IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

MIDMARK CORPORATION,	:	CASE NO. 3:14-cv-088
Petitioner,	:	Judge Thomas J. Rose
v.	:	
JANAK HEALTHCARE PRIVATE LIMITED, *et al*.,	:	**FINAL JUDGMENT AND ORDER GRANTING RELIEF TO PETITIONER MIDMARK CORPORATION AND ISSUING PERMANENT INJUNCTION**
Respondents.	:	

This matter comes before the Court on the Verified Petition of Midmark Corporation to compel arbitration of disputes arising out of or relating to the operation, administration, and management of Respondent Janak Healthcare Private Limited, and to obtain temporary, preliminary, and permanent injunctive relief to maintain the status *quo ante* prior to the commencement of litigation by the other Respondents (collectively, the "Mehta Family Respondents" or "Mehtas") before Company Law Board, Mumbai India, Company Petition No. 21/2014.

Midmark and the Mehta Family Respondents are shareholders in Janak Healthcare and are signatories to a shareholder agreement governing their relationship. Midmark maintains that the Mehtas have filed and pursued the Indian Petition in violation of an arbitration clause in the shareholder agreement.

I. PROCEDURAL HISTORY

On March 18, 2014, Midmark filed a petition to compel arbitration under the Federal Arbitration Act, 9 U.S.C. § 201, *et seq*., which codifies the (1958 New York) Convention

on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the "New York Convention"). In its petition, Midmark alleges that the Mehta Family Respondents have brought an action in India in violation of a mandatory arbitration clause in their shareholder agreement. Doc. 1. Midmark also moved for a restraining order temporarily precluding the Mehta Family Respondents from pursuing the Indian Petition.[1] Doc. 2. Midmark undertook to serve its papers on the Mehta Family Respondents through the Indian Central Authority under the requirements of the Hague Convention, to which both the United States and India are party, but to date service by this means has not been completed.

On March 19, 2014, the Court held a telephone conference under S.D. Ohio Civ. R. 65.1 and allowed the Mehta Family Respondents' Indian counsel to participate. During the hearing, Respondents' Indian counsel confirmed that he had actual notice of Midmark's U.S. Petition.

On March 19, 2014, the Court granted Midmark's motion for a TRO enjoining the Mehta Family Respondents from advancing their action before the Company Law Board pending action by this Court on Midmark's motion for a preliminary injunction and set the matter for a preliminary injunction hearing to take place on April 1, 2014. Doc. 9. While the Court granted a TRO, it expressed skepticism whether the Court had personal jurisdiction over the Mehta Family Respondents. *Id.* The Court ordered Midmark to establish at the April 1 hearing that the Court had personal jurisdiction over the Mehta Family Respondents. *Id*.

[1] Janak Healthcare is also named as a respondent to the Petition. However, Janak Healthcare has set forth in a letter that it does not intend to appear and contest these proceedings as it must remain neutral in any dispute among the shareholders; but, Janak Healthcare's counsel committed to comply with the Court's final order.

On March 20, in spite of the TRO, the Mehta Family Respondents attempted to advance the Indian Petition, arguing that this Court lacked subject matter and personal jurisdiction. Doc. 24, PageID 925, ¶ 4. Company Law Board Member Tripathi, who presides over the proceedings relating to the Indian Petition, was made aware of this Court's TRO and the preliminary injunction hearing this Court had scheduled for April 1, and he adjourned the Indian Petition proceedings until April 9. *Id.* ¶ 5; Doc. 24.

On March 24, Midmark filed a motion to show cause why the Mehta Family Respondents should not be held in contempt. Doc. 10. The Mehta Family Respondents had retained United States counsel for the purpose of contesting personal jurisdiction in this matter. Entry of Appearance, Doc. 13. After the appearance of counsel, the Court extended the TRO and rescheduled the preliminary injunction hearing for April 14. The Court also deferred ruling on Midmark's motion to show cause. Doc. 14, at 3–4, PageID 494–95.

On April 4, the Mehta Family Respondents, through their U.S. counsel, filed a motion to dismiss for insufficient service of process, lack of personal jurisdiction, and forum *non conveniens*. Doc. 16. While the motion was pending, the Company Law Board extended its original April 9 hearing to April 30, until after this Court's hearing on the Mehta Family Respondents' motion to dismiss. Doc. 24; Joint Exhibit 32. To address the factual questions relating to personal jurisdiction, the Court granted expedited discovery in which both sides participated through document exchange and depositions between April 10 and 13. Doc. 22.

