Dispute Resolution Hotline

March 26, 2014

US COURT DISMISSES MOTION FOR CLASS ACTION AGAINST MAHINDRA & MAHINDRA

- US Court applied tests to be satisfied under US Federal Rules of Civil Procedure, in a motion for *'class action'* by the dealers, and dismissed it accordingly against M&M.
- US Court held that the class member's claims for unjust enrichment and promissory estoppel would require individualized analysis and hence would not satisfy commonality test.
- US Court observed that although no fixed numerosity rule can be applied to a particular case, however, generally less than twenty one is inadequate and more than forty adequate, with numbers varying according to other factors.
- US Court held that as M&M had executed the agreements at different places, at different times, seeking varying damages, there would be different choice of law applicable to the respective claims and as such a common question of law would not arise in respect of all the Plaintiffs.

FACTS

In Automobile Leasing Corporation v. Mahindra and Mahindra [**Click here** for the judgment], the United States District Court, Northern District of Georgia, Atlanta Division **('US Court')**, has dismissed Automobile Leasing Corporation's **('Plaintiffs')** Motion for Class Certification against Mahindra and Mahindra Ltd **('M&M')**, on the ground that common question of fact and law were not satisfied by the Plaintiffs.

The Plaintiffs paid *'appointment fees'* to M&M, through its distributor, Global Vehicles Inc. **('Global')**, to obtain the rights to distribute M&M made vehicles in USA. In 2006, M&M began marketing and along with Global collected $32 million in fees from 340 dealers. M&M was to enter the automobile market from 2009. However, in June 2010, M&M announced that it would not be entering the USA market and terminated the agreements. M&M and Global did not refund all of the fees that were collected from Plaintiffs. Therefore, the Plaintiffs approached the US Court and sought to be certified as a 'class', in order to seek restitution and damages, for all dealers that paid appointment fees to M&M. The Plaintiffs sought certification on four counts[1]:

- violation of Georgia Motor Vehicle Franchise Practices Act;
- violation of Automobile Dealers Day in Court Act;
- unjust enrichment; and,
- promissory estoppel.

TESTS INVOLVED FOR CLASS CERTIFICATION IN USA

In order to maintain a *'class action'*, the party seeking class certification must satisfy each of the prerequisites of Rule 23(a) and at least one of the provisions of Rule 23(b) of US Federal Rules of Civil Procedure **('FRCP')**.

The tests to be satisfied in terms of Rule 23 (a) are Numerosity test, Commonality test, Typicality test, and Adequacy of Representation test. A failure to establish any one of the four factors precludes certification.[2]

In terms of Predominance and Superiority Requirement under Rule 23(b)(3)[3], it has to be satisfied that:

- Prosecuting separate actions by or against individual members of the class would create a risk of prejudice to the party opposing the class or to those members of the class not parties to the subject litigation;
- The party opposing the class has refused to act on grounds that apply generally to the class, necessitating final injunctive or declaratory relief; and
- Question of law or fact common to the members of the class predominate over any questions affecting only individual members and that a *'class action'* is superior to other available methods for fair and efficient adjudication of the controversy.

JUDGMENT

The US Court concluded that the proposed class was sufficiently numerous in view of the fact that several dealers had sought action against M&M and observed that although there is no fixed numerosity rule, generally less than twenty one is inadequate and more than forty adequate, with numbers varying according to other factors.

However, the US Court held that the Commonality test was not satisfied and held that the Plaintiffs had failed to show that a common question of law arose. Specifically, Plaintiffs were unable to demonstrate that an equity-based Georgia law claims arose in respect of each of the Plaintiffs. The US Court concluded that all the Plaintiffs did not have a connection with Georgia and consequently Georgia law would not be applicable for all Plaintiffs. Further, Georgia law would not necessarily apply to all class members because:

- only the Letter of Intent in the initial application package had the choice of law and dispute resolution clause.

Research Papers

Littler International Guide (India) 2024
November 08, 2024

Unmasking Deepfakes
October 25, 2024

Are we ready for Designer Babies
October 24, 2024

Research Articles

The Bitcoin Effect
November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!
September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare
August 23, 2024

Audio

Digital Lending - Part 1 - What's New with NBFC P2Ps
November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I
August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II
August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FII8 event in Riyadh
October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs
September 26, 2024

However, the validity of the letter of intent was not the moot point in the present scenario and that there was no indication that the language was meant to extend to subsequent litigation between the dealers and M&M;[4]

- the choice of law provision in Dealer Sales and Service Agreement **('DSSA')** stated that the DSSAs themselves were to be governed and construed according to Georgia law, not that any disputes arising from the payment of prospective franchise fees from the dealers to M&M, will be governed by Georgia law;[5]
- Since M&M had executed agreements with Plaintiffs at different places, at different times, seeking varying damages, Georgia law would not be applicable. Consequently, a common question of law would not arise in respect of all Plaintiffs;[6]
- determination of which law to apply to class members claims for unjust enrichment and promissory estoppel would require individualized choice of law analysis, including due process analysis;[7] and,
- not every class member signed every agreement and several only signed one agreement and there were at least five different versions of information memoranda that the class members signed.[8]

The US Court also noted that even if a common question of law was raised based on the Federal Dealers' Day in Court Act, in light of the fact that a variety of agreements were executed by M&M with each of the Plaintiffs and in view of the varying circumstances of many potential class members, the Plaintiffs did not meet the commonality requirement of Rule 23(a)(2).[9]

