e).

54 NE p 3 ln 18 to 27.

55 PWS at para 59; NE p 3 ln 8 to 14.

56 PWS at para 59.

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My decision

61 The parties' submissions raise two discrete sub-issues:

(a) whether the failure to withdraw the NCLT Petition amounts to "proceeding" and "continuing" with the NCLT proceedings; and

(b) if so, whether the defendant is entitled to unilaterally pursue proceedings in breach of an order of court on the basis that he seeks to avoid prejudice to himself.

(1) The defendant's failure to withdraw the NCLT Petition amounts to proceeding and continuing with the NCLT proceedings

62 At first blush, I accept that Order 1(a) appears to read as a prohibitory injunction and not a mandatory injunction. At least on its face, it requires the defendant *not to do* something (here, to proceed, pursue or continue with the NCLT proceedings) as opposed to requiring him to positively *do* something (such as withdrawing a petition or filing a notice of discontinuance).

63 This distinction between prohibitory and mandatory ASIs also appears to find support in some cases where the courts have expressly included mandatory language in addition to prohibitory language. Ostensibly, the inference here is that where courts intend for mandatory steps to be taken, the relevant orders would state so.

64 For example, in *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2015] 5 SLR 873 ("*PT Sandipala* (2015)"), the High Court used both mandatory and prohibitory language, and ordered a party to "forthwith *withdraw*, and be restrained from pursuing, or continuing to pursue, the claim …" (at [1(a)] and [4]).

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65 Similarly, the ASI granted in the English case of *Mobile Telecommunications Company Ltd v HRH Prince Hussam bin Saudi bin Abdulaziz Al Saud (t/a Saudi Plastic Factory)* [2018] EWHC 1469 (Comm) ("*Mobile Telecommunications*") included both directions of a prohibitory nature (paragraph 5 of the injunction) and those of a mandatory nature (paragraph 6 of the injunction). The text of the ASI (set out below) was reproduced more fully in the later decision of *Mobile Telecommunications Co KSC v HRH Prince Hussam Bin Abdulaziz Au Saud* [2018] EWHC 3749 (Comm):

> … Paragraph 5 provided:
>
> 'The defendant/respondent *must not* whether by himself or by his directors, officers, partners, service or agents or otherwise howsoever –
>
> (a) *prosecute, pursue and/or otherwise continue and/or take any further substantive or procedural step* against the claimant/applicant in the proceedings commenced in the 25th Judicial Division of the Riyadh General Court in the Kingdom of Saudi Arabia with case number 3485935 'The Saudi proceedings', against the claimant/applicant including in any appeal they are in; save for the purposes of dismissing, withdrawing and/or otherwise discontinuing the said Saudi proceedings against the claimant/applicant. (For the avoidance of doubt, resisting any appeal therein brought by the claimant/applicant shall amount to prosecuting or pursuing or continuing or taking steps in such proceedings.'
>
> … Paragraph 6 provided that:
>
> '6. The defendant/respondent *shall discontinue and/or otherwise withdraw and/or procure the dismissal* of the Saudi proceedings –
>
> (1) as soon as reasonably practicable but in any event,
>
> (2) before the earlier of
>
> (a) any further hearing in Saudi Arabia and –
>
> (b) 5.00 p.m. Gulf time on Friday, 25 May 2018.'
>
> [emphasis added]

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66 Finally, there are English authorities suggesting that a higher threshold must be crossed before a mandatory ASI is granted; the implication here being that a prohibitory ASI should not become a more convenient backdoor route for obtaining a mandatory ASI when the latter is not specifically sought and obtained. As observed in Thomas Raphael QC, *The Anti-suit Injunction* (Oxford University Press, 2nd Ed, 2019) ("*The Anti-suit Injunction*") at paras 3.38–3.39:

> The standard form of anti-suit injunction[s] is prohibitory, restraining the injunction defendant from taking any further steps to pursue the foreign proceedings. However, this may not be enough to ensure that the injunction is practically effective. The foreign action may have a life of its own. Consequently, in appropriate cases the court will also grant a mandatory anti-suit injunction requiring the injunction defendant to obtain the equivalent of a stay of the foreign proceedings or even to discontinue them. …
>
> *A mandatory anti-suit injunction can be seen as a more invasive form of relief, and there are a number of cases suggesting that a stronger case, and particular reasons, is required to justify it. …*
>
> [emphasis added]

The cases referenced by *The Anti-suit Injunction* include *Ecom Agroindustrial Corp Ltd v Mosharaf Composite Textile Mill Ltd* [2013] EWHC 1276 (Comm), where it was observed at [37] that "a court should be more cautious before ordering a mandatory injunction"; and *Evergreen Marine (Singapore) Pte Ltd v Fast Shipping & Transportation Co Ltd* [2014] EWHC 4893 (QB), where the court noted at [19] that "it is only right to grant mandatory relief exceptionally and if the court is satisfied that a prohibitory injunction would not be an adequate remedy". These observations notwithstanding, however, I note that a mandatory injunction was readily granted in both cases.

67 On the other hand, there appears to be a growing view that, in appropriate circumstances, drawing technical distinctions between prohibitory and mandatory language *in ASIs* might amount to needless formalism. As *The*

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Anti-suit Injunction explains at para 3.39 (after making the observations described at [66] above), mandatory language might simply "be no more than the spelling out of the inevitable consequence of a prohibitory injunction":

> … There are signs, however, that the courts are moving to a more sophisticated view. It can be artificial to treat the dividing line between mandatory and prohibitory relief in any rigid fashion. *A so-called mandatory injunction requiring discontinuance may in truth be no more than the spelling out of the inevitable consequence of a prohibitory injunction preventing continuance of the foreign action.* Further, stopping the foreign action may be a cleaner and clearer result than prohibiting it from being pursued and may require less policing. So, it may be that the mere fact that an injunction could be regarded as mandatory should not automatically trigger any different and more demanding regime: the focus should be on whether, in truth, the mandatory relief is more invasive in a way that should demand higher scrutiny. [emphasis added]

68 A similar view was expressed in *Mobile Telecommunications*. In relation to the mandatory ASI granted (see [65] above), the court stated (at [19]):

> … I say that *that specific provision, mandatory in form, in truth does no more than express in words what ordinarily is required and, indeed, is expected and assumed to occur when final injunctive relief is granted preventing a defendant from prosecuting, pursuing or otherwise further continuing proceedings* that have been brought in breach of contract or otherwise vexatiously or oppressively, and is plainly appropriate in circumstances where that relief has now been granted on a final basis and on the evidence of the events of the last few weeks it is apparent that it is necessary for the defendant to take an active step in order to prevent the Saudi proceedings from going any further. So in my judgment, it is entirely correct to express that in terms in a specific mandatory form of order in the injunction to be granted today. [emphasis added]

69 In my view, these comments provide a compelling answer to the suggestion above at [63]–[66] that courts only intend for an ASI to have mandatory consequences when these are expressly stated. Rather, such language is often included prophylactically for good measure – as a way of making

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explicit or reinforcing what is "expected and assumed to occur" in the "standard form" prohibitory ASI; in other words, a "belt and braces" approach. The fact that mandatory language is sometimes used should not be interpreted to mean that purely prohibitory directions – which after all form the majority of ASIs granted – can never achieve mandatory effects, or that mandatory language should be used to "read down" the import of prohibitory language. Such an extreme interpretation rests on an unstated and unsubstantiated assumption – that some form of clinical, bright line separation necessarily exists between mandatory and prohibitory directions in an ASI.

70 The artificiality of such a clinical separation becomes apparent once one considers how ASIs operate in reality. A party directed to not continue an action would, in the ordinary course of things, feel compelled to file a notice of discontinuance or take some equivalent step to terminate it. This is because the initiative does not lie with the party to decide whether or when to continue an action (save perhaps where the action has been stayed). Control over the action's progress lies with the *court* (wherever situated), which may fix matters for hearing and in this sense *force* the party to take a decision on how it intends to proceed. Each time this occurs, the party is placed at risk of breaching the ASI for as long as those proceedings remain alive; the safer and often more obvious option would simply be to bring the foreign proceedings to an end once and for all. In practice, therefore, a prohibition on continuing proceedings, and a decision to discontinue proceedings, are almost always two sides of the same coin. It is with this practical context in mind that ASIs are drafted and granted. It bears reiterating that the majority of ASIs contain purely prohibitory language. It seems most unlikely that the courts ordering these ASIs intend only a partial restraint on foreign proceedings, or that they would be content with

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litigants merely keeping foreign proceedings in abeyance, while leaving open the option of continuing with those proceedings whenever they choose.

71 In the final analysis, when interpreting ASIs, one must not lose sight of their essential nature and purpose or be blinkered by form over substance. A court granting an ASI is, in effect, directing a party not to frustrate litigation or arbitration proceedings by pursuing parallel proceedings abroad, whether such proceedings are brought in breach of the parties' agreement on dispute resolution or otherwise in a manner that the court considers to be unconscionable. Whether an injunctee's conduct complies with an ASI therefore must be assessed having due regard to this purpose. As explained in *Aurol Anthony Sabastian v Sembcorp Marine Ltd* [2013] 2 SLR 246 ("*Sembcorp (CA)*") at [99]:

> … In proceedings for criminal contempt, the court will not adopt a myopic and blinkered view of the scope of an order. It is ultimately the *purpose* for which the order was granted that will be the lodestar in guiding the court's determination as to the true *effect* of the order. … [emphasis in original]

72 In *Sembcorp (CA)*, the Court of Appeal interpreted an interim sealing order which prevented the *inspection* of sealed documents by a non-party as also proscribing the *disclosure* of said documents by a party. As the court reasoned at [101]:

> This is the same distinction we have already alluded to at [29] above. *While in a narrow sense*, the effect of granting the interim sealing order was that it prevented an individual from inspecting the sealed documents, *it was evident that the AR had intended that the public should not have access to the confidential information contained in the sealed documents through any other means*. To find otherwise would mean that a party to the proceedings who might routinely have obtained copies of the sealed materials as well as a non-party who somehow obtained possession of them could, with impunity, have disclosed the confidential information to the public in spite of the interim sealing order. *This would not only denude the*

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> *interim sealing order of all meaning and effect, but would also allow one, in the words of Lindley LJ, to 'set the court's process at naught'.* By any measure, it would be perverse if such conduct were not also caught within the ambit of the offence of criminal contempt provided each element had been satisfactorily proved. [emphasis added]

73 To be sure, these observations were made by the Court of Appeal with a different question in mind, namely whether a *third party* to the order of court was in contempt for interfering with the administration of justice. In answering this question, it is well-accepted that the relevant test examines whether the third party deliberately frustrated the order's *purpose* (*Sembcorp (CA)* at [72]). Be that as it may, as a matter of principle, it seems inconceivable that an order's purpose would only be relevant to third parties but not a *named* party. In my judgment, the principles articulated in *Sembcorp (CA)* are no less relevant to direct injunctees. It is notable that the analysis in [99] and [101] of the case is not worded as being confined to third-party situations.