On April 14, the Court held an evidentiary hearing on the Mehta's motion to dismiss and Midmark's motion for a preliminary injunction. The Mehta Family Respondents appeared via video conference from Mumbai. All of the Mehtas appeared. On April 16, the

Court denied the Mehta Family Respondents' motion to dismiss and granted Midmark a preliminary injunction, which ordered the Mehtas to take no action in furtherance of the Indian petition pending resolution of the petition to compel arbitration in this Court. *Midmark Corp. v. Janak Healthcare Private, Ltd.*, 2014 WL 1513009 (S.D. Ohio Apr. 16, 2014). The Court also found that formal service of summons need not be perfected prior to the issuance of a preliminary injunction of which the enjoined party has actual notice, that the Mehta Family Shareholders purposefully availed themselves of the State of Ohio's jurisdiction by establishing an ongoing business relationship in Ohio, and that the doctrine of forum *non conveniens* did not prevent this Court from granting Midmark the relief requested under the laws and treaties of the United State.

On April 28, Midmark filed a motion to serve the Mehta Family Respondents by email. Doc. 28. On April 30, the Court denied that motion, without prejudice. Doc. 39. That same day, the Mehtas again attempted to pursue the Indian Petition in violation of the injunction issued by this Court. Doc. 38, PageID 1031–33, ¶¶ 3–6. The Mehta Family Respondents attempted to further prosecute the Indian Petition, and Company Law Board scheduled a further hearing to be held on June 27. Doc. 38, PageID 1034.

On April 30, Midmark filed a second motion to show cause based on the Mehta Family Respondents' repeated and direct violations of this Court's Orders. Doc. 38. Midmark followed that motion with separate requests, under S.D. Ohio Civ. R. 7.1, to expedite briefing and to hold a telephonic conference to address the Mehtas conduct in India, which Midmark claimed was improperly continuing to cost Midmark inordinate fees and expenses both in the U.S. and in India. Doc. 40. Counsel for the Mehtas moved to withdraw. Doc. 41.

On May 12, the Mehta Family Respondents filed an application before the India Company Law Board seeking an antisuit injunction to prevent Midmark from pursuing this litigation. The Mehta Family Respondents argued to Company Law Board that this Court's injunction did not apply to all claims arising from the shareholder agreement, and the Mehtas attempted to re-litigate the jurisdictional issues already settled in the Court's April 16 order. Counsel for Midmark informed the Company Law Board of its belief that the Mehta Family Respondents are in contempt of this Court, and thus are not entitled to their requested relief. Company Law Board declined to address the Mehtas' request to excuse their alleged contempt, and stated that "contempt is a matter between a 'court' and the 'contemnor.' . . . [T]his is for the US District Court to decide as to whether the Petitioners have deliberately committed dis-obedience of the court's order or not." Exhibit 1 at May 13 Hearing on Pending Motions, ¶ 12. In addition, the Company Law Board ruled that it is the only forum with the "inherent jurisdiction" to decide the Mehta Family Respondents' claims under the Indian Companies Act, but did not pass on whether the Mehta Family Respondents waived such jurisdiction with the arbitration clause. *Id.*

This Court held a hearing on May 13 on the motion to withdraw and Midmark's emergency motion to expedite hearing on its second motion to show cause. At the hearing, Midmark orally renewed its motion to serve the Mehta Family Respondents by email, citing the urgency created by recent circumstances. Midmark further requested that the Court allow Midmark to serve the Mehtas through counsel prior to their withdrawal. The Court granted the motion to withdraw, but only on the condition that counsel accept service of summons on their clients prior to withdrawing. Dinsmore accepted service of the Summons and Verified Petition directed to each of their clients on May 16, Doc. 47, and Midmark also served the papers via

email. The Court permitted those methods of service after finding them to be sufficient under Fed. R. Civ. P. 4(f). Doc. 45. The Court also granted Midmark's emergency motion to expedite hearing on its second motion to show cause and set a combined trial on the merits and hearing on Midmark's motions to show cause for June 9.

