

# Company Law Board reserves verdict on Vikram Bakshi's plea against arbitration by McDonald's

**Kaushal shroff** Posted online: Saturday, Dec 28, 2013 at 0000 hrs

**New Delhi :** The Company Law Board (CLB) on Friday reserved its order on the plea of Vikram Bakshi seeking a stay on the foreign arbitration proceedings initiated by McDonald's India (MIPL) in respect of the unresolved disputes between the two, which includes the question of Bakshi's reinstatement as the MD of Connaught Plaza Restaurants (CPRL).

CPRL is an equal JV among Bakshi, MIPL and McDonald's USA. On August 30, MIPL had announced that Bakshi had ceased to operate as MD from July 17. In September, Bakshi had moved the Company Law Board (CLB) seeking reinstatement as MD of CPRL.

On November 28, MIPL had terminated its JV agreement with Bakshi, and on the next day, via e-mail, had submitted an application to the London Court of International Arbitration seeking arbitration of the dispute. LCIA had then directed Bakshi to nominate an arbitrator by December 27. Failure to nominate an arbitrator shall be considered as an irrevocable waiver by Bakshi of his opportunity to nominate an arbitrator. Pursuant to this, the London court will take upon itself, the responsibility to nominate an arbitrator, on behalf of Bakshi. Sources close to Bakshi told FE that the ex-MD has not nominated any arbitrator, adding that doing so will amount to submitting to the plea made by MIPL and an acceptance of the jurisdiction of the London court. "We have full faith in the Indian judicial system and we believe that the CLB will uphold our stand that MIPL's arbitration proceedings initiated in a foreign tribunal, while litigation is pending in India, is invalid."

Legal experts have, however, suggested that the matter could be taken up by both authorities. "It is possible that one or more allegations raised can be subject matter of the proceedings both before CLB as well as an arbitral tribunal. There is no restriction that the two proceedings cannot proceed simultaneously. CLB may not exercise its jurisdiction if the grievances raised before it purely relate to contract (for example, JV agreements), and relegate the parties to civil suit or arbitration, as the case may be," Dhirendra Negi, partner at J Sagar Associates, said.

"Only those disputes between parties that fall within the subject matter of the arbitration clause of the JV agreement between the same set of parties can be referred to the arbitral tribunal and no other matters. Any allegation of oppression and mismanagement calls for statutory relief, which only the CLB can grant. Disputes where a contractual remedy is sought may be taken up before the arbitral tribunal, whereas remedies provided by Companies Act can only be awarded by a statutory body like CLB," Shinoj Koshy, head of corporate practice at Nishith Desai Associates, told FE.