74 These principles had also been articulated by Quentin Loh J (as he then was) sitting in the High Court on the same matter, in *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 ("*Sembcorp (HC)*") at [40]–[41]. A number of observations made by the learned judge are worth repeating:

> 40 A court therefore has to look at the purpose of the order, to determine whether the contemnor had the requisite intention to interfere with the administration of justice and therefore whether he intended, by his act, to frustrate or thwart the purpose of the order: *A-G v Times Newspapers* at 223, and then to determine whether the contemnor's act carried a real risk that the administration of justice would be interfered with. ***The court also has to consider whether the act or acts in question had the effect of destroying or nullifying either the purpose of trial, pursuant to which the order of court was made, or the order itself***: *A-G v Times Newspapers* at 206H–207F. ***It is clear that the purpose of the court which granted the order, and not only the purpose of the parties applying for the order, is what is relevant***: *A-G v Punch* at [39]:

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> … *Fundamental to the concept of contempt in this context is the intentional impedance or prejudice of the purpose of the court.* The underlying purpose of the Attorney General, as the plaintiff in the proceedings against Mr Whayler, in seeking the order against Mr Shayler is nothing to the point. Lord Oliver of Aylmerton adverted to this distinction in *Attorney General v Times Newspapers* [1992] 1 AC 191, 223:
>
> > *"Purpose", in this context, refers, o[f] course, not to the litigant's purpose in obtaining the order or in fighting the action but to the purpose which, in seeking to administer justice between the parties in the particular litigation of which it has become seised, the court was intending to fulfil.*
>
> [emphasis added]
>
> 41 The court is not strictly confined to the express terms of the order when determining the purpose of the court in granting the order in criminal contempt proceedings. ***The court is also entitled to consider the circumstances surrounding the grant of the order and its purpose***: see *A-G v Times Newspapers* at 224D–224E; *Arlidge, Eady & Smith on Contempt* (Sweet & Maxwell, 3rd Ed, 2005) at paras 11-43 and 12-51. …
>
> [emphasis in original in italics; emphasis added in bold italics]

75 Even if I am wrong that these observations (at [67]–[74] above) are of general applicability, I nevertheless find that they make eminent sense and would certainly apply on the present facts at the very least. The defendant's failure to discontinue the NCLT proceedings can only amount to continuing and/or proceeding with them. The adjournments here are not *sine die*; nor are the NCLT proceedings held in abeyance specifically until CA 64 is decided. Instead, the adjournments have been administrative and were necessitated only by the paucity of time in that the NCLT has been unable to hear the matter. It is undisputed that the matter continues to be listed in the NCLT's hearing list. When the case finally comes up for hearing before the NCLT, the expectation is that it can and will be heard. Indeed, the only plausible explanation for the defendant's conduct is that he *wants* the matter to be heard, and is keeping the proceedings alive for this very reason.

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76 In my judgment, the defendant's conduct in no way accords with the letter and spirit of ORC 6040 and the stated purpose for which it was granted in the OS 242 Judgment. When ORC 6040 was granted, the NCLT proceedings were already afoot. I found that this was contrary to the parties' agreement to arbitrate in Singapore. Order 1(a) was thus granted with *specific* reference to the NCLT proceedings, and expressed in wide terms – "pursuing, continuing and/or proceeding with" – which phrase covers every conceivable manner of enabling the NCLT proceedings to remain afoot. In the circumstances, the defendant cannot possibly justify how his conduct was consistent with the nature and purpose of Order 1(a) of ORC 6040.

(2) The defendant's concerns with prejudice do not justify breaching Order 1(a)

77 On the second sub-issue of prejudice, I agree with Mr Thio that the potential prejudice from withdrawing proceedings is no justification for contempt of court. An injunctee who does not wish to comply with an order or who believes an order is wrong cannot simply ignore his duty to comply – his or her recourse is in having the order discharged, set aside or stayed (*OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 at [28]–[29]; *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 ("*Pertamina*") at [81]–[82]). The defendant's proper recourse was to seek a stay pending his appeal in CA 64, or as Mr Thio submitted, to seek a carve-out from the ASI to enable him to seek adjournments of the NCLT proceedings. Neither course was pursued by the defendant.

78 The defendant has also failed to particularise the prejudice he expects to suffer. As the plaintiff submitted at the oral hearing, while there may be cost considerations to withdrawing the NCLT proceedings and starting again, such

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prejudice is not irreparable as the possibility of instituting fresh NCLT proceedings is not (on the available evidence) foreclosed.[57] Certainly, the defendant has not asserted that there would be any obstacle to him withdrawing the NCLT proceedings and starting afresh if necessary, should he prevail in CA 64.

(3) Conclusion

79 Given my findings above, I am satisfied that the defendant has breached Order 1(a) of ORC 6040.

The second breach: Bombay High Court proceedings (Suit 95)

Overview

80 To recapitulate, the second breach relates to the proceedings before the Bombay High Court (described at [15]–[20] above) and Order 1(b) of ORC 6040. Order 1(b) provides as follows:

> It is ordered that:
>
> 1. An injunction is granted restraining the defendant, whether by himself, his agents or otherwise, from:
>
> …
>
> (b) commencing or procuring the commencement of *any legal proceedings in respect of any dispute, controversy, claim or disagreement of any kind in connection with or relating to the management of People Interactive (India) Private Limited ("**People Interactive**"), or in connection with or relating to any of the matters set out in the Shareholders' Agreement* dated 10 February 2006, as amended from time to time (the "**SHA**") in any other dispute resolution forum other than an arbitration tribunal constituted in accordance with the rules laid down by the International Chamber of Commerce ("**ICC**") and seated in Singapore, against the plaintiff,

[57] NE p 3 ln 9 to 13.

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> and/or Shobitha Annie Mani and/or Navin Mittal and/or Anand Mittal and/or People Interactive and/or any person in relation to any dispute relating to the management of People Interactive, or arising from, connected with or relating to any of the matters set out in the SHA.

[emphasis added in italics]

81 Parties' submissions clashed over two sub-issues:

(a) whether any of the defendant's steps in the proceedings before the Bombay High Court amounted to "commencing … any legal proceedings"; and

(b) if so, whether the proceedings commenced were "in respect of any dispute, controversy, claim or disagreement of any kind in connection with or relating to the management of People Interactive … or in connection with or relating to any of the matters set out in the [SHA]".

82 It is plain that if both questions are answered in the affirmative, the remainder of the requirements under Order 1(b) would also be satisfied. Proceedings in the Bombay High Court are proceedings "in any other dispute resolution forum other than an arbitral tribunal" of the relevant description.

Whether the defendant commenced proceedings subsequent to the grant of the permanent ASI on 26 October 2021

83 There are two key dates on which steps were taken by the defendant in the Bombay High Court proceedings:

(a) 18 March 2021 – Suit 95 and IA 1010 (application for interim reliefs) were filed.

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(b) 15 November 2021 – IA 2827 (application to amend Suit 95 and for the EGM Injunction) was filed.

(1) Suit 95 and IA 1010 (filed on 18 March 2021)

84 As noted at [7], the plaintiff has chosen to rest its application for committal solely on breaches of the permanent ASI granted in ORC 6040, and is not pursuing breaches of the interim ASI granted in ORC 1463 in these proceedings. ORC 6040 was made on 26 October 2021 and served on the defendant on 1 November 2021. The plaintiff does not argue that ORC 6040 has retrospective effect, whether by relating back to the date of ORC 1463 or otherwise.

85 Consequently, the defendant says that Suit 95 and IA 1010, which were filed (*ie*, commenced) *prior* to 26 October 2021, cannot seriously be regarded as having been commenced in breach of Order 1(b) of ORC 6040. Order 1(b) is unambiguous in enjoining only the *commencement* of proceedings and their procurement thereof; it does not expressly proscribe the continued prosecution of proceedings that have already been commenced.[58]

86 Mr Thio responded that Order 1(b) could not be read this restrictively. His basis for this was a point of logic: that one cannot be permitted to continue something that one could not start.[59] The defendant was, Mr Thio contended, effectively sliding into a linguistic gap in the Order to launch a collateral attack.

87 In my view, there is some rhetorical force to Mr Thio's argument. At the same time, however, it is not without difficulty:

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58 DWS (SUM 1119) at para 32.

59 PWS at para 8(b); NE p 4 ln 18 to 31 and p 5 ln 8 to 13.

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(a) Textually, Order 1(b) only refers to the commencement of proceedings. It does not use words such as "pursuing", "continuing" or "proceeding with", even though these same words were used in Order 1(a).

(b) The statement that "one cannot be permitted to continue something that one could not start" has as a logical predicate that Suit 95 could not be lawfully started. There is therefore some circularity to this logic (at least in so far as ORC 1463 is not in the picture) – the plaintiff must still show why Suit 95 could not be started.

(c) Procedurally, by the time OS 242 was heard on 29 April 2021, Suit 95 had already been commenced. Therefore, the plaintiff had the opportunity to apply to amend the OS to seek broader language for Order 1(b), rather than keeping to the original wording in terms of "commencement". While it is perhaps arguable whether the plaintiff ought to have done so, the fact that it did not remains a relevant consideration.

88 Nevertheless, in the final analysis and notwithstanding these difficulties, I find that I need not reach a conclusion on this issue. This is in light of my next finding: that the commencement of *IA 2827* fell within the temporal scope of ORC 6040.

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(2) IA 2827 (filed on 15 November 2021)

89 IA 2827 does not raise the same temporal issues, because it was filed after ORC 6040 was made. Rather, the issue is whether the filing of IA 2827 amounts to the commencement of a legal proceeding.[60]

90 The plaintiff argues that it does, as the reference in Order 1(b) to "the commencement of any legal proceedings" extends to the filing of interlocutory applications.[61]

91 The defendant argues that it does not.[62] To this end, he relies on expert evidence on Indian law to the effect that IA 2827 "cannot be regarded as commencement of any further or fresh legal proceedings" as it "was filed in aid of the final relief sought in [Suit 95]".[63]

92 I find that IA 2827 was a legal proceeding "commenced" within the meaning of Order 1(b).

93 As a threshold point, it is in my view doubtful that this issue (*ie*, whether the filing of IA 2827 amounts to the commencement of proceedings) falls to be decided by Indian law. The plaintiff's position is similarly that "Singapore law suffices to establish [the defendant's] breach of [ORC 6040] and his corresponding contempt of court".[64] On the other hand, the defendant has not submitted *why* Indian law ought to apply to this question. To my mind, it is

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60 PWS at paras 48–52.

61 NE p 16 ln 29 to 30.

62 2nd Affidavit of Mittal at para 24.

63 DWS (SUM 1119) at para 33; 1st Affidavit of Shahrukh J Kathawalla dated 8 June 2022 ("Affidavit of SJK"), Exhibit SJK-1 at paras 29 and 34.

64 PWS at para 63.

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material that ORC 6040 is an order of this court as the court in the arbitral seat. The ASI in the OS 242 Judgment was granted on the basis of the court's conclusion that Singapore law as the *lex arbitri* governs the issue of arbitrability at the pre-award stage. These committal proceedings fundamentally engage the interpretation and application of ORC 6040 in the context of *enforcing* the defendant's compliance with that very ASI. The *grant* of an ASI like ORC 6040 is itself governed by the law of the granting court, *ie*, Singapore law (*The Anti-suit Injunction* at paras 4.08–4.10). To my mind, Singapore law should also logically extend to matters such as the precise content and wording of the ASI for purposes of its enforcement in this court. Thus, even if any choice of law issue is involved, the relevant choice in this case would, in my view, be Singapore law as the *lex arbitri* and not Indian law as (for example) the law governing the SHA.

94 In any event, even if Indian law were to apply to this question, the defendant's expert evidence does not address the actual issue at hand. With respect, the defendant's expert report only concludes that the commencement of IA 2827 would not amount to the commencement of "further or fresh" proceedings.[65] It does not address the textually and conceptually broader category of "any legal proceeding".[66] The qualifiers of "further" and "fresh" are significant – they both presuppose the existence of prior or existing proceedings, and require the commenced proceedings to be "further" or "fresh" *relative to* the prior or existing proceedings. By contrast, "any legal proceeding" is framed without such a limitation.

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65 Affidavit of SJK, Exhibit SJK-1 at para 34.

66 5th Affidavit of SAM at para 16(b).

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95 Furthermore, how the defendant's expert reaches his conclusion is also not entirely clear. A foreign law expert's role is to not only present his or her opinion as to the effect of foreign law, but also to present the underlying evidence and analytical process by which such opinion is reached (*Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 ("*Pacific Recreation*") at [78] and [85]). It is for this court to then make its own findings of what the foreign law is (*Pacific Recreation* at [85], citing *The "H156"* [1999] 2 SLR(R) 419 at [27]). In this case, the defendant's expert's sole basis for his opinion was the following excerpt from *State of Orissa v Madan Gopal Rungta* (1952) SCR 28 ("*State of Orissa*") at 35: "[a]n interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding".[67] This appears to address the *substantive conditions* under which interim relief may be granted; it says nothing about whether IA 2827 would *procedurally* stand apart as a separate proceeding capable of being commenced.