The trial on the merits proceeded on June 9 as scheduled. The Mehta Family Respondents did not offer any additional testimony to support their defenses. Moreover, pursuant to Fed. R. Civ. P. 65, this Court considered the testimony and evidence provided during the April 14 hearing of the Mehta Family Respondents' defenses on the merits. Fed. R. Civ. P. 65(a)(2) ("[E]vidence that is received on the motion [for preliminary injunction] and that would be admissible at trial becomes part of the trial record and need not be repeated at trial."); *Valente v. University of Dayton*, 689 F. Supp. 2d 910, 922 (S.D. Ohio 2010) (granting summary judgment based on evidence at preliminary injunction hearing because "[a]ll of the evidence on the motion for preliminary injunction was evidence which would be admissible at trial") (Merz, Mag. J.). This matter is now ripe for final judgment.

II. ARBITRATION PROVISION OF THE SHAREHOLDERS AGREEMENT

On December 22, 2008, Midmark and the Mehta Family Respondents signed the shareholders agreement, granting Midmark a minority share in Janak. This agreement was the culmination of negotiations in both India and Ohio, and was the result of Midmark and the Mehta Family Respondents' intention to create an ongoing business relationship. The Court discussed the contacts this relationship created in Ohio in the previous Entry and Order Issuing Preliminary Injunction. *Midmark*, 2014 WL 1513009, at *3-6.

The Shareholder Agreement was executed as part of Midmark's acquisition of a 37 percent interest in Janak. Doc. 23-2, PageID 785. The Shareholder Agreement contains a broad arbitration clause requiring international arbitration under well-recognized rules:

> "10.1 Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination, or invalidity thereof, shall be resolved exclusively by binding arbitration (the "Arbitration") conducted before a sole arbitrator (the "Sole Arbitrator") in Singapore, pursuant to the rules of and administered in accordance with the rules of the London Court of International Arbitration (the "LCIA"). … The prevailing Party shall be entitled to any appropriate relief (including monetary damages, if any), as well as reimbursement of all its actual costs (including sole arbitrator's fees and fees payable to the LCIA) and its attorneys' fees, from the opposing Party. … Final judgment on any such decision or award may be entered by any court of competent jurisdiction. The Parties waive any objection to this arbitration on grounds that such a proceeding is an inconvenient or inappropriate forum to settle any such dispute. …
>
> 10.2 Nothing contained in Section 10.1 shall prohibit any Party from pursuing equitable relief (including immediate, preliminary and permanent injunctive relief) to which it may be entitled in any court of competent jurisdiction in order to preserve the status quo pending resolution of the dispute at issue through Arbitration."

Doc. 23-2, PageID 816.

The Parties intended the arbitration provision to apply to "any dispute, controversy, or claim" arising in any respect out of, or otherwise relating to, the "rights and obligations as shareholders of [Janak], on matters concerning the operation, administration, and management of [Janak,]" as broadly as such terms can encompass all disputes, including, but not limited to, all those described in the Indian Petition such as the India statutory claims for minority shareholder oppression and mismanagement of Janak by the majority. Even though the law of India governs the shareholders agreement, given that Midmark has filed its petition here, the question of whether the parties agreed to arbitrate such claims, and whether they are arbitrable under the New York Convention for the purposes of ordering arbitration, requires the

application of United States federal law. See, e.g., *Westbrook Int'l, LLC v. Westbrook Techs*., 17 F. Supp. 2d 681, 683 (E.D. Mich. 1998) ("[E]ven in international agreements, the [Federal Arbitration Act] governs the arbitrability of claims and choice-of-law clauses will be applied to the substantive aspects of the arbitration proceedings."). As the Court previously found, the Mehta Family Respondents' claims of "mismanagement and oppression" arise "from the shareholders agreement." Order Granting Motions, p. 2, Doc. 45, PageID 1072. Whether the claims Petitioners seek to have arbitrated are non-arbitral under Indian law, is likely to be determined in the context of an action to enforce any arbitration order. See *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 540 (1995).

III. MOTION TO COMPEL ARBITRATION

This dispute, and the Company Law Board Petition in India, are governed by the New York Convention because these disputes are commercial by their nature and the Parties' home countries are signatories of the Convention. *Fertilizer Corp. of India v. IDI Mgmt., Inc*., 517 F. Supp. 948, 950–51 (S.D. Ohio 1981) (noting that the United States ratified the New York Convention in December 1970 and India ratified the same in 1961).