The US Court also held that the Plaintiffs failed to satisfy predominance and superiority requirement. The US Court observed that for claims made by putative class members, for unjust enrichment and promissory estoppel, it would require individualized due process determinations and therefore common issues of law did not predominate in respect of those claims. Further, class members sought to recover varying amounts that were paid at different times, these facts undermine the Courts ability to resolve the question of damages on a class wide basis.[10]

ANALYSIS

The US Court has applied well settled principles of *'class action'* suits to the present case and dismissed claims against M&M. In the present case a contractual claim was rejected when raised in the form of a *'class action'* suit. *'Class action'* suits operate when the test laid down by the US Supreme Court is satisfied.[11]

Although representative suits are recognized in Indian law, the expression *'class action'* has only recently been recognized in law. The law of *'class action'* suits in the US and India although apparently similar, have certain material differences. Under the Companies Act 2013 **('Act')**, only a shareholder or a depositor can file a claim in the nature of *'class action'* suit against a company. The requisite number of members and depositors, who can maintain a *'class action'* is specified under Section 245(3)(i) and Section 245(3)(ii) of the Act, i.e. either 100 members/depositors of the company or 10% of the total members/shareholders of the company, whichever is less.[12]

Interestingly, the test for the purpose of Rule 23(b)(3) of FRCP is similar to the test for joinder of parties and consolidation of claims under the Code of Civil Procedure, 1908 under Order I.[13] In 2005, the J.J. Irani Committee Report,[14] suggested that representative action may be initiated by one shareholder/depositor on behalf of one or more of the shareholders/depositors, on the premise that they would all have the same locus standi to initiate an action against an erring company. Further, the Standing Committee on Finance (2011-12)[15], discussed the issue whether *'class action'* should be allowed on the applications of members or depositors only. The Committee remarked that it has been felt that since creditors can enforce their claims through contracts/ agreements with borrower companies, they may not be given statutory right for *'class action'*. On the other hand since depositors do not have any contractual rights and are mainly of unsecured nature, they are being proposed to be empowered with right to file *'class action'* petitions before Tribunal. We will have to wait for Section 245 of the Act to be notified, its interpretation by the Courts, in order to comment on whether the concept of *'class action'* has been brought in Indian Company law jurisprudence with sufficient ease.

Companies keen to do business in US should be sensitive to risk of *'class action'* suits as well risk of litigation under commercial contracts. With more Indian companies seeking to engage in international trade, they will have to be mindful of risks of litigation from all possible corners. This judgment highlights the risks of doing business in different jurisdictions and the importance of being aware of local practices in each jurisdiction.

– Alipak Banerjee, M.S. Ananth & Vyapak Desai
You can direct your queries or comments to the authors

[1] Plaintiffs proposed to define a class as 'Any and all individuals and/or entities that paid money to Global and/or Mahindra for the right to sell and market vehicles, products, and accessories manufactures by Mahindra & Mahindra, Ltd. In the United States'.

[2] Rule 23(a)
"(a) PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
(1) the class is so numerous that joinder of all members is impracticable;
(2) there are questions of law or fact common to the class;
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4) the representative parties will fairly and adequately protect the interests of the class."

[3] The Plaintiffs did not argue that their proposed class should be certified under either Rule 23(b)(1) or 23(b)(2).

[4] *See* Page 7 of the Judgment.

[5] *Ibid* at Page 6

[6] *Ibid* at Page 9 & 14

[7] *Ibid* at Page 12

[8] *Ibid* at Page 10

[9] *Ibid* at Page 9 & 10

[10] *Ibid* at Page 12 & 13

[11] *See* Wal-Mart Stores, Inc. v. Dukes, U.S., 131 S.Ct. 2541, 2552 (2011)

[12] Section 245(3)(i) of the Act
a) In the case of a company having share capital – a) not less than 100 members of the company, or b) not less than such percentage of the total number of its members as may be prescribed, whichever is less ***[Note:*** *The Rules under the Act set out in Chapter XVI Rule 16.1 have prescribed the percentage as 10% of the total number of members of the company];* or c) any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed *[Note: The Rules under the Act set out in Chapter XVI Rule 16.1(a) have prescribed the percentage as 10% of the issued share capital of the company];*

Scope of judicial interference and inquiry in an application for appointment of arbitrator under the (Indian) Arbitration and Conciliation Act, 1996
September 22, 2024

b) In case of a company not having share capital- Not less than 1/5th of the total number of its member.
Section 245(3)(ii) of the Act
The requisite number of depositors that can maintain an action **a)** not less than 100 depositors; or **b)** not less than such percentage of the total number of depositors as may be prescribed, whichever is less ***[Note:** The Rules under the Act set out in Chapter XVI Rule 16.1(b) have prescribed the percentage as 10% of the total number of depositors of the company];* or **c)** any depositor or depositors holding to whom the company owes such percentage of total deposits of the company as may be prescribed ***[Note:** The Rules under the Act set out in Chapter XVI Rule 16.1(b) have prescribed the percentage as 10% of the issued share capital of the company]*.

[13] *See* The Chairman, Tamil Nadu Housing Board, Madras v. T.N. Ganapathy, (1990)1SCC608

[14] For details *see*,http://www.mca.gov.in/MinistryV2/chapter7.html

[15] 7th Report, Standing Committee on Finance (2011-2012) - The Companies Bill, 2011, (15th Lok Sabha), Ministry of Corporate Affairs.