96 This impression is reinforced once one carefully studies the paragraph in *State of Orissa* that the excerpt is taken from and examines the issue the court was confronted with (at 34–35):

> On behalf of the appellant it was urged that the Court had no jurisdiction to pass such orders under Article 226 [of the Constitution of India] under the circumstances of the case. This is not a case where the Court before finally disposing of a petition under Article 226 gave directions in the nature of interim relief for the purpose of maintaining the *status quo*. ***The question which we have to determine is whether directions in the nature of interim relief only could be granted under Article 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature***

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67 Affidavit of SJK, Exhibit SJK-1 at para 30.

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> ***could be issued***. In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of section 80 of the Civil Procedure Code, and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of the opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the *status quo ante*. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action. On that short ground the judgment of the Orissa High Court under appeal cannot be upheld. [emphasis in original in italics; emphasis added in bold italics]

It is evident that the court in *State of Orissa* was not at all concerned with the question of when "proceedings" (much less "any legal proceedings") may be said to be "commenced". As such, the case does not provide a clear basis for the defendant's expert's opinion that the commencement of IA 2827 would not amount to the commencement of "further or fresh" proceedings. Even if one accepts the case of *State of Orissa* to be of some relevance, the defendant's expert report remains silent on the *analytical process* by which one goes from the case to the eventual opinion expressed. For these reasons, I find the defendant's expert opinion to be of little assistance.

97 I return to examine IA 2827 through the lens of Singapore law.

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98 I first note that there is no overriding statutory definition that binds or informs what "commenc[ing] … any legal proceeding" means in Singapore. This may be contrasted with Malaysia's Courts of Judicature Act 1964 (M'sia), for instance, where s 3 of the same defines "proceeding" to mean "any proceeding whatsoever of a civil or criminal nature and includes an application at any stage of a proceeding".

99 The only Singapore authority cited by the parties is the case of *Attorney-General v Tee Kok Boon* [2008] 2 SLR(R) 412 ("*Tee*"). Mr Thio placed particular reliance on the following extracts from the judgment of Woo Bih Li J (as he then was), and argues that they provide support for an expansive reading of what it means to "institute proceedings":[68]

> 90 On the other hand, Blair JA said at 240:
>
> In my view, the word "institute" is of the same generic type as the word "proceeding". There is no fixed and unalterable meaning to be attached to the phrase "institute proceedings". The often-quoted comment of Martin, J.A., in *Eddy v. Stewart* [1932] 3 W.W.R. 71 at p. 74, about the variable meaning of the word "proceeding", *applies with equal force to the words "institute proceedings*". He said:
>
> The word "proceeding," in its derivative sense, means, according to *Murray's English Dictionary*, vol. 7, at p. 1407, "*the action of going onward; advance, onward movement or course.*" In its legal sense, it includes the form in which actions are brought and defended; the manner of intervening in suits and of conducting them; *it is sometimes used as equivalent to and interchangeable with the word "action," and it is also applied to any step in an action.* From the authorities it is clear that the word may be differently construed in different Acts: *Stroud's Judicial Dictionary*, vol. 3, pp. 1561 *et seq.*; *Ratteau v. Ball* (1914) 47 N.S.R. 488, 15 D.L.R. 574—Townshend, C.J., at p. 576.

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[68] NE p 5 ln 27 to p 6 ln 2.

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> The meaning of the word "proceeding," … must be gathered from the context.

91 He continued at 242–245:

> The words "instituted proceedings", in my opinion, were intended by the Legislature to describe broadly how proceedings may commence. *Proceedings can be undertaken in a number of ways, including*: the issuing of a writ; *the making of an application*; the bringing of a motion; or the launching of an appeal. The statute is intended to cover a variety of proceedings and until very recently there was no suggestion that it did not. …

[emphasis added in italics]

These were observations made by Blair JA in the Ontario Court of Appeal case of *Foy v Foy (No 2)* (1979) 26 OR (2d) 220 ("*Foy*"), a case concerning the interpretation of the phrase "instituted vexatious legal proceedings" in s 1(1) of the Vexatious Proceedings Act, RSO 1970, c 481 (Can) ("VPA").

100 *Tee* itself concerned the interpretation of an order of court sought pursuant to s 74(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA 1999"). Section 74(1) of the SCJA 1999 empowered the court to order, *inter alia*, that "no legal proceedings shall without the leave of the High Court be instituted by [a person] in any court" where that person "has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings". One of the interpretive questions the court was faced with was whether s 74(1) applied to interlocutory proceedings. Adopting a purposive interpretation, namely that s 74(1) was meant to prevent abuses of the court's process through vexatious litigation, the court held that it did (at [99]).

101 While the court in *Tee* did not directly attribute its decision to Blair JA's observations in *Foy*, this does not prevent me from placing reliance on those observations. In these proceedings, I am not concerned with the interpretation of s 74(1) of the SCJA 1999 *per se*; I am instead concerned with the broader

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question of whether a litigant should be allowed to commence proceedings when these may be vexatious. In *Foy* and *Tee*, this took the form of a statutory restraint on a vexatious litigant; in the present proceedings, this concerns the defendant's pursuit of foreign proceedings in defiance of an ASI and the underlying arbitration agreement – a breach which I found to be *prima facie* vexatious and oppressive at [88] of the OS 242 Judgment.

102 I find Blair JA's comments to persuasive. They are, in my judgment, relevant and may also be applied to the interpretation of ORC 6040. Blair JA made two main points:

> (a) First, as a linguistic matter, the word "proceeding" is wide enough to encompass "any step taken in an action". As the learned Justice explained, a proceeding can be "undertaken" not only by way of a writ or appeal, but also through the "making of an application" or "bringing of a motion" (and in Blair JA's view, this was precisely how s 1(1) of the VPA ought to be interpreted).
>
> (b) Second, what "institut[ing] proceedings" means is in the final analysis a contextual inquiry. There is "no fixed and unalterable meaning" attached to this phrase. Likewise, what "proceeding" means "must be gathered from the context".

103 On the facts, the context of ORC 6040 is clear (see [71] and [76] above) – the defendant has been restrained from taking steps inconsistent with the arbitration agreement. Moreover, read as a whole, the ASI was not confined to fresh actions that had yet to be commenced. The co-existence of Order 1(a) alongside Order 1(b) makes this clear: their *collective width* demonstrates the intent that all manner of proceedings were not to be advanced by the defendant.

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There is nothing in the language or context of ORC 6040 that detracts from this. Neither is there anything intrinsic to the word "proceedings" that confines this to originating actions as opposed to interlocutory steps within an action (as Blair JA noted, at [99] and [102] above). The breadth of the specific phrase used in ORC 6040 – "*any* legal proceeding" – only serves to fortify my conclusion.

104 I acknowledge that there *may* exist a penumbra of procedural steps, particularly those of a purely administrative or logistical nature, which *may* fall outside the ambit of "any legal proceeding" under ORC 6040. However, I am satisfied that IA 2827 is not one such case. In the papers filed in IA 2827, the defendant himself emphasised that it was "critical that the proposed amendments be carried out for [the Bombay High Court] to have the benefit of all the facts and issues in the matter before deciding on the reliefs sought in [Suit 95]",[69] and that "the proposed amendments are necessary for a complete and effective adjudication of [Suit 95]".[70] On his own case, these were not inconsequential amendments, but bore a direct and significant relation to the reliefs sought under Suit 95. Furthermore, IA 2827 is not purely an amendment application; the defendant sought *fresh relief* in the form of a temporary injunction on the holding of the EGM (see paragraph 14(b) at [17] above). Put differently, the EGM Injunction could not have been obtained by the defendant by merely continuing with Suit 95 as such. Granted, the *plaintiff* had itself previously advised the Bombay High Court of voluntary adjournments of the EGM on a number of occasions, resulting in the EGM being adjourned from 7 April 2021 to 22 November 2021.[71] However, this does not detract from the

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69 IA 2827 application dated 15 November 2021 ("IA 2827 application") in 3rd Affidavit of SAM, Exhibit SAM-29 at p 635 at para 9.

70 IA 2827 application in 3rd Affidavit of SAM, Exhibit SAM-29 at p 637 at para 12.

71 3rd Affidavit of Anupam Mittal dated 8 July 2022 at paras 13–14 (and Exhibit AM-41 at pp 16–29); DWS (SUM 1119) at para 36.

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fact that *the defendant* has now made an application for a form of relief in Suit 95. ORC 6040 does not distinguish between reliefs that the plaintiff might deem (or might have formerly deemed) acceptable and those that it does (or did) not.

105 I therefore find that the filing of IA 2827 amounts to the commencement of a legal proceeding falling within the ambit of Order 1(b) of ORC 6040.

Whether IA 2827 is in respect of a dispute connected with and/or relating to the management of People Interactive or matters set out in the SHA

106 At the outset, it bears recalling that the central reason I granted the ASI in the OS 242 Judgment was to secure the defendant's compliance with the parties' arbitration agreement, which covers "dispute[s] *relating to* the management of [People Interactive] or *relating to* any of the matters set out in [the SHA]" [emphasis added].

107 The plaintiff says that IA 2827 relates to the management of People Interactive and the SHA. In particular, its Indian law expert takes the view that the *EGM Injunction* pertains to the management of People Interactive and matters set out in the SHA as it engages shareholders' rights – specifically the appointment of directors (a matter provided for in the SHA).[72]

108 The defendant says that neither IA 2827 nor Suit 95 relates to the management of People Interactive or the SHA, and relies on his Indian law expert's evidence that in Suit 95, there will be "no adjudication of the reliefs sought for the [NCLT] Petition" before the Bombay High Court. Rather, there will only be "an adjudication on the *nature of disputes raised* in the [NCLT] Petition and whether [the defendant] is entitled to an anti-enforcement

[72] 2nd Affidavit of Ciccu Mukhopadhaya dated 29 June 2022, Exhibit CM-6, at pp 34–35 at para 58.

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injunction" [emphasis added].[73] His expert thus concludes that "[t]he final reliefs sought for in [Suit 95] … cannot … be construed as relating to the management of [People Interactive] or relating to the matters set out in the SHA."[74] As to IA 2827 in particular, the defendant argues that the application serves a limited purpose – to amend the prayers sought and bring on record subsequent facts and events.

109 As I explain below, I find that IA 2827 is a proceeding in respect of a dispute connected with or related to the management of People Interactive and the SHA. This conclusion applies to both reliefs sought under IA 2827, *ie*, the amendments and the EGM Injunction.

(1) "In connection with" and "relating to"

110 As a starting point, in our jurisprudence, arbitration and jurisdiction clauses containing expressions such as "in connection with" and "relating to" have consistently been regarded as importing a wide scope of disputes/matters. For instance:

> (a) In *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732, the Court of Appeal observed at [50] that "the phrase 'arising out of or in connection with' that appears in the subject clause *has a wide ambit that extends to all manner of issues that have a relationship with the SPA*. *A generous interpretation should be given to such a phrase* ..." [emphasis added].

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73 DWS (SUM 1119) at paras 27–29; Affidavit of SJK, Exhibit SJK-1 at pp 17–19 at paras 36–43.

74 Affidavit of SJK, Exhibit SJK-1 at p 19 at para 43.

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(b) In *Sabah Shipyard (Pakistan) Ltd v Government of the Islamic Republic of Pakistan* [2004] 3 SLR(R) 184, Judith Prakash J (as she then was) endorsed at [12] the view that "words of broad import such as 'in connection with this contract' are to be given their natural meaning in the context in which they are found, and are not to be cut down by reference to earlier decisions giving a narrower meaning to the same or similar expressions in other contexts".

(c) In *Gulf Hibiscus Ltd v Rex International Holding Ltd and another* [2017] SGHC 210 at [74], Aedit Abdullah JC (as he then was) described the phrase "arising under, out of or relating [to]" an agreement as being "a very wide one".