Congress codified the New York Convention in Chapter 2 of the Federal Arbitration Act, 9 U.S.C. § 201, *et seq*. The Federal Arbitration Act embodies "the strong federal policy in favor of enforcing arbitration agreements" and "ensure[s] judicial enforcement of privately made agreements to arbitrate." *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217, 219 (1985) (enforcing agreement to arbitration); *accord Haskins v. Prudential Ins. Co. of Am.*, 230 F.3d 231, 239, 241 (6th Cir. 2000) (enforcing arbitration agreement). At the same time, arbitration awards will not be enforced when arbitration acts "'as a prospective waiver of a party's right to pursue statutory remedies.'" *Orman v. Citigroup, Inc*., 2012 WL 4039850, *2

(S.D.N.Y. 2012) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc*., 473 U.S. 614, 637 n.19 (1985)).

Article II, Section 3 of the New York Convention provides that "'when one of the parties' to [an] arbitration agreement requests a court refer the dispute to arbitration, that court 'shall' do so." *Answers in Genesis of Ky., Inc. v. Creation Ministries, Int'l, Ltd*., 556 F.3d 459, 468–69 (6th Cir. 2009) (citing 9 U.S.C. § 208).

The dispute before the Indian Company Law Board arises out of, or, at the very least, relates to the shareholder agreement. Indeed, the parties appear to have no relationship to each other except for that arising from the shareholder agreement. The Court has declared that the parties agreed to adjudicate the merits of this dispute, and any dispute arising in any way out of or relating to the shareholder agreement, in a neutral arbitration in Singapore and not in the courts of the United States or India. *Midmark*, 2014 WL 1513009 at *9-10. While the parties remain free to mutually agree to modify their contract and litigate in any court of the world, if either of them objects, they are bound by their agreement to arbitrate disputes. Because Midmark objects to litigation in India, the only available avenue to redress the wrongs the Mehtas allege is to open arbitration in Singapore. This action, in United States District Court, does not violate the arbitration clause, as ¶ 10.2 of the Shareholders Agreement permits any party to seek "equitable relief (including immediate, preliminary and permanent injunctive relief) to which it may be entitled in any court of competent jurisdiction in order to preserve the *status quo*" in the event the arbitration clause is breached or at risk of being breached.

IV. MIDMARK IS ENTITLED TO AN INJUNCTION REQUIRING THE DISMISSAL OF THE INDIAN PETITION

The Mehta Family Shareholders have attempted to advance the Company Law Board litigation over Midmark's objection that Midmark is entitled to arbitration of this dispute. While Midmark's objection is perplexingly advanced not in the Company Law Board, but here, the Mehta's actions are in direct defiance of this Court's TRO and Preliminary Injunction.

Midmark will be irreparably injured if the Mehta Family Shareholders continue to pursue their grievances outside of the contractual arbitration process. *Zaborowski v. MHN Government Services, Inc.*, 2013 WL 1832638, *2 (N.D. Cal. 2013) (citing *Alascom, Inc. v. ITT North Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984)); *Northwest Airlines, Inc. v. R&S Co. S.A.*, 176 F. Supp. 2d 935, 941–42 (D. Minn. 2001) (entering preliminary injunction, reasoning in part that "[Northwest Airlines] faces significant harm if a preliminary injunction is not granted" because "[i]f R&S is allowed to pursue its wrongful termination claim in Lebanon, [Northwest Airlines] faces the precise risk it bargained and contracted to avoid"). Forcing Midmark to carry on arbitration parallel with the Indian Petition in Company Law Board would rob the Parties of the benefit of their bargain.

There is no assertion that others would be harmed by the injunction. Further, the Mehta Family Respondents will not be harmed by the Court's holding them to their bargain, which the parties freely negotiated. *Safelite Group, Inc. v. Zurich American Ins. Co., Inc.*, 2012 2014 WL 1513009, *19 (S.D. Ohio Aug. 6, 2012) ("[T]here is no harm in requiring [plaintiff] to act in accordance with its contractual obligation.").

