

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19183 of 2023

**[On note for speaking to minutes of order dated 03/11/2023 in
R/SCA/19183/2023]**

**With
R/SPECIAL CIVIL APPLICATION NO. 19243 of 2023**

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NXGN SPORTS INTERACTIVE PRIVATE LIMITED

**Versus
UNION OF INDIA**

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Appearance:

SINGHI & CO(2725) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,3,4

MR. TRUPESH C. KATHIRIYA, ASSISTANT GOVERNMENT PLEADER/PP
for the Respondent(s) No. 2

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**CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

Date : 06/11/2023

**ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

Perused the Note for Speaking to Minutes dated 04.11.2023 filed by Mr.Trupesh C. Kathiriya, learned Assistant Government Pleader, seeking typographical correction in the order dated 03.11.2023 in the captioned matter, which occurred inadvertently by showing the name of Mr.Pranav Trivedi as the Assistant Government Pleader for respondent No.2.

The same is hereby rectified and in the appearance portion of the order as well as in para 1 of the Order in Special Civil Application No. 19183 of 2023, name of Mr.Trupesh C. Kathiriya be inserted for respondent No.2 instead of the name of Mr.Pranav Trivedi.

Note for Speaking to Minutes is allowed, accordingly.

(BIREN VAISHNAV, J)

(MAUNA M. BHATT,J)

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NXGN SPORTS INTERACTIVE PRIVATE LIMITED

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Appearance In Special Civil Application No. 19183 of 2023:

MR MIHIR JOSHI, SENIOR COUNSEL WITH MR SANDEEP SINGHI,
ADVOCATE FOR SINGHI & CO(2725) for the Petitioner(s) No. 1,2

MR DEVANG VYAS, ASG WITH MR PRIYANK LODHA, SENIOR STANDING
COUNSEL for the Respondent(s) No. 1,3,4

MR PRANAV TRIVEDI, ASST GOVERNMENT PLEADER/PP for the
Respondent(s) No. 2

Appearance In Special Civil Application No. 19243 of 2023:

MR TUSHAR HEMANI, SENIOR COUNSEL WITH MR ABHAY DESAI,
ADVOCATE for the Petitioner(s) No. 1

MR DEVANG VYAS, ASG WITH MR PRIYANK LODHA, SENIOR STANDING
COUNSEL for the Respondent(s) No.

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 03/11/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

**ORDER IN SPECIAL CIVIL APPLICATION NO. 19183
OF 2023**

1. Heard Mr. Mihir Joshi, learned Senior Counsel appearing with Mr. Sandeep Singhi, learned advocate for Singhi & Co. for the petitioners, Mr. Devang Vyas,

learned Additional Solicitor General appearing with Mr. Priyank Lodha, learned Senior Standing Counsel for respondents no. 1, 3 & 4 and Mr. Pranav Trivedi, learned AGP for respondent no. 2.

2. Challenge in this petition is to the show cause notice dated 04.10.2023 issued by the respondent no. 3.

3. Essentially, the question that requires our consideration is whether the petitioners' platform which is used for gaming would fall within an actionable claim amounting to betting and gambling. Essentially, it is the case of the learned Senior Advocate Mr. Joshi that it is not an actionable claim which is sought to be so conveyed in the show cause notice. He has relied on the provisions of Section 2(52) of the Act read with Section 7 thereof particularly schedule (III) which reads as under:

"SCHEDULE III

[See Section 7]

Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

XXXXXXXXXX

6. Actionable claims, other than lottery, betting and gambling."

4. Essentially, therefore, it is the case of the petitioner that the activity of the online claim that the petitioners undertake would be an actionable claim other than lottery, betting and gambling. Reliance is placed on a decision of the Division Bench of the Punjab and Haryana High Court in the case of **Varun Gumber vs. Union Territory of Chandigarh and Others reported in 2017 SCC OnLine P&H 5372** wherein the Punjab and Haryana High Court considered a claim of similar kind.

5. Similarly, the Rajasthan High Court in the case of **Chandresh Sankhla vs State of Rajasthan and Others reported in 2020(2) RLW 1601 (Raj.)** decided a similar issue i.e. whether there is an element of betting/gambling. The said issue has now attained finality by way

of a decision of the Apex Court in SLP (Civil) Diary No. 18478 of 2020 in favour of the petitioner therein.

6. Perusal of the show cause notice would indicate that the authorities while purporting to seek an explanation from the petitioner prima facie observed that the nature of services rendered was 'actionable claims' and therefore Mr. Joshi, learned Senior Advocate has contended that no useful purpose will be served in responding to the show cause notice.

7. Having heard learned Senior Counsels appearing for both the sides, prima facie, we are of the view that the question whether online gaming as so done by the petitioner would tantamount to betting/gambling requires to be considered in extenso.

8. Hence, notice returnable on 17.01.2024. Pending the petition there shall be ad-interim relief inasmuch as the respondents are restrained from taking any further

steps on the adjudication of the show cause notice. It shall however be open to the petitioner to file a response to the show cause notice.

9. Direct service is permitted.

ORDER IN SPECIAL CIVIL APPLICATION NO. 19243 OF 2023

1. Heard Mr. Tushar Hemani, learned Senior Counsel appearing with Mr. Abhay Desai, learned advocate for the petitioner and Mr. Devang Vyas, learned Additional Solicitor General appearing with Mr. Priyank Lodha, learned Senior Standing Counsel for respondents.

2. Challenge in this petition is to the show cause notice dated 17.10.2023 issued by the respondent no. 4. Challenge in this petition is also to the vires of Rule 31A of the Central Goods and Service Tax Rules, 2017.

3. In addition to the contentions advanced by learned Senior Advocate Mr. Mihir Joshi in Special Civil Application No. 19183 of 2023 as stated hereinabove, Mr. Hemani, learned Senior Advocate would also rely on an order passed by the Bombay High Court rendered in Writ Petitions No. 715 to 717 of 2023 on 23.10.2023 wherein the issue is pending consideration.

4. Notice returnable on 17.01.2024.

5. Pending the petition there shall be ad-interim relief inasmuch as the respondents are restrained from taking any further steps on the adjudication of the show cause notice. It shall however be open to the petitioner to file a response to the show cause notice.

6. Direct service is permitted.

(BIREN VAISHNAV, J)

(MAUNA M. BHATT, J)

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