111 These views are consonant with Gary Born's survey of global arbitral practice. Born observes that "[c]ourts in almost all jurisdictions have concluded that the phrase 'relating to' extends an arbitration clause to a broad range of disputes" and that "[t]here are virtually no contrary authorities and the term 'relating' should ordinarily be interpreted very expansively, as encompassing any matter, dispute, or claim having any material connection to the parties' contract or their actions under that contract" (see 'Chapter 9: Interpretation of International Arbitration Agreements' in Gary B Born, *International Commercial Arbitration* (Kluwer, 3rd Ed, 2021) ("*International Commercial Arbitration*") at pp 1455–1457). Similar observations are made for the phrase "in connection with" (*International Commercial Arbitration* at pp 1457–1459).

112 In my judgment, these observations apply equally to an ASI granted to give effect to an arbitration agreement – as in the present case. In such circumstances, in granting an ASI, the court is simply "enforcing [the] contractual promise" made between parties: *John Reginald Stott Kirkham and*

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others v Trane US Inc and others [2009] 4 SLR(R) 428 at [29]. Unless an ASI applicant seeks and obtains an ASI of a different scope, rational commercial parties are likely to expect consistency between the scope of their arbitration agreements and of the ASIs obtained to enforce those arbitration agreements. In this case, this ought, at the minimum, to mean that the meaning of the phrase "related to" in the parties' arbitration agreement would carry over into ORC 6040.

(2) The management of People Interactive and/or matters set out in the SHA

113 Turning to the facts, it is, in my view, difficult to see how the reliefs sought in IA 2827 could be anything but connected with or related to the management of People Interactive and matters set out in the SHA:

(a) In respect of the amendments, the defendant's own submission in IA 2827 was that these were sought to enable "the reliefs sought in [Suit 95 to] be suitably modified".[75] Each relief was sought with the ultimate objective of facilitating or furthering the NCLT proceedings in some way – and thus pursuing the resolution of a dispute in relation to the management of People Interactive and/or matters set out in the SHA. The defendant sought to downplay these amendments by suggesting that they were merely updates "to bring on record subsequent facts and events",[76] for the Bombay High Court to "have the benefit of all the facts and issues in the matter before deciding on the reliefs sought in the captioned Suit".[77] This is somewhat euphemistic. The truth is that, in

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75 IA 2827 application in 3rd Affidavit of SAM, Exhibit SAM-29 at p 635 at para 9.

76 DWS (SUM 1119) at para 6.

77 IA 2827 application in 3rd Affidavit of SAM, Exhibit SAM-29 at p 635 at para 9; NE p 10 ln 1 to 5.

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substance, these amendments were *essential* to preserving the utility of Suit 95, for most of the originally-pleaded reliefs (referencing and dealing with the *temporary* ASI) had been rendered functionally useless and otiose once the *permanent* ASI had been granted and superseded the temporary ASI.

(b) As for the EGM Injunction, I agree with the plaintiff's submission that preventing the holding of the EGM (and thus a vote on the appointment of directors to the board of People Interactive) directly interferes with shareholders' rights – a matter set out in the SHA.[78] It is difficult to see what else the EGM Injunction could be described as. It is also striking that a similar injunction had previously been sought by the defendant in the NCLT proceedings (at para 102(g) of the NCLT Petition)[79] – the very proceedings which the defendant was not to continue with by virtue of Order 1(a) of ORC 6040.[80]

114 To this, the defendant's primary response (alluded to at [108]) is that the reliefs sought in IA 2827 and Suit 95 differ from the final reliefs sought in the main action (be it the reliefs that would likely be sought in arbitration, or those actually sought in the NCLT proceedings). In respect of IA 2827 in particular, the interim reliefs are, according to his Indian law expert, "only in aid of and in furtherance of the final reliefs in [Suit 95]".[81] Accordingly, the issues to be adjudicated would also differ; for instance, the Bombay High Court would only

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78 PWS at para 55(a).

79 5th Affidavit of SAM, Exhibit SAM-37 at p 149 at para 102(g).

80 PWS at para 52; 5th Affidavit of SAM at para 18.

81 DWS (SUM 1119) at para 39.

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have to characterise the nature of disputes raised and assess whether the conditions for granting the various injunctions sought are met.[82]

115 This argument based on the *precise issues* to be adjudicated is misplaced.

116 To be clear, issues raised and reliefs sought in parallel/related proceedings *can* be relevant, and the courts have previously examined these parameters, when determining whether an ASI ought to be granted (see, *eg*, *PT Karya Indo Batam v Wang Zhenwen and others (Wang Zhenwen and others, third parties)* [2021] 5 SLR 1381 at [33]).

117 What distinguishes this case, however, is that IA 2827 and Suit 95 are essentially proceedings *anterior* to the main action (*ie*, the NCLT proceedings), and further, are proceedings where interlocutory reliefs are sought. It is only to be expected that the issues and reliefs sought therein *will bear differences* from those in the main action. Those differences are therefore not only immaterial (in the face of the obvious connection of IA 2827 to the management of People Interactive and matters set out in the SHA); they are *to be entirely expected*.

118 It cannot be fathomed that in framing and granting an ASI, a court only intends for it to extend to proceedings or hearings touching on final reliefs, but not everything else that culminates in those proceedings. It would, in my judgment, be bad policy to allow a party to be dragged through the time and expense of defending anterior or ancillary foreign proceedings that nevertheless remain connected with or related to the injuncted disputes, only to have the final proceedings be injuncted. To adopt such a myopic approach would, in my view,

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[82] DWS (SUM 1119) at paras 27–29.

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result in a substantial erosion of the purpose of the ASI and denude it of much of its force.

119 Significantly, the defendant's own Indian law expert has explained that "[i]n so far as the interim applications filed in the Suit are concerned, the interim reliefs sought under the interim applications are only in aid of and in furtherance of the final reliefs in the Suit and *therefore, in my opinion, the aforesaid nature and scope of the Suit will also apply to the interim applications*" [emphasis added].[83]

120 Even if the law actually requires some degree of correspondence across proceedings with respect to issues and reliefs, I find that the differences in issues and reliefs in this case are not fatal to the plaintiff's case. Other factors weigh in the plaintiff's favour, particularly the identity of the parties and the causes of action. In this regard, it is instructive to note that even in the context of *lis alibi pendens*, the Court of Appeal has held that exact identity of issues and reliefs is not required. This can be seen in *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097 at [47]:

> 47 We are of the view that in deciding whether there is a *lis alibi pendens*, *the first legal port of call ought to be the identity of the parties and the causes of action concerned*. This will enable the court to identify whether there are same or similar issues arising from the same factual matrix which are before both the local and foreign court(s), and, if so, the extent of these similarities. The nature of the reliefs sought will be relevant to the analysis, given that in most cases the reliefs sought and the causes of action concerned will be inextricably linked with each other. *However, the court ought not to hold, without more, that the local and foreign court(s) are faced with the same or similar issues by focusing merely on the reliefs sought* – for example, whether the claimant is entitled to the same quantum of damages as a remedy. *As for the degree of similarity necessary, the party seeking to demonstrate that there is a* lis alibi pendens

83 Affidavit of SJK, Exhibit SJK-1 at pp 15–16 at paras 29–31.

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> *need not show a total correspondence of issues, but the court will be more likely to find a* lis alibi pendens *where the issues are of a greater degree of similarity.* [emphasis added]

121 For these reasons, I am satisfied that IA 2827 is in respect of a dispute connected with or related to the management of People Interactive and matters set out in the SHA.

(3) Other arguments on the nature of IA 2827

122 The foregoing analysis addresses the main contentions raised on the scope of IA 2827. I conclude this section by noting that the defendant has also raised further arguments in relation to the EGM Injunction in particular. These arguments can be grouped into two buckets but neither holds any water.

123 The first bucket describes the injunction as being "merely incidental" to the reliefs sought in Suit 95 and IA 1010, and moreover, as being merely *ad-interim* relief.[84]

124 For this argument to work, *Suit 95 and/or IA 1010* must have been the impugned "proceeding(s)" that were wrongfully commenced, such that the ancillary or *ad-interim* nature of the EGM Injunction *might* potentially mean that there was nothing new commenced. However, that is not the plaintiff's case. The commencement of IA 2827 *itself* – which names the EGM Injunction as one of two primary reliefs sought – is the subject of criticism. As I have found above (at [97]–[105]), the filing of IA 2827 amounts to commencing a proceeding within the meaning of Order 1(b) of ORC 6040.

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[84] DWS (SUM 1119) at paras 36–37.

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125 The second bucket characterises the EGM Injunction as merely preserving the status quo that was initially secured and subsequently maintained by the *plaintiff* (through repeatedly supporting further adjournments); more generally, the argument is that the EGM Injunction causes no prejudice to the plaintiff.[85] In my judgment, both points are legally irrelevant. It is irrelevant whether the plaintiff might benefit from IA 2827, might consent thereto, has previously supported similar reliefs, or is likely to continue to do so. None of these considerations attenuates the defendant's obligation defined in ORC 6040. The lack of prejudice to the plaintiff is also not exculpatory (even if it may be relevant to mitigation), nor is the presence of prejudice a condition precedent to establishing a breach of ORC 6040.

126 Hence, I find that none of the defendant's arguments pertaining to the EGM Injunction detracts from my earlier conclusion (at [105] and [121]) – that the filing of IA 2827 is the commencement of a proceeding in respect of a dispute connected with or related to the management of People Interactive and matters set out in the SHA.

Whether the plaintiff failed to raise the EGM Injunction in its Statement of Committal, and whether this precludes it from relying on the EGM Injunction

127 In addition to the arguments raised above on the effect and scope of ORC 6040, the defendant raises what it says is a procedural defect in the plaintiff's committal application: that the plaintiff belatedly raised a new argument in Ms Mani's *fifth* affidavit that had not been raised in the Statement of Committal. This argument relates to the defendant's seeking of the EGM Injunction in IA 2827.[86] The upshot of the argument is that the plaintiff should

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85 DWS (SUM 1119) at para 38.

86 DWS (SUM 1119) at paras 34–35; NE p 7 ln 1 to 5 and p 10 ln 14 to 17.

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not be permitted to cast the EGM Injunction application as a breach of ORC 6040, since this was not alleged in the Statement of Committal.

128 In my judgment, the defendant's contention arises from a factual misapprehension and should be rejected.

129 Before explaining the factual misapprehension, however, the role of the Statement of Committal should be placed in its proper context. In this regard, I agree with the defendant that a Statement of Committal must be sufficiently particularised, such that a defendant has sufficient information to meet the charges mounted against him: *Mok Kah Hong* at [62].[87] Additionally, the Statement's four corners "function as the boundaries" of the plaintiff's case (*Mok Kah Hong* at [61]). The defendant is also right in asserting that the plaintiff cannot simply refer to its verifying affidavit (or a subsequent affidavit, for that matter) to expand on the Statement's contents. As explained in *Mok Kah Hong*, while a schedule or addendum attached to the Statement may form part of it, references to other documents which do not form part of the notice "such as the affidavit filed in support of the leave application" would not; the affidavit is to verify the truth of the Statement's contents and not supplement them (at [66]). Defects in the Statement also cannot be cured through counsel's submissions, whether written or oral, or by apprising the alleged contemnor of the application's grounds by other means (at [66] and [69]). Permeating all these rules is this principle: the requirement of sufficient particularity is a procedural safeguard that has to be strictly complied with – no matter whether non-compliance causes harm or prejudice to the alleged contemnor (at [69]). These safeguards are necessary and important because of the quasi-criminal nature of

87 DWS (SUM 1119) at para 15.

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a committal application, even in the context of civil litigation (*Li Shengwu v Attorney-General* [2019] 1 SLR 1081 at [56]–[67]).

130 That being said, on the facts, I find that the Statement of Committal *is* sufficiently particularised. In particular, it alludes sufficiently to the plaintiff taking issue with the EGM Injunction sought. Let me explain.

131 The main principle governing the interpretation of a Statement of Committal is that it must be interpreted using the perspective of a reasonable person in the position of the alleged contemnor, reading the Statement in a fair and sensible manner: *Mok Kah Hong* at [62].