The public interest will be served by the injunction. "[T]here is a strong public policy in favor of carrying out commercial arbitration when a contract contains an arbitration

clause." *Safelite*, 2012 2014 WL 1513009 at *21 (citing *Performance Unlimited v. Questar Publishers*, 52 F.3d 1373, 1384 (6th Cir. 1995)). There is no reason under the New York Convention for two different courts in two different jurisdictions to address the arbitrability of claims that arise out of or relate to this commercial dispute; indeed, Article II(3) of the New York Convention mandates that any singular court of competent jurisdiction "when seized of an action" involving such an international dispute, must refer the parties to arbitration.

Midmark urges the Court to issue an antisuit injunction against the Mehta family defendants, citing *Gau Shan Co. v. Bankers Trust Co.*, 956 F.2d 1349, 1352 (6th Cir. 1992) ("It is well settled that American courts have the 'power to control the conduct of persons subject to their jurisdiction to the extent of forbidding them from suing in foreign jurisdictions."). According to Midmark, an antisuit injunction is appropriate "to protect the jurisdiction of [the Court]" and because allowing the Mehta Family Respondents to continue litigating outside of the contractual forum would allow them "'to evade the forum's important policies.'" *Id.* at 1353.

The Mehta Family Respondents have exhibited a determination to pursue the Company Law Board Petition. It is evident that the Mehta Family Respondents will continue to pursue the Indian Petition before Company Law Board.

At the same time, the Court perceives no danger to its jurisdiction in this case. The action does not involve *in rem* jurisdiction, a category of cases *Gau Shan* contemplated allowing an antisuit injunction. Moreover, with the issuance of today's order granting final relief, with the exception of Midmark's pending motion for the Court to hold Defendants in

contempt, this Court's involvement in this case draws to a close, making it impossible for it to be deprived of jurisdiction.[2]

Additionally, Midmark has recited to the Court a history of the Mehta Defendants going from court to court in Mumbai seeking an antisuit injunction against Midmark, to no avail. The Court concludes from this that the Indian courts are as committed to allowing enforcement of the arbitration clause as this Court is and that Midmark could have realized enforcement of its arbitration agreement in a manner much more efficient than creating an international web work of parallel litigation.

V. THE COURT GRANTS RELIEF TO MIDMARK

For the reasons above, his Court finds and orders as follows:

A. **IT IS ORDERED THAT** all Respondents named in Midmark's Petition, Janak and the Mehta Family Respondents, and their officers, agents, servants, employees, attorneys, successors, assigns, and all other persons who are in active concert or participation with Janak and the Mehta Family Respondents, are hereby **ENJOINED** from taking any action in furtherance of the Indian Petition.

B. **IT IS FURTHER ORDERED THAT** the Mehta Family Respondents must dismiss, withdraw, or cause to be dismissed or withdrawn, the Indian Petition

[2] The Court additionally notes that *Gau Shan* discussed the issuance of antisuit injunctions over parties over whom the court exercised general jurisdiction, rejecting the notion that courts should also issue such injunctions over their nationals. *Gau Shan*, at 1358. Here, an antisuit injunction is requested against parties who are not United States nationals and not subject to the Court's general jurisdiction, but only subject to minimum contacts jurisdiction concerning a specific subject matter.

within 3 business days of service of this Order which service shall be accomplished by Midmark through the channels already approved by the Court to reasonably reach the Mehta Family Respondents. Midmark is to serve this Order upon Respondents by email as previously approved by the Court, and thereafter shall promptly submit proof of service to the Court. The Respondents or Midmark, or both, shall promptly file an affidavit or declaration with this Court (1) stating that the Respondents have fully complied with this Order and (2) detailing the method of compliance.

C. **IT IS FURTHER ORDERED THAT** if the Indian Petition is not dismissed within the time specified by this Court, then the Mehta Family Respondents must show cause within seven days of the expiration of the time period described in Part B, above, as to why they have not complied with this Order.

D. Finally, **IT IS FURTHER ORDERED THAT** this final judgment that the claims asserted by Midmark in the Verified Petition are subject to arbitration should be considered conclusive and enforceable.

IT IS SO ORDERED.

Dated: Monday, June 16, 2014

s/Thomas M. Rose

UNITED STATES DISTRICT JUDGE