132 In this case, the defendant has taken the position that the Statement of Committal is completely silent on the EGM Injunction when it is not. The Statement of Committal *does* allege that "[t]he [d]efendant's act of amending Suit 95 and Application No 1010, *and continued seeking of reliefs from the Bombay High Court*, is thus a clear contempt of Court" [emphasis added].[88] This sentence refers to both the making of an amendment *and the continued seeking of reliefs*. In reading the Statement, the defendant must have appreciated that "the continued seeking of reliefs" refers to something *other than* the making of amendments. Having been the very party that put forward IA 2827, he cannot credibly suggest that he was ignorant of what these reliefs were. A reasonable person situated in his position certainly cannot do so. After all, this is not a case where a dozen different reliefs were sought, for example, such that a generic reference to the continued seeking of reliefs might be ambiguous on its face and leave the defendant in doubt as to the plaintiff's precise case. All that was in play was the filing of Suit 95, the filing of IA 1010, and the filing of IA 2827

88 Statement of Committal at para 4.

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(in which only two primary reliefs were sought – the amendments and the EGM Injunction). The *continued* seeking of *reliefs* can thus only be reasonably understood as referring to the EGM Injunction. It is also incontrovertible that the phrase "continued seeking of reliefs" is linguistically wide enough to include the EGM Injunction, and there was no suggestion to the contrary.

133 I therefore find that the alleged omission of the EGM Injunction from the Statement of Committal is not a procedural defect, because this was not omitted by the plaintiff to begin with. Even if it was omitted, this would not defeat the plaintiff's committal application. As I have found above (chiefly at [105] and [113]), the seeking of *amendments* in IA 2827 itself amounts to the commencement of proceedings connected with or related to the management of People Interactive and matters set out in the SHA. Thus, this act in and of itself would have provided sufficient basis for a finding of contempt of court.

Other issues relating to the Bombay High Court proceedings

134 In my analysis above, I have addressed the two main sub-issues (described at [81]) arising from the Bombay High Court proceedings and the defendant's breach of Order 1(b) of ORC 6040, as well as the alleged procedural defect in the Statement of Committal. This leaves me to examine two remaining arguments raised by the defendant concerning the Bombay High Court proceedings.

(1) Whether it is material that the plaintiff did not oppose the amendments before the Bombay High Court

135 Over the course of his submissions, Mr Nandakumar took issue with the plaintiff's failure to object to the defendant's filing of IA 2827 in the Bombay

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High Court proceedings.[89] He referred to a statement from the plaintiff's Indian legal counsel that it was not opposing the amendments to Suit 95. For clarity, there only appears to have been a failure to object to the *amendments* sought. The plaintiff asserts that it had in fact opposed the seeking of the *EGM Injunction* by way of its reply filed to IA 1010 (as amended by IA 2827).[90]

136 I find that the defendant's complaint is nothing more than a red herring. I address each of the defendant's arguments on this point in turn.

137 The defendant argues, first, that the plaintiff's inaction signals its acceptance that IA 2827 and Suit 95 do not relate to the management of People Interactive or the SHA.

138 Even assuming that silence or mere non-opposition amounts to acceptance, it is doubtful that such subjective "acceptance" carries any legal weight. The key principles governing the interpretation of an order of court are that the *court* will: (a) interpret the *plain meaning* of the language used, and (b) resolve any ambiguity in favour of the person required to comply therewith (*PT Sandipala* (2018) at [46]; *Monex Group (Singapore) Pte Ltd v E-Clearing (Singapore) Pte Ltd* [2012] 4 SLR 1169 at [31]). The defendant has not shown how the plaintiff's subjective *interpretation* of the scope of ORC 6040, and its views on whether the Indian proceedings fall within or without it, fit within these principles. ORC 6040 cannot be modified or re-interpreted by implied mutual consent in this way.

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89 DWS (SUM 1119) at para 39.

90 PWS at paras 55(c)–55(d); 5th Affidavit of SAM at para 20(b).

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139 The defendant offers a further reason for why the plaintiff's conduct can only be understood as expressing "acceptance" that Suit 95 and IA 2827 were not proceedings covered under ORC 6040: were it otherwise, the plaintiff would be liable for aiding or abetting the alleged contempt through its failure to object.[91]

140 This argument is fallacious. It proceeds from the erroneous assumption that the plaintiff cannot by any imagination be found liable for aiding or abetting, and so the court is constrained to accept the only remaining conclusion – that the plaintiff did not object to those proceedings because the defendant was not acting in breach of ORC 6040. The flaw is that the assumption need not be true. In theory, provided the conditions for aiding or abetting are met, the plaintiff too can be held liable for the same. Hence, the very premise of the defendant's argument is problematic.

141 More charitably, the defendant's argument could be understood to be that it is *implausible* that the plaintiff would have even *countenanced* aiding or abetting contempt – so the logical conclusion must be that it was not doing so.

142 Again, there is a logical gap in this argument. It assumes that the plaintiff's silence runs a real risk of amounting to aiding or abetting, such that the plaintiff would have taken deliberate steps to avoid this. But, realistically examined, there was no such risk. The touchstone for establishing third party liability for contempt is that there must be some *intention* to interfere with the course of justice, whether this is achieved by actively assisting the primary contemnor, or through some other form of interference (*Pertamina* at [49]–[50], [63]–[65]). From the record, there is no evidence pointing to such intention; the

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91 DWS (SUM 1119) at para 39.

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plaintiff's inaction could equally have resulted from a calculated risk or mere inadvertence.

143 There is also some force in the plaintiff's explanation for why it could not be said to have abetted the contempt of the defendant. Its explanation was that it had no choice but to "raise the necessary objections and preserve its rights in the Bombay High Court Proceedings and in the NCLT" because it had been placed in this unenviable position by the *defendant's* own impermissible acts.[92]

144 Finally, the defendant makes the point that it was (only) because IA 2827 went unopposed by the plaintiff that the Bombay High Court granted the reliefs sought through its 10 January 2022 Order. This finds some basis in how para 3 of the said Order was worded:[93]

> 2. The amendment sought for by the Applicant/Original Plaintiff [*ie*, the defendant in the Singapore proceedings] is not opposed by the Defendants subject to their rights and contentions being kept open to deal with the amended plaint as well as the amended Interim Application as and when served upon them.
>
> 3. *Considering that the amendment is not opposed* subject to the aforementioned, the Applicant/Original Plaintiff is granted leave to amend the plaint … [and] also permitted to carry out consequential amendments in the Interim Application No.1010 of 2021. …
>
> 4. Interim Application No.2827 of 2021 is disposed of in the above terms
>
> [emphasis added]

145 Nevertheless, the basis for the *Bombay High Court's* decision is strictly immaterial to these proceedings. It might have been relevant if these were committal proceedings against the *plaintiff*, such that the degree of its

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92 PWS at para 56.

93 3rd Affidavit of SAM, Exhibit SAM-28 at pp 617–618.

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involvement is in issue, and such that the consequences flowing from its actions might shed light on its degree of involvement. Against *the defendant*, however, how the 10 January 2022 Order came about is not strictly relevant. ORC 6040 is not directly concerned with what the plaintiff does (it does not require the plaintiff to positively oppose breaches) or what the Bombay High Court does (ORC 6040 is certainly not expressed as a prohibition directed at the Bombay High Court). The ASI is directed at the defendant. The moment the defendant filed IA 2827, his breach was committed and consummated, and no further steps (whether from the plaintiff or the Bombay High Court) were necessary. There is no legal requirement for the plaintiff to first "call out" the defendant for his wrongdoing before the Indian courts before it is permitted to raise the defendant's breach before the Singapore courts and seek a committal order.

(2) Whether it is material that the Bombay High Court granted the EGM Injunction under IA 1010 and not IA 2827

146 The defendant places some emphasis on how the Bombay High Court worded its 10 January 2022 Order granting the EGM Injunction:

> 5. It is clarified that in paragraph 4 of the order dated 22.11.2021, the direction to the Defendants to adjourn the meeting post the Interim Application being heard and decided, *is as and by way of ad-interim relief granted in Interim Application No.1010 of 2021*. This is evident from the earlier part of the paragraph 4 which records that the Interim Application taken out by the Plaintiff is required to be heard and particularly considering that the Interim Application seeks to restrain Defendant No.2 from acting upon and enforcing the anti-suit injunction order which is now anti-suit permanent injunction by the judgment dated 26.10.2021. [emphasis added]

147 The defendant emphasises how the Bombay High Court granted the EGM Injunction pursuant to IA 1010, and *not* IA 2827. In other words, the defendant seeks to dissociate his success at obtaining relief in the Bombay

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proceedings from his commencement of IA 2827, by attributing this to IA 1010 instead – a matter that potentially falls outside ORC 6040 (see above at [84] to [88]).[94]

148 In my judgment, I need not assess whether the relief was, in truth and in substance, granted pursuant to IA 1010 or IA 2827. The simple point is that ORC 6040 has been breached *regardless* of whether relief was granted pursuant to IA 1010 or IA 2827. ORC 6040 does not proscribe the defendant from *successfully obtaining* relief; it proscribes the defendant from *seeking* relief to begin with. As I have explained above at [145], the moment IA 2827 was filed, a legal proceeding of the relevant description in Order 1(b) was commenced, and the breach of Order 1(b) was fully crystallised. In assessing *liability* for contempt, what happened *after* the filing of IA 2827 (*eg*, that relief was granted, that relief was refused, *etc*) became secondary.

Conclusion

149 In light of my findings above, I am satisfied that the defendant has also breached Order 1(b) of ORC 6040 by his filing of IA 2827.

The defendant's rights under Indian law to pursue proceedings in India notwithstanding ORC 6040

150 Finally, the defendant has sought in particular to defend his seeking of anti-enforcement injunctions ("AEIs") before the Bombay High Court (see [19] above, at paras 39(b) and 39(d) of the table). His expert evidence on Indian law stresses that AEIs may be granted where the rights of an Indian citizen to access to justice or to pursue legal remedies before a competent forum are interfered

94 NE p 8 ln 7 to 8, and p 9 ln 4 to 29.

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with.[95] This forms part of the defendant's broader point that the plaintiff is attempting to use contempt proceedings in Singapore to bar the defendant from seeking reliefs from the Indian courts, which is oppressive and operates to deprive him of access to justice.

151 At the outset, I would state that it is not for this court to comment on the appropriateness of a foreign court granting or not granting an AEI. Equally, however, whether an AEI is granted or not is, in my judgment, not relevant to the *committal* proceedings before me. I say this for the following reasons:

(a) First, the defendant might consider that he has a good reason for applying for an AEI from the Indian courts. However, a contemnor's motives and reasons for disobedience of an order of this court are only relevant (if at all) to mitigation, and not liability for the contempt complained of.

(b) Second, the Indian courts may find that there is good reason to grant an AEI, and indeed may choose to do so. That may negate the ASI's effect within India, but it does nothing to ORC 6040 in Singapore or indeed anywhere else in the world. This is because ORC 6040 continues to act on the defendant *in personam*. The defendant has not provided any basis to say that ORC 6040 no longer binds (or would no longer bind) him at all in the event he obtains an AEI from the Indian courts.

152 For this same reason, the *plaintiff's* submission – that the AEI application is premature in view of the defendant's pending appeal in CA 64 –

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[95] Affidavit of SJK, Exhibit SJK-1 at pp 10–15 at paras 20–28; NE p 12 ln 16 to 20 and 26 to 29.

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is also neutral at best.[96] Whether the commencement of the Indian proceedings may be described as timely or premature is immaterial. What *is* material is whether the defendant was permitted to bring an application contrary to ORC 6040. I have found that he was not. As such, regardless of whether the application for an AEI had been timely or premature, this would not have changed ORC 6040's prohibition on the bringing of an application of such a *nature*, or the fact that the defendant's conduct amounts to a breach of ORC 6040.

153 I therefore find that the arguments relating to an AEI being potentially granted in India do not affect my finding of contempt.

Mens rea

154 I have thus far concluded that the defendant has breached both Order 1(a) and Order 1(b) of ORC 6040, and there are no other issues that undermine this conclusion (at [79], [149], and [153]). I am also satisfied that the defendant committed these breaches with the requisite *mens rea* to constitute contempt of court.

155 Section 4(1)(*a*) of the AJPA provides:

> **Contempt by disobedience of court order or undertaking, etc.**
>
> **4.**—(1) Any person who —
>
> (*a*) *intentionally disobeys or breaches* any judgment, decree, direction, *order*, writ or other process of a court; or
>
> (*b*) intentionally breaches any undertaking given to a court,
>
> commits a contempt of court.

[96] PWS at para 64(b).

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[emphasis added]

156 This requirement of intentional disobedience is set at a low threshold: the breach must have been intentional, with the contemnor having knowledge of all facts which make the relevant conduct a breach of the order (including the order's existence and material terms). It is said that "liability is strict in the sense that all that is required to be proved is service of the order and the subsequent omission by the party to comply with the order". The alleged contemnor's motives and reasons for disobedience are only relevant to mitigation, and not liability (*PT Sandipala* (2018) at [47]–[48]; *Pertamina* at [51]–[62]).

157 The defendant does not seriously dispute that this low threshold for *mens rea* has been satisfied, and I find that it has. The defendant was served with ORC 6040, and must be taken to have had knowledge of the order of court and its terms. In addition, the defendant has been legally represented in these proceedings and would no doubt have been advised of the terms and purport of ORC 6040. Notwithstanding, the defendant has persisted in continuing, proceeding with and/or commencing proceedings before the NCLT and the Bombay High Court. I also note that it is not the defendant's evidence that he did so otherwise than deliberately.

Conclusion on liability

158 To conclude on the question of liability, having carefully considered the evidence and arguments presented, I am satisfied beyond a reasonable doubt that the defendant is guilty of contempt of court for breaching ORC 6040 by:

(a) pursuing and proceeding with the NCLT proceedings, in breach of Order 1(a) of ORC 6040; and

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(b) commencing proceedings by way of IA 2827 before the Bombay High Court, in breach of Order 1(b) of ORC 6040.

159 Having found the defendant guilty of contempt of court, I turn now to consider the appropriate sentence to be imposed.

Sentence

160 Contempt is punishable with a fine not exceeding $100,000 and/or imprisonment for a term not exceeding three years (s 12(1)(*a*) of the AJPA):

> **Punishment for contempt of court**
>
> **12.**—(1) Except as otherwise provided in any other written law, a person who commits contempt of court shall be liable to be punished —
>
> (*a*) subject to paragraph (*b*), where the power to punish for contempt is exercised by the General Division of the High Court, by the Appellate Division of the High Court or by the Court of Appeal, with a fine not exceeding $100,000 or with imprisonment for a term not exceeding 3 years or with both;
>
> …

Parties' arguments

161 In its written submissions, the plaintiff asks for the defendant to be given the maximum fine, *ie*, $100,000.[97] Further, he should be given two weeks to purge his contempt, failing which he ought to be imprisoned for a month.[98] According to the plaintiff, purging his contempt would entail discontinuing the

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97 PWS at para 82.

98 PWS at para 83.

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NCLT proceedings, and discontinuing Suit 95 as well as all interim applications therein.[99]

162 In oral submissions, Mr Thio changed tack and sought a custodial sentence instead. He explained that, after reading the defendant's written submissions (and the lack of proper justification for the defendant's actions that they exposed), he considered a fine to be insufficient, particularly since no effort had been taken by the defendant to purge his contempt. He contended that ordering a term of imprisonment would better signal the court's disapprobation of the defendant's conduct.[100]

163 Mr Nandakumar's submissions on sentence were far briefer. In oral submissions, he stressed that a custodial sentence is a measure of last resort. Further, if a fine were imposed, this ought to be on the lower end of the scale. The NCLT proceedings had been adjourned repeatedly since 2021, with no allegation made contemporaneously that these adjournments amounted to contempt. Filing IA 2827 was a one-off breach, unopposed by the plaintiff, and done with a view to updating the Bombay High Court of relevant developments. Any breach was technical and of no consequence.[101]

A fine should be imposed

164 Having considered parties' submissions on the relative merits of a term of imprisonment and a fine, I find that a fine would be more appropriate in the circumstances than a custodial sentence.

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99 PWS at para 84.

100 NE p 6 ln 11 to 15.

101 NE p 13 ln 23 to p 14 ln 6.

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165 The starting point is that committal to prison is usually a measure of last resort (*PT Sandipala* (2018) at [68]). This does not mean that imprisonment is empirically exceptional, as *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) summarises at para 52/1/5:

> Custodial sentences meted out have ranged from 5 days' imprisonment [(*Sembcorp Marine Ltd*)] or 7 [days'] imprisonment (*Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo* [2013] SGHC 105; *PT Sandipala Arthaputra v. ST Microelectronics Asia Pacific Pte Ltd* [2018] 4 S.L.R. 828); two weeks' imprisonment (*Jannie Chan Siew Lee v. Henry Tay Yun Chwan* [2019] S.G.C.A. 49) to 4 months (*Technigroup Far East Pte Ltd v. Jaswinderpal Singh s/o Bachint Singh* [2017] SGHC 68), 6 months (*OCM Opportunities Fund II, LP and others v. Burhan Uray (alias Wong Ming Kiong)* [2005] 3 S.L.R.(R.) 60; *Maruti Shipping Pte Ltd v Tay Sien Djim* [2014] SGHC [227]; and *Cartier*) or 8 months' imprisonment (*Mok Kah Hong v. Zheng Zhuan Yao* [2016] 3 S.L.R. 1).

166 Ultimately, however, the appropriate sentence will depend on the facts of the *individual case* and the nature of the contempt (*PT Sandipala* (2018) at [68]). The underlying question is whether a fine would be adequate to *punish* and *deter* contemptuous behaviour, and in this regard, the nature of the contemnor's behaviour, the motives for it, and the ameliorative and deterrent effect of a fine are all relevant factors (*Sembcorp (HC)* at [67]).

167 From the case law surveyed in *Sembcorp (HC)* at [57]–[68], factors that may weigh in favour of a custodial sentence include:

(a) a continuing, deliberate and persistent course of conduct (at [57]);

(b) the failure of all other efforts to resolve the situation, and continued lack of co-operation from the contemnor (at [57] and [64]);

(c) egregious behaviour and motive (at [59]);

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(d) the position of the contemnor and the standard of care expected from him/her, for instance as an officer of the court (at [60]–[61]);

(e) repeated breaches of a court order evincing a flagrant disregard of the court's authority (at [62]); and

(f) the likelihood that a fine would not be an adequate deterrent, for instance if the contemnor is a bankrupt without means to pay, or if the cost of the fine has been internalised into the cost of the contemnor's contempt (at [65] and [68(c)]).

168 On the other hand, where the main motive behind a contemnor's contemptuous conduct is to seek a financial advantage, a fine may be most appropriate for it can nullify the profits hoped to be gained from the act and achieve proportionality with the contempt committed (at [56]).

169 Applying these factors, in my judgment, a fine would be appropriate in this case. While I accept that the defendant's breaches are deliberate and continuing, this feature does not automatically justify or necessitate an imprisonment term (at least in this case). Most of the other grounds for a custodial sentence are not engaged – for instance, the defendant has not previously been found to be in contempt of court, be it for breach of the interim ASI granted in ORC 1463 or otherwise. Neither has the plaintiff shown that a fine would be any less of a deterrent than a term of imprisonment, particularly for a contemnor resident abroad like the defendant.

Quantum of the fine

170 The plaintiff submits that the maximum fine of $100,000 ought to be imposed.

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171 The plaintiff bases its submission on a number of aggravating features that are largely based off the list at [68] of *Sembcorp (HC)* (which bear some overlap with the factors found in *PT Sandipala* (2018) at [69] and *Mok Kah Hong* at [102]–[104]). I will address these arguments, set out at [92]–[97] of the plaintiff's written submissions, in the same sequence.

172 First, on the contemnor's attitude, I **agree** that the breach was deliberate and not committed in good faith (*Sembcorp (HC)* at [68(a)]).[102] *Sembcorp (HC)* suggests that a contemnor might act in good faith when he believes that what he was doing was right in law, for instance on the basis of legal advice. The defendant has argued that "[f]rom [his] understanding of Indian law, and based on the advice from [his] Indian law advisors", the amendments sought in IA 2827 did not relate to the management of People Interactive or to matters set out in the SHA.[103] However, this is but a bare assertion, and more importantly, does not even suggest that he had received advice on *Singapore law* concerning whether ORC 6040 might be breached. Legal advice aside, it is telling from the tenor of the defendant's case that he has primarily relied on technical and collateral defences to try and bring himself *just outside* of ORC 6040's ambit (for instance, by trying to separate IA 2827 from Suit 95 to show that it was not "related to" or "connected with" the management of People Interactive or matters set out in the SHA). The nature of these arguments suggests that he *knew and/or accepted* that he had to comply with ORC 6040, but was finding ways to maximise his procedural gains in the Indian proceedings while (unsuccessfully) tiptoeing around the ASI. His breaches were neither unintentional nor made *bona fide*. It is hard to ignore the impression that the defendant intends to do all he can to proceed with the Indian proceedings, in a

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102 PWS at para 92.

103 2nd Affidavit of Mittal at para 11.

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deliberate and cynical breach of ORC 6040. These considerations support a fine closer to the higher end of the spectrum.

173 Second, I **agree** with the plaintiff's characterisation of the breach as one of a continuing nature. Simply put, the NCLT proceedings have not been discontinued. I also agree with what the plaintiff contends is the legal consequence of a continuing breach, namely that the court should consider both punitive and coercive elements in determining the sanction.[104] The coercive element refers to the court's interest in bringing the still-continuing contempt to a halt (*Mok Kah Hong* at [103]). This likewise militates towards a higher fine.

174 Third, on prejudice, I **disagree** with the plaintiff that substantial prejudice has been caused to it that is incapable of being remedied by costs (*Sembcorp (HC)* at [68(d)]).[105] This is because:

(a) It is unclear from the plaintiff's submissions what it says the prejudice suffered is, and thus much of the ensuing discussion is inevitably speculative.

(b) If the prejudice complained of is the prospect of the defendant being granted favourable final reliefs in the Indian proceedings, as much as such an *outcome* would be prejudicial, this remains at present a *prospect* or *risk* that has yet to crystallise. This risk does not increase with the mere effluxion of time; it remains a constant probability until a decision is reached by the Indian courts. That the defendant would create such a risk is of course problematic (hence the finding of contempt), but

104 PWS at para 93.

105 PWS at para 94.

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for the purposes of *sentencing*, it is unclear how this prospect or risk *simpliciter* ought to be quantified or measured.

(c) Even if this risk can be quantified, it is pertinent to note that the defendant has been routinely seeking adjournments of the NCLT proceedings and is likely to continue doing so (at least pending the outcome of CA 64), effectively postponing any decision in India on the merits that may cause prejudice to the plaintiff.

(d) A second possibility is that the prejudice in question is prejudice from the continued postponement of EGMs. Whether this is the prejudice envisaged, and how the postponements have injured the shareholders, are matters not sufficiently expounded on in the plaintiff's submissions or affidavits, and I therefore say no more about it.

(e) Finally, the plaintiff asserts in its written submissions that "[e]ven an order for costs would be insufficient, as the proceedings in India have gone on for approximately nine months too long. One cannot simply turn back time".[106] It is again unclear how time spent defending proceedings (for nine months) cannot be compensated for by costs, as they ordinarily would, or why this should therefore translate to a higher fine.

175 Fourth, on the gravity of the contempt, I **agree** that the defendant's breach of ORC 6040 is contumacious and persistent and renders his conduct egregious (*Sembcorp (HC)* at [68(f)]).[107] As the court in *Sembcorp (HC)* stated, the relevant inquiry is what the purpose of ORC 6040 is, and how the breach

106 PWS at para 94.

107 PWS at para 95.

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impacted this purpose. Planning can also add to the egregiousness of the contemnor's conduct. On the facts, the defendant continues to seek an AEI that would, if granted, nullify the permanent ASI's effect on him, at least in India. He continues to seek a declaration that the NCLT has exclusive jurisdiction, to the exclusion of the arbitral tribunal. He continues to seek reliefs (*eg*, the EGM Injunction) that the ASI effectively reserves for the tribunal's (or seat court's) determination. It is clear that the defendant's acts, singly or cumulatively, are all orchestrated to undermine and/or ignore the effect and import of ORC 6040.

176 Fifth, on remorse, while I agree that no remorse has been displayed by the defendant (in the form of purging the contempt), I **disagree** that the lack of remorse should be an *aggravating* factor (*Sembcorp* at [68(g)]).[108] The law recognises the presence of remorse to be mitigating. As was held in *Sembcorp*, the absence of remorse is not necessarily aggravating, but it may be so where it points towards a contumacious breach with no intention of remedy. The plaintiff says that this is a contumacious breach with no intention of remedy because the defendant had filed an affidavit in the Bombay High Court proceedings, stating that the Singapore committal proceedings amount to an interference with justice in the Bombay High Court proceedings. In my view, the mere filing of an affidavit is equivocal. It only signals the defendant's disagreement with the committal proceedings being taken out, which is not too different from the defendant choosing to defend the committal proceedings in Singapore. At best, it confirms that the defendant has not chosen to voluntarily purge his contempt even after the committal proceedings had begun. This just means that he is unremorseful – which, without more, is neutral. In my view, this remains qualitatively different from saying that the defendant has evinced that he is opposed to ever complying with ORC 6040 (for example, even following an

108 PWS at para 96.

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unfavourable outcome in CA 64). As such, on the available evidence and submissions, this is not a case where the absence of remorse ought to be regarded as aggravating.

177 In the totality of the circumstances, I find that a fine of $70,000 would be appropriate.

Purging contempt

178 To recapitulate (see [161] above), the plaintiff submits that the defendant should be given two weeks to purge his contempt, failing which he ought to be imprisoned for a month.[109] For this proposal, it refers to *PT Sandipala* (2018) at [68], where the court observed that "[i]n some cases, a more nuanced sanction may be appropriate such as a suspended committal order requiring the contemnor to take certain steps such as to provide documents by a given date and to take other steps to purge the contempt".

179 The reasons the plaintiff gives for why imprisonment is appropriate are three-fold:[110]

(a) First, the defendant has made no attempt to purge his contempt or offer a good explanation for his breach of ORC 6040.[111] The plaintiff submits that it remains likely that the defendant's "deliberate and persistent breaches of [ORC 6040] will continue despite the imposition of the maximum fine".[112]

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109 PWS at para 83.

110 PWS at paras 99 and 108–112.

111 PWS at para 99.

112 PWS at para 99.

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(b) Second, imprisonment would give effect to the twin principles of enforcement and deterrence, especially in respect of a contemnor who continues to breach the order even after being given an opportunity to purge his contempt.[113]

(c) Third, the defendant attempted to delay the present committal proceedings for close to six weeks (see [24] above).[114]

180 As to the proposed length of one month's imprisonment, the plaintiff submits that defendant's contempt has persisted over several months. A "lengthy" sentence is thus "both necessary and desirable to achieve general deterrence". This is to be contrasted with short imprisonment terms of a few days, which have typically been imposed where a contemnor's actions constituted a one-off breach.[115]

181 In my view, the plaintiff's submissions are not without difficulty.

182 First, from the plaintiff's written submissions, it is not entirely clear whether the one-month imprisonment term is being sought *in addition to* the $100,000 fine or in *substitution* thereof. For instance, [110] of the plaintiff's written submissions suggests that imprisonment is sought *in addition to* a fine:

> Similar to the contemnors in *OCM Opportunities*, [the defendant] had failed to comply with clear and unambiguous orders under the interlocutory anti-suit injunction in ORC 1463. This breach persisted after a permanent anti-suit injunction via [ORC 6040] was obtained. *[The defendant] remains uncooperative, deliberate, and contumacious in breaching the terms of the Order, and* ***a fine on its own would not be an adequate deterrent*** *if [the defendant] still fails*

113 PWS at para 109.

114 PWS at para 112.

115 PWS at para 111.

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> *and/or refuses to purge his contempt by 8 August 2022.* [emphasis added in italics and bold italics]

183 By contrast, [109] of the submissions appears to suggest that imprisonment is meant to *replace* the imposition of a fine:

> First, an imprisonment term would give recognition to the twin principles of enforcement and deterrence in committal proceedings (see *Sembcorp Marine* at [65]), *whereby the contemnor is given an opportunity to purge his contempt and failing which, an imprisonment sentence is imposed* to deter continuing breaches ***as opposed to a fine*** *which may be insufficient to ensure compliance* with the Court order. [emphasis in original omitted; emphasis added in italics and bold italics]

184 If the plaintiff's submission is the former (*ie*, to impose both a fine and an imprisonment term), then I am essentially being asked to order a partial suspension: to fine the defendant *in any event* and *also* to sentence the defendant to imprisonment *if* he fails to purge his contempt. At a fundamental level, I have reservations as to whether s 12(1)(*a*) of the AJPA empowers me to grant a partial suspension in this manner. I also have reservations about whether this was what the court in *PT Sandipala* (2018) contemplated at [68] – as opposed to a single sentencing outcome that is either fully imposed or not. In any event, the plaintiff has not explained why a global sentence of a $100,000 fine *and* one month's imprisonment (should the defendant fail to purge his contempt) would be appropriate in the circumstances and consistent with the case law. The plaintiff has only addressed the merits of a $100,000 fine and the merits of a one-month imprisonment term individually. Even on the plaintiff's own case authorities, the courts have rarely imposed *both* a fine and imprisonment; indeed, the courts have often placed great emphasis on determining whether a fine *or* imprisonment would be more appropriate in each case.

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185 On the other hand, if the plaintiff's submission is in fact the latter (*ie*, to impose an imprisonment term in place of a fine), it is again unclear if this is an outcome that s 12(1)(*a*) of the AJPA permits and that *PT Sandipala* (2018) envisages. It is also not immediately obvious why a one-month imprisonment term would be, in the circumstances, regarded as an escalated form of punishment that would more strongly deter and punish the defendant than a $100,000 fine, such that the defendant would be induced into purging his contempt.

186 These difficulties are compounded by the plaintiff's shift in position at the oral hearing, where its primary position became that a custodial sentence ought to be imposed (see [162] above). There is no clarity on what this means for its original submission that one month's imprisonment should be imposed in default of the defendant purging its contempt – for instance, whether this requires an upward revision of the one-month term, or whether it is to remain unchanged.

187 Notwithstanding these difficulties, I am of the view that the defendant ought to be given a final chance to purge his contempt. As to what this means, I agree with the plaintiff that to purge his contempt, the defendant will have to discontinue the NCLT proceedings, discontinue Suit 95 and all interim applications therein, and further, discharge the EGM Injunction or not oppose it being discharged.[116] I am minded however to give the defendant one month (and not two weeks as submitted by the plaintiff) to comply, given that two sets of Indian proceedings are involved. I am also minded not to impose a one-month imprisonment term. Rather, the suspended sentence will be the fine of $70,000 (see [177] above).

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116 PWS at para 84.

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My decision on SUM 2090

188 Finally, I address the defendant's application in SUM 2090 to set aside the leave I granted to the plaintiff to commence committal proceedings. This application proceeded on two bases, namely that: (a) there were material non-disclosures in the plaintiff's application; and (b) there were defects in the plaintiff's Statement of Committal. I address each in turn.

Material non-disclosures

Overview

189 It is a well-entrenched principle that in *ex parte* proceedings, a fact should be disclosed if it is a "[matter] that the court should take into consideration in making its decision", even if it is not one that has a determinative impact on the court's decision (*The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [86]).[117]

190 In his written submissions, the defendant claims that the plaintiff's omission to inform the court of the following matters amount to material non-disclosures which warrant the setting aside of the *ex parte* grant of leave:

> (a) The plaintiff's non-opposition to the amendments sought in the defendant's application in IA 2827, and the Bombay High Court's decision to award the reliefs sought on this basis.[118]

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117 DWS (SUM 2090) at para 17.

118 2nd Affidavit of Mittal at paras 13–15; DWS (SUM 2090) at para 21(a); NE p 11 ln 28 to 30.

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(b) The plaintiff's decision not to pursue its Order VII application which was an application for the plaint filed in Suit 95 to be rejected on the ground of *res judicata*.[119]

(c) The defendant's basis for seeking an adjournment of the NCLT proceedings, namely on account of ORC 6040.[120]

(d) The fact that none of the parties who filed an appearance in the NCLT proceedings had objected to the adjournments sought.[121]

191 The plaintiff's key contention is that the non-disclosures are neither material nor relevant.[122] Further:

(a) On the failure to oppose IA 2827, it argues that the defendant's very act of filing IA 2827 was a breach of ORC 6040; the plaintiff's objections or lack thereof are immaterial and need not be disclosed. In any event, it argues that the plaintiff *did* raise objections to IA 2827.[123]

(b) In relation to the Order VII application, the plaintiff similarly argues that this is neither material nor relevant. Further, the plaintiff did not abandon its Order VII application altogether – it only informed the Bombay High Court that it would not press for the application to be heard "at this stage".[124]

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119 2nd Affidavit of Mittal at paras 16–17; DWS (SUM 2090) at para 21(c); 5th Affidavit of SAM at para 34(a).

120 DWS (SUM 2090) at para 21(b).

121 DWS (SUM 2090) at para 21(b).

122 PWS at para 72.

123 PWS at paras 73–74; 5th Affidavit of SAM at paras 31–32.

124 PWS at paras 75–76; 5th Affidavit of SAM at paras 34(b)–34(d).

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192 Moreover, the plaintiff argues that the court has a discretion to refuse to set aside an order granted *ex parte*, even if there has been material non-disclosure. It adds that this is a particularly wide power in the context of contempt proceedings, since such proceedings arise because the court's authority has been challenged and the court itself has an interest in seeing that its order is properly complied with.[125]

193 Having considered the parties' arguments, I find that none of the alleged non-disclosures is material.

The plaintiff's purported failure to oppose IA 2827

194 I find that although the defendant is right that there was non-disclosure of the plaintiff's non-opposition, this is not material to the present proceedings.

195 First of all, I accept as a factual matter that there was non-disclosure. The plaintiff suggests that it *did* object to the application (with the ostensible implication that the fact that it *did* object was neither detrimental to its case nor beneficial to the defendant's case and thus need not have been disclosed).[126] However, I find that it did not object. While the plaintiff asserts that it had filed an affidavit opposing the amendments sought, it also concedes that it had "with a view to expedit[ing] the hearing in [IA 1010] and Suit 95, informed the Bombay High Court that *it would not oppose the amendments sought* for in [IA 2827], subject to its rights and contentions being kept open to deal with the amended Suit 95 as well as the amended [IA 1010]" [emphasis added].[127] Clearly, the position the plaintiff ultimately landed on and conveyed was to *not*

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125 NE p 15 ln 4 to 10.

126 PWS at para 74.

127 5th Affidavit of SAM at para 32(d).

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oppose *IA 2827* – even if it did indeed reserve its position on *Suit 95* (as amended).

196 Be that as it may, I agree with the plaintiff that this non-disclosure is not material.[128] It is doubtful that any non-opposition would have been relevant to the *defendant's* breach of ORC 6040, which crystallised once IA 2827 was filed (see [145] above).

The plaintiff's decision not to pursue its Order VII application

197 As with the preceding point, the non-disclosure of this point is also not material. What matters is not what the *plaintiff* does or does not do; what is vital to the evaluation of a committal application against the *defendant* is *his own* conduct.[129]

Non-disclosures relating to the NCLT proceedings

198 In light of the analysis above (at [62]–[79]) that the mere seeking of adjournments does not amount to compliance with ORC 6040, it is immaterial whether the defendant did or did not seek to adjourn the NCLT proceedings. The position taken by other parties to the NCLT proceedings is even less consequential – again, it is the defendant's conduct that matters. As such, there are no material non-disclosures in relation to the NCLT proceedings.

Other alleged non-disclosures

199 In oral submissions, Mr Nandakumar sought to expand his case by relying on a wider set of alleged non-disclosures. These included, for example,

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128 PWS at para 73.

129 PWS at para 75.

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the plaintiff's alleged omission to state that the EGM Injunction had been granted pursuant to IA 1010 and not IA 2827 (the merits of which I have separately addressed at [146]–[148] above), and its alleged omission to inform the court of the matters raised before the Bombay High Court at the two hearings in November 2021 and January 2022.[130]

200 What undermined these allegations is that no amplification was provided as to why these wider allegations were material or relevant to the application. Neither did the defendant's affidavits characterise them as material non-disclosures. In the circumstances, these wider allegations were nothing more than bare allegations raised by counsel.

Defects in the Statement of Committal

Overview

201 In the context of SUM 2090, the defendant identifies three defects with the Statement of Committal. These are distinct from the omission to mention the EGM Injunction in the Statement, which was raised in respect of SUM 1119 (see [127] above). Nevertheless, as I explain below, the principles canvassed earlier (at [129] above) from *Mok Kah Hong* concerning the Statement of Committal are no less applicable and have formed the starting point of my analysis.

202 The three defects are:[131]

(a) First, the Statement of Committal failed to particularise *how* the dispute in Suit 95 or the amendments sought relate to a dispute, *etc*, in

130 NE p 11 ln 24 to p 12 ln 5.

131 2nd Affidavit of Mittal at para 19; DWS (SUM 2090) at paras 25–37.

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connection with or relating to the management of People Interactive or the matters set out in the SHA. As such, the defendant was unable to provide a substantive response in these proceedings to the allegations made.[132]

(b) Second, the Statement of Committal referred to additional documents (such as an order of court and cause papers filed in various proceedings) without these being annexed to the Statement.[133]

(c) Third, the plaintiff sought to rely on information found outside the Statement of Committal's four corners. This included information in the supporting affidavit referenced in the Statement of Committal, *ie*, the third affidavit of Ms Mani.[134] Even if the plaintiff is entitled to rely on Ms Mani's affidavit, the reference thereto in the Statement of Committal was an "unhelpful" blanket reference to an affidavit of approximately 866 pages.[135]

203 The plaintiff submits that these allegations are baseless. It argues that the Statement of Committal contains sufficient information for the defendant to meet the charges against him, including the relevant conduct, proceedings and reliefs that the plaintiff takes issue with.[136]

204 I address the three alleged defects in turn.

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132 2nd Affidavit of Mittal at para 19(a).

133 2nd Affidavit of Mittal at para 19(b).

134 2nd Affidavit of Mittal at para 19(c).

135 2nd Affidavit of Mittal at para 19(d).

136 PWS at paras 78(a)–78(e).

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The failure to explain how ORC 6040 was breached

205 On the first defect, in my judgment, O 52 r 2(2) of the ROC does not require such information (*ie*, information concerning *how* IA 2827 breaches ORC 6040) to be included in the Statement of Committal. Rule 2(2) only requires the applicant to, *inter alia*, "[*set*] *out* … the *grounds* on which his committal is sought" [emphasis added]. It does not require a detailed or complete *explanation* of how the ground or breach alleged rises to the level of contempt of court. That properly belongs in the parties' legal submissions. More pertinently, it seems to me spurious to say that the omission hindered the defendant's ability to "meet the charges against him" or "curtailed [his] ability to provide a response".[137] Breach of ORC 6040 was identified as the ground of the committal application. The defendant was served with ORC 6040 and must be taken to have known of its terms. Notice of these terms would have been sufficient for the defendant to realise that if he wished to resist the committal application, he should proceed to show either that his conduct did not fall foul of one of the prohibited actions (*eg*, commencing, continuing, *etc*, any legal proceeding), and/or that the NCLT proceedings and the Bombay High Court proceedings were not one of the types of proceedings contemplated under ORC 6040 (*eg*, one relating to the management of People Interactive). Whatever the plaintiff's precise legal arguments were going to be for alleging that these proceedings fell within the scope of ORC 6040, the defendant was clearly in a position to mount a positive and trenchant case explaining why those proceedings did *not* fall within the scope of ORC 6040 and why he is not in breach of ORC 6040. The defendant's response has not been contingent or parasitic on what the plaintiff has had to say.

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137 2nd Affidavit of Mittal at para 19 and 19(a); DWS (SUM 2090) at para 18(a).

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The failure to annex supporting documents

206 As to the second defect (*ie*, that additional documents were referenced without being annexed to the Statement), my observations at [132] above apply with equal force. More pointedly, the defendant has been a party in all relevant proceedings and, in some of these proceedings, was even the plaintiff who initiated the proceedings. As between him and his local and foreign counsel, there is no suggestion that there were any documents incapable of being identified and/or accessed by the defendant. No actual prejudice was ever identified by the defendant.

207 It is striking that the defendant's written submissions specifically complain that the Bombay High Court's order of 10 January 2022 was referred to but not annexed.[138] Those same submissions fail to mention that the defendant's second affidavit dated 3 June 2022 relies on and *exhibits* that very order of the Bombay High Court.[139]

208 In the circumstances, this second alleged defect is, in my view, an attempt by the defendant to find fault by raising arid meritless technicalities.

The reliance on information not included within the Statement of Committal

209 At first glance, there is some force to the defendant's third allegation. Given my observations at [129] above on the requirements that apply to a Statement of Committal, it follows that the plaintiff cannot pursue an ever-expanding case. To this extent, the plaintiff's arguments that "[i]t is only where lengthy particulars are needed that the same may be included in a schedule or

138 DWS (SUM 2090) at para 31.

139 2nd Affidavit of Mittal, Exhibit AM-36 at pp 257–260.

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addendum" and that "there is no procedural rule that the Statement of Committal must particularise the specific portions of the supporting affidavit relied on" consequently fall away.[140] In any event, they miss the point. The verifying affidavit is not even meant to be "relied on" to supplement the grounds in the Statement in the first place. The Statement must, in itself, be sufficiently particularised.

210 Be that as it may, this does not mean that what is left of the Statement of Committal was insufficiently particularised. In this regard, modifying the table at [4] above, I have matched the breaches raised in the Statement to the relevant paragraphs of ORC 6040 as follows:

Order	Action proscribed	Subject-matter	Breach(es) alleged in the Statement of Committal
1(a)	Pursuing, continuing and/or proceeding with	The defendant's action commenced by way of Company Petition No 92 of 2021 in the Mumbai NCLT [*ie*, the NCLT Petition]	• The NCLT Petition remains active and is not withdrawn.[141] • The terms of the Permanent Injunction include a restraint on continuing with the action commenced (*ie*, the NCLT proceedings). This has, to date, not

140 PWS at para 78.

141 Statement of Committal at para 3(d).

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Order	Action proscribed	Subject-matter	Breach(es) alleged in the Statement of Committal
			been done and the NCLT Petition remains alive.[142]
1(b)	Commencing or procuring the commencement of	Any legal proceedings in respect of any dispute, controversy, claim or disagreement of any kind • in connection with or relating to the management of People Interactive (India) Private Limited ("People Interactive"), or	• The defendant filed an application *viz* Suit 95 of 2021 before the Bombay High Court on or around 18 March 2021, which was served on the plaintiff's Indian solicitors on 24 March 2021.[143] • In Suit 95 of 2021, the defendant filed Interim Application No 1010 of 2021, seeking interim reliefs pending the final determination of Suit 95.[144] • In Suit 95 of 2021, the defendant filed Interim Application (L) No 2827 of 2021 on 15 November

142 Statement of Committal at para 4.

143 Statement of Committal at para 3(f)(i).

144 Statement of Committal at para 3(f)(i).

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Order	Action proscribed	Subject-matter	Breach(es) alleged in the Statement of Committal
		• in connection with or relating to any of the matters set out in the Shareholders' Agreement dated 10 February 2006, as amended from time to time (the "SHA") in any other dispute resolution forum other than [an ICC arbitration seated in Singapore] against • the plaintiff and/or	2021, to amend Suit 95, the prayers sought therein, and to bring on record subsequent facts and events which occurred after Suit 95 was filed but were not relevant and material to the determination of Suit 95. This included bringing on record the Order, being the permanent [ASI] granted by the Singapore court and affidavits by Indian law experts filed in the Singapore court. The defendant also sought to replace most of the original reliefs in Suit 95, *ie*, for a stay on the enforcement of [the interim ASI], with amended reliefs of a stay on the enforcement of the [the permanent ASI],

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Order	Action proscribed	Subject-matter	Breach(es) alleged in the Statement of Committal
		• Shobitha Annie Mani and/or • Navin Mittal and/or • Anand Mittal and/or • People Interactive and/or • any person in relation to any dispute relating to the management of People Interactive, or arising from, connected with or relating to any of the matters set	passed by the Singapore court. These amendments sought by the defendant in Application No 2827 were allowed by the Bombay High Court by its order dated 10 January 2022. The Bombay High Court also permitted the defendant to make consequential amendments to Application No 1010.[145] • The reliefs sought [in Interim Application (L) No 2827 of 2021] are "in essence, submissions [*sic*] dealing with the rights of the Plaintiff, the Defendant, People Interactive and other

145 Statement of Committal at para 3(f)(ii).

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Order	Action proscribed	Subject-matter	Breach(es) alleged in the Statement of Committal
		out in the SHA.	shareholders' rights under the SHA".[146] • The defendant's act of amending Suit 95 and Application No 1010, and continued seeking of reliefs from the Bombay High Court, are thus a clear contempt of Court.[147]

211 It is clear from the table (and thus from the Statement of Committal) what the alleged grounds for contempt were.[148] The Statement of Committal had adequately identified the parts of ORC 6040 that were allegedly breached, and furthermore identified the acts and proceedings that constituted the breaches.

212 For these reasons, I dismiss the defendant's various arguments that are premised on alleged procedural defects.

Conclusion

213 The court's power to punish contempt of court is "directed at securing compliance with [its] orders, to specifically and generally deter contemptuous behaviour and to protect and preserve the authority of the Singapore courts" (*PT*

146 Statement of Committal at para 3(f)(ii).

147 Statement of Committal at para 4; see also 3rd Affidavit of SAM at para 21.

148 See also PWS at paras 78(a)–78(c).

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Sandipala (2018) at [45]). This is not the first time that the defendant's pursuit of foreign proceedings has given rise to issues before this court (see the OS 242 Judgment). In clear and continuing defiance, the defendant has ignored the existence and import of ORC 6040. The Indian proceedings remain substantially afoot – indeed, steps have been taken by the defendant to bolster those proceedings and in turn undermine both the ASI and the arbitration agreement in the SHA. The defendant has neither provided a good justification for this, nor has he offered to even begin to purge his contempt.

214 In the circumstances, I allow prayer 1 of the plaintiff's application in SUM 1119 in the terms set out below. I find the defendant guilty of contempt of court. I order that a fine of $70,000 be imposed on the defendant to be paid by him within six (6) weeks from the date of this judgment, *unless* the defendant successfully purges his contempt within one (1) month from the date of this judgment. Purging the contempt entails: (a) discontinuing the NCLT proceedings (*ie*, the NCLT Petition); (b) discontinuing Suit 95 and all interim applications therein (including IA 1010 and IA 2827); and (c) either procuring the discharge or setting aside of the EGM Injunction or not opposing any steps taken by the plaintiff (or any other party in the Bombay High Court proceedings) to have it discharged or set aside. For avoidance of doubt, the defendant is expected to take all steps necessary to regularise his position and bring himself in compliance with the ASI granted in ORC 6040. Finally, for the reasons above and in light of the orders made in SUM 1119, I dismiss SUM 2090 entirely.

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215 I shall hear the parties separately on costs.

S Mohan
Judge of the High Court

Thio Shen Yi SC, Tan May Lian Felicia, Uma Jitendra Sharma and Juliana Lake (Lu Zhixuan) (TSMP Law Corporation) for the plaintiff;
Nandakumar Ponniya Servai, Ashish Chugh, Pradeep Nair, Yiu Kai Tai and Yap Yong Li (Wong & Leow LLC) for the defendant.

Version No 1: 31 Oct 2022 (10:53 